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

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

Payment of Premiums; Correction

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Interim rule; correction.

SUMMARY: This document corrects an interim rule on Payment of Premiums, 29 CFR Part 2610, that appeared at pages 24906 through 24919 in the **Federal Register** of Thursday, June 30, 1988 (53 FR 24906). This action is needed to correct an editorial error in that interim rule.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; telephone 202–778–8823. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The following correction is made in FR Doc. 88–14792 appearing on pages 24906 through 24919 in the issue of June 30, 1988:

§ 2610.34 [Corrected]

1. On page 24919, column two, line 26, the text of § 2610.34(b)(6) is corrected by substituting the word "fifteenth" for the word "last".

Note: An additional correction to this document is published elsewhere in the corrections sections of this issue of the **Federal Register**.

Dated: July 5, 1988.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88–15414 Filed 7–7–88; 8:45 am]

BILLING CODE 7708–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6799]

List of Communities Eligible for the Sale of Flood Insurance; Iowa, et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures compliant with the NFIP revised regulations that became effective on October 1, 1986. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATE: June 3, 1988.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street SW., Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of the Federal Emergency Management Agency has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et. seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, the suspension for each listed community has been withdrawn. The entry reads as follows:

§ 64.6 List of eligible communities.

State	Community name	County	Community No.	Effective date
Iowa	Anita, City of	Cass	190048	June 3, 1988 Suspension withdrawn.
Do	Beford, City of	Taylor	190263	Do.
Do	Charlotte, City of	Clinton	190087	Do.
Do	Cherokee, City of	Cherokee	190063	Do.
Do	Clarksville, City of	Butler	190336	Do.
Do	Clive, City of	Polk	190488	Do.
Do	Correctionville, City of	Woodbury	190288	Do.
Do	Definance, City of	Shelby	190246	Do.
Do	Fertile, City of	Worth	190301	Do.
Do	Fort Madison, City of	Lee	190184	Do.
Do	Gilbertville, City of	Black Hawk	190021	Do.
Do	Gladbrook, City of	Tama	190516	Do.
Do	Janesville, City of	Black Hawk and Bremer	190023	Do.
Do	Lamoni, City of	Decatur	190110	Do.
Do	Lehigh, City of	Webster	190310	Do.
Do	Lowden, City of	Cedar	190054	Do.
Do	Lucas, City of	Lucas	190196	Do.
Do	Mapleton, City of	Monona	190208	Do.
Do	Maxwell, City of	Story	190257	Do.
Do	Newell, City of	Buena Vista	190334	Do.
Do	Pleasant Hill, City of	Polk	190489	Do.
Do	Roland, City of	Story	190513	Do.
Do	Sageville, City of	Dubque	190122	Do.
Do	Sioux Center, City of	Sioux	190658	Do.
Do	Smithland, City of	Woodbury	190300	Do.
Do	Spencer, City of	Clay	190071	Do.
Do	Story City, City of	Story	190259	Do.
Do	Sumner, City of	Bremer	190029	Do.
Do	Unionville, Town of	Appanoose	190923	Do.
Do	Victor, City of	Iowa and Poweshiek	190426	Do.
New York	Holland Patent, Village of	Oneida	360530	June 15, 1988 Suspension withdrawn.
Do	Huron, Town of	Wayne	360892	Do.
Do	Jay, Town of	Essex	360265	Do.
Do	Lebanon, Town of	Madison	360403	Do.
Do	Lexington, Town of	Greene	360284	Do.
Do	Lima, Town of	Livingston	360457	Do.
Do	Lincoln, Town of	Madison	360405	Do.
Do	Lyons, Town of	Wayne	361226	Do.
Do	Marathon, Village of	Cortland	360183	Do.
Do	Middlesex, Town of	Yates	360960	Do.
Do	Newark, Village of	Wayne	360894	Do.
Do	Pelham, Village of	Westchester	360925	Do.
Do	Pulaski, Village of	Oswego	360659	Do.
Do	Rensselaer Falls, Village of	St. Lawrence	361466	Do.
Do	Savona, Village of	Steuben	361049	Do.
Do	Sherburne, Town of	Chenango	360164	Do.
Do	Sherman, Town of	Chautauqua	361502	Do.
Do	Smyrna, Town of	Chenango	361308	Do.
Do	Sodus Point, Village of	Wayne	360899	Do.
Do	Speculator, Village of	Hamilton	361527	Do.
Do	Stockport, Town of	Columbia	361322	Do.
Do	Tivoli Village of	Dutchess	361507	Do.
Do	Valatie, Village of	Columbia	361508	Do.
Do	Valley Falls, Village of	Rensselaer	361469	Do.
Do	Wallkill, Town of	Orange	360634	Do.
Do	Wappingers Falls, Village of	Dutchess	360223	Do.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: July 1, 1988.

[FR Doc. 88-15329 Filed 7-7-88; 8:45 am]

BILLING CODE 6718-21-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 31

Referral of Debts to the Internal Revenue Service for Tax Refund Offset; Implementing the Deficit Reduction Act

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: Section 2653 of the Deficit Reduction Act (the Act) authorizes the Secretary of the Treasury to offset the income tax refund due an individual taxpayer who has a delinquent debt obligation to the Federal Government when other collection efforts have failed to recover the amount due. This final rule implements the provisions of the Act for reporting an individual debtor to the Internal Revenue Service (IRS) so that an offset against an income tax refund can be effectuated. The procedure contains safeguards for the debtor, while enhancing the Department's ability to collect delinquent debts.

EFFECTIVE DATE: Effective date of rule August 8, 1988.

FOR FURTHER INFORMATION CONTACT: Alan M. Levit, (202) 245–6201.

SUPPLEMENTARY INFORMATION: On December 17, 1986, the Department solicited public comment on an interim rule implementing section 2653 of the Deficit Reduction Act (DRA) (31 U.S.C. 3720A) and its implementing regulations issued by the Department of the Treasury, Internal Revenue Service (IRS), at 26 CFR 301.6402–6T.

The Department received only one comment from an interested party, and a substantive revision was made to the interim rule upon consideration of the comment.

Section 31.1—Scope

The commenter was concerned with the issue of reporting to the IRS a debt for which the statute of limitations had lapsed. Such discharged debts are considered by the IRS to be income to the debtor. The commenter suggests that the procedural safeguards afforded debtors in general by the interim rule are not provided to those debtors whose debts are unenforceable solely due to the lapse of the limitations period for collecting the debt. However, section 61(a)(12) of the Internal Revenue Code and its implementing regulations at 26 CFR 1.61–12 provide that income arising from the discharge in whole or in part of a debt is to be included in the debtor's gross income for the year in which the debt is discharged. Therefore, since the Department is required to report such income to the IRS, the Departmental claims collection regulations, at 45 CFR 30.31(b), provide that the Secretary will report to the IRS, using Form 1099G, any amount over $600 which becomes uncollectible because the applicable limitations period expires. We have revised § 31.1(d) merely to reference this preexisting requirement.

E.O. 12291

This rule does not constitute 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) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) 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.

Regulatory Flexibility Act

In accordance with the provisions of section 605(b) of the Regulatory Flexibility Act, at 5 U.S.C. 603, the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities such as would require the development of a regulatory impact analysis. The Department recognizes that there may be increased costs to individuals as a result of this rule. However, such increases are imposed *only if* an individual is late in making payments to the Department. In addition, these procedures are mandated by section 2653 of the Deficit Reduction Act.

Reporting and Recordkeeping Requirements

Under section 3518 of the Paperwork Reduction Act of 1980 and 5 CFR 1320.3(c), the information collection provisions contained in these regulations are not subject to Office of Management and Budget review and approval.

List of Subjects in 45 CFR Part 31

Administrative practice and procedure, Claims.

Otis R. Bowen,

Secretary.

Date: May 11, 1988.

Accordingly, we hereby revise 45 CFR Part 31 as follows:

PART 31—REFERRAL OF DEBT TO IRS FOR TAX REFUND OFFSET

Sec.

31.1 Scope.
31.2 Notice of requirements before offset.
31.3 Review within the Department of a determination that an amount is past due and legally enforceable.
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31.7 Application of offset funds: single debt.
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31.9 Application of offset funds: tax refund insufficient to cover amount of debt.
31.10 Time limitation for notifying the IRS to request offset of tax refunds due.
31.11 Correspondence with the Department.

Authority: 31 U.S.C. 3711, 3716, 3718; Section 2653 of the Deficit Reduction Act (31 U.S.C. 3720A); 26 CFR 301.6402–6T; and 45 CFR Part 30.

§ 31.1 Scope.

(a) The standards set forth in §§ 31.1 through 31.11 are the Department's procedures for requesting the Internal Revenue Service (IRS) to offset tax refunds due taxpayers who have a past due debt obligation to the Department. These procedures are authorized by the Deficit Reduction Act of 1984 (31 U.S.C. 3720A), as implemented by regulation at 26 CFR 301.6402–6T, and apply to the collection of debts as authorized by common law, by 31 U.S.C. 3716, or under other statutory authority.

(b) The Secretary will use the IRS tax refund offset to collect claims which are liquidated or certain in amount, past due and legally enforceable, and which are eligible for tax refund offset under regulations issued by the Secretary of the Treasury.

(c) Except as provided in paragraph (d) of this section, the Secretary will not report debts to the IRS except for the purpose of using the offset procedures described in §§ 31.1 through 31.11. Debts of less than $25.00, exclusive of interest and other charges, will not be reported.

(d) If not legally enforceable because of the lapse of the statute of limitations but otherwise valid, a debt amounting to over $600 will be reported to the IRS as a discharged debt on Form 1099G. (Form 1099G is an information return which Government agencies file with the IRS to report discharged debt, and the discharged amount is considered as income to the taxpayer.) [See § 31.9; 45 CFR 30.31(b).]

§ 31.2 Notice of requirements before offset.

A request for reduction of an IRS tax refund will be made only after the Secretary makes a determination that an amount is owed and past due and provides the debtor with 60 calendar days written notice. The Department's Notice of Intent to Collect by IRS Tax Refund Offset (Notice of Intent) will state:

(a) The nature and amount of the debt;

(b) That unless the debt is repaid within 60 calendar days from the date of the Department's Notice of Intent, the Secretary intends to collect the debt by requesting the IRS to reduce any amounts payable to the debtor as refunds of Federal taxes paid by an amount equal to the amount of the debt and all accumulated interest and other charges;

(c) That the debtor has a right to obtain review, within the Department, of the Secretary's initial determination that the debt is past due and legally enforceable (*See* § 31.3); and

(d) That the debtor has a right to inspect and copy departmental records related to the debt as determined by the Secretary and will be informed as to where and when the inspection and copying can be done after the Department receives notice from the

debtor that inspection and copying are requested (*See* § 31.5).

§ 31.3 Review within the Department of a determination that an amount is past due and legally enforceable.

(a) *Notification by debtor.* A debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past due or not legally enforceable. To exercise this right, the debtor shall send a letter notifying the applicable delegatee of the HHS Departmental Claims Officer specified in § 31.11 that the debtor intends to present evidence to a designated hearing officer. The letter must be received by such designated claims officer within 60 calendar days from the date of the Department's Notice of Intent.

(b) *Submission of evidence.* The debtor may submit evidence showing that all or part of the debt is not past due or not legally enforceable along with the notification required by paragraph (a) of this section. Failure to submit the notification and evidence within 60 calendar days will result in an automatic referral of the debt to the IRS without further action. Evidence submitted by a debtor who has requested prior review of a claim under 45 CFR Part 30 will not be reconsidered unless such evidence raises a new defense not considered in connection with such prior review.

(c) *Review of the record.* After a timely submission of evidence by the debtor, the claims officer will submit such evidence to a designated hearing officer, who will review all material related to the debt which is in possession of the Department. The hearing officer shall make a determination based upon a review of the written record, except that the hearing officer may order an oral hearing if the officer finds that:

(1) An applicable statute authorizes or requires the Secretary to consider waiver of the indebtedness and the waiver determination turns on credibility or veracity; or

(2) The question of indebtedness cannot be resolved by review of the documentary evidence.

§ 31.4 Determination of the hearing officer.

(a) Following the hearing or the review of the record, the hearing officer shall issue a written decision which includes the supporting rationale for the decision. The decision of the hearing officer concerning whether a debt or part of a debt is past due and legally enforceable i the final agency decision with respect to the past due status and enforceability of the debt.

(b) Copies of the hearing officer's decision will be distributed to the designated claims officer, the Department's Office of the Assistant Secretary for Management and Budget, the debtor, and the debtor's attorney or other representative, if any.

(c) If the hearing officer's decision affirms that all or part of the debt is past due and legally enforceable, the Secretary will notify the IRS after the hearing officer's determination has been issued under paragraph (a) of this section and a copy of the determination is received by the Department's Office of the Assistant Secretary for Management and Budget. No referral will be made to the IRS if review of the debt by the hearing officer reverses the initial decision that the debt is past due and legally enforceable.

§ 31.5 Review of departmental records related to the debt.

(a) *Notification by debtor.* A debtor who intends to inspect or copy departmental records related to the debt as determined by the Secretary must send a letter to the designated claims officer stating the debtor's intention. The letter must be received by the designated claims officer within 60 calendar days from the date of the Department's Notice of Intent.

(b) *Department's response.* In response to timely notification by the debtor as described in paragraph (a) of this section, the designated claims officer will notify the debtor of the location and time when the debtor may inspect or copy departmental records related to the debt. At his or her discretion, the designated claims officer may also mail copies of the debt-related records to the debtor.

§ 31.6 Stay of offset.

If the debtor timely notifies the Secretary that the debtor is exercising a right described in § 31.3(a) and timely submits evidence pursuant to § 31.3(b), any notice to the IRS will be stayed until the issuance of a written decision by the hearing officer which determines that a debt or part of a debt is past due and legally enforceable.

§ 31.7 Application of offset funds: single debt.

If the debtor does not timely notify the Secretary that the debtor is exercising a right described in § 31.3, the Secretary will notify the IRS of the debt 60 calendar days from the date of the Department's Notice of Intent, and will request that the amount of the debt be offset against any amount payable by the IRS as refund of Federal taxes paid. Normally, recovered funds will be applied first to any special charges provided for in HHS regulations or contracts, then to interest, and finally, to the principal owed by the debtor.

§ 31.8 Application of offset funds: multiple debts.

The Secretary will use the procedures set out in § 31.7 for the offset of multiple debts. However, when collecting on multiple debts the Secretary will apply the recovered amounts against the debts in order in which the debts accrued.

§ 31.9 Application of offset funds: tax refund insufficient to cover amount of debt.

If a tax refund is insufficient to satisfy a debt in a given tax year, the Secretary will recertify to the IRS on the following year to collect further on the debt. If, in the following year, the debt has become legally unenforceable because of the lapse of the statute of limitations, the debt will be reported to the IRS as a discharged debt in accordance with § 31.1(d) and 45 CFR 30.31(b).

§ 31.10 Time limitation for notifying the IRS to request offset of tax refunds due.

(a) The Secretary may not initiate offset of tax refunds due to collect a debt for which authority to collect arises under 31 U.S.C. 3716 more than 10 years after the Secretary's right to collect the debt first accrued, unless facts material to the Secretary's right to collect the debt were not known and could not reasonably have been known by the officials of the Department who were responsible for discovering and collecting such debts.

(b) When the debt first accrued is determined according to existing law regarding the accrual of debts. (*See*, for example, 28 U.S.C. 2415.)

§ 31.11 Correspondence with the Department.

(a) All correspondence from the debtor to the Secretary concerning the right to review as described in § 31.3 shall be addressed to the appropriate office of the Department at the following locations:

Office of the Secretary: Office of Financial Operations, Room 705D, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201

Public Health Service: PHS Claims Office, Room 18–20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Social Security Administration: SSA Claims Office, P.O. Box 17042, Baltimore, Maryland 21235

Health Care Financing Administration: HCFA Claims Office, Division of Accounting, P.O. Box 17255, Baltimore, Maryland 21203

Family Support Administration: FSA Claims Office, Switzer Building, Room 2222, 330 C Street SW., Washington, DC 20201
Region I: Office of the General Counsel, John F. Kennedy Federal Building, Room 2047, Boston, Massachusetts 02203
Region II: Office of the General Counsel, Jacob K. Javits Federal Building, Room 3908, New York, New York 10278
Region III: Office of the General Counsel, 3535 Market Street, Room 9100, P.O. Box 13716, Philadelphia, Pennsylvania 19101
Region IV: Office of the General Counsel, 101 Marietta Tower, Room 221, Atlanta, Georgia, 30323
Region V: Office of the General Counsel, 18th Floor, 300 South Wacker Drive, Chicago, Illinois 60606
Region VI: Office of the General Counsel, 1200 Main Tower, Room 1330, Dallas, Texas 75202
Region VII: Office of the General Counsel, 601 East 12th Street, Room 535, Kansas City, Missouri 64106
Region VIII: Office of the General Counsel, 1961 Stout Street, Room 1106, Denver, Colorado 80294
Region IX: Office of the General Counsel, 50 United Nations Plaza, Room 420, San Francisco, California 94102
Region X: Office of the General Counsel, 2901 3rd Avenue, Room 580, Seattle, Washington, 98121.

(b) All other correspondence shall be addressed to the appropriate office as described in paragraph (a) of this section. All requests for review of Departmental records must be marked: *Attention: Records Inspection Request.*

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45 CFR Part 85

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Health and Human Services

AGENCY: Department of Health and Human Services.

ACTION: Final regulation.

SUMMARY: This regulation requires that the Department of Health and Human Services (HHS) operate all of its programs and activities to ensure nondiscrimination against qualified individuals with handicaps. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition of individual with handicaps and qualified individual with handicaps, and establishes a complaint mechanism for resolving allegations of discrimination. This regulation is issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs or activities conducted by Federal Executive Agencies.

EFFECTIVE DATE: September 6, 1988.

ADDRESS: Copies of this regulation are available in Spanish, in Braille and on tone-indexed tape. These may be obtained from Marcella Haynes, Director, Policy & Special Projects Staff, Office for Civil Rights, Room 5034, Wilbur J. Cohen Building, 330 Independence Avenue SW., Washington DC, 20201.

FOR FURTHER INFORMATION CONTACT: Frank E G Weil, (202) 245-6700. TDD (202) 472-2916.

SUPPLEMENTARY INFORMATION: On February 16, 1988, the Department of Health and Human Services (HHS) 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 HHS, 53 FR 4425.

By April 18, 1988, close of the comment period, HHS received eight comments. These included comments from the Department of Justice, which has government-wide coordination authority under section 504 and from the Equal Employment Opportunity Commission which has similar authority over allegations of discrimination in employment. In addition, comments were received from one Federal office, and from five organizations concerned with the interests of the handicapped.

HHS read and analyzed each comment; to the extent to which the comments focused on the language of the regulation, a discussion thereof and a decision thereon will be found below.

Copies of the written comments will continue to be available for inspection and copying from 9:00 a.m. to 5:00 p.m. on weekdays, except for legal holidays, in Room 5034, Wilbur J. Cohen Building, 330 Independence Avenue SW., Washington, DC, 20201.

Section 504 requires that this regulation be submitted to the appropriate authorizing committees of the Congress, and that the regulations may take effect no earlier than the thirtieth day after they have been so submitted. HHS has today submitted this regulation to the Senate Committee on Labor and Human Resources and to the House Committee on Education and Labor pursuant to the terms of section 504. The regulation will become effective on September 6, 1988.

Background

The purpose of this regulation 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 Department of Health and Human Services. Section 504 states, in pertinent part, 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 regulation are identical, 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) and 45 CFR Part 84 (section 504 regulations for federally assisted programs funded by HHS).) 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 of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

There are, however, some language differences between this regulation and the Federal Government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision 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), *Strathie* v. *Department of Transportation*, 716 F.2d 227 (3rd Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander v. Choate*, 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. 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 301 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 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*, by lower courts 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, HHS believes that there are no significant differences between this regulation for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

Several commenters took the view that the decision in *Davis* was limited to an academic setting, and should not be applied outside that setting. HHS disagrees. It should be noted that *Alexander*, *APTA*, and *Strathie*, cited above, all deal with non-academic settings, and that *Davis* is cited and interpreted in each of them.

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 on April 15, 1983, and of an amended prototype distributed by the Department of Justice on April 13, 1984. It was again reviewed by the Department of Justice following publication of the Notice of Proposed Rulemaking. At that time, the Department of Justice suggested a number of changes, largely non-substantive. These have been adopted.

This regulation has also been reviewed by the Equal Employment Opportunity Commission (EEOC) under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). It was again reviewed by EEOC following publication of the Notice of Proposed Rulemaking. At that time, EEOC suggested a number of non-substantive changes, which have been adopted.

The regulation is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127). No regulatory impact analysis is required if a regulation applies only to the management of Federal agencies. This regulation applies only to the management of HHS. 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).

This regulation contains no collections of information which require the approval of the Office of Management and Budget under the Paperwork Reduction Act of 1980.

One commenter maintained that Executive Order No. 12612 of October 26, 1987, requires all Federal agency rules to consider impact on State governmental programs and procedures, and that because States tend to enact statutes analogous to Federal statutes, a reference to Executive Order 12612 was required. This regulation relates solely to the Federal sector and deals with internal agency management. Such a reference is therefore, not required.

Section-by-Section Analysis of Regulation and Response to Comments

Where no discussion of comments follows the analysis of a section, no comments have been received thereon.

Section 85.1 Purpose.

Section 85.1 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.

Section 85.2 Application.

The proposed regulation covers all programs and activities conducted by the Department of Health and Human Services ("HHS" or the "agency").

This includes the following components:

The Office of the Secretary
- Office of the Under Secretary
- Office of the Deputy Under Secretary
- Office of the Assistant Secretary for Public Affairs
- Office of the Assistant Secretary for Legislation
- Office of the Assistant Secretary for Planning and Evaluation
- Office of the Assistant Secretary for Management and Budget
- Office of the Assistant Secretary for Peronnel Administration
- Office of the General Counsel
- Office of Inspector General
- Office for Civil Rights
- Office of Consumer Affairs

Office of Human Development Services
- Office of the Assistant Secretary for Human Development Services
- Administration on Aging
- Administration for Children, Youth and Families
- Administration for Native Americans
- Administration on Developmental Disabilities

Public Health Service
- Office of the Assistant Secretary for Health
- Agency for Toxic Substances and Disease Registry
- Alcohol, Drug Abuse and Mental Health Administration
- Centers for Disease Control
- Food and Drug Administration
- Health Resources and Services Administration
- Indian Health Service
- National Institutes of Health

Health Care Financing Administration

Social Security Administration

Family Support Administration.

Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: those involving general public contact as part of ongoing agency operations, and those directly administered by the agency for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the agency's facilities. Activities in the second category include programs that provide Federal services or benefits.

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.

The *major* programs subject to this regulation are listed below. Each of the components listed above occupies facilities which the public may have occasion to visit, engages in written and oral communication with the public, and hires Federal employees. In addition, some components operate programs which involve extensive public use, as summarized below:

Office of the Secretary—No major operating programs or activities conducted directly by the Federal government.

Office of Human Development Services—No major operating programs or activities conducted directly by the Federal government.[1]

Public Health Service—Directly operated programs include the Indian Health Service, and intramural research conducted by the National Institutes of Health.[1]

Health Care Financing Administration—Directly operates the Medicare program.[1]

Social Security Administration—Directly operates the Old Age, Survivors, and Disability Insurance, and Supplemental Security Income for the Aged, Blind, and Disabled programs.

Family Support Administration—No major operating programs or activities conducted directly by the Federal government.[1]

One commenter urged the inclusion of a program operated by one component of the Office of the Secretary, and for a list of all programs and activities to be appended to the regulation. In light of the fact that all programs and activities are covered, that a comprehensive list of ail programs would be very lengthy, and that such a list would have to be amended frequently as new programs are enacted and existing programs expire, the above list appears to be sufficient.

Section 85.3 Definitions.

"Agency." For purposes of this part "agency" means the Department of Health and Human Services or any component part of the Department of Health and Human Services that conducts a program or activity covered by this part. "Component agency" means any such component part.

"Assistant Attorney General." "Asistant 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 § 85.51(a)(1), they may also be necessary to meet other requirements of this regulation.

Two commenters suggested expanding the definition of "auxiliary aids" and one of them further suggested re-naming "auxiliary aids" to read "aids for reasonable accommodation" and specifically include the services of attendants.

The items set out in § 85.3 are clearly described as examples, and are not intended to constitute an exhaustive list. By giving examples rather than by including a list, other aids can be used, and, in appropriate cases, required, without amending the regulation. In certain instances, the services of attendants may indeed by appropriate; in those instances, they will fall under the definition in § 85.3. Therefore, there is no need to change the text of the regulations.

"Complete complaint." "Complete complaint" is defined to include all of 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* § 85.61(g)) begins when the agency receives a complete complaint.

Two commenters stated their belief that the definition of "complete complaint" is too restrictive, and urged language which would give the complainant specific information as to what additional information is needed, and a further 30 days to submit such information, failing which the complaint would be dismissed without prejudice, and the complainant would be so informed.

Procedures similar to this suggestion are currently in place, and complainants will be given reasonable opportunities to complete the information submitted. There appears to be no need to spell these procedures out in the regulation.

"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 this part, refers to structures and not to intangible property rights. It should, however, be noted that this part 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 §§ 85.41, 85.42, and 85.61(f).

One commenter proposed not to delete the phrase "or interest in such property." As previously stated, the phrase "or interest in such property" has been deleted because the term "facility," as used in this part, refers to structures and not to intangible property rights.

"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), and the HHS regulation for federally assisted programs (45 CFR 84.3(j)). 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 the 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.

One commenter suggested that we add "sensory" to the phrase "physical or mental impairment." Since the definition set out in § 85.3 specifically includes the sense organs among the body systems whose impairment constitutes a handicap, we have not found it necessary to amend the regulation.

"OCR." "OCR" means the Office for Civil Rights of the Department of Health and Human Services.

"OCR Director/Special Assistant" means the Director of the Office for Civil Rights, who serves concurrently as the Special Assistant to the Secretary for Civil Rights, or a designee of the OCR Director/Special Assistant.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32) and the HHS section 504

[1] Financial assistance programs conducted through grants to States and other recipients are covered by the section 504 rule for federally assisted programs at 45 CFR Part 84.

regulation for federally assisted programs (45 CFR 84.3(k)).

Paragraph (1) is an adaptation of existing definitions of "qualified handicapped person" for purposes of federally assisted preschool, elementary, and secondary education programs (*see, e.g.*, 45 CFR 84.3(k)(2)). It provides that an individual with handicaps is qualified for preschool, elementary, or secondary education programs conducted by the agency, if he or she is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive these services from the agency. In other words, an individual with handicaps is qualified if, considering all factors other than the handicapping condition, he or she is entitled to receive educational services from the agency.

Paragraph (2) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program other than those covered by paragraph (1) 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 *Davis*.

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 so as to enable the 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 purpose of the program.

One commenter proposed inserting the second sentence from the above paragraph into the regulatory text. We believe that the use of this language in the preamble is sufficient.

Another commenter commended HHS for the discussion of *Davis*, and the cases interpreting the *Davis* decision, in order to explain why the language of this part does not precisely track that of the regulations concerning federally assisted recipients (45 CFR Part 84). Two other commenters stated their view that incorporating *Davis* and *Alexander* into the regulation was unduly restrictive, and that the differences between this part and Part 84 would result in holding HHS to a lesser standard than HHS holds recipients of Federal financial assistance.

We believe that the Supreme Court's decision in *Davis* as well as the subsequent lower court decisions following *Davis* interpret section 504 and that it is necessary to reflect those decisions in the Department's regulation. The suggested changes are therefore not being adopted.

The agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in §§ 85.42(a) and 85.51(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens to the agency. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources which are legally available to the agency for the purpose, 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.

Two commenters suggested that the total resources of the agency be considered in determining "undue burden." Because many Department funds are earmarked for specific purposes and are therefore unavailable for use elsewhere, the entire agency budget is not an appropriate consideration.

For programs or activities which do not fall under either of the first two paragraphs, paragraph (3) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity.

Paragraph (4) explains that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined for purposes of employment in the EEOC regulation at 29 CFR 1613.702(f), which is made applicable to this part by § 85.31. Nothing in this part changes existing regulations pertaining to employment.

One commenter proposed using the general section 504 definition of "qualified handicapped person" in employment cases rather than the definition of the EEOC regulation. The definition has been supplied by the Equal Employment Opportunity Commission which coordinates all employment discrimination matters throughout the government. It is also the Department's view that it is important to have a uniform definition of what constitutes employment discrimination throughout the Federal government.

"Secretary" means the Secretary of the Department of Health and Human Services or the Secretary's designee.

"Section 504". This definition makes clear that, as used in this part, "section 504" applies only to programs or activities conducted by the agency itself and not to programs or activities to which it provides Federal financial assistance.

Section 85.11 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 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)) and the HHS regulations for federally assisted programs (45 CFR 84.6(k)). 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.

One commenter stated that a three-year retention period is insufficient, and proposed that self-evaluations be kept indefinitely. The regulation requires the self-evaluation to be kept for a minimum of three years, but does not include a maximum. It is expected that the self-evaluation will be retained for the period provided in current document retention policies.

Another commenter proposed that copies of the self-evaluation be made available for copying as well as for public inspection. This proposal has been adopted.

A further commenter proposed the inclusion of provisions for assurances, transition plans and specific modification requirements. We believe that while assurances are appropriate—and can be specifically enforced—in section 504 regulations for federally assisted programs or activities, all of the entities involved in this part are under the control of the Secretary, who can issue the necessary directives; assurances are therefore not required.

The final rule provides for participation in the self-evaluation process by individuals with handicaps or organizations representing individuals with handicaps by submitting comments, which may include the development of transition plans. It is expected that component agencies will consult with individuals with handicaps among their own staff in the course of preparing self-evaluations.

Because modification requirements are intended to address any potential problems in the agency's programs or activities, they are not specified in the regulation.

Section 85.12 Notice.

Section 85.12 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of the rights and protections afforded by section 504 and this part. 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 or in connection with recruitment; the display of informative posters in service centers and other public places; or the broadcasting of information by television or radio.

One commenter suggested the inclusion of a reference to recruitment materials in the above examples. Such a reference has been included.

Section 85.21 General prohibitions against discrimination.

Section 85.21 is an adaptation of the corresponding section of the section 504 coordination regulation for programs and activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 85.21 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 part. If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 85.21. 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 person is handicapped. Such blatantly exclusionary practices could 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.

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 (§§ 85.41–43) and communication (§ 85.51) 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, as well as 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 enuciated in § 85.21(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

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 certifications. 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* § 85.3).

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 the standards 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 or activity of the licensee or certified entity and thereby indirectly affect limited aspects of their operations.

One commenter suggested pointing out that Federal licensees or certified entities, having received services from Federal employees during the process of licensing or certification, thereby become Federally assisted recipients, and are covered by 45 CFR Part 84. Such an argument is beyond the scope of this part, and is therefore not being included.

Another commenter suggested including language such as that found in 45 CFR 84.4(b)(1) to the effect that agencies may not perpetuate discrimination against qualified individuals with handicaps by providing significant assistance to an agency, organization or person that discriminates on the basis of handicap. Assistance from the agency that would provide significant support to an organization constitutes Federal financial assistance and the organization, as a recipient of such assistance, would be covered by the section 504 regulation for federally assisted programs.

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 individuals those with handicaps.

Paragraph (d) provides that the agency must administer programs and activities in the most integrated setting appropriate to the next of qualified individuals with handicaps, *i.e.* in a setting that enables individuals with handicaps to interact with nonhandicapped individuals to the fullest extent possible.

Section 85.31 Employment.

Section 85.31 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, 259–60 (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. *Morgan* v. *United States Postal Service*, 798 F.2d 1162, 1164–65 (8th Cir. 1986); *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, § 85.31 (Employment) of this rule adopts the definitions, requirements, and procedures of section 501 as established in regulations of the 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.

One commenter proposed that the general definition of "qualified individual with handicaps" be used in this section, instead of that used under section 501. We believe that the above paragraphs sufficiently explain the need for using the section 501 definition.

In addition to this section, § 85.61(c) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination.

Section 85.41 Program accessibility: Discrimination prohibited.

Section 85.41 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 85.42 and 85.43.

Section 85.42 Program accessibility: Existing facilities.

This part adopts the program accessibility concept found in the existing section 504 coordination regulation form programs or activities receiving Federal financial assistance (28 CFR 41.57) with certain modifications. Thus, § 85.42 requires that each agency program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The part also makes clear that the agency is not required to make each of its existing facilities accessible (§ 85.42(a)(1)). However, § 85.42, unlike 28 CFR 41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 85.42(a)(2)).

One commenter stated that the provisions of § 85.42(a)(1) were negatively worded and may reflect a misinterpretation of the decision of the Supreme Court in *Grove City College* v. *Bell*, 465 U.S. 555 (1984), and argued for deletion of this language.

The language is identical to that in the section 504 regulation for federally assisted programs or activities. We believe that the inclusion of this language is necessary in order to make clear that, while every aspect of every Federal program or activity need not be accessible, each program or activity, when viewed as a whole, must be accessible.

Another commenter recommended adding the language "where other methods are equally effective in achieving compliance" from § 84.42(b) to § 84.42(a)(1). We believe that, because §§ 84.42 (a) and (b) treat different aspects of the subject, their language must necessarily differ.

Paragraph (a)(2) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement, the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity, or in undue financial and administrative

burdens. A similar limitation is provided in § 85.51(d). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), 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, e.g., Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis*, 655 F.2d 1272 (D.C. Cir. 1981).

Paragraph (a)(2) and § 85.51(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 handicapped persons. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, 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 handicapped persons "meaningful access to the benefits the grantee offers," *id.* at 301, and that "*reasonable adjustments* in the nature of the benefit offered must at times be made to assure meaningful access." *Id.* 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 a handicapped person 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.

This paragraph, however, 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.

It is our view that compliance with § 85.42(a) 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 § 85.42(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 procedures established in § 85.61. The opportunity to file such a complaint responds to one commenter's suggestion that review by a high level Department official be assured.

Paragraph (b)(1) 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. (It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features, such as removal of or alteration to a load-bearing structural member.) The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

One commenter proposed that methods other than structural changes to ensure accessibility should be "equally effective". The regulations implementing section 504 for federally assisted programs do not contain such language. The addition of the proposed language would impose a regulatory standard on the Department not required of recipients. In view of the fact that the 1978 amendments were intended to apply the same requirements to federally conducted programs as apply to federally assisted programs, the proposed language is not being adopted.

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 (3) years after the effective date of this part. Where structural modifications are required and it is not expected that these can be completed within six months, a transition plan should be developed within six months of the effective date of this part. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

One commenter proposes to limit the time allowed for making structural modifications to one year. We note that the basic requirement is that these changes be made "as soon as practicable," and that the three-year limit is the maximum period of time. Furthermore, the three-year maximum for transition plans is identical to that contained in the regulations for federally assisted recipients.

Section 85.43 Program accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction and alterations under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 85.43 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 Part 101–19, 101–19.600 to 101–19.607 (GSA regulation which incorporates the Uniform Federal Accessibility Standards). 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 by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standards for existing facilities in § 85.42. To the extent the buildings are newly constructed or altered, they must also meet the new constructions and alteration requirements of § 85.43.

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 that same program accessibility standards 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 question 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 this issue. Two commenters urged that leased buildings be required to be accessible at the time of lease. The agency may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section 85.51 Communications.

Section 85.51 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 § 85.1(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 (§ 85.51(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 § 85.51(d). That paragraph limits the obligations of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble discussion of § 85.42(c)(2)). Unless not required by § 85.51(d), the agency shall provide auxiliary aids at no cost to the individual with handicaps.

One commenter proposed that the choice of auxiliary aid made by the individual with handicaps should govern unless it would constitute an undue hardship on the agency. We believe that the language set out above is adequate to ensure consideration of an individual's preference.

Another commenter proposed that the regulation require all films and videotapes produced by the agency to be captioned for the hearing-impaired. The Department intends to examine all appropriate methods of ensuring effective communication.

The same commenter applauded HHS for the inclusion of the language requiring HHS to inform individuals with handicaps of their section 504 rights.

The discussion of § 85.42(a), Program accessibility, Existing facilities, regarding the determination of what constitutes undue financial and administrative burdens, also applies to § 85.51(d) and should be referred to for a complete understanding of the agency's obligation to comply with § 85.51.

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.

One commenter proposed changing the language to state that notepads rarely suffice for communication with the hearing-impaired. Considering that a significant number of the hearing-impaired may not be skilled in sign language, we believe that the language used is appropriate.

For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to inform the public of (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs and 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 proceedings 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 proceedings 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 (§ 85.51(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.

One commenter proposed that the items which agencies are not required to provide and the circumstances involved be described in more detail. We believe that the description given is sufficient, because the interpretation of this provision will be made on a case-by-case basis.

Paragraph (b) requires the agency to ensure that individuals with handicaps can obtain information concerning accessible services, activities, and facilities.

Paragraph (c) requires the agency to provide signage at inaccessible facilities that direct users to locations with information about accessible facilities.

One commenter suggested specifically mentioning the international symbol for deafness, and placing such signs at the main entrance of buildings equipped to service the hearing-impaired. We believe that the language contained in §§ 85.51 (b) and (c) requires the agency to ensure that individuals with handicaps, including those with impaired hearing, can obtain information regarding accessibility, and that this requirement is sufficient to afford flexibility on the part of the agency regarding use of appropriate signage.

One commenter proposed adding the words "in the most integrated setting

appropriate" to the language in § 85.51(d). This language already appears elsewhere in the regulation, *e.g.* in § 85.42(b)(2), and it is the Department's intention to act in accordance with that provision.

Section 85.61 Compliance procedures.

Paragraph (a) specifies that paragraphs (b) and (d) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (c) 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).

Paragraph (b) designates the official responsible for coordinating implementation of § 85.61. The NPRM stated that responsibility for the implementation and operation of this "part" shall be vested in the OCR Director/Special Assistant. The final rule has been revised by replacing the word "part" with the word "section" to clarify the responsibility for coordinating implementation of § 85.61.

The agency is required to accept and investigate all complete complaints (§ 85.61(d)). Two commenters suggested that a complainant have an opportunity to remedy an incomplete complaint. Current administrative procedures provide for this practice and it need not be included in the text of the regulation.

If the agency 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 (§ 85.61(e)). One commenter pointed out that where a reference to another entity of the Federal government is required, the obligation to refer should be absolute, not limited to reasonable efforts. The language "shall make reasonable efforts to refer" is not intended to minimize the Department's obligation.

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board (ATBCB) 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 (§ 85.61(g)). One appeal within the agency shall be provided (§ 85.61(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance.

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.

Commenters have suggested the following:

Notifying complainants whenever their complaints are referred to another agency. Current administrative procedures provide for this practice and it need not be included in the text of the regulation.

Describing the basic parameters for submitting or obtaining evidence used to decide appeals. Since the grounds for appeal may be extremely varied, it would not be practicable to set out parameters for every appeal.

Including a statement as to complainants' rights to judicial review. These rights are statutory and beyond the scope of this regulation.

Obtaining the expertise of ATBCB in appropriate cases. A provision regarding notification of ATBCB is already included in the regulation.

Including a statement that all other regulations, forms and directives issued by HHS are superseded by the nondiscrimination requirements of this part. The Department views any other issuances falling short of the requirements of this regulation as insufficient to ensure compliance and therefore such a statement is unnecessary.

Provisions for attorneys fees and compensation to the prevailing party. Such provisions are statutory and beyond the scope of this regulation.

Section 85.62 Coordination and compliance responsibilities.

Section 85.62 sets out the respective responsibilities of the components of HHS and of the Director, OCR/Special Assistant in the implementation of section 504 to programs and activities conducted by HHS.

Paragraph (c) specifies the respective roles of OCR and of the HHS component in cases in which noncompliance is found.

In the event that OCR and the HHS component cannot agree on a resolution of any particular matter, such matter will be submitted to the Secretary for resolution.

List of Subjects in 45 CFR Part 85

Blind, Buildings, Civil rights, Employment, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped.

Date: June 17, 1988.

Otis R. Bowen,

Secretary.

For the reasons set forth in the preamble, Title 45 of the Code of Federal Regulations is amended by adding a new Part 85, as follows:

PART 85—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

Sec.

85.1 Purpose.
85.2 Application.
85.3 Definitions.
85.4–85.10 [Reserved]
85.11 Self-evaluation.
85.12 Notice.
85.13–85.20 [Reserved]
85.21 General prohibitions against discrimination.
85.22–85.30 [Reserved]
85.31 Employment.
85.32–85.40 [Reserved]
85.41 Program accessibility: Discrimination prohibited.
85.42 Program accessibility: Existing facilities.
85.43 Program accessibility: New construction and alterations.
85.44–85.50 [Reserved]
85.51 Communications.
85.52–85.60 [Reserved]
85.61 Compliance procedures.
85.62 Coordination and compliance responsibilities.
85.63–85.99 [Reserved]

Authority: 29 U.S.C. 794.

§ 85.1 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.

§ 85.2 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.

§ 85.3 Definitions.

For purposes of this part, the term—

"Agency" means the Department of Health and Human Services or any component part of the Department of Health and Human Services that conducts a program or activity covered by this part. "Component agency" means such component part.

"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; genito-urinary; 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 impairment" means has a history of, or is 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 paragraph (1) of this definition but is treated by the agency as having such an impairment.

"OCR" means the Office for Civil Rights of the Department of Health and Human Services.

"OCR Director/Special Assistant" means the Director of the Office for Civil Rights, who serves concurrently as the Special Assistant to the Secretary for Civil Rights, or a designee of the Director/Special Assistant.

"Qualified individual with handicaps" means:

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive educational services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a particular 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; and

(3) 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; and

(4) "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 §85.31.

"Secretary" means the Secretary of the Department of Health and Human Services or his/her designee.

"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); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); the Rehabilitation Act Amendments of 1986 (Pub. L 99–566, 100 Stat. 1810); and the Civil Rights Restoration Act of 1987 (Pub. L. 100–259, 102 Stat. 28). As used in this part, section 504 applies only to programs or activities conducted by the agency and not to federally assisted programs.

§§ 85.4–85.10 [Reserved]

§ 85.11 Self-evaluation.

(a) The agency shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications. Any new operating or staff divisions established within the agency shall have one year from the date of their establishment to carry out this evaluation.

(b) 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 by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection and copying—

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 85.12 Notice.

The agency shall make available to 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 a manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

§§ 85.13–85.20 [Reserved]

§ 85.21 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 aids, benefits, or services to individuals with handicaps or to any class or individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aids, 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 a planning or advisory board; 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 the objectives of a program or activity with respect to 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 programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of individuals without handicaps 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.

§§ 85.22–85.30 [Reserved]

§ 85.31 Employment.

No qualified individuals 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 (9 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 9 CFR Part 1613, shall apply to employment in federally conducted programs and activities.

§§ 85.32–85.40 [Reserved].

§ 85.41 Progarm accessibility: Discrimination prohibited.

Except as otherwise provided in § 85.42, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by such persons, 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.

§ 85.42 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 § 85.42(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 his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity in question, and must be accompanied by a written statement of 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.* (1) 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.

(2) 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 within 60 days of the effective date of this part except where structural changes in facilities are undertaken; such changes shall be made within three years of the effective date of this part, but, in any event, as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities must be undertaken to achieve program accessibility, and it is not expected that such changes can be completed within six months, the agency shall develop, within six months of the effective date of this part, 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 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 the implementation of the plan.

§ 85.43 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, or 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.

§§ 85.44–85.50 [Reserved]

§ 85.51 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, 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 individual 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, telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(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 § 85.51 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 his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity in question 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.

§§ 85.52–85.60 [Reserved]

§ 85.61 Compliance procedures.

(a) Except as provided in paragraph (c) 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) Responsibility for the implementation and operation of this section shall be vested in the CCR Director/Special Assistant.

(c) 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) and HHS Instruction 1613–3. Part 1613 requires complainants to obtain pre-complaint counseling within 30 days of the alleged discriminatory act, and to file complaints within 15 days of the close of counseling. Responsibility for the acceptance, investigation, and the rendering of decisions with respect to employment complaints is vested in the

Assistant Secretary for Personnel Administration.

(d) OCR shall accept the investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. OCR may extend this time for good cause.

(e) If OCR 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 Federal government entity.

(f) OCR shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or 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, OCR shall notify the complainant of the results of the investigations 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 60 days of receipt from the agency of the letter required by § 85.61(g). OCR may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the OCR Director/Special Assistant. Decisions on such appeals shall not be heard by the person who made the initial decision.

(j) OCR shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If OCR determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in (g) and (j) above may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to a component agency or other Federal agencies, except that the authority for making the final determination may not be delegated.

§ 85.62 Coordination and compliance responsibilities.

(a) Each component agency shall be primarily responsible for compliance with this part in connection with the programs and activities it conducts.

(b) The OCR Director/Special Assistant shall have the overall responsibility to coordinate implementation of this part. The OCR Director/Special Assistant shall have authority to conduct investigations, to conduct compliance reviews, and to initiate such other actions as may be necessary to facilitate and ensure effective implementation of and compliance with, this part.

(c) If as a result of an investigation or in connection with any other compliance or implementation activity, the OCR Director/Special Assistant determines that a component agency appears to be in noncompliance with its responsibilities under this part, OCR will undertake appropriate action with the component agency to assure compliance. In the event that OCR and the component agency are unable to agree on a resolution of any particular matter, the matter shall be submitted to the Secretary for resolution.

§ 85.63–85.99 [Reserved]

[FR Doc. 88–15382 Filed 7–7–88; 8:45 am]
BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 87–312]

Amendment To Permit Commercial Enterprises To Be Licensed Directly in the Special Emergency Radio Service; Private Land Mobile Services

AGENCY: Federal Communications Commission.

ACTION: Report and order amending rules in the Private Land Mobile Radio Services.

SUMMARY: In response to a petition for rule making, the Commission adopted a Report and Order to permit private entrepreneurs or "private carriers" to be licensed in the Special Emergency Radio Service (SERS). This action will make a new communications option available to eligible SERS end users. The Report and Order also eliminates secondary uses of eight channels known as "MED" channels 1 through 8 to ensure that these channels will be available for emergency medical communications.

EFFECTIVE DATE: July 25, 1988 for licensing private carriers; July 1, 1990 for eliminating secondary use of MED channels 1 through 8.

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, PR Docket No. 87–312, adopted on May 18, 1988 and released June 13, 1988. The full text of the Order is available for inspection and copying during normal business hours in the FCC Private Radio Bureau, Land Mobile and Microwave Division, Rules Branch (Room 5126), 2025 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Summary of Report and Order

1. In response to a December 1986 petition for rule making and a September 1987 notice of proposed rule making, the Commission issued a Report and Order amending licensing rules applicable to the Special Emergency Radio Service (SERS). The SERS is a private land mobile radio service available to medical services, rescue squads, disaster relief organizations, and seven additional categories of eligible end users. Under present rules, these eligible SERS users have only limited communications service options. To expand options available to eligible users and promote the efficient and effective use of the SERS frequencies, the Report and Order permits private entrepreneurs or "private carriers" to be licensed in the SERS.

2. Under the private carrier concept, entrepreneurs would apply to the Commission to be licensed in the SERS. Once licensed, the entrepreneurs would build communications systems and offer service only to eligible end users. Private carriers would be required to observe existing restrictions on the permissible use of the SERS frequencies. The private carriers would be responsible for all aspects of system operation including licensing, maintenance and compliance with Commission rules. The Commission will permit private carriers to serve eligible end users on all SERS frequencies below 800 MHz, including those channels reserved for medical service eligibles.

3. In the Notice of Proposed Rule Making, the Commission asked whether it should eliminate secondary use of ten channels known as "MED" channels 1 through 10. On a primary basis these

channels are used for specific emergency medical applications. On a secondary basis, MED channels 1 through 8 may be used for administrative purposes and MED channels 9 and 10 may be used to alert ambulances and rescue crews. In the Report and Order, the Commission decides to eliminate secondary use of MED channels 1 through 8 due to congestion that currently exists on these channels, the resulting incompatibility between current primary and secondary uses, and the important public safety functions of these channels. The Report and Order states that this analysis does not apply to MED channels 9 and 10 because the secondary use of these channels (paging) occurs in short bursts that do not use significant air time.

4. Licensees authorized to use MED channels 1 through 8 prior to July 1, 1988 will have until July 1, 1990 to relocate their secondary communications to other frequencies. In addition, the Commission will consider requests for waiver from new and existing licensees we can show that secondary uses of MED channels 1 through 8 are not harmful to primary communications in their areas.

Ordering Clauses

5. Accordingly, *It Is Ordered* That, pursuant to the authority of sections 4(i), 303(r), and 331(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 332(a), Part 90 of the Commission's Rules, 47 CFR Part 90, is amended as set forth below.

It Is Further Ordered That this proceeding is TERMINATED.

List of Subjects in 47 CFR Part 90

Special Emergency Radio Service, Private carriers, Radio.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. Section 90.33 is revised as follows:

§ 90.33 Scope.

The Special Emergency Radio Service covers the licensing of the radio communications of the following categories of activities: Medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishment in isolated places, communications standby facilities, and emergency repair of public communications facilities.

Private carriers may also be licensed in the Special Emergency Radio Service solely to provide radio communications service below 800 MHz to any other eligible. Rules as to eligibility for licensing, permissible communications and classes and number of stations, and any special requirements as to each of these categories are set forth in the following sections. Frequencies available for these categories of service are shown in a separate frequency table.

2. Section 90.52 is added as follows:

§ 90.52 Private carriers.

(a) *Eligibility.* Private carriers, as defined in § 90.7, may be licensed on frequencies below 800 MHz solely to provide service to any other Special Emergency Radio Service eligible, subject to the requirements and limitations set out for use of the frequencies listed in § 90.53.

3. Section 90.53 is amended by revising paragraphs (b) (19) and (20).

§ 90.53 Frequencies available.

* * * * *

(b) * * *

(19) This frequency is authorized for use under § 90.35(a) only for operations in bio-medical telemetry stations. F1B, F1D, F2B, F2D, F3E, G1B, G1D, G2B, G2D, and G3E emissions may be authorized. Licensees authorized prior to July 1, 1988 may use this frequency on a secondary basis for any other permissible communications consistent with § 90.35 provided that such secondary use must cease no later than July 1, 1990.

(20) This frequency is authorized for use under § 90.35(a), only for communications between medical facilities vehicles and personnel related to medical supervision and instruction for treatment and transport of patients in the rendition or delivery of medical services. F1B, F1D, F2B, F2D, G1B, G1D, G2B, G2D, F3E and G3E emissions are authorized. Licensees authorized prior to July 1, 1988 may use this frequency on a secondary basis for any other permissible communications consistent with § 90.35 provided that such secondary use must cease no later than July 1, 1990.

[FR Doc. 88–15204 Filed 7–7–88; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Tipton Kangaroo Rat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for the Tipton kangaroo rat, a mammal restricted to south-central California. The historical range of this rodent has been substantially reduced by agricultural development. The subspecies is jeopardized by continuing loss of native habitat from agricultural development and other actions that modify and fragment extant occupied habitats. This rule implements the protection provided by the Endangered Species Act of 1973, as amended, for the Tipton kangaroo rat.

EFFECTIVE DATE: August 8, 1988.

ADDRESSES: The complete file for this final rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232, (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

Kangaroo rats (*Dipodomys*) are small mammals that travel rapidly by hopping on their hind legs, and that transport food in their external cheek pouches. They inhabit mainly dry, open country of western North America, where they construct burrows for shelter and often for storage of food. The Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) was distributed historically in the Tulare Lake Basin of the San Joaquin Valley, encompassing portions of Fresno, Kings, Tulare, and Kern Counties, California (Williams 1985). Merriam (1894) originally described it as a subspecies of the widely-distributed species *Dipodomys merriami*. Grinnell (1920, 1921) later separated it as a subspecies of the "Fresno" kangaroo rat (*D. nitratoides*). Adult weight is 1.2 to 1.3 ounces (35 to 38 grams), combined

head and body length is 3.9 to 4.3 inches (100 to 110 millimeters), and tail length is 4.8 to 5.1 inches (125 to 130 millimeters). Adaptations for bipedal locomotion include elongated hind limbs, a long tail, a short neck, and a large head. Dorsal pelage is a dark, yellowish tan, while ventral coloration is white. A white stripe also extends laterally across each flank and along the sides of the prominently-tufted tail (Williams 1985).

Valley saltbush scrub and valley sink scrub communities provide the habitat for the Tipton kangaroo rat. The characteristic plants in these sparsely-vegetated communities are iodinebush (*Allenrolfea occidentalis*), saltbush (*Atriplex* spp.), Mormon-tea (*Ephedra californica*), red-sage (*Kochia californica*), and sea-blite (*Suaeda* spp.) (Williams 1985, 1986). The Tipton kangaroo rat inhabits the soft, friable soils on the floor of the Tulare Lake Basin that escape seasonal flooding. The subspecies, however, may also occur on surrounding higher sites (Williams 1986). It excavates shallow burrow systems that are often located on slightly-elevated mounds around the base of shrubs where wind-deposited soils have accumulated. This behavior apparently reduces the chances of drowning during seasonal flooding (Williams 1985). The Tipton kangaroo rat feeds primarily on seeds, though it also eats green vegetation and insects (Eisenberg 1963).

The Tipton kangaroo rat plays an integral role in the valley plant communities by distributing seeds and, thus, influencing plant distribution. It also serves as prey for a variety of carnivores, such as the badger (*Taxidea taxus*) and kit fox (*Vulpes macrotis*). Its burrows serve to aerate soils and increase vegetative productivity. Moreover, these burrows are utilized as places of concealment and refuge for a variety of other small wildlife species, including the federally endangered blunt-nosed leopard lizard (*Gambelia silus*).

The geographic range of the Tipton kangaroo rat historically encompassed about 1,716,480 acres (695,174 hectares) within the San Joaquin Valley, extending from Lemoore and Hanford (Kings County) in the north; southeast along State Route 99 from Tipton to Pixley (Tulare County), Delano, Bakersfield, and Arvin (Kern County); westward to the southern, eastern, and northern shores of the former Buena Vista Lake (Kern County); and then northward through the Antelope Plain along a line marked by Buttonwillow, Lost Hills (Kern County), Kettleman City (Kings County), and Westhaven (Fresno County). As of July 1985, only 63,367 acres (25,665 hectares), encompassing 3.7 percent of its historical range, were still occupied (Williams 1985). Approximately 6,434 acres (2,606 hectares) of this remaining habitat are administered by local, State, and Federal governments. These public lands contain low to moderate density populations of Tipton kangaroo rats, which are relatively secure from habitat loss (Williams 1985). The principal factor resulting in this reduction in habitat has been conversion of native wildlands for agricultural production.

The Tipton kangaroo rat was included in the Service's Review of Vertebrate Wildlife in the **Federal Register** of September 18, 1985 (50 FR 37958), as a category 2 candidate species. This categorization meant that available information indicated that a proposal for listing as endangered or threatened was possibly appropriate, but that conclusive data on biological vulnerability and threat were not available to support a proposed rule. Completion of a subsequent status report for this rodent (Williams 1985) provided additional information on which to base a proposed rule. The Tipton kangaroo rat was proposed as an endangered species on July 10, 1987 (52 FR 26040–26043).

Summary of Comments and Recommendations

In the July 10, 1987, proposed rule (52 FR 26040–26043) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. A notice reopening and extending the comment period to November 8, 1987, was published on September 9, 1987 (52 FR 33979). Appropriate State and Federal agencies, county governments, scientific organizations, biologists, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were inadvertantly not published in time for the first comment period. Therefore, the public comment period was reopened. A notice reopening the public comment period was published in the Turlock Journal (September 11, 1987), Daily Midway Driller (September 11, 1987), Los Angeles Times (September 11, 1987), Fresno Bee (September 11, 1987), Bakersfield Californian (September 11, 1987) and Hanford Sentinel (September 11, 1987).

During both comment periods a total of ten written comments were received. Comments were submitted by two Federal agencies, two State agencies, one conservation organization, and five individuals. Six responses supported listing, one response opposed listing, and three responses expressed no opinion regarding listing. Both responding Federal agencies, the U.S. Bureau of Land Management and U.S. Bureau of Reclamation, stated that Federal endangered status for this rodent would not affect agency activities or plans. Both responding State agencies, the California Department of Fish and Game and California Energy Commission, supported the proposed ruling to list the Tipton kangaroo rat as endangered.

Three of the remaining six comments received were from biologists familiar with this species and strongly supported the listing. A single conservation group also supported listing. None of the respondents, however, provided additional information regarding current status or threats.

A pest control company stated that its rodent control operations had not been undertaken within Tipton kangaroo rat habitat. No information relating to activities of other pest control firms within this area was provided, nor were specific comments regarding Federal listing.

A private individual opposed to the proposed listing questioned whether listing of species, such as "rats" was in the best interest of the public. No additional information regarding the status of the Tipton kangaroo rat was provided by this commentor.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Tipton kangaroo rat should be classified as an endangered species. Procedures found at section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* In a recent status survey, Dr. Daniel F. Williams (1985) of California State University, Stanislaus, concluded that habitat loss associated with agricultural development has been the principal factor contributing to the decline of the Tipton kangaroo rat. He attributed other habitat losses to construction of roads, canals, railroads,

and structures. The known historical range of this rodent, that encompassed approximately 1,716,480 acres (695,174 hectares), has been reduced to about 3.7 percent, or roughly 63,367 acres (25,665 hectares). Approximately 6,434 acres (2,606 hectares) of the remaining range harbors relatively secure populations. This area includes federally-administered lands at Pixley National Wildlife Refuge, State of California lands at the Allensworth Ecological Preserve, and privately-owned and managed lands administered by The Nature Conservancy at the Paine Wildflower Preserve. Private individuals or corporations own the remaining habitats. Although these habitats generally appear to be unstable for farming because of seasonal inundation and high soil alkalinity, land conversion of kangaroo rat habitat continues to occur.

Williams (1985) observed instances where remaining habitats were being converted to agricultural production. He also estimated rates of conversion of remaining habitats by comparing extant unmodified habitats within the Tulare Lake Basin. Approximately 110,031 acres (44,562 hectares) out of the total 2,556,288 acres (1,035,296 hectares) on the floor of the Tulare Lake Basin was undeveloped by late 1983; a subsequent comparison in June 1985 showed that 75,430 acres (30,549 hectares) remained undeveloped. The construction of evaporation ponds for diversion of salt-laden waters from adjacent cultivated fields also threatens extant habitat (Williams 1985). Remaining habitat typically consists of small, highly fragmented parcels on private land, where long-term protection is not assured.

Constituent Tipton kangaroo rat populations are small in size, typically surrounded by agriculturally-developed lands, and highly vulnerable to extirpation from single catastrophic events such as flooding, disease, predation, or excessive application of rodenticides.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

C. *Disease or predation.* Neither disease nor predation is known to result in significant population declines.

D. *The inadequacy of existing regulatory mechanisms.* Existing State and Federal regulations do not afford the Tipton kangaroo rat adequate protection. Agencies involved with permitting or funding agricultural development, that continues to reduce the animal's remaining habitat and increase the potential for the extirpation of increasingly isolated populations, are not presently required to confer with agencies knowledgeable about the distribution of this rodent. State and Federal governments also do not presently require implementation and protective measures for the species and its habitat during application of pesticides.

E. *Other natural and manmade factors affecting its continued existence.* Many of the remaining "pockets" of habitat for this rodent are adjacent to or surrounded by agriculturally-developed land. The small size and highly isolated nature of these remaining pockets could result in their eventual extirpation because of inbreeding or stochastic events. Assuming a population density of about six kangaroo rats per acre, an equal sex ratio, and a population where all individuals contribute to breeding, Williams (1985) estimated that the minimum contiguous block necessary to sustain a viable population on a long-term basis may be between 823 and 2,806 acres (333 to 1,136 hectares). Because the average size of extant contiguous habitat is less than half this size, many remaining tracts are likely too small to ensure the perpetuation of their constituent Tipton kangaroo rat populations. In addition to inbreeding, application of pesticides also may kill Tipton kangaroo rats in areas where control of "target" species, such as the California ground squirrel (*Spermophilus beecheyi*), is required. Williams (1985) provided specific recommendations for control of "pest" species while reducing the potential for inadvertent mortality of non-target species as the Tipton kangaroo rat.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this final rule. Based on this evaluation, the preferred action is to list the Tipton kangaroo rat as endangered. Threatened status would not adequately reflect the drastic decline and continued losses associated with conversion of remaining valley floor habitats. Critical habitat is not being designated for this species at this time for reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat for the Tipton kangaroo rat is not prudent at this time. As discussed under factors, "A" and "E" in the "Summary of Factors Affecting the Species," the Tipton kangaroo rat is jeopardized by taking, the prevention of which is difficult to enforce. Publication of precise critical habitat descriptions and maps could make this species even more vulnerable, and increase enforcement problems. Such published descriptions and maps are not necessary to protect the habitat of the Tipton kangaroo rat, as that will be addressed through the recovery process and section 7 consultation (see following section).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Several Federal actions that may affect the Tipton kangaroo rat are issuance of leases for agricultural purposes on U.S. Bureau of Land Management holdings, development of evaporation ponds for salt-laden agricultural run-off by the U.S. Soil Conservation Service and U.S. Bureau of Reclamation, issuance of permits for development of oil and natural gas reserves by the Environmental Protection Agency, and water-development projects for increasing

agricultural conversion of remaining pockets of wildland habitats by the Bureau of Reclamation. Actions that may affect the Tipton kangaroo rat in these areas may also affect the federally-listed endangered San Joaquin kit fox (*Vulpes macrotis mutica*) and blunt-nosed leopard lizard, which are already protected under the provisions of the Act. No major conflicts are known or expected at this time. The involved Federal agencies already are consulting with the Service, and any additional impacts because of this listing are expected to be minimal.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Eisenberg, J.F. 1963. The behavior of heteromyid rodents. Univ. California Publ. Zool. 69:1–100.

Grinnell, J. 1920. A new kangaroo rat from the San Joaquin Valley, California. J. Mamm. 1:78–179.

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Merriam, C.H. 1894. Preliminary description of eleven new kangaroo rats in the genera *Dipodomys* and *Perodipus*. Proc. Biol. Soc. Washington 9:109–116.

Williams, D.F. 1985. A review of the population status of the Tipton kangaroo rat, *Dipodomys nitratoides nitratoides*. Final report prepared for the U.S. Fish and Wildlife Service, Sacramento Endangered Species Office.

Williams, D.F. 1986. Mammalian species of special concern in California. Report prepared for the California Dept. of Fish and Game, Nongame Wildlife Investigation. Report No. 86–1.

Author

The primary author of this final rule is Mr. Ted Rado, U.S. Fish and Wildlife Service, Sacramento Endangered Species Office, 2800 Cottage Way, Room E–1823, Sacramento, California 95825 (916/978–4866 or FTS 460–4866).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*). Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS:							
*	*	*	*	*	*	*	
Rat, Tipton, kangaroo	*Dipodomys nitratoides nitratoides.*	U.S.A. (CA)	Entire	E	312	NA	NA
*	*	*	*	*	*	*	

Dated: June 27, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–15389 Filed 7–7–88; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 80621–8131]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Fishery Conservation and Management

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce (Secretary) issues a notice of changes in the total allowable catch (TAC), allocations, and quotas for the Atlantic and Gulf of Mexico migratory groups of king and Spanish mackerel and in the bag limits for the Atlantic group of king mackerel and the Gulf group of Spanish mackerel in accordance with the framework procedure of the Fishery Management Plan for the Coastal Migratory Pelagic Resources (FMP). This notice (1) for the Gulf migratory group of

king mackerel, increases TAC, allocations, and quotas; (2) for the Gulf migratory group of Spanish mackerel, increases TAC, allocations, and bag limits; (3) for the Atlantic migratory group of king mackerel, reduces TAC and allocations and reduces the bag limit applicable to the southern area (the exclusive economic zone (EEZ) off Florida); and (4) for the Atlantic migratory group of Spanish mackerel, increases TAC and allocations. The intended effects are to protect the mackerels while still allowing catch by the important recreational and commercial fisheries that are dependent on these species.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3722.

SUPPLEMENTARY INFORMATION: The mackerel fisheries are regulated under the FMP, which was prepared and amended jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR Part 642.

In accordance with the FMP and its implementing regulations, the Councils recommended and NOAA published a preliminary notice of changes in TACs, allocations, quotas, and bag limits for king and Spanish mackerel (53 FR 22036, June 13, 1988). That notice (1) described the framework procedures of the FMP through which the Councils recommended changes in TACs, allocations, quotas, and bag limits, (2) specified the recommended changes, and (3) described the need and rationale for the recommended changes. Those descriptions are not repeated here; the specifications implemented by this final notice are the same as those proposed in the preliminary notice.

Comments and Responses

Four letters commenting on the proposed adjustments were received during the public comment period.

Ten Florida east coast charterboat owner/operators from Port Canaveral expressed support for bag limits as a means to preserve mackerel fisheries. However, they recommended elimination of the recreational allocation as a means of regulating the fishery because they question the credibility of the statistical data used to monitor the recreational catch and determine when the quota has been reached. Furthermore, they wish to avoid the king mackerel recreational harvest prohibition experienced during the 1987/88 fishing year for the Gulf group, which they contend "devastated" the charterboat industry. As an alternative, they would prefer that bag limits be set, either on a per angler or per boat basis, at a level that would support an uninterrupted year-round fishery.

NOAA agrees that bag limits should ideally maintain harvest throughout the fishing year; during the annual preseason adjustment process the Councils are provided analyses to achieve this. In recent years this goal has been difficult to accomplish because most mackerel groups were considered overfished and are now in the early stages of long-term rebuilding programs. Fishing mortality must be decreased by reducing allocations in order to rebuild the spawning stock biomass.

The Councils may recommend bag limits be adjusted downward to maintain recreational catches within allocations. In consideration of industry recommendations, however, the bag limit has usually been lowered only to a level that would not discourage potential customers and adversely impact charterboat businesses. In some cases, these considerations have prevented the Councils from lowering bag limits to levels that would sustain harvest throughout the fishing year.

As outlined in the FMP, the conditions of the stocks are annually evaluated by the Stock Assessment Panel. The panel provides to the Councils a range of acceptable biological catch (ABC) for each mackerel group. The Councils then propose a TAC for each group, within the range of the ABC for that group, to avoid overfishing. Once TACs are set, recreational and commercial allocations automatically follow from fixed percentages established in Amendment 1 to the FMP. ABCs, TACs, allocations, and quotas are measured in pounds. Accordingly, monitoring of recreational and commercial allocations/quotas is accomplished by systematically determining the poundage of fish caught both in State and Federal (EEZ) waters. When allocations and quotas are reached or projected to be reached, the Secretary publishes in the **Federal Register** a notice to close the commercial fishery or, after consulting with the Councils, to reduce the bag limit to zero for the recreational fishery when that group is overfished. Under this management system, both recreational and commercial fisheries are treated equitably and both share in the responsibility to restrict fishing mortality to levels that reduce the risks of overfishing and promote stock rebuilding. Consequently, NOAA cannot effectively or equitably manage recreational fisheries solely by bag limits when stocks are depleted.

Two respondents opposed the two-fish bag limit for Atlantic group king mackerel in the southern area. One offered no basis for his objection. A southeast Florida recreational fishing club, representing 575 members, strongly opposed the reduction in bag limit from three to two fish per person per trip because they felt Florida anglers are unfairly bearing the burden to reduce the catch while a driftnet fishery for king mackerel in the same area continues to expand.

NOAA supports the bag limit reduction for Atlantic group king mackerel. The reduction was recommended by a Florida Council member to achieve compatibility with Florida's Statewide, two-fish bag limit for king mackerel. The Councils subsequently adopted this measure to promote effective law enforcement and to accommodate a lowered TAC by reducing fishing pressure in the southern area, where king mackerel are considered to be available throughout more of the year, occur closer to shore, and are more accessible to a greater number of fishermen than in the northern area. Commercial and recreational allocations are based on fixed percentages and are monitored separately. Drift gillnet gear competition within the commercial sector does not affect the recreational allocation.

The club also opposed the four-fish bag limit for Atlantic group Spanish mackerel in the southern area while anglers in the northern area (EEZ off Georgia, South Carolina and North Carolina) enjoy a ten-fish bag limit.

NOAA continues its support for the ten-fish/four-fish bag limit for Atlantic group Spanish mackerel for the same reasons as stated in last year's final notice (52 FR 25012; July 2, 1987). Briefly, the ten-fish bag limit in the northern area apportions more of the Spanish mackerel resource to an area where they are seasonally less available and more widely dispersed. In the southern area of Florida, the lower four-fish bag limit was prescribed to proportionately reduce fishing pressure in this region where Spanish mackerel are present year-round and are more accessible to a

greater number of fishermen. NOAA finds these Council decisions consistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act).

A minority report on the proposed Spanish mackerel differential bag limit of ten fish in the western Gulf and four fish in the eastern Gulf was submitted by ten members of the Councils. The report challenged the basis for the ten/four bag limit and its potential effects on the magnitude and the temporal and spatial distribution of the harvest. The report further contended that the differential bag limit violates national standards 3 and 4 of the Magnuson Act.

NOAA disagrees on all counts. Available data indicate that Spanish mackerel are less accessible in the western Gulf off Alabama, Mississippi, Louisiana, and Texas, and that during the past 3 fishing years most of the recreational catch occurred in the eastern Gulf off Florida. According to NMFS data, most Spanish mackerel caught off the two highest-producing western Gulf states (Mississippi and Alabama) were taken in the EEZ. Consequently, Council members supported the ten/four bag limit to more equitably apportion the recreational allocation among the States. Further, NMFS data presented at the April 1988 joint Council meeting indicated that little change in harvest was expected under the ten/four bag limit and Councils discussed its possible effect on the duration of the recreational fishing year. In the western area, NMFS projected no reduction in catch under a ten-fish bag limit for Alabama and Mississippi. In the eastern area, an 8 percent decrease in catch is expected, assuming 100 percent angler compliance with the present Florida four-fish bag limit. In addition, one Council member suggested that a full year of fishing may be completed because the TAC proposed for 1988/89 has been doubled. Last year, under a 1.08 million-pound recreational allocation, the bag limit reverted to zero on December 16, 5½ months into the season. If recreational catch characteristics for this year are similar to those experienced last year, NMFS expects the recreational harvest to continue into May or June 1989 under the 2.15 million-pound allocation.

NOAA believes that Gulf group Spanish mackerel are being managed as a unit stock in conformance with national standard 3. Unit stock management objectives are set forth in the FMP and are carried out through the annual stock assessment, preseason adjustments, and monitoring of harvest to ascertain when allocations/quotas have been reached and closures should be effected. Throughout this process and throughout the defined geographic boundaries, each Spanish mackerel migratory group (Atlantic and Gulf) is treated as a separate unit. Within each management unit, fish in State or Federal waters are undifferentiated. According to the FMP, the management unit shall include the EEZ, the territorial sea, and internal waters of the various States when considering and determining maximum sustainable yield, optimum yield, and TAC for each unit stock.

Councils have previously subdivided management areas to administer different regulations on a geographical basis while still maintaining the national standards set forth in the Magnuson Act. Such regulations are usually designed to mitigate disproportionate resource usages resulting from variable migration patterns, seasonal availability, distance from shore (principally EEZ), and scattered distributions. The regulations also follow Councils' desire to foster State/Federal compatibility for more effective law enforcement. Although the secondary objective may be to more equitably distribute the resource on a geographical basis, the Councils' overriding goal is to manage each stock as a unit. Examples of regional management regulations currently in place or proposed follow; three are from the FMP:

(1) A ten/four bag limit for Atlantic group Spanish mackerel implemented for the 1987/88 fishing year is again proposed for the 1988/89 fishing year.

(2) The commercial allocation for Gulf group king mackerel is divided into eastern and western zones to protect the resource and to provide for a commercial catch in each of these two areas.

(3) A three/two bag limit for Atlantic group king mackerel was adopted for the 1988/89 fishing year.

(4) Amendment 1 to the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico established primary and secondary management areas in the Gulf of Mexico.

(5) Regulations governing the ocean salmon fishery off Washington, Oregon, and California establish a number of management areas subject to differing measures.

Finally, NOAA does not agree that the ten/four bag limit violates national standard 4. Rather NOAA believes that this measure will promote fairness and equitability. National standard 4 should be satisfied in that the necessary allocation and assignment of fishing privileges among various U.S. fishermen is carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

According to NMFS catch and effort data, during the past 3 fishing years approximately 45 to 66 percent of the effort was in the Gulf eastern area and produced 66 to 88 percent of the recreational catch of Spanish mackerel in the Gulf of Mexico. The Councils considered this catch distribution unfair and proposed differential bag limits for eastern and western areas to redistribute the catch more evenly across the Gulf in both space and time. Differential bag limits are proposed on a regional, and not on a per State, basis.

In summary, the most recently compiled data support the Council's proposed ten/four bag limit. Allocation adjustments and processes are the major responsibility of the Councils. Their decision to more fairly distribute the recreational catch on a regional basis was based on the best available scientific information. NOAA's review of relevant discussions and considerations by the Councils indicates that the actions recommended are in compliance with the Magnuson Act.

Other Matters

This action is authorized by 50 CFR 642.27, and complies with E.O. 12291.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: July 5, 1988.

James W. Brennan,

Assistant Administrator, for Fisheries, National Marine Fisheries Service.

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

For the reasons set forth in the preamble, 50 CFR Part 642 is amended as follows:

1. The authority citation for Part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 642.21 [Amended]

2. In § 642.21, the numbers are revised in the following places to read as follows:

Paragraph	Removed	Added
(a)(1), introductory text	0.7	1.09
(a)(1)(i)	0.48	0.75
(a)(1)(ii)	0.22	0.34
(a)(2), First sentence	3.59	2.60
(b)(1)	1.5	2.31
(b)(2)	6.09	4.40
(c)(1)	1.42	2.85

Paragraph	Removed	Added
(c)(2)	2.36	3.04
(d)(1)	1.08	2.15
(d)(2)	0.74	0.96

3. In § 642.28, paragraphs (a)(2) and (3) are revised, paragraph (a)(4)(iii) is removed, and a new paragraph (a)(5) is added to read as follows:

§ 642.28 Bag and possession limits.

(a) * * *

(2) *King mackerel Atlantic migratory group.* (i) Possessing two king mackerel per person per trip from the southern area.

(ii) Possessing three king mackerel per person per trip from the northern area.

(3) *Spanish mackerel Gulf migratory group.* (i) Possessing four Spanish mackerel per person per trip from the eastern area.

(ii) Possessing ten Spanish mackerel per person per trip from the western area.

* * * * *

(5) *Areas.* (i) For the purposes of paragraphs (a)(2) and (4) of this section, the boundary between the northern and southern areas is a line extending directly east from the Georgia/Florida boundary (30°42'45.6" N. latitude) to the outer limit of the EEZ.

(ii) For the purposes of paragraph (a)(3) of this section, the boundary between the eastern and western areas (identical to the eastern and western zones in the commercial fishery) is a line extending directly south from the Alabama/Florida boundary (87°31'06" W. longitude) to the outer limit of the EEZ.

* * * * *

[FR Doc. 88-15388 Filed 7-6-88; 10:29 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 131
Friday, July 8, 1988

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 TRANSPORTATION

Office of the Secretary

14 CFR Parts 221 and 389

[Docket No. 43343; Notice 88-10]

RIN 2105-ABOO

Electronic Filing of Tariffs

AGENCY: Office of the Secretary; Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a petition for emergency rulemaking filed by the Airline Tariff Publishing Company, the Department is proposing to amend its regulations to allow carriers to file passenger fares tariffs electronically. This proposal is being made because it is becoming increasingly evident that some form of interim relief from the burdens associated with the paper tariff filing system is necessary in the near-term, even while the Department continues the development of a completely automated tariff filing system.

DATE: Comments must be received no later than September 6, 1988.

ADDRESS: Five (5) copies of any comments should be sent to the Documentary Services Division, C-55, U.S. Department of Transportation, 400-7th Street SW., Washington, DC 20590. Comments should refer to Docket 43343. Persons wishing acknowledgment of their comments should include a stamped, self-addressed postcard with their comments. The Docket Clerk will time- and date-stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Thomas G. Moore, Chief, Tariffs Division, P-44, Department of Transportation, 400-7th Street SW., Washington, DC 20590. Telephone: (202) 366-2414.

SUPPLEMENTARY INFORMATION:

Background

Section 403 of the Federal Aviation Act of 1958, as amended (Act), requires all U.S. and foreign air carriers to file tariffs with the Department of Transportation (the "Department" or "DOT") setting forth passenger fares, cargo rates, other charges, and rules which apply to air transportation between a point or points in the United States, its territories or possessions, on the one hand, and foreign points, on the other. Once approved by the respective government aviation authorities, as required under bilateral agreements and/or the Act, these tariffs become legally binding contracts of carriage for international air transportation.

The airlines currently file tariffs on paper in accordance with the requirements found in 14 CFR Part 221 of the Department's regulations. These requirements have remained essentially the same since their inception in 1938, when the former Civil Aeronautics Board (the "Board") was established. Now, half a century later, carriers and their tariff publishing agents are still submitting all proposed fares, rates, and rules on paper, and DOT analysts are still searching through voluminous paper documents to evaluate all proposed tariffs.

This paper system worked well in a regulatory environment when tariffs were more stable and static. However, the aviation environment has changed dramatically in the last ten years. U.S. domestic air transportation has been completely deregulated and the international aviation marketplace has become increasingly more competitive. Carrier fares, rules, and rates are now subject to frequent, sometimes daily, changes. As a result, the volume of tariff pages filed has increased tremendously, creating a burden on the Department, the industry, and the public that has become virtually unmanageable and unworkable. We expect the tariff volume to continue to increase substantially in future years. In this connection, we note that in 1985 the Department had over 20,000 tariff pages, containing more than one million fares, rates, and rules, in effect and on file on any given day; today, the number of currently effective tariff pages on file exceeds 40,000.

Our ability to handle this growing volume of tariff filings has been severely taxed. In the future, it could become extremely difficult for the Department to fulfill its statutory and regulatory responsibilities unless major modifications are made in the current paper-based tariff filing system. We have taken steps to handle the ever increasing volume of tariff filings.

Steps Already Taken

The Department has already demonstrated its concern over the increasing burdens that the filing and processing of paper tariffs places on all involved. On August 19, 1985, we issued an Advance Notice of Proposed Rulemaking (ANPRM) (50 FR 33452) indicating that the Department was considering establishing an automated tariff system, one that would allow carriers to file and disseminate tariff information electronically. The ANPRM included information regarding the current tariff system, as well as a preliminary outline for a proposed computerized system, and it requested comment on the feasibility and advisability of such a proposal.

Seventeen commenters responded to the ANPRM. (See Docket 43343). The ANPRM received strong and nearly universal support. The supporting commenters presented some specific suggestions on how we should implement tariff automation, and also raised a number of concerns that could arise depending on the approach we might adopt. We have taken these comments into account in formulating the present interim proposal. (We have summarized and addressed the comments to the ANPRM in the section below labeled "Supplementary Discussion of Comments on the ANPRM".) The only opposition to the ANPRM came from a carrier concerned that the costs of electronic filing would be burdensome. In response to this concern, we are proposing that electronic filing under this rule would not be mandatory but, rather, an alternative to paper filing.

Several of the commenters suggested that we allow the industry and other private sector interests to participate in the design and development of any system. Accordingly, in November 1986, the Department established an Advisory Committee to assist the Department in the development of its proposed Electronic Tariff System (ETS) (51 FR 42327, Novemer 24, 1986). The Committee is made up of

representatives of a variety of interests, including U.S. air carriers, foreign air carriers, tariff publishing agents, airline associations, the information industry, and consumer groups. The Committee met on two occasions during the first half of 1987. The Committee has made two recommendations to the Department. First, the Committee requested that the Department amend the posting regulations for international air transportation to allow carriers and agents to provide notice of, access to, and information concerning, the terms of their contracts of carriage in a manner similar to that applicable to U.S. domestic air transportation. This request is under Department review.

The Advisory Committee also recommended that the Department conduct experiments to determine if there were any existing systems/databases available which could serve as a foundation for the future ETS, or any methods of electronically transmitting Special Tariff Permission Applications (STPAs) that would ease the Department's processing of these applications. A carrier must file an STPA whenever it wishes to file a tariff on less than the required statutory/bilateral notice. The current STPA procedure is a two step process. The carrier must first submit a detailed description of the changes it wishes to implement with and explanation and, when necessary, economic justification. If the Department grants the STPA and the carrier chooses to implement the authorized changes, the carrier must then print a tariff and file it with the Department. Approximately 95–98 percent of all tariff filings are filed pursuant to an approved STPA. In July 1987, we published notices in the **Federal Register** and the *Commerce Business Daily* requesting that interested parties submit their expressions of interest to the Department. (52 FR 27099, 27100, July 17, 1987; *Commerce Business Daily*, Issue No. PSA–9391, July 29, 1987.) The Department is currently reviewing these submissions.

The Need for Interim Relief

Against the background of these developments, it is apparent that the current paper filing regime is antiquated, inefficient and costly, and needs to be replaced with a modern, efficient and cost effective alternative. We believe that some form of automation is a logical alternative.

Department staff, along with our Transportation System Center (TSC) and its on-site contractor, have been working to develop the prerequisites of an electronic tariff system. TSC has prepared a *Preliminary Electronic Tariff ADP Requirements Study* and a *Draft Staff Study Electronic Tariff System Data Model*. (Copies of these documents are included in Docket 43343.)

These two documents set out many of the functions and data elements, and the basic structure of an ETS. They have provided an excellent launching of our automation effort. As that effort has progressed, however, it has become clear that the automation project is one of major scope that raises a number of complex issues.

We are actively moving forward to resolve the issues related to this effort. However, we recognize that a serious need exists to provide at least some degree of interim relief from the burdens of filing and processing paper tariffs, and that this relief is needed now, even while our longer-term automation efforts continue. We believe that a rule along the lines of that being proposed here and discussed below would provide both the industry and the Department some near-term relief.

We recognize that the rule we are now proposing would provide only a portion of the benefits which would accrue to the Department, the industry, and the public once the efficiencies of a fully automated tariff system are achieved. However, in view of the situation in which we and the industry find ourselves today, we tentatively conclude that some relief is plainly better than no relief at all. We also recognize that, upon completion of the definition and design of a fully automated tariff filing system, this proposed rule may not be a part of any final rule issued pursuant to our outstanding ANPRM on electronic tariff filing. However, we believe that any experience we might gain while operating under this proposal would be invaluable in our development of that system.

We emphasize that we are not departing from our ultimate goal of establishing a fully integrated electronic tariff system, *i.e.*, one where data would be held in one official central database (whether inside or outside Departmental headquarters), and where software would be developed to perform, or facilitate the performance of, various procedures which constitute the functions of the Department (essentially analysis of tariff filings for conformity to statutory and regulatory requirements). Our simple objective here is to provide some measure of interim relief to the Department and the industry from the burdens of filing paper tariffs.

ATPCO Petition

On December 16, 1987, Airline Tariff Publishing Company (ATPCO) petitioned the Department for emergency rulemaking to amend 14 CFR Part 221 to allow carriers to file passenger fares tariffs electronically as an alternative to the current paper requirements. ATPCO is the industry's major tariff filing agent, publishing tariffs on behalf of over 90 percent of all carriers required to file tariffs with the Department. Included with ATPCO's petition was a proposal, including proposed rule language, which it believes would provide immediate relief to the industry and at the same time facilitate the Department's tariff processing resposibilities until such time as the Department is able to complete development of an automated tariff system.

In support of its petition and proposal, ATPCO states that the current international aviation environment, with its constantly changing price structures, and the need for rapid processing of the paper tariffs associated with implementing such changes, has made it extremely difficult for ATPCO to be responsive to the carriers for which it files tariffs, and that some immediate relief is needed. It further states that the industry is currently spending at least $5,000,000 per year to produce, file, and distribute paper tariff documents; that the ability of its carriers effectively to compete in this environment is diminished by the time lags inherent in producing and processing paper tariffs; that the current situation also impacts negatively on the public's ability to avail itself of the benefits of increased competition; that implementation of an electronic filing system as soon as possible would allow the Department to take advantage of the efficiencies currently available to the airline industry by virtue of its access to a highly developed automated system; that an amendment to Part 221, which would permit tariffs to be filed, reviewed and stored electronically, would be consistent with, and could be a part of, the Department's on-going rulemaking for electronic tariffs; and finally, that because ATPCO is willing to create a fares database for the Department at no charge, an electronic fares filing system could be implemented with a minimal expenditure of government funds.

In general, ATPCO's proposal provides that any carrier or tariff filing agent would be able to file tariffs electronically if it establishes and maintains, on behalf of DOT, a database

of all tariffs filed electronically by such carrier or agent. The Department would have unlimited access to this data at no charge, as well as the ability to input certain information into the database. This would include, but not necessarily be limited to, such information as the approval, rejection, or suspension of any proposed fare change; or the grant or denial of an STPA application. The ATPCO proposal also provides that the filing carrier or agent would provide public access to this information to the extent deemed necessary by the Department. Also, the carrier or agent would maintain tariff data on-line for a period of two (2) years.

Answers to ATPCO's Petition

Six parties have filed answers in support of the ATPCO petition: USAir Group, Inc. (USAir Group), Air Transport Association of America (ATA), American Airlines, Pan American World Airways, Lufthansa German Airlines, and Japan Air Lines.

The answers state that the inefficiencies of the paper tariff system hurt the airline industry's ability to compete in an increasingly competitive environment; that ATPCO and the industry have developed sophisticated electronic systems for handling airline fares; and that the Department should take advantage of those capabilities to enhance the efficiency of its tariff system.

The International Foundation of Airline Passenger Associations (IFAPA) also filed an answer in response to ATPCO's petition. IFAPA states that it has no difficulty with the overall objective behind the ATPCO proposal. However, it voices concern with the issue of public access, the charges to be made for such access, and the format of the information to be made available. It asks that, if we proceed to rulemaking, we include provisions that respond to these issues. It further asks that we not proceed by emergency rulemaking procedures, so that we can give these issues careful attention.

The only answer in opposition to ATPCO's petition came from ABC International (ABC). ABC is a British company specializing in tariff collection and information distribution to the travel industry. Its publications include, among others, the *ABC World Airways Guide* and the *Air Cargo Guide.* ABC urges the Department to deny ATPCO's petition for substantive and procedural reasons. Specifically, ABC alleges that, under the ATPCO proposal, individual carriers, or their agents, will own and control the database; therefore, because ATPCO is owned by most major U.S. and some foreign carriers, the potential for bias in favor of its carrier owners may render ATPCO an unsuitable entity to control all or a significant part of the ETS database; that under ATPCO's proposal, ABC and other interested parties may not be able to gain on-line access to the ATPCO database, or *vice versa;* that implementing the ATPCO proposal would raise competitive issues in light of ATPCO's large market share; that issuance of an emergency rule is an improper manner for the Department to proceed, one which could give "short shrift" to the work being done in connection with the Department's on-going rulemaking in this Docket; and that the Department must take certain legal steps, especially in the procurement area, before implementing an electronic tariff.

ATPCO filed a response to ABC's answer stating that ABC misunderstood the underlying premise of ATPCO's proposal, which neither contemplates nor requires procurement action; that ATPCO's proposal in no way favors ATPCO over any other filing agent; that both the public and DOT will have access to the Department's official tariff database, at Departmental headquarters, as soon as fares are submitted, and that others who would like to access ATPCO's (or any other filing agent's) database can still do so by purchasing access such as is done now; and that free unrestricted on-line access to the Department's official tariff database is not necessary to satisfy the Department's public obligations.

ABC International filed a rejoinder to ATPCO's response, which essentially expands upon points previously raised.

Disposition Of Petition

After consideration of the comments received, we have decided to grant the ATPCO petition in part and deny it in part.

We agree that a rule along the lines of that proposed by ATPCO could provide substantial public benefits and would be particularly useful at the present time in light of our need to gain interim relief. We will not, however, issue an emergency interim final rule as proposed by ATPCO. While we are certainly sympathetic to ATPCO's need (as well as our own) for relief from the burden of paper tariffs, we find that no such an emergency exists that would cause us to bypass our normal rulemaking procedures.

Although ATPCO indicates that its current goal is the electronic filing of passenger fares, the ATPCO petition is worded sufficiently broadly to encompass the electronic filing of the entire tariff. We are not prepared at this time to permit the electronic filing of any data other than passenger fares, including arbitraries, footnotes, routings, fare class explanations, etc., and related STPA's. Therefore, we will not grant the ATPCO petition to the extent that it would permit the filing of electronic tariffs for other than passenger fares.

The Controlling Setting for our Proposal: the Department's Tariff Responsibilities

Any electronic filing system, interim or otherwise, must enable us to continue to perform all of our ongoing tariff functions. Clearly then, an appreciation of these functions is critical to an understanding of the provisions of our proposal. So, before turning to a description of our proposal, we begin by reviewing our tariff responsibilities.

The Department of Transportation is charged with the responsibility for reviewing proposed tariffs to ensure that they comply with U.S. laws and international agreements. The Department must approve or disapprove all U.S. and foreign carrier tariff proposals. In connection with its tariff responsibilities, the Department receives, reviews, approves or disapproves, and maintains a file of all international tariff filings, STPAs, and waivers. (A waiver is filed whenever a carrier, or its agent, wishes to deviate from the tariff filing requirements of 14 CFR Part 221.) In addition, the Department must certify tariff documents for use in court cases and other purposes.

The following tasks are involved in performing our statutory and regulatory responsibilities with respect to tariffs: (For a more in-depth discussion of our tariff responsibilities, see the *Preliminary Electronic Tariff ADP Requirements Study,* at pp. 2–4 thru 2–19.)

- The Department receives, tracks, and stores tariff documents as specified by the governing regulations.
- The Department accepts, rejects or suspends tariff filings, and grants or denies STPA's by:

—Reviewing the tariff for adherence to regulations and policies; and

—Analyzing the tariff for adherence to relevant U.S. laws and international agreements.

- The Department informs carriers, and/or their agents, about the status of tariff filings and STPA's.
- The Department maintains public records for open access to published tariffs and to tariff filings.
- The Department maintains reference data files which are used for analyzing tariff filings and STPA's.

• The Department provides certified copies of carrier tariffs for use in legal proceedings.

• The Department responds to *ad hoc* requests from other government bodies, including U.S. Executive Agencies and other U.S. Federal Agencies, the U.S. Congress, and from local and state governments, for data analysis related to international air fares, rates and rules.

As we said above, any proposal to amend the current tariff filing procedures must ensure that the Department can fulfill its statutory and regulatory responsibilities, especially our responsibility for assuring the integrity and accuracy of current and historical tariff data. We believe that our proposal, described below, would meet this test. Moreover, it would provide needed relief to the industry and to the Department by eliminating much of the paperwork now required in filing passenger fares tariffs with the Department.

Description of the Department's Proposed Rule

We are proposing to allow any carrier, or its tariff filing agent (the "filer"), to file its passenger fares electronically by establishing and maintaining a database of all of such fares, subject to certain conditions imposed by the Department. The Department and the public would have unlimited access to this data at Departmental headquarters, and at no charge. The Department would record its decisions regarding these fare filings into this database.

All daily data transactions would be recorded on an electronic storage device at Departmental headquarters. All Departmental actions would also appear in an "on-line tariff database" maintained by the filer.[1] At the end of each day, each filer would submit to the Department an electronic copy of all transactions made during that day for comparison with the daily data transaction record.

Electronic filing would be strictly optional. The paper system would remain available to those carriers or filing agents perferring the *status quo*.

We now address the mechanics of how our proposal would work. First, we envision that the Department would be required to complete the installation of a local area network, which would be connected to several personal computers in the Department's offices. Filers desiring to file tariffs and STPA's electronically would be required to install whatever hardware, software, and communications devices would be needed to comply with the provisions of the rule. Whenever the term "tariff" is used in this proposed rule it includes, unless the context otherwise requires, the STPA procedures as well.

Any fare changes that are to be incorporated into a tariff filing would be consolidated by the filer under a "Filing Advice Number." The filer would electronically enter a text justification for the filing into the system, and this justification and the fare changes would be transmitted to a "Government Filing File." Once a fare is entered into the "Government Filing File" DOT would be able to enter control data and approval/disapproval indicators which could apply to the entire filing or to specific records within the filing. Submissions to the "Government Filing File" would be allowed at any time.

When an electronic submission is made to the Department, the filing advice number would also be included in a "Filing Advice Status File." The Filing Advice Status File" would be updated automatically as a result of action taken by DOT in the "Government Filing File." The file could be accessed by reference to filing date, by geographic area, by filing advice number and by carrier. Access to this information would be made available to the public at Departmental headquarters.

After DOT acts on any filer's proposal contained in the "Government Filing File", the filer would then incorporate the proposal, including any adverse action by DOT on any particular record, into a "Historical File". The "Historical File" would contain all fares, including inactive fares. The inactive fares would be held on-line for two years after they have become inactive. At the expiration of this two-year period, we would require the filing carrier, or its agent, to provide the Department, free of charge, all such inactive data transactions on machine-readable tape or any other mutually acceptable electronic medium.

The Department would store and maintain these historical/inactive data records for an additional three years. This would effectively satisfy DOT's retention requirement of storing and maintaining historical/inactive data for the required five-year period.

We are proposing to liberalize our procedures so as to permit the electronic submission of Special Tariff Permission Applications (STPAs). We would propose that when an STPA contains only electronic submissions, a filing advice number would be used, and the STPA would be required to comply with proposed § 221.302. STPA's that contain both electronic material and related paper tariff material would have to comply with Subpart P of 14 CFR Part 221. That is, these STPA's would have to bear a sequential STPA number, as is the case today, and this number would also have to be reflected in the electronic submission to the Department. Under this liberalized electronic STPA procedure, a filer would only be required to submit the proposed changes once. For all practical purposes the STPA would be treated the same as a tariff filing that had been made on either statutory or bilateral tariff notice, as applicable. The only substantive difference would be that if the Department granted the STPA, the filer would be required, if it chose to implement the authorized changes, to reference the Department's action and to comply with any condition imposed by the Department in connection with its approval of the STPA.

We envision that the electronic submission of data from any filer's computer to DOT's computer facilities would be accomplished by the use of a leased dedicated conditioned data circuit. (A dedicated leased conditioned data circuit is a communication line leased from the telephone company over which electronic madia may be transmitted without interference and which ensures the integrity of the data being transmitted.) The Department would download all daily data transactions submitted by the filer onto Department computers. Additionally, we would require that the filer furnish the Department, on a daily basis, all transactions made to the on-line tariff database on a machine-readable tape, or any other mutually acceptable electronic medium. We would compare these tapes (or other medium) with the daily transaction record to ensure that they were complete and accurate. If they were not, we would take steps to ensure immediate corrective action. The downloaded daily data transactions, together with the tapes (or other agreed medium) as verified against the daily transactions data would constitute the officially filed tariff with the Department for that portion of the tariff filed

[1] The term "on-line tariff database" means the remotely accessible, on-line version, maintained by the filer, of (1) the electronically filed tariff data submitted to the "official DOT tariff database," and (2) the Departmental approvals, disapprovals, and other actions, as well as any Departmental notation concerning such approvals, disapprovals or other actions, that Subpart W of the proposed Part 221 requires the filer to maintain in its database. The term "official DOT tariff database" means those data records (as set forth in § 221.283 and 221.286 of our proposed rule) which would be in the custody of, and maintained by, the Department of Transportation.

electronically. This approach would effectively remove the basis for ABC's concern that the individual carrier, or its agent, would own the official DOT tariff database.

The official DOT tariff database would be used for certification purposes. Also, it would routinely be employed to verify the on-line tariff database and, as necessary, for audit purposes. We believe that these verification procedures, together with internal database security measures we will implement through a maintenance agreement, and the availability of civil and criminal penalties for tampering with or destroying such data, will provide an adequate degree of accuracy in the on-line tariff database. The on-line tariff database, which would thus effectively duplicate the official DOT tariff database, would be used by the Department in performing various of its functions and access would be made available to the public at Departmental headquarters.

We propose to require the filer (a) to provide the Department the capability to note any action taken on any tariff filed with the Department, as well as the reasons for such action, (b) to provide a designated place (in technical terms, a "field") in the "Government Filing File" for the signature of the approving U.S. Government official, that "signature" to be achieved through the use of Pesonal Identification Number (PIN), (c) to make designated places (again, "fields") available to the Department in any record filed electronically for inclusion into the on-line tariff database, and (d) to provide a leased dedicated conditioned data circuit to the Department which is capable of operating and handling the electronic data at a sufficient rate. We would expect, at the outset, that a circuit operating at a minimum of a 9.6K baud rate should be sufficient. Further, we propose to require that, in the event of a failure in the primary dedicated circuit, the filer shall have in place a secondary or a redundancy circuit that will handle data at a 4.8K baud rate, or greater. We also propose to require that the primary data circuit provided to access the on-line tariff database must be capable of being restored within four hours after failure.

We propose to require that, in the event that the electronic tariff system is discontinued, or the source of the data is changed (*i.e.*, a carrier chooses to have its fares tariffs filed by an agent, or *vice versa*, or a carrier switches from one agent to another), all tariff records developed prior to such event shall immediately be delivered by the filer to the Department on machine-readable tapes or any other mutually acceptable electronic medium. Also, should a filer stop filing tariffs electronically, we would require the filer to provide the Department, immediately upon cessation of electronic filing, free of charge, a copy of its on-line tariff database on machine-readable tapes or any other mutually acceptable electronic medium.

In its justification for new or increased fares which are subject to the Standard Foreign Fare Level (SFFL) or the European Civil Aviation Conference (ECAC) Agreement, we proposed that a carrier, or its agent, provide certain fare comparisons as is currently the case in the paper tariff filing environment.

Specifically, we would require that the carrier, or its agent, provide, as to any proposed new or increased bundled or unbundled (whichever is lower) on-demand economy fare in a direct-service market, a comparison between, on the one hand, that proposed fare and, on the other hand, the ceiling fare allowed in that market based on either the pertinent ECAC zone or SFFL.[2] If, however, the carrier's proposed fare is intended to match that already approved for another direct-service carrier, the proponent carrier may forego the comparison and, instead, simply identify the competitor's fare it claims to match.

We propose to require that fares in direct-service markets be filed as single factor fares. While this may vary from the current practices of some of the filers, *i.e.* those who prefer to file fares in such markets on a base fare/arbitrary basis, we feel that the single factor approach will provide both us and the public with more useful information and, in the context of an electronic filing system, should represent no significant change in the filer's workload.

In order to facilitate the verification and monitoring of the SFFL regulated fares, we propose to require that all carriers use specified application rule numbers in conjunction with these fares. We believe the use of specified rule numbers would be extremely helpful to the Department in its analysis of fare tariffs and STPA's, thereby enabling the Department of approve some fare changes more rapidly. We invite comments on whether, in an automated environment, complying with this proposed requirement would pose any major hardship on any carrier, or its agent.

[2] For the purpose of this rulemaking, a direct-service market is an international market where the carrier provides service on a nonstop or single-flight-number basis, including change-of-gauge.

There are times when one carrier adopts the fares of another carrier as its own. This can create problems should it be necessary to research historical tariff information. In order to facilitate such research, we propose to require that the currently effective or prospective fares of the adopted carrier be changed to reflect the name of the adopting carrier as of the effective date of the adoption. Further, such provisions would be annotated with a notice showing the adopted carrier and the effective date of the adoption.

We would also require that, upon institution of the electronic tariff filing under this rule, a carrier, or its agent continue to file tariffs as specified in Subparts A–V of 14 CFR Part 221, *i.e.*, on paper, for a period of 90 days, or until such time as we shall deem paper filing no longer to be necessary to ascertain that all tariffs filed electronically meet our needs.

Last, we re required by regulation to give each tariff filer notice of each action taken under assigned authority, *i.e.* rejection of tariff, and approval or denial of STPA and waiver applications. We must also give notice of the right to petition for review of such action. *See* 14 CFR 385.4. In the current paper tariff environment we provide this information with each written determination. In an electronic environment, where we will not be providing written determinations for our actions under assigned authority, we must adopt a different approach. To this end, we propose to incorporate the notice by reference through a provision in our new rule. *See* the proposed § 221.700.

Central to our proposed rule is the provision that a carrier, or its agent, may file its international passenger fares tariffs, *including* those provisions relating to the application of such fares such as arbitraries, routing, footnotes, fare class explanations, etc., but *excluding* narrative fare rules, in machine-readable form. Moreover, electronic filing would be an *alternative* to filing such tariffs in the paper format currently prescribed by 14 CFR Part 221.

IFAPA has voiced a concern over the format of electronically filed information as related to the public's ability to identify certain carrier fare rules. The proposed exclusion from our rule of narrative fare rules would effectively remove the basis of IFAPA's concern.

To file electronically, a filer must agree to establish and maintain its filings in such form and manner as required by the Department and shall make its on-line tariff database available to the public, at no charge, at

the Department's headquarters. Further, the Department would have the right to audit the carrier, or its agent; the carrier's, or its agent's database(s); and their applications, including, but not limited to, support functions, environmental security, and any accounting data recorded by the system.

Before we would permit any carrier, or its agent, to file tariffs electronically, we would require the filer to enter into a maintenance agreement with the Department under which the filer would, among other things, (1) agree to establish and maintain an on-line tariff database for use by the Department and the public; and (2) assure the Department any oversight and right to monitor any system (operating, environmental, and application) necessary to our use of the database.

Public Access

We propose that the filer make access to its on-line tariff database available to the public, at DOT headquarters, at no charge, during business hours. We would require that the filer place one or more Computer Video Display Terminals, *i.e.* in technical terms, a Cathode Ray Tube, (CRT) and one or more printers, connected to the on-line tariff database, in the Tariffs Public Reference Room. The number of CRT's and printers which would be required for public access would be determined by the Department. Further, the filer would be responsible for the maintenance of such equipment and would need to enter into an agreement to indemnify and hold the Department and the U.S. Government harmless from any claims or liabilities which may result from any defects in this equipment. The public would have access to the on-line tariff database, with a query capability that would provide access to those elements listed in §§ 221.283 and 221.286 of our proposed rule. Certified copies of tariffs would be provided by the Department at a reasonable charge.

Regarding remote access to the on-line tariff database, a concern raised by both ABC and IFAPA, we propose steps to ensure that tariff information filed electronically will be reasonably available to the public, including potential competitors. We have proposed in § 221.600 of this notice that any electronic filer must afford remote access to its on-line tariff database to any member of the public, at a charge that does not exceed a reasonable estimate of the added cost of providing the service. This would extend to electronic filings the rule currently in effect for paper filings (14 CFR 221.179). This would not, however, preclude the offering of machine-readable copies of the on-line tariff database or other value-added services by the filer at such reasonable prices as may be set by it. Comment is solicited on the extent to which the public would seek access to the on-line tariff database, especially in preference to the value-added services already available.

Filing fees and user fees

By law, fees charged for filing tariffs should cover the basic costs of processing the tariff material filed. In our ANPRM, we noted that filing fees for tariffs are currently assessed on a per-page basis, at a rate of $2.00 per side. There is no fee for pages reprinted without change—for example, the reverse side of a page filed with fare or rate changes on it. We currently charge a flat rate of $12 for each STPA submitted. See 14 CFR 389.25.

ATPCO suggested that filing fees for the electronic transmission of tariffs should be waived until such time as the Department establishes a fee schedule. We are not prepared to waive filing fees for those carriers that exercise the option to file their fares electronically. This, by its very nature, would be inequitable to those carriers that continue to file their tariffs only in the paper medium. Furthermore, filing fees are intended to cover the actual processing time costs for ensuring technical compliance with the Act. (*See* OR–204, effective January 10, 1983, Dockets 30586 and 30816; 48 FR 635, January 6, 1983). Therefore, we will not grant ATPCO's request to waive filing fees for electronic tariffs.

In an automated tariff filing system, even one as limited in scope as that proposed in our rule, we would need to adopt a different filing fee approach from that used in the paper system. We propose a filing fee structure providing for the assessment of a fee on a per record basis. We propose to establish an interim filing fee of 5 cents for one or more transactions proposed in any existing record, and 5 cents for any proposed canceled or new record. For ETS purposes, we propose to define *record* as "that set of information which describes one (1) tariff fare, or that set of information which describes one (1) related element associated with such tariff fare."

We based our proposed interim fee on the transaction volume studies conducted in the *Tariffs Computerization Project—Feasibility Study and Cost Analysis Report* (June 1985) and *Preliminary Electronic Tariff ADP Requirements Study* (March 1987), and on estimates derived from the existing direct labor costs we have experienced in processing the current paper records. Both of the cited studies estimated that there were on average approximately 50 transactions per tariff fare page, and that virtually all these transactions were under the STPA process. Using this average of 50 transactions per tariff fare page, and factoring the STPA filing fee into the cost for processing paper tariff pages, we arrived at a proposed filing fee that we believe is consistent with the costs of providing these services.

In assessing electronic filing fees we would not charge separately for electronic STPAs and fare records. This is because virtually all fare filings (98%) are submitted under the STPA process. Given this fact, we believe that applying a single filing fee is the most efficient and cost effective method of fee assessment.

There are several areas that need to be clarified in the assessment of the proposed filing fees. These are: (a) what fees should be assessed during the 90-day implementation period under proposed § 221.500, (b) what fees should be assessed after the 90-day implementation period, (c) what fees should be assessed when a filer elects to file electronically, and is also required to file paper tariffs under proposed § 221.275, and (d) should foreign air carriers that have been exempted from filing fees under 14 CFR 389.24 be required to pay electronic filing fees.

We propose that during the implementation period no electronic filing fee would apply; however, the filer would continue to pay the required paper filing fee. We propose that once the filer receives authority to cease filing paper fares tariffs and is permitted to file electronic fares tariffs, the electronic filing fee would apply to such fares tariffs. We propose that when a filer is authorized to file both electronic and paper tariffs under § 221.275, the filing fee, as applicable, would apply individually to each medium. We propose that foreign air carriers that have been exempted under § 389.24 of our economic regulations would also be exempt from the electronic filing fees.

We propose to collect the interim filing fees for the electronic filing of passenger fares as specified above, until such time as we revise the electronic filing fee schedule in light of actual experience under electronic filings.

We are specifically seeking public and industry comments on our proposed interim electronic filing fees.

For general, day-to-day, on-line access to electronically filed tariff data, our proposed rule provides that the public would be provided such access, free of

charge, at DOT headquarters. With respect to the cost of providing certified copies or other services involving passenger fares filed electronically, the Department proposes to follow the provisions regarding Freedom of Information Act requests, at 49 CFR Part 7 (also see 14 CFR Part 310). We would not assess a charge for copies made from the printer or printers placed by the filer in the Public Reference Room. The filer may assess such fees, provided they are reasonable and that no administrative burden is placed on the Department to require the collection of fees or provide services.

We welcome comments from the public and the industry on the issue of user fees.

ABC's Competition Argument

We do not share ABC's belief that ATPCO's large market share will have competitive ramifications on ABC or any other interested party. We have carefully drafted our proposal to allow any carrier, or its agent, to file fare tariffs electronically under identical conditions. Moreover, these conditions have been stated in general terms limited only by what we believe to be the Department's minimum needs. We do not wish to create limitations that could allow any party to attain an unfair advantage due to its particular data processing equipment, telecommunications capabilities, etc. Therefore, it is not clear to us what advantage ATPCO would have in an automated environment that it does not already have by virtue of the fact that it currently files printed tariffs on behalf of the majority of carriers that file. Saying this, we appreciate that interested persons may wish to comment on this issue and we invite them to do so.

In response to ABC's concerns about a rule which could operate to ATPCO's competitive advantage, we would note first that ATPCO is not immune from operation of the antitrust laws. *See* DOT Order 87–5–44, May 18, 1987. As always, our monitoring of the implementation of this rule would be a continuing one. In addition to this Departmental oversight, filers coming in under our proposed rule would, as ABC points out, remain subject to judicial scrutiny under the antitrust laws. *See* DOT Order 85–9–57, September 26, 1985, at 19. Further, our proposal seeks to be competitively neutral, allowing equal opportunities to all carriers and agents regarding the electronic filing of their fares. We recognize also that, in a sense, we are opening a new market—that of filing, not paper tariffs, but electronic tariffs. By creating that option, it may be that other firms, specializing in ADP and related fields, may find it advantageous to enter the marketplace. Our proposal should allow them a fair opportunity to do so. Thus, to the extent that this rule would have any effect on the competitive environment, we would perceive such effect to be pro-competitive, not anti-competitive.

ABC's Procurement Argument

We do not accept ABC's assertions that ATPCO's proposal is an improper manner for the Department of proceed in view of our on-going rulemaking in this Docket, or that we are required to procure ETS equipment and services. Under our proposal, the Department would not be acquiring equipment from electronic filers for its own purposes. Terminals and peripheral equipment have already been obtained at DOT for tariff processing purposes via competition. The terminal or terminals provided for public use would remain the property of the filers, and be of use only in connection with the review of data supplied by that filer. We would require the filers to ensure the security, retention, and dissemination of the on-line tariff database. Departmental ETS services (as involved, for example, in the downloading of daily submissions or storage of official data at the Department) would largely be furnished through an on-site contractor, selected via appropriate competition, that supplies computer services to various Departmental elements. Of course, once we progress to a fully integrated system, different considerations will likely exsit and a need for formal procurement may arise.

Alternatives

Before choosing the approach set out in our proposed rule, the Department carefully considered several other options which are available to us in this area. In fact, most of these options have been explored in-depth in the document, *Automation of the OIA Tariff System, A Cost Benefit Analysis*, dated March 1987. This document was prepared by the Department's Transportation Computer Center. Because this document is a part of this Docket, we will only briefly discuss these options here.

The first alternative was the possibility of streamlining the current paper tariff filing system in 14 CFR Part 221. However, over the past several years the Department has streamlined its operations and eased the paperwork burden on the carriers in as many ways as possible within the confines of the current paper system without undermining the very integrity of that system.

The second alternative we considered was storing images of tariff pages on an optical disk. An optical disk is a computer-oriented storage device which has the capability of storing up to 2,000 printed pages per disk. Under this system, the Department would transfer printed tarriff pages onto an optical disk. (For a more detailed discussion of an optical disk system, see pages 5–13 through 5–20 of our study, *Automation of the OIA Tariff System, A Cost Benefit Analysis*, March 1987.) The optical disk alternative would provide some relief as far as simply accessing tariff information. However, such a system would not allow for the possibility of automating any of the Department's analytical or clerical functions. Consequently, any real relief to the Department would be negligible. Even more important, under this option no relief would accrue to the industry, since it still would be required to publish tariff pages.

A third alternative, tariff deregulation of international air transportation, would certainly eliminate the tariff burden for all concerned, just as it has for domestic air travel. However, such action would require a change in the Act as well as the possible renegotiation of many bilateral agreements between the U.S. and other countries, neither of which we consider a possibility at this time. Even if such changes were foreseeable, the time frame for implementing them would be quite long, thereby not providing the near-term relief needed by the Department and the industry.

We also considered the use of an airline reservation system to satisfy the Department's tariff filing requirements. Under this alternative the carriers would simply place their fares into an airline reservation system and would notify the Department that they had done so. Tariffs would no longer be filed with the Department. While this alternative would certainly eliminate the tariff filing burden on all parties, it would effectively mean the end of the Department's regulatory and statutory responsibilities over such tariffs. For the reasons cited above, we do not regard this as an acceptable alternative.

Any alternative that involved implementing any other type of automated tariff system, whether it be contractor-owned/contractor-operated, or DOT owned/operated, would require the Department to complete its system definition, develop specifications, and meet competitive procurement requirements—steps which would take time and which therefore would mean

that such an alternative could provide no near-term relief.

Finally, since we already have an ANPRM outstanding on the very subject of tariff computerization, we could simply defer any action on ATPCO's petition until final action in this Docket. However, as we have already indicated, complete definition, design and implementation of any ETS will involve compex issues, making it unlikely that this option could provide the interim relief which is central to ATPCO's petition and our proposed rule.

We believe that the proposal set forth in this NPRM offers the best opportunity for the Department and the industry to realize some measure of much-needed relief from the the ever-growing burden of publishing and processing paper tariffs. However, we seek comments on any other alternatives that would accomplish this goal.

Supplementary Discussion of Comments on the ANPRM

We received several comments to our tariff automation ANPRM (50 FR 33452, August 19, 1985) indicating that the Department should rely on the private sector for development and operation of any electronic tariff filing system. It was suggested that the Department should develop systems responsive to its own needs and work with private industry to provide service to meet any other needs; the Department should have separate contracts for those aspects of the system which address the internal administration needs of the Department and those which address the receipt and dissemination of tariff information to the public. Several commenters offered their services, or products, for use in conjunction with development of the ETS.

In the notice establishing its Advisory Committee (51 FR 42327, November 24, 1986), the Department set out thirteen specific goals which we hoped to achieve in implementing an electronic tariff filing system. One of those goals was using private sector resources wherever feasible in developing our complete system. We have been mindful of that goal in formulating the present proposed rule. Central to our instant proposal is that the filing airlines or their agents would be establishing and maintaining their own tariff databases for the use by DOT and the public. Further, with respect to DOT's regulatory functions, we will use the resources of either our Transportation Computer Center or Transportation Systems Center, both of which use the services of on-site private industry contractors.

Several commenters stated that any electronic tariff filing system should be compatible with databases and systems in use in the industry; some commenters suggested that the Department should use one or more industry databases as the official tariff database, rather than create a separate database of its own. However, other commenters noted that some interests could possibly gain competitive advantage if the Department's electronic tariff system is run on the computers of a selected carrier or tariff agent. One commenter made it clear that the Department should not create the possibility, or even the appearance, of conflict of interest in connection with tariff automation; that the Department should specifically and publicly make clear all criteria established to maintain propriety. Our proposal here would allow any carrier, or its agent, to establish and maintain an on-line tariff database. The Department and the public would be permitted access to this tariff database for daily use. We believe this course of action will provide no competitive advantage for any party.

Two commenters to the ANPRM suggested that the Department should consult with other governments in order to establish uniform tariff procedures and formats. In this connection, we note that two foreign governments sit on our Advisory Committee as non-voting, ex-officio members.

One commenter was concerned with how carriers would fulfill their responsibilities for filing fares or rates with other governments if the Department changes from a paper tariff environment to an electronic tariff environment, especially in the event that a carrier is required to provide copies of its U.S. tariff to foreign governments. We emphasize that electronic tariff filing under our proposed rule would not be mandatory; any carrier who saw a need to continue filing tariffs on paper would be free to do so. Further, a carrier could make printed copies of any data it might file electronically.

Many comments we received dealt with the level and type of public access which would be provided in conjunction with any proposed ETS. Again, the comments represented widely divergent viewpoints. Some commenters suggested that the Department provide on-line access to electronically-filed tariff data only at Department headquarters. In fact, it was suggested that the Department could be considered to be in competition with the private sector if remote access to tariff data were permitted. Other comments clearly indicated that there was a need for the Department to provide on-line access to its tariff database to anyone with the necessary computer equipment. It was even suggested that the Department should provide the data for carriers to run their fare/rate quote systems. Another aspect of public access was addressed by two commenters who requested that the Department require the carriers, or their agents, to continue to provide printed copies of tariffs for those entities which do not possess the computer facilities needed to access the electronic tariff data; another commenter stated that carriers, or their agents, should provide electronic access to STPAs/tariffs filed with the Department.

We propose to require public access at Departmental headquarters to any electronically filed tariff-STPA, coupled with a requirement that the carrier, or its agent, make the electronic tariff available to any person on a remote access basis, for a subscription fee. This service may be provided without charge or at a charge which may not exceed a reasonable estimate of the added cost of providing this service.

One issue on which there was near unanimous agreement was that the Department should take steps to amend or eliminate its posting requirement. These requirements provide that each carrier must maintain copies of all tariffs at each of its airport and city offices. We will address this issue in a contemporary rulemaking.

Comments were filed concerning the security of the tariff data (for example, who can access what data, and when). The consensus was that the security of tariff data is very important. One commenter noted that the Department should establish ways of certifying electronic tariff data as the official records of the Department. We have included a number of provisions in our proposal expressly designed to ensure adequate security and certifiability of our records.

With respect to filing fees or user charges in connection with an automated system, one commenter noted that the Department should not expect the public to bear the entire expense of development and operation of such a system. Instead, funding for automated systems should come from a mix of filing fees, user charges, and general appropriations. ATPCO's petition raised the filing fee issue and we have addressed it in the body of our discussion.

There were several comments that expressed the hope that an automated tariff filing system would reduce the number of STPA's needed to be filed

with the Department, while speeding up the approval process on those still necessary. One commenter suggested that we could achieve this result by amending the statutory filing periods. We believe that the efficiencies associated with the ability of carriers to file tariffs electronically would result in a reduction of the many inadvertent errors caused by a paper system. Such a reduction in errors should result in a decrease in the number of STPA's required to correct these errors. With respect to expediting the approval process for STPA's, we note that one commenter suggested that the Department should implement an "automated approval" mechanism—for example, that STPA's would be automatically approved if not acted upon within a specified period of time after filing. This type of proposal is clearly beyond the scope of the relief we are proposing and moreover, would raise significant questions about consistency with our statuory and regulatory obligations. However, we note that, even under our manual tariff filing system, we strive to process an STPA within 48 hours. Further, to the extent that the Department is able to realize increased efficiencies from the proposed rule, we would certainly expect such efficiencies to result in a more rapid response time to the industry and the public.

There were several comments concerning the operation of the electronic tariff system. These included a request that the justifications supplied by a carrier in support of a proposed tariff or STPA would be available to the public; that the Department should provide notice to the carrier or agent of any action taken on a fare filing, along with the reason form the rejection of any fare filing or denial of an STPA; that tariffs filed electronically should be available to the public as soon as they are filed with the Department; and that the Department should maintain a history file as discussed in the ANPRM. Our proposed rule addresses these concerns. With respect to the maintenance of historical data, the rule proposes that a carrier, or its agent, must maintain tariff data on—line for a period of two years after it becomes inactive. After that time, the carrier, or its agent, would provide the Department with this inactive tariff data on machine-readable tapes, or other mutually acceptable electronic medium. Public access to this data can be requested at Departmental headquarters.

One suggestion which we have not adopted is that a DOT automated tariff system should provide carriers access to the Standard Foreign Fare Level (SFFL) and Standard Foreign Rate Level (SFRL) fare and rate bases. (These "benchmark" fares and rates are one of the standards against which the Department analyzes proposed fares and rates.) This suggestion is beyond the scope of our proposal, which is directed only toward automating the passenger fare filings received from the industry, not the Department's entire tariff system. We will, however, consider such a possibility as we continue development of our automated tariff system. Similarly, since our proposed rule provides only for the electronic filing of passenger fares tariffs, we are not addressing at this time those comments regarding other tariff matters, such as cargo rates or the content and format of rule provisions. We also note that several commenters proposed general outlines of how an automated tariff system could be structured. Again, we will consider all of these comments as the Department moves forward with the tariff automation process.

A commenter suggested that the Department should perform a cost/benefit study on electronic tariff filing. In fact, we have conducted such a study, *Automation of the OIA Tariff System, A Cost Benefit Analysis*, March 1987, a copy of which is included in Docket 43343. We have fully considered the cost/benefit implications of our proposed rule and have discussed them in our Regulatory Evaluation.

A commenter suggested that the Department implement a "pilot" system before final implementation of an automated tariff system. In this connection, in order to provide a smooth transition from paper tariff filing to electronic tariff filing, we propose to require carriers filing electronically to continue filing paper tariffs for a period of 90 days, or until such time as we shall deem paper filing no longer to be necessary.

A commenter noted that tariff automation will be a major undertaking, and that the issues associated with system development should be carefully considered; the commenter urged the Department to proceed very methodically in system development. A commenter stated that the Department should pay careful attention to determining not only its own needs, but also the needs of outside users. We agree that development of a fully automated tariff system such as envisioned in our ANPRM plainly demands thorough consideration and careful attention to methodology and the need of all users. Recognizing this, however, we are also mindful that we have reached a point where some type of relief, however limited, is absolutely essential if the Department and the industry are to continue to fulfill their tariff responsibilities. We have undertaken the proposed rulemaking to provide such relief while we continue our efforts at developing a fully automated, integrated tariff system.

Finally, a commenter stated that the Department's conversion to an automated tariff environment should not hamper a carrier's ability to compete in the international aviation marketplace. Rather, it should facilitate a carrier's ability to compete. We point out, in this connection, that one of our major goals in establishing an automated tariff system is to make tariff filing more efficient both for the industry and the Department. We believe that this proposal would in no way diminish a carrier's ability to compete; in fact, we believe that it would enable carriers to compete more effectively.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act, Federalism Assessment

The Department certifies that this rule, if adopted as proposed, is not a major rule as defined by Executive Order 12291. It is, however, considered a significant rule under the Department's policies and procedures because it involves important Departmental policies and is a matter of significant interest to the aviation industry. We have prepared a Regulatory Evaluation which is summarized below. Copies of the evaluation have been placed in Docket 43343. (A copy may be obtained by contacting Thomas G. Moore, Chief, Tariffs Division, P–44, Department of Transportation, 400 7th Street SW., Washington, DC 20590, Telephone: (202)366–2414.) Further, I certify that the proposed rule would not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, Pub. L. 96–354. Virtually all airlines that provide international air transportation are large corporations. This notice of proposed rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the concepts discussed therein do not have sufficient federalism implications to warrant the preparation of a federalism assessment.

With respect to the Paperwork Reduction Act of 1980, Pub. L. 96–511, our proposal would produce a small increase in the carriers' reporting burden because of their need to make formal

application to file electronically. This new information requirement has been submitted to the Office of Management and Budget for approval.

However, we believe that the net paperwork burden associated with the tariff filing requirements should dramatically decrease. For example, in 1987, the international airlines filed with the Department 241,230 tariff pages applicable to international air transportation. Of this total, 219,503 applied to passenger service, and 21,727 applied to cargo service. Of the 241,230 tariff pages filed, we estimate that 65 percent involved passenger fares only. Assuming all carriers currently filing tariffs in paper form elect to file electronically, we would estimate an actual paperwork reduction of 142,676 pages filed with the Department, which would produce a reduction of approximately 60 percent in the paperwork burden.

As we said above, carriers, or their agents, electing to file tariffs electronically will be subject to a new reporting requirement. Specifically, they will need to make a one-time application under § 221.260 for authorization to file tariffs electronically. However, we expect these applications to be straightforward and short, not exceeding a few pages. Given the thousands of pages of paperwork to be saved by adoption of the electronic filing option, we believe that, on balance, the paperwork involved in the initial application would be a minor burden.

Regulatory Evaluation

The Department received many comments to our ANPRM which indicated that, while electronic filing could be expected to reduce the costs of filing tariffs, the magnitude of any such changes were difficult to quantify absent a specific ETS proposal. This section summarizes the estimated economic impact of our proposed rule. We welcome public and industry comments on these findings.

In our ANPRM, we set out the costs to the government (over $500,000 a year) and to the industry (at least $5 million a year) of filing and processing printed tariffs, as well as the potential benefits which could accrue to both if the tariff filing system was automated. Comments to that ANPRM confirmed that automation would be beneficial. Our March 1987 *Cost-Benefit Analysis*, which detailed costs (in excess of $21 million a year, with 78 percent of such costs being borne by the industry) and benefits that could accrue to both the Government and the industry with automation, further concluded that it was clearly cost-effective to automate the tariff filing function.

In its petition, ATPCO stated that the ability to file fares tariffs electronically would reduce industry tariff costs by over $2.5 million per year, just for printing costs. ATPCO went on to state that the industry would also benefit financially from the ability to implement new fare packages more quickly in an automated environment than under the paper filing system.

The government would also benefit. Right now, our tariff workload has reached a saturation point and we fully expect this workload to continue to increase substantially. Under these circumstances, we are finding it increasingly difficult to fulfill our statutory and regulatory responsibilities.

A principal feature of our proposed rule is that it would be permissive. That is, it would provide carriers wishing to file fares electronically the option of doing so. It would not, however, eliminate the current, paper-based system. Carriers preferring to file as they have been doing could continue to do so. We believe the rule would reduce economic and paperwork burdens on the industry and on the government. But the key point is that the impact of this rule is within the discretion of the affected parties. To the extent that there is impact, the impact promises to be positive.

We believe that the proposal we have outlined would provide the Department and the industry with some much-needed paperwork relief, even while the Department continues its work on the ETS. We reached our conclusion after considering several other options. These options were discussed earlier in this rulemaking, along with the reasons for their rejection.

List of Subjects

14 CFR Part 221

Air fares and rates; Explosives; Freight; Handicapped; Contracts; Claims; Consumer protection; Travel.

14 CFR Part 389

Archives and records.

This proposed rule is being issued under the authority delegated to the Assistant Secretary for Policy and International Affairs contained in 49 CFR 1.56(j)(2)(ii). For the reasons set forth in the preamble, the Department of Transportation proposes to amend 14 CFR Parts 221 and 389 as follows:

PART 221—TARIFFS

1. The Authority citation for Part 221 would continue to read as follows:

Authority: Secs. 102, 204, 401, 402, 403, 404, 411, 416, 1001, 1002, Pub. L. 85-726, as amended, 72 Stat. 740, 743, 754, 757, 758, 760, 769, 771, 788; 49 U.S.C. 1302, 1324, 1371, 1372, 1373, 1374, 1381, 1481, 1482.

2. Subpart W would be added to the Table of Contents for Part 221 as follows:

Subpart W—Electronically Filed Tariffs

Sec.
221.251 Applicability of the subpart.
221.260 Requirements for filing.
221.270 Time for filing and computation of time periods.
221.275 Requirements for filing paper tariffs.
221.280 Content and explanation of abbreviations, reference marks and symbols.
221.282 Statement of filing with foreign governments to be shown in air carrier's tariff filing.
221.283 The filing of tariffs and amendments to tariffs.
221.284 Unique rule numbers required.
221.285 Adoption of provisions of one carrier by another carrier.
221.286 Justification and explanation for certain fares.
221.287 Statement of fares.
221.300 Suspension of tariffs.
221.301 Cancellation of suspended matter.
221.302 Special tariff permission.
221.400 Discontinuation of electronic tariff system.
221.500 Filing of paper tariffs required.
221.600 Transmission of electronic tariffs to subscribers.
221.700 Actions under assigned authority and petitions for review of staff action.

3. Section 221.4 would be amended to add the following definitions in alphabetical order:

§ 221.4 Definitions.

* * * * *

"Area No. 1" means all of the North and South American Continents and the islands adjacent thereto; Greenland; Bermuda; the West Indies and the islands of the Caribbean Sea; and the Hawaiian Islands (including Midway and Palmyra).

"Area No. 2" means all of Europe (including that part of the Union of the Soviet Socialist Republics in Europe) and the islands adjacent thereto; Iceland; the Azores; all of Africa and the islands adjacent thereto; Ascension Island; and that part of Asia lying west of and including Iran.

"Area No. 3" means all of Asia and the islands adjacent thereto except that portion incuded in Area No. 2; all of the East Indies, Australia, New Zealand, and the islands adjacent thereto; and the islands of the Pacific Ocean except those included in Area No. 1.

* * * * *

"Bundled normal economy fare" means the lowest one-way fare

available for unrestricted, on-demand service in any city-pair market.

"CTR" means a video display terminal that uses a cathode ray tube as the image medium.

* * * * *

"Direct-service market" means an international market where the carrier provides service either on a nonstop or single-flight-number basis, including change-of-gauge.

"ECAC agreement" means the Memorandum of Understanding between the United States and various member nations of the European Civil Aviation Conference, signed on December 17, 1982, as revised and renewed on October 11, 1984, as further revised and renewed on February 13, 1987, and as may be subsequently further revised and renewed.

"Electronic tariff" means an international passenger fares tariff or a special tariff permission application transmitted to the Department by means of an electronic medium, and containing fares for the transportation of persons and their baggage or property, and including such associated data as arbitraries, footnotes, routings, and fare class explanations.

* * * * *

"Field" means a specific area of a record used for a particular category of data.

"Filer" means an air carrier, foreign air carrier, or tariff publishing agent of such a carrier filing electronic tariffs on its behalf in conformity with this subpart.

* * * * *

"Official DOT tariff database" means those data records constituted pursuant to § 221.283 and 221.286 of this subpart, which are in the custody of, and are maintained by, the Department of Transportation.

"On-line tariff database" means the remotely accessible, on-line version, maintained by the filer, of (1) the electronically filed tariff data submitted to the official DOT tariff database, and (2) the Departmental approvals, disapprovals, and other actions, as well as any Departmental notation concerning such approvals, disapprovals, or other actions, that Subpart W of Part 221 requires the filer to maintain in its database.

* * * * *

"SFFL" means the Standard Foreign Fare Level as established by the Department of Transportation under section 1002 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1482).

* * * * *

"Unbundled normal economy fare" means the lowest one-way fare available for on-demand service in any city-pair market which is restricted in some way, *e.g.* by limits set and/or charges imposed for enroute stopovers or transfers.

* * * * *

4. Subpart W would be added to Part 221 as follows:

Subpart W—Electronically filed tariffs

§ 221.251 Applicability of the subpart.

(a) Any carrier, consistent with the provisions of this subpart, and Part 221 generally, may file its international passenger fares tariffs electronically in machine-readable form as an alternative to the filing of printed paper tariffs as provided for elsewhere in Part 221. This subpart applies to all carriers and tariff publishing agents and may be used by either if the carrier or agent complies with the provisions of Subpart W. Any carrier or agent that files electronically under this subpart must transmit to the Department the remainder of the tariff in a form consistent with Part 221, Subparts A–V on the same day that the electronic tariff would be deemed received under § 221.270(b).

(b) To the extent that Subpart W is inconsistent with the remainder of Part 221, Subpart W shall govern the filing of electronic tariffs. In all other respects, Part 221 remains in full force and effect.

§ 221.260 Requirements for filing.

(a) No carrier or filing agent shall file an electronic tariff unless, prior to filing, it has signed a maintenance agreement or agreements, furnished by the Department of Transportation, for the maintenance and security of the on-line tariff database.

(b) No carrier or agent shall file an electronic tariff, unless, prior to filing, it has submitted to the Department's Office of International Aviation, Tariffs Division, and received approval of, an application containing the following commitments:

(1) The filer shall file tariffs electronically only in such format as shall be agreed to by the filer and the Department. (The filer shall include with its application a proposed format of tariff. The filer shall also submit to the Department all information necessary for the Department to determine that the proposed format will accommodate the data elements set forth in § 221.283.)

(2) The filer shall provide, maintain and install in the Public Reference Room at the Department, (as may be required from time to time) one or more CRT devices and printers connected to its on-line tariff database. The filer shall be responsible for the transportation, installation, and maintenance of this equipment and shall agree to identify and hold harmless the Department and the U.S. Government from any claims or liabilities resulting from defects in the equipment, its installation or maintenance.

(3) The filer shall provide public access to its on-line tariff database, at Departmental headquarters, during normal business hours.

(4) The filer shall provide the Department access to its on-line tariff database 24 hours a day, 7 days a week.

(5) The access required at Departmental headquarters by this subpart shall be provided at no cost to the public or the Department.

(6) The filer shall ensure that the Department shall have the sole ability to approve or disapprove electronically any tariff filed with the Department and the ability to note, record and retain electronically the reasons for approval or disapproval. The carrier or agent shall not make any changes in data or delete data after it has been transmitted electronically, regardless of whether it is approved, disapproved, or withdrawn. The filer shall be required to make data fields available to the Department in any record which is part of the on-line tariff database.

(7) The filer shall maintain all fares filed with the Department and all Departmental approvals, disapprovals and other actions, as well as all Departmental notations concerning such approvals, disapprovals or other actions, in the on-line tariff database for a period of two (2) years after the fare becomes inactive. After this period of time, the carrier or agent shall provide the Department, free of charge, with a copy of the inactive data on a machine-readable tape or other mutually acceptable electronic medium.

(8) The filer shall ensure that its on-line tariff database is secure against destruction or alteration (except as authorized by the Department), and against tampering.

(9) Should the filer terminate its business or cease filing tariffs electronically, it shall provide to the Department on a machine-readable tape or any other mutually acceptable electronic medium, contemporaneously with the cessation of such business, a complete copy of its on-line tariff database.

(10) The filer shall furnish to the Department, on a daily basis, on a machine-readable tape or any other mutually acceptable electronic medium, all transactions made to its on-line tariff database.

(11) The filer shall afford any authorized Departmental official full,

free, and uninhibited access to its facilities, databases, documentation, records, and application programs, including support functions, environmental security, and accounting data, for the purpose of ensuring continued effectiveness of safeguards against threats and hazards to the security or integrity of its electronic tariffs, as defined in this subpart.

(12) The filer must provide a field in the Government Filing File for the signature of the approving U.S. Government Official through the use of a Personal Identification Number (PIN).

(13) The filer shall provide a leased dedicated data conditioned circuit with sufficient capacity (initially not less than 9.6K baud rate) to handle electronic data transmissions to the Department. Further, the filer must provide for a secondary or a redundancy circuit in the event of the failure of the dedicated circuit. The secondary or redundancy circuit must be equal to or greater than 4.8K baud rate. The primary data circuit provided to access the on-line tariff database must be capable of being restored within four hours after failure.

§ 221.270 Time for filing and computation of time periods.

(a) A tariff, or revision thereto, or a special tariff permission application may be electronically filed with the Department immediately upon compliance with § 221.260, and anytime thereafter, subject to § 221.500. The actual date and time of filing shall be noted with each filing.

(b) For the purpose of determining the date that a tariff, or revision thereto, filed pursuant to this Subpart, shall be deemed received by the Department:

(1) For all electronic tariffs, or revisions thereto, filed before 5:30 p.m. local time in Washington, DC on Federal business days, such date shall be the actual date of filing.

(2) For all electronic tariffs, or revisions thereto, filed after 5:30 p.m. local time in Washington, DC on Federal business days, and for all electronic tariffs, or revisions thereto, filed on days that are not Federal business days, such date shall be the next Federal business day.

§ 221.275 Requirement for filing paper tariffs.

(a) Any tariff, or revision thereto, filed in paper format which accompanies, governs, or otherwise affects, a tariff filed electronically, must be received by the Department on the same date that a tariff or revision thereto, is filed electronically with the Department under § 221.270(b). Further, such paper tariff, or revision thereto, shall be filed in accordance with the requirements of Subparts A–V of Part 221. No tariff or revision thereto, filed electronically under this subpart, shall contain an effective date which is at variance with the effective date of the supporting paper tariff, except as authorized by the Department.

(b) Any printed justifications, or other information accompanying a tariff, or revision thereto, filed electronically under this subpart, must be received by the Department on the same date as any tariff, or revision thereto, filed electronically.

(c) If a filer submits a filing which fails to comply with paragraph (a), or if the filer fails to submit the information in conformity with paragraph (b), the filing will be subject to rejection, denial, or disapproval, as applicable.

§ 221.280 Content and explanation of abbreviations, reference marks and symbols.

(a) *Content.* The format to be used for any electronic tariff must be that agreed to in advance as provided for in § 221.260, and must include those data elements set forth in § 221.283. Those portions that are filed in paper form shall comply in all respects with Part 221, Subparts A–V.

(b) *Explanation of Abbreviations, Reference Marks and Symbols.* Abbreviations, reference marks and symbols which are used in the tariff shall be explained in each tariff.

(1) The following symbols shall be used:

R—Reduction.
I—Increase.
N—New Matter.
X—Canceled Matter.
C—Change in Footnotes, Routings, Rules or Zones.
E—Denotes change in Effective Date only.

(2) Other symbols may be used only when an explanation is provided in each tariff and such symbols are consistent throughout all the electronically filed tariffs from that time forward.

§ 221.282 Statement of filing with foreign governments to be shown in air carrier's tariff filings.

(a) Every electronic tariff filed by or on behalf of an air carrier that contains fares which, by international convention or agreement entered into between any other country and the United States, are required to be filed with that country, shall include the following statement:

The rates, fares, charges, classifications, rules, regulations, practices, and services provided herein have been filed in each country in which filing is required by treaty, convention, or agreement entered into between that country and the United States, in accordance with the provisions of the applicable treaty, convention, or agreement.

(b) The statement referenced in § 221.282(a) may be included with each filing advice by the inclusion of a symbol which is properly explained.

(c) The required symbol may be omitted from an electronic tariff or portion thereof if the tariff publication that has been filed with any other country pursuant to its tariff regulations bears a tariff filing designation of that country in addition to the C.A.B./D.O.T. number appearing on the tariff.

§ 221.283 The filing of tariffs and amendments to tariffs.

All electronic tariffs and amendments filed under this subpart, including those for which authority is sought to effect changes on less than bilateral/statutory notice under § 221.302, shall contain the following data elements:

(a) A *Filing Advice Status File*—which shall include:

(1) Filing date and time;
(2) Filing advice number;
(3) Reference to carrier;
(4) Reference to geographic area and to affected tariff number;
(5) Effective date of amendment or tariff;
(6) A place for government action to be recorded; and
(7) Reference to the Special Tariff Permission when applicable.

(b) A *Government Filing File*—which shall include:

(1) Filing advice number;
(2) Carrier reference;
(3) Filing date and time;
(4) Proposed effective date;
(5) Justification text; reference to geographic area and affected tariff number;
(6) Reference to the Special Tariff Permission when applicable;
(7) Government control data, including places for:
(i) Name of the government analyst, except that this data shall not be made public, notwithstanding any other provision in this or any other subpart;
(ii) Action taken;
(iii) Remarks, except that this data shall not be made public, notwithstanding any other provision in this or any other subpart;
(iv) Date action is taken; and
(v) Personal Identification Number; and
(8) Tariff, or proposed changes to the tariffs, including:
(i) Market;
(ii) Fare code;
(iii) One-way/roundtrip (O/R);
(iv) Fare Amount;

(v) Currency;
(vi) Footnote (FN);
(vii) Rule Number;
(viii) Routing (RG);
(ix) Effective date and discontinue date; and
(x) Percent of change from previous fares.

(c) *A Historical File*—which shall include:
(1) Market;
(2) Fare code;
(3) One-way/roundtrip (O/R);
(4) Fare amount;
(5) Currency;
(6) Footnote (FN);
(7) Rule Number;
(8) Routing (RG);
(9) Effective Date;
(10) Discontinue Date;
(11) Government Action;
(12) Carrier;
(13) All inactive fares (two years);
(14) Any other fare data which is essential; and
(15) Any necessary cross reference to the Government Filing File for research or other purposes.

§ 221.284 Unique Rule Numbers Required.

The following tariff rule numbers shall be used in conjunction with normal economy fares filed pursuant to this Subpart.

(a) The rule number for all "bundled" normal economy fares shall be 1000 for fares between a point, or points, in the United States, its territories and possessions, on the one hand, and a point, or points, in Area 1 (excluding the United States, its territories and/or possessions), on the other hand, and, for "unbundled" normal economy fares, shall be 1005.

(b) Except as otherwise provided, the rule number for all "bundled" normal economy fares shall be 2000 for fares between a point, or points, in the United States, its territories and possessions, and a point, or points, in Area 2 via the Atlantic Ocean; and, for "unbundled" normal economy fares, shall be 2005. *Exception:* when transportation is provided via the Pacific Ocean the rule numbers shall be, respectively, 3000 and 3005.

(c) Except as otherwise provided, the rule number for all "bundled" normal economy fares shall be 3000 for fares between a point, or points in the United States, its territories and possessions, and a point, or points, in Area 3 via the Pacific Ocean; and, for "unbundled" normal economy fares, shall be 3005. *Exception:* when transportation is provided via the Atlantic Ocean the rule numbers shall be, respectively, 2000 and 2005.

§ 221.285 Adoption of provisions of one carrier by another carrier.

When one carrier adopts the tariffs of another carrier, the effective and prospective fares of the adopted carrier shall be changed to reflect the name of the adopting carrier and the effective date of the adoption. Further, the filed tariff shall bear a notation for each each of the fares that were adopted. Such notation shall reflect the name of the adopted carrier and the effective date of the adoption.

§ 221.286 Justification and explanation for certain fares.

Any carrier or its agent, must provide, as to any new or increased bundled or unbundled (whichever is lower) on-demand economy fare in a direct-service market, a comparison between, on the one hand, that proposed fare, and on the other hand, the ceiling fare allowed in that market based on either the pertinent ECAC Zone or SFFL. If, however, the carrier's proposed fare is intended to match that already approved for another direct-service carrier, the proponent carrier may forego the comparison and instead, simply identify the direct competitor's fare it claims to match.

§ 221.287 Statement of fares.

All fares filed electronically in direct-service markets shall be filed as single factor fares.

§ 221.300 Suspension of tariffs.

(a) A rate, fare, charge, change, rule or other tariff provision that is suspended by the Department pursuant to section 1002 of the Act (49 U.S.C. 1482) shall be noted by the Department in the Government Filing File and the Historical File.

(b) When the Department vacates a tariff suspension, in full or in part, and after notification of the carrier by the Department, such event shall be noted by the carrier in the Government Filing File and the Historical File.

(c) When a tariff suspension is vacated or when it becomes effective upon termination of the suspension period, the carrier or its agent shall refile the tariff showing the effective date.

§ 221.301 Cancellation of suspended matter.

When, pursuant to an order of the Department, the cancellation of rules, fares, charges, or other tariff provision is required, such action shall be made by the carrier by appropriate revisions to the tariff.

§ 221.302 Special tariff permission.

(a) When a filer submits an electronic tariff or an amendment to an electronic tariff for which authority is sought to effect changes on less than bilateral/statutory notice, and no related tariff material is involved. The submission shall bear a sequential filing advice number. The submission shall appear in the Government Filing File and the Filing Advice Status File, and shall be referenced in such a manner to clearly indicate that such changes are sought to be made on less than bilateral/statutory notice.

(b) When a filer submits an electronic tariff or an amendment to the electronic tariff for which authority is sought to effect changes on less than bilateral/statutory notice, and it contains related paper under § 221.275, the submission must bear a sequential filing advice number and a sequential Special Tariff Permission Application number as prescribed by Subpart P of 14 CFR Part 221. The submission shall appear in the Government Filing File and the Filing Advice Status File, and shall be referenced in such a manner to clearly indicate that such changes are sought to be made on less than bilateral/statutory notice.

(c) Departmental action on the Special Tariff Permission request shall be noted by the Department in the Government Filing File and the Filing Advice Status File.

(d) When a Special Tariff Permission has been approved by the Department under this subpart, the filer must (1) use the permission in its entirety as granted, unless the filer chooses not to submit the approved changes, (2) submit all approved changes concurrently, and (3) submit the approved changes on such notice as authorized by the Department.

(e) Special Tariff Permissions which are not implemented within 15 days after approval by the Department shall be null and void.

(f) All submissions under this section shall comply with the requirements of § 221.283.

§ 221.400 Discontinuation of electronic tariff system.

In the event that the electronic tariff system is discontinued, or the source of the data is changed, or a filer discontinues its business, all electronic data records prior to such date shall be provided immediately to the Department, free of charge, on a machine-readable tape or other mutually acceptable electronic medium.

§ 221.500 Filing of paper tariffs required.

After approval of any application filed under § 221.260 of this part to allow a filer to file tariffs electronically, the filer in addition to filing electronically must continue to file printed tariffs as required by Subparts A–V of Part 221 for a period of 90 days, or until such time as the Department shall deem such filing no longer to be necessary.

§ 221.600 Transmission of electronic tariffs to subscribers.

(a) Each filer that files an electronic tariff under this subpart shall make available to any person so requesting, a subscription service meeting the terms of paragraph (b) of this section.

(b) Under the required subscription service, remote access shall be allowed to any subscriber to the on-line tariff database, including access to the justification required by § 221.286. The subscription service shall not preclude the offering of additional services by the filer or its agent.

(c) The filer at its option may establish a charge for providing the required subscription service to subscribers: *Provided,* that the charge may not exceed a reasonable estimate of the added cost of providing the service.

§ 221.700 Actions under assigned authority and petitions for review of staff action.

When an electronically filed record which has been submitted to the Department under this subpart, is disapproved (rejected), or a special tariff permission is approved or denied, under authority assigned by the Department of Transportation's Regulations, 14 CFR 385.13, such actions shall be understood to include the following provisions:

(a) *Applicable to a Record or Records Which is/are Diaspproved (rejected):* The record(s) disapproved (rejected) is/are void, without force or effect, and must not be used.

(b) *Applicable to a record or records which is/are disapproved (rejected), and to special tariff permissions which are approved or denied:* This action is taken under authority assigned by the Department of Transportation in its Organization Regulations, 14 CFR 385.13. Persons entitled to petition for review of this action pursuant to the Department's Regulations, 14 CFR 385.50, may file such petitions within seven days after the date of the action. This action shall become effective immediately, and the filing of a petition for review shall not preclude its effectiveness.

PART 389—FEES AND CHARGES FOR SPECIAL SERVICES

1. The authority citation for Part 389 would continue to read as follows:

Authority: Sections 204, 1002, Pub. L. 85–726, as amended, 72 Stat. 743, 797; 49 U.S.C. 1324, 1502. Act of August 31, 1951, Ch. 376, 65 Stat. 268; 31 U.S.C. 483a.

2. Section 389.20 would be revised to read as follows:

§ 389.20 Applicability of subpart.

(a) This subpart applies to the filing of certain documents and records at the Department by nongovernment parties, and prescribes fees for their processing.

(b) For the purpose of this subpart, record means those electronic tariff records submitted to the Department under Subpart W of 14 CF Part 221, and contains that set of information which describes one (1) tariff fare, or that set of information which describes one (1) related element associated with such tariff fare.

§ 389.21 [Amended]

3. Section 389.21(a) introductory text would be amended by adding "or record" after the word "document".

4. In § 389.22, paragraph (a) would be redesignated as paragraph (a)(1) and a new paragraph (a)(2) would be added as follows:

§ 389.22 Failure to make proper payment.

(a)(1) * * *

(2) Except as provided in § 389.23, records which are not accompanied by the appropriate filing fees shall be retained and considered filed with the Department. The Department will notify the filer concerning the nonpayment or underpayment of the filing fees, and will also notify the filer that the records will not be processed until the fees are paid.

* * * * *

5. The table in § 389.25 would be designated as paragraph (a) and a heading added reading:

§ 389.25 Schedule of processing fees.

(a) *Document-filing fees.* * * *

6. Section 385.25(b) would be added reading as follows:

§ 385.25 [Amended]

* * * * *

(b) *Electronic Tariff Filing Fees.* The filing fee for one (1) or more transactions proposed in any existing record, or for any new or canceled record, shall be 5 cents per record.

Issued in Washington, DC on July 1, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88–15277 Filed 7–7–88; 8:45 am]

BILLING CODE 4910-52-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 284 and 385

[Docket No. RM88–13–000]

Brokering of Interstate Natural Gas Pipeline Capacity; Technical Conference

Issued July 1, 1988.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of technical conference.

SUMMARY: The Federal Energy Regulatory Commission issued a notice of proposed rulemaking (NOPR) in this docket on April 4, 1988 (53 FR 15,061 (Apr. 27, 1988)). In response to various requests, a staff technical conference will be held in this rulemaking to address certain technical issues raised in the NOPR. As provided by the Commission's order issued on July 1, 1988, written comments may be filed on the matters raised at the conference.

DATE: The conference will be held on Thursday, July 28, 1988 at 10:00 a.m. Requests to participate should be directed to the Commission no later than July 20, 1988.

ADDRESS: The technical conference will be held at: Hearing Room A, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Requests to participate and questions regarding participation should be directed to: John Carlson, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8109.

FOR FURTHER INFORMATION CONTACT: John Carlson, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8109.

SUPPLEMENTARY INFORMATION: In response to various requests, a technical conference will be held in this docket to address certain technical issues raised in the NOPR. The sole purpose of this conference is to enable interested persons to obtain further information

concerning the Commission's capacity brokering proposal. This information should assist interested persons in formulating their supplemental comments to the NOPR, as described in the notice requesting supplemental comments issued today.

The technical conference will consist of panels with representatives of the various segments of the natural gas industry, or economic or other interests potentially affected by the proposed rule. Each panel will address one of the four topics listed below.

Persons requesting an opportunity to participate on a panel should indicate the panel or panels, listed in order of priority, on which they wish to be included and the segment of the industry or economic or other interest that they represent. Because of time and space constraints it may be impractical to honor all requests. The Commission's intent is to limit the number of participants on each panel so as to maximize the opportunity for meaningful dialogue among those participants. Therefore, prior to the conference, persons who share a common interest in a particular topic are encouraged to select and propose a representative participant for the panel on that topic.

The transcript of the technical conference will be placed in the Commission's public files and will be available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426 during regular business hours.

Topics for the Four Panels

A. What Can Be Brokered

1. Defining a specific right to firm transportation
2. Use of flexible receipt and delivery points
3. Storage
4. Conditions and terms of service
5. Rights to and obligations of original and ultimate capacity holders

B. Interstate Pipeline Rate and Cost Issues

1. Account No. 858 cost allocation for pipelines holding a blanket broker certificate
2. Adjustment to interruptible volumes for pipelines holding a system brokering certificate
3. Effect of brokering on pipeline rates
4. Contract demand conversion rights
5. Determining appropriate price caps

C. Market Power and Discrimination

1. Need for regulation of broker transactions
2. Defining market power
3. Standards of conduct by brokers
4. Brokering by affiliates of pipelines and local distribution companies
5. Scope and determination of discrimination
6. Additional safeguards to prevent use of market power

D. Certificate Provisions

1. Limitation to Part 284, Subpart G pipelines
2. Three-year time limitation
3. Temporary certificates
4. Local distribution companies and interstate pipelines.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15396 Filed 7-7-88; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

18 CFR Parts 284 and 385

[Docket No. RM88-13-000]

Brokering of Interstate Natural Gas Pipeline Capacity; Notice Requesting Supplemental Comments

Issued July 1, 1988.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice requesting supplemental comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued a notice of proposed rulemaking in Docket No. RM88-13-000 on April 4, 1988 on brokering of interstate natural gas pipeline capacity. The comment period for this notice ended June 17, 1988. In response to numerous requests during the comment period, Commission staff issued a notice on July 1, 1988, that it would hold a technical conference on July 28, 1988. The Commission is requesting supplemental comments on the issues raised in the conference.

DATES: Comments must be received by September 2, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas J. Lane, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (202) 357-8530.

Brokering of Interstate Natural Gas Pipeline Capacity; Notice Requesting Supplemental Comments

The Federal Energy Regulatory Commission issued a notice of proposed rulemaking (NOPR) in this docket on April 4, 1988 (53 FR 15,061, Apr. 27, 1988). The comment period for the NOPR ended June 17, 1988. In response to numerous requests during the comment period, the Commission issued a notice on July 1, 1988, that it would hold a staff technical conference in this rulemaking on July 28, 1988. The Commission is requesting supplemental comments on the issues raised in the conference.

Comments must be in writing, and an original and 14 copies of the comments must be received by September 2, 1988. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 and should refer to Docket No. RM88-13-000.

The transcript of the technical conference and written comments will be placed in the Commission's public files and will be available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426 during regular business hours.

By direction of the Commission. Commissioner Trabandt concurred with a separate statement attached.

Lois D. Cashell,

Acting Secretary.

Concurring Opinion of Commissioner Charles A. Trabandt

I concur in the decision of the Commission to request supplemental comments in this docket on the issues raised in the staff technical conference to be held on July 28, 1988. I concur with several observations about the Notice of Proposed Rulemaking (NOPR) in this docket.

First, I welcome a technical conference in this docket to explore the many issues associated with the capacity brokering concept proposed in the NOPR. It would have been preferable to have scheduled the technical conference prior to the subcommission of original comments, in order that those comments and the related analysis could have been more sharpened for our review. For that reason, I supported the requests for the earlier technical conference from all sectors of the industry. Nevertheless, on the theory of "better late than never," I support the decision today to proceed with a technical conference next month.

Second, I want to address two procedural matters. I do want to make clear that my support for the technical conference does not constitute any acquiescence in the failure of the Commission thus far to schedule a public hearing for the Full Commission to receive testimony on the capacity brokering proposal. To the contrary, I believe strongly that capacity brokering

could have major fundamental impact on the operation of the natural gas industry and activity in the natural gas markets. Consequently, I think the Commission is obligated to provide a public hearing for interested parties before taking action on a Final Rule in this docket. The staff technical conference next month will not satisfy in any way that obligation.

I also believe that it is increasingly obvious to all interested parties, including supporters of the capacity brokering concept, that the NOPR was largely a theoretical and broad conceptual proposal, rather than a more concrete proposed rule in the traditional sense. Indeed, the decision to schedule the technical conference, and the format adopted for it, in response to numerous requests from all sectors of the industry demonstrate the broad conceptual nature of the proposal. There are a whole series of largely amorphous and undefined aspects of the current proposal of a legal, operational, ratemaking and technical nature highlighted in the public comments filed earlier this month. The staff technical conference in July and the supplementary comments in September can address and attempt to refine those many issues for subsequent Commission review. Clearly though, the Commission must not attempt to implement the proposed concept in anything like the current amorphous form.

However, I do not believe that the additional public comment can, or should be allowed to, fill in the seemingly endless missing parts of the proposal in a final rule. Rather, I believe that the Commission must review that additional comment and any new staff analysis to develop a traditional proposed rule. That proposed rule should be the subject of a subsequent NOPR in this docket, which will include far more precise and well defined elements for public review and comment prior to any eventual final rule. I would invite comments from all interested parties on this approach to the continued formulation and further consideration of the capacity brokering proposal. Finally, I would re-emphasize again my comments in my concurring opinion, at page 10 on the need for fully adequate public comment and participation in this rulemaking docket.

Third, I want to address a few substantive matters related to the capacity brokering proposal. In my concurring opinion, I emphasized, at page 11 and following, that the threshold issue in the NOPR was the exact need for capacity brokering and the preferred option to satisfy that need. Review of the initial public comments demonstrates that threshold issue analytically remains perhaps the major fundamental issue. We still must determine (1) whether, (2) how, (3) when and (4) to what extent capacity brokering and allocation by price should replace the existing capacity allocation system. For example, it still does not appear to be at all clear that the industry should move now directly to full blown unregulated capacity brokering. As I stated before, the Commission must bear the burden of analytical persuasion that the NOPR concept should be considered superior to some form of a more limited and simple form of third party capacity re-allocation where the capacity entitlement is held by a second pipeline, who transfers or "brokers" the entitlement to a third party under existing practices.

Any systematic and objective review of the initial comments would conclude that the Commission thus far would be able to satisfy that burden. Consequently, I still believe that the Commission will have to establish more specifically the exact need for direct and immediate action on capacity brokering and the best available alternative for action in the context of the many applicable considerations before we formulate a revised proposal for re-noticing in a new NOPR. I would urge all interested parties to address further this threshold issue in their supplement comments and carefully assess the range of practical, as opposed to conceptual or theoretical, options for action on this issue.

I also would urge the Commission to reconsider its decision to dismiss the numerous proposals to permit pipelines to engage in capacity reallocation to third parties, as requested by INGAA and other parties in the public comments. In that regard, I would note with strong support the Motion of the Public Service Commission of the State of New York for Severance, Reconsideration and Prompt Relief to Correct Gross Discrimination filed June 21, 1988, in this docket and Docket Nos. RP85–177 and RP85–159. While I may not necessarily agree with every aspect of the motion, I generally support the thrust of the arguments and the proposal for immediate Commission action on this issue. The New York Public Service Commission petition highlights the currently critical importance of the discrete issue of the assignment of unused firm capacity of downstream pipeline customers of interstate pipelines and is one example of a number of such pleadings in those and related dockets.

The understandable necessity for the technical conference, the supplemental comments, a public hearing and a re-noticing of the capacity brokering concept in a new NOPR will significantly delay any final decision on capacity brokering in this docket. As a result, the critical need for third party capacity reallocation will remain unsatisfied as a virtual hostage to the ongoing NOPR process. It is for that reason that I opposed the Commission's original decision to dismiss all such pending propsals in the several dockets.

Additionally, I believe the Commission must make a sustained effort to address the original rate objectives adopted in Order Nos. 436 and 500 for the purpose of encouraging competition. Specifically, the Commission must now require generally that rates for open access transportation reflect any material variation in the costs of providing services based on seasonal or geographic factors, ration capacity at the pipeline's peak, encourage full utilization of the pipeline, and ensure transportation is unbundled and does not differ in sales or transportation services. In that regard, please see my concurring opinion in *Texas Eastern Transmission Corporation* in Docket Nos. RP88–81–000 and RP88–67–000 discussing my views on the rate design issues in that case, including 100 percent load factor for interruptible rates, the absence of an off-peak seasonally-differentiated firm transportation, and the allocation of capacity-related costs to interruptible transportation.

I also would note with general analytical agreement and substantive support the Petition For Issuance of Statement of General Policy applicable to rate design of pipelines transporting nutural gas, filed by the Natural Gas Supply Association on June 13, 1988. The NGSA petition emphasizes the need for prompt Commission action on the open access transportation rate design issue. I share completely the NGSA conclusion that the Commission now should act directly on those rate design issues. I do not believe that the capacity brokering NOPR subsumes those issues or otherwise obviates the need for direct and immediate action on the issues. And, I would not agree that action on the rate design issues could or should be deferred sequentially until after final resolution of the capacity brokering proposal.

Here again, the Commission would, in essence, be holding those critical rate design issues as a virtual hostage to

final action on capacity brokering and for no good or valid policy purpose. As my concurring opinion in *Texas Eastern* and the NGSA petition conclude, we must act on the outstanding open-access transportation rate design issues as soon as possible to ensure that the resulting transportation services support a fully competitive and non-discriminatory implementation of our Order No. 436 program. Let's get on with that effort in the summer of 1988 and not let the extended consideration of capacity brokering in this docket frustrate that result.

Finally, thus far there realistically are no answers to the many questions filed by the industry groups seeking a technical conference, including INGAA and NGSA, the issues raised in the public comments, or the several major issues raised in my original concurring opinion. And, the public comments reflect a substantial degree of controversy on the merits and substance of the capacity brokering concept and the implementation details of the concept, with a wide range of recommended modifications and alternatives including outright rejection. Procedurally, commenters have recommended various alternatives including policy statements, re-noticing a modified proposal, and deferring action on a broader capacity proposal at this time, while proceeding with some immediate form of third party capacity re-allocation. As a result, it is fair to conclude that there is a broad consensus of comment from all sectors of the industry and state authorities in strong opposition to any adoption of the current proposal and the broader concept of capacity brokering as it now exists.

I will conclude with a final observation about the capacity brokering NOPR. As discussed in my concurring opinion, at page 3 and following, the original recommendation to the Commission was to issue the proposal as an immediately effective Interim Rule. I strenuously opposed then any immediate effectiveness of the proposed rules prior to public comment on legal and policy grounds. The substance of the initial public comments in this docket and the Commission decision today to schedule a staff technical comments and request supplemental comments, in my judgment, demonstrate the wisdom of the Full Commission's decision to proceed with an NOPR rather than an Interim Rule. It certainly is abundantly clear now that immediate effectiveness of the proposed rules would have been an unmitigated disaster for the Commission, the industry and natural gas consumers. And, of course, the proposal would not have been susceptible, as a practical matter, to modification or refinement. Consequently, I would like to take this opportunity to commend publicly my colleagues on the Full Commission who tenaciously opposed an Interim Rule. As we proceed now with continued consideration of the capacity brokering concept, I look, forward to a similar, common sense approach to our decision making process, in the hope that we will adopt a practical solution to a real problem in capacity re-allocation in the natural gas industry.

It is in that spirit that I concur in this order.

Charles A. Trabandt,

Commissioner.

[FR Doc. 88–15419 Filed 7–7–88; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 50

Public Health Service Grant Appeals Procedures

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services (HHS) revises 42 CFR Part 50, Subpart D, to substitute new informal procedures for the resolution of certain Public Health Service (PHS) grant disputes. A revision of the informal procedures governing PHS grant disputes is necessary in order to conform with the Department's rules at 45 CFR Part 16 (46 FR 43817, August 31, 1981) establishing requirements and procedures applicable to disputes arising under certain departmental grant and cooperative agreement programs. The major changes concern the addition of an adverse determination to which the procedure is applicable and the deletion of another to eliminate any confusion that currently exists due to different areas of jurisdiction reflected in the two sets of grant regulations.

DATE: To be considered, comments must be received no later than September 6, 1988.

ADDRESS: Written comments should be addressed to the Director, Division of Grants and Contracts, Office of Resource Management, OM/PHS, Room 17A–39, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Mr. Theodore J. Roumel, Phone: 301/443–1874.

SUPPLEMENTARY INFORMATION:

Background

HHS rules regarding the procedures for the appeal of written final decisions under certain grant programs administered by the Department are codified at 45 CFR Part 16. These rules require that an appellant must have exhausted any preliminary appeal process required by regulation before a formal appeal to the Departmental Grant Appeals Board.

The PHS regulations provide an informal preliminary procedure for the resolution of disputes concerning PHS grants. This procedure gives PHS an opportunity to review decisions of its officials and to settle disputes with grantees before these disputes are formally submitted to the Department's Grant Appeals Board. The PHS rules are codified at 42 CFR Part 50, Subpart D. This document revises the existing PHS informal procedures to conform with the departmentwide rules at 45 CFR Part 16.

Highlights of the Changes

Section 50.404 describes the types of disputes covered by the informal appeal procedure. This action adds a new dispute and deletes one. To be added are final written decisions denying a noncompeting continuation award, where the denial is for failure to comply with the terms of a previous award. To be deleted is the disapproval of a grantee's written request for permission to incur an expenditure during the term of a grant. These disputes are similar to those in the Department's rules with one exception. It is noted that decisions relating to withholding under block grant programs, as provided in 45 CFR 96.52, are not included in the revised PHS procedures.

PHS Discretionary Project Grants and Cooperative Agreements

Adverse determinations to which the amended PHS procedure would be applicable are as follows:

(1) Termination, in whole or in part, or a grant for failure of the grantee to carry out its approved project in accordance with the applicable law and the terms and conditions of such assistance or for failure of the grantee otherwise to comply with any law, regulation, assurance, term or condition applicable to the grant.

(2) A determination that an expenditure not allowable under the grant has been charged to the grant or

that the grantee has otherwise failed to discharge its obligation to account for grant funds.

(3) A determination that a grant is void.

(4) A denial of a noncompeting continuation award under the project period system of funding where the denial is for failure to comply with the terms of a previous award.

Section 50.406(b), which outlines the procedural steps in the informal appeal process would be revised to require grantees to include in their request for review a copy of the adverse determination and copies of documents supporting their claim. These requirements are similar to those in the departmental rules. When a dispute has been determined to be reviewable by a review committee, any background materials grantees submit to the review committee would have to be organized chronologically and include an indexed listing identifying each document to the committee. See § 50.406(e). This requirement for organizing the materials submitted for review is similar to one in the departmental rules at 45 CFR 16.8 and is intended to facilitate the review process.

The second sentence of § 50.406(c) emphasizes that during the pendency of an appeal, the Department is not obligated to provide continuation funding to a grantees whose noncompeting continuation award has been denied.

In addition to the substantive revisions discussed above, we propose certain editorial revisions.

Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules—defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The Secretary certifies that these regulations are not major rules within the meaning of the Executive Order because they do not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. Ch.6) requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. The Secretary has determined that this regulation will not have a significant economic impact on a substantial number of small entities and hereby certifies that an initial regulatory flexibility analysis is not required.

Accordingly, 42 CFR Part 50, Subpart D, is proposed to be revised as set forth below.

Dated: April 20, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Approved: May 18, 1988.

Don M. Newman,

Acting Secretary.

PART 50—[AMENDED]

Subpart D—Public Health Service Grant Appeals Procedure

Sec.

50.401 What is the purpose of this subpart?
50.402 To what programs do these regulations apply?
50.403 What is the policy basis for these procedures?
50.404 What disputes are covered by these procedures?
50.405 What is the structure of review committees?
50.406 What are the steps in the process?

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); 45 CFR 16.3(c).

§ 50.401 What is the purpose of this subpart?

This subpart establishes an informal procedure for resolution of certain postaward grant disputes within PHS.

§ 50.402 To what programs do these regulations apply?

This subpart applies to all grant programs, except block grants, which are administered by the National Institutes of Health, the Health Resources and Services Administration, the Centers for Disease Control, the Alcohol, Drug Abuse, and Mental Health Administration, the Food and Drug Administration, the Indian Health Service, the Office of the Assistant Secretary for Health (OASH), or by the Public Health Service regional offices.

§ 50.403 What is the policy basis for these procedures?

The Secretary of Health and Human Services has established a Departmental Grant Appeals Board for the purpose of providing a fair and flexible process for the appeal of written final decisions involving certain grant programs administered by constituent agencies of the Department. The regulatory provision which establishes when the Board will take an appeal (45 CFR 16.3) provides, among other things, that the appellant must have exhausted any preliminary appeal process required by regulation before a formal appeal to the Departmental Board will be allowed. These regulations provide such an informal preliminary procedure for resolution of disputes within the Public Health Service in order to preclude submission of cases of the Departmental Grant Appeals Board before the Public Health Service has had an opportunity to review decisions of its officials and to settle disputes with grantees.

§ 50.404 What disputes are covered by these procedures?

(a) These procedures are applicable to the following adverse determinations under Public Health Service discretionary project grants and cooperative agreements:

(1) Termination, in whole or in part, of a grant for failure of the grantee to carry out its approved project in accordance with the applicable law and the terms and conditions of such assistance or for failure of the grantee otherwise to comply with any law, regulation, assurance, term, or condition applicable to the grant.

(2) A determination that an expenditure not allowable under the grant has been charged to the grant or that the grantee has otherwise failed to discharge its obligation to account for grant funds.

(3) A determination that a grant is void.

(4) A denial of a noncompeting continuation award under the project period system of funding where the denial is for failure to comply with the terms of a previous award. This does not apply to denials that are due to the grantee's poor performance or to the unavailability of funds.

(b) A determination subject to this subpart may not be reviewed by the review committee described in subsection 50.405 unless an officer or employee of the agency, OASH, or the regional office has notified the grantee in writing of the adverse determination. The notification must set forth the reasons for the determination in sufficient detail to enable the grantee to respond and must inform the grantee of the opportunity for review under this subpart.

§ 50.405 What is the structure of review committees?

The head of each agency or his/her designee shall appoint review committees for reviewing appeals of adverse determinations made by headquarters for programs under the jurisdiction of that agency. For adverse determinations made by an OASH program and regional officials, the Assistant Secretary for Health or his/her designee shall appoint review committees. A minimum of three

employees shall be appointed (one of whom shall be designated as chairperson) either on an ad hoc, case-by-case basis, or as regular members of review committees for such terms as may be designated. None of the members of the review committee reviewing any given appeal may be from the office of the responsible official whose determination of the grant involved, e.g, project officer, grants specialist, program manager, grants management officer, etc.

§ 50.406 What are the steps in the process?

(a) A grantee with respect to whom an adverse determination described in § 50.404(a) above has been made and who desires a review of that determination must submit a request for such review to the head of the appropriate agency or his/her designee (or in the case of an OASH program or regional office determination, to the Assistant Secretary for Health or his/her designee) no later than 30 days after the written notification of the determination is received, except that if the grantee shows good cause why an extension of time should be granted, the head of the appropriate agency or his/her designee (or in the case of an OASH program or regional office determination, the Assistant Secretary for Health or his/her designee) may grant an extension of time.

(b) The request for review must include a copy of the adverse determination, must identify the question(s) in dispute, and must contain a full statement of the grantee's position with respect to such question(s) and the pertinent facts and reasons in support of the grantee's position. In addition to this written statement, the grantee shall provide copies of any documents supporting its claim.

(c) When a request for review has been filed under this subpart with respect to a determination, no action may be taken by the awarding agency, OASH, or regional office pursuant to such determination until the request has been disposed of, except that the filing of the request shall not affect the authority which agency, OASH, or regional office may have to suspend assistance or otherwise to withhold this support. In addition, this paragraph does not require the awarding agency, OASH, or regional office to provide continuation funding during the appeal process to a grantee whose noncompeting continuation award has been denied.

(d) Upon receipt of a request for review, the head of the agency or his/her designee (or, if the adverse determination was made in an OASH program or regional office, the Assistant Secretary for Health or his/her designee) will make a determination as to whether the dispute is a reviewable one under this subpart and will promptly notify the grantee and the office responsible for the adverse determination of this decision. If the head of the agency or his/her designee (or if the adverse determination was made in an OASH program or regional office, the Assistant Secretary for Health or his/her designee) determines that the dispute is reviewable, he/she will forward the matter to the review committee appointed under § 50.405.

(e) The agency, OASH, or regional office involved will provide the review committee appointed under § 50.405 with copies of all background materials (including application, award, summary statements, and correspondence) and any additional information available. These materials must be tabbed and organized chronologically and accompanied by an indexed list identifying each document.

(f) The grantee shall be given an opportunity to provide the review committee with additional statements and documentation not provided in the request for review (paragraph (b) of this section). This additional submission, which must be organized and indexed as indicated under paragraph (e) of this section, should include only material that is important to the review committee's decision on the issues in the case.

(g) The review committee may, at its discretion, invite the grantee or the agency, OASH, or regional office staff, or both, to discuss with the review committee pertinent issues, and to submit such additional information as it deems appropriate.

(h) Based on its review, the review committee will prepare a written decision to be signed by the chairperson and all committee members. The review committee shall send a transmittal letter with the written decision to the grantee, with a copy to the official responsible for the adverse determination. If the decision is adverse to the grantee's position, the correspondence must state the grantee's right to appeal to the Departmental Grant Appeals Board under 45 CFR Part 16.

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BILLING CODE 4160-17-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 85-388; FCC 88-157]

Amendment of Commission's Rules on Applications To Serve Rural Service Areas; Public Land Mobile Services; Cellular Services

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rule.

SUMMARY: In its Fourth Notice of Proposed Rulemaking in this docket, the FCC is inviting comment on whether it should adopt a fill-in policy for Rural Service Areas similar to the fill-in policy adopted for the Metropolitan Statistical Areas and recommends such action. Such action is needed in order to provide RSA carriers a reasonable opportunity to adjust their business plans to developing demand. The intended effect of the proposed action is to eliminate delays in the processing of applications for unserved portions of the RSAs and to ensure that cellular radiospectrum is used in as efficient a manner as possible.

DATES: Comments are due on or before July 25, 1988, and reply comments by August 2, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Anne Moebes, Mobile Services Division, Common Carrier Bureau; tele: 202-632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Order on Reconsideration adopted April 21, 1988, and released June 30, 1988. The full text of this Commission notice is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Fourth Notice of Proposed Rulemaking

1. This notice invites comment on the Commission's proposal to apply the fill-in policy and procedures adopted for the Metropolitan Statistical Areas (MSAs) to the Rural Service Areas (RSAs) and to amend the current cellular rules for RSAs accordingly. The amended rules

adopting the proposed fill-in policy would govern service to the area within each RSA that is not part of the Cellular Geographic Service Area (CGSA) of the licensee for that RSA. If the proposal is adopted, RSA licensees would be permitted to file applications to serve areas outside of their CGSA, but within the RSA, for a period of five years from the date of the initial authorization in the market without being subject to competing applications. Thereafter, non-licensees could file applications for unserved portions of the RSA.

It is also proposed that if the original licensee transfers its entire authorization for its CGSA within the RSA, the fill-in period and the right of expansion without competing applications would transfer with the authorization. However, if the licensee transfers any other CGSA in the RSA or less than the total original CGSA authorization to another party, such party would have no right to expand the area covered by the transferred authorization without competing applications unless the transferee obtains a statement signed by the transferor agreeing to such an expansion.

This proposal was adopted based on the Commission's tentative conclusion that in order to provide RSA carriers a reasonable opportunity to assess and adjust their business plans to developing demand, a fill-in policy for RSAs, similar to that used for MSAs, is preferable to other alternatives.

2. *Ex Parte:* This is a non-restricted notice and comment rule making proceeding. *See* §§ 1.1202, 1203, 1206 of the Commission's Rules, 47 CFR 1.1202, parts 1203 and 1206 for rules governing permissible *ex parte* contacts.

3. *Initial Regulatory Flexibility Analysis:* Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603(a), the Commission notes that adoption of this proposal will uniformly affect all entities with a minimal cost associated with the filing of applications, amendments, correspondence, exhibits and attachments in microfiche form. We are considering exempting submissions of two pages or less from this requirement.

4. *Paperwork Reduction:* The collection of information requirement contained in this proposed rule has been submitted to OMB for review under Section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on this collection of information requirement should direct their comments to the Office of Management and Budget, Washington, DC 20503, Attention Desk Officer for Federal Communications Commission.

5. *Service List:* A copy of this *Notice* shall be sent to the Chief, Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-15302 Filed 7-7-88; 8:45 am]

BILLING CODE 6712-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 701, 715, 717, AND 752

[AIDAR Case 88-1]

Training Cost Analysis System

AGENCY: Agency for International Development, IDCA.

ACTION: Proposed rule.

SUMMARY: The Agency for International Development (A.I.D.) proposes to amend the A.I.D. Acquisition Regulation to require prospective contractors proposing to provide participant training services (that is, training of foreign nationals) to A.I.D. to use a specified format for preparation and submission of cost proposals for participants training; and to require contractors providing participant training services to submit a quarterly expenditure report in a specified format for the participants training services being provided.

DATES: Comments on this proposed rule should be submitted in writing to the address specified below. Comments must be received by September 6, 1988 in order to be considered in formulation of the final rule.

ADDRESS: Comments should be addressed to the Agency for International Development, Washington, DC 20523, Attention: M/SER/PPE, Room 1600I, SA-14. Please cite AIDAR Case 88-1 in all correspondence related to this proposed rule.

FOR FURTHER INFORMATION CONTACT: OIT/PP, Ms. Joyce Kaiser, SA-16, Room 201D, Agency for International Development, Washington, DC 20523, (703) 875-4147.

SUPPLEMENTARY INFORMATION: In order to responsibly keep track of the cost of participant training, to permit more accurate cost projections, to provide a reliable data base for reports to Congress and other required or beneficial purposes, and to provide a common basis for evaluation of participant training cost proposals, A.I.D. is in the process of establishing a Training Cost Analysis System (TCA). the TCA will affect the public by requiring any prospective contractor responding to a request for proposals which contains a requirement for participant training to prepare and submit its cost estimate for participant training in a specified format—the TCA Proposal Worksheet. In addition, contractors providing participant training services under an A.I.D.-direct contract will be required to submit a quarterly report of expenditures for participant training—the TCA Quarterly Report. The TCA Proposal Worksheet and Quarterly Report are shown in the text of this proposed rule.

Both the TCA Proposal Worksheet and Quarterly Report were submitted to OMB for review and approval as required by the Paperwork Reduction Act and the OMB procedures for review and approval of information collections. Both were approved by OMB for use through March 31, 1989, and were assigned control number 0412-0532. A.I.D. estimates that the average reporting burden for the TCA Proposal Worksheet will be approximately 16 hours per response; for the TCA Quarterly Report, 8 hours.

A.I.D. particularly invites comments from small business organizations concerning the degree of impact this proposed rule may have on them. We believe that the proposed system may benefit small businesses by providing a structured system for preparing and presenting cost proposals. This may result in a more equitable competitive environment for small businesses.

List of Subjects in 48 CFR Parts 701, 715, 717, and 752

Government procurement.

For the reasons set out in the Preamble, it is proposed that Chapter 7 of Title 48 of the Code of Federal Regulation be amended as follows:

1. The authority citation for Parts 701, 715, 717, and 752 is unchanged and continues to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

Subpart 701.1—Purpose, Authority, Issuance

2. Section 701.105 is revised as follows:

701.105 OMB approval under the Paperwork Reduction Act.

The following information collection and recordkeeping requirements established by A.I.D. have been

approved by OMB, and assigned an OMB control number and approval expiration date as specified below:

AIDAR segment	OMB control No.	Expiration
709.104-3(c)	0412-0520	04/30/90
731.205-6(a)(2)	0412-0520	04/30/90
731-205-6(a)(3)	0412-0520	04/30/90
731.371(c)	0412-0520	04/30/90
731.772(c)	0412-0520	04/30/90
733.7003(c)	0412-0520	12/31/88
737.270(e)	0412-0520	04/30/90
752.209-70	0412-0520	04/30/90
752.219-8	0412-0520	04/30/90
752.228-70(b)	0412-0520	04/30/90
752.245-70	0412-0520	04/30/90
752.245-71	0412-0520	04/30/90
752.7001(a)	0412-0520	04/30/90
752.7001(b)	0412-0520	04/30/90
752.7002(a)	0412-0520	04/30/90
752.7002(b)	0412-0520	04/30/90
752.7003	0412-0520	04/30/90
752.7004	0412-0520	04/30/90
752.7013(a)	0412-0520	04/30/90
752.7016	0412-0520	04/30/90
752.7020	0412-0520	04/30/90
752.7027(a)	0412-0520	04/30/90
752.7027(b)	0412-0520	04/30/90
752.7028	0412-0520	04/30/90
752.7031(b)	0412-0520	04/30/90
752.7032	0412-0532	03/31/89
752.7033	0412-0532	03/31/89

PART 715—CONTRACTING BY NEGOTIATION

3. Part 715 is amended by adding a new Subpart 715.4 as follows:

Subpart 715.4—Solicitation and Receipt of Proposals and Quotations

715.407-70 Solicitation provisions.

The contracting officer shall insert the provisions at 752.7033, Proposal Worksheet and 752.7034, Glossary of Cost Analysis Terms, in all solicitations which call for any participant training as defined in AIDAR 717.7101.

PART 717—SPECIAL CONTRACTING METHODS

4. Part 717 is amended by adding a new Subpart 717.71 as follows:

Subpart 717.71—Participant Training

717.7101 Definitions.

(a) Participant training is the training of any participant.

(b) A Participant is any foreign national being trained outside of his or her home country under A.I.D. sponsorship and using A.I.D. funds.

717.7102 Solicitation provision and contract clause.

The contracting officer shall insert the following clauses in addition to otherwise applicable FAR and AIDAR clauses in solicitations or contracts which call for any participant training as defined in AIDAR 717.7101:

(a) The clause at 752.7018, Health and Accident Insurance for A.I.D. Participant Trainees.

(b) The clause at 752.7019, Participant Training.

(c) The clause at 752.7021, Changes in Tuition and Fees.

(d) The clause at 752.7022, Conflicts Between Contract and Catalog.

(e) The clause at 752.7023, Required Visa Form for A.I.D. Participants.

(f) The clause at 752.7024, Withdrawal of Students.

(g) The clause at 752.7032, Quarterly Reporting Requirement.

(h) The solicitation provisions at 752.7033, Proposal Worksheet.

(i) The solicitation provisions at 752.7034, Glossary of Training Cost Analysis Terms.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.70—Texts of A.I.D. Contract Clauses

5. A new section 752.7032 is added as follows:

752.7032 Quarterly reporting requirement.

The following clause is for use in any A.I.D. contract involving participant training.

Quarterly Reporting Requirement (Date)

(a) The contractor shall prepare and submit 2 copies of a Quarterly report, one to the project officer specified in the contract and one to [specify OIT recipient], the first report being due 3 calendar months after the contract effective date, in the format specified in paragraph (c) of this clause.

(b) Instructions for completing the quarterly report.

(1) The first data column reflects the final negotiated contract amounts—different from the corresponding figures on the proposal worksheets to the extent that contract negotiations altered those numbers.

(2) The second data column shows the amount of each budget line item projected to be spent during the quarter under report; the third data column reports the actual amount spent.

(3) Data column "Expended to Date," presents the cumulative expenditure as of the end of the reporting period. The "Balance Remaining" (data column 5) is the "Budget" figure minus "Expended to Date."

(4) The last data column, "% of Budget," shows the percentage of the budget line item spent at the close of the reporting period. It is computed by dividing the "Expended to Date" figures by their corresponding "Budget" figures.

(5) For a cost item expected to be evenly spread over the contract period, the "% of Budget" figure should correspond to the percentage obtained by dividing the "Contract Quarter" under report by the contract life (in quarters) shown in the "Contract Quarter: § ___ of § ___" space.

(6) The last two lines provide measures of projected and actual participant months for both the quarter being reported and the project to date.

(7) Any questions regarding completion of the quarterly report should be direct to A.I.D.'s Office of International Training.

(c) The required quarterly report format is illustrated below; the format has been approved by OMB and assigned Control No. 0412-0532, expiration 3/31/89. A.I.D. estimates the reporting burden for this collection of information to be 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Agency for International Development, Office of International Training, Washington, DC 20523; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

BILLING CODE 6116-01-M

QUARTERLY REPORT

Project Title: _____ Project Number: _____ Implementor: _____

Date: _____ Report Period: _____ Contract Quarter: _____ of _____

*** SEE "Instructions: Quarterly Report ***

I. PARTICIPANT TRAINING COSTS	Budget	Projected This Qtr	Expended This Qtr	Expended to Date	Balance Remaining	% of Budget
Academic Programs:						
A. Education/Training Costs .	$_____	$_____	$_____	$_____	$_____	_____%
B. Allowances	_____	_____	_____	_____	_____	_____%
C. Travel	_____	_____	_____	_____	_____	_____%
D. HAC	_____	_____	_____	_____	_____	_____%
E. Supplemental Activities .	_____	_____	_____	_____	_____	_____%
Sub-Total, Academic Costs . . .	$_____	$_____	$_____	$_____	$_____	_____%
Technical Programs:						
A. Education/Training Costs .	$_____	$_____	$_____	$_____	$_____	_____%
B Allowances	_____	_____	_____	_____	_____	_____%
C. Travel	_____	_____	_____	_____	_____	_____%
D. HAC	_____	_____	_____	_____	_____	_____%
E. Supplemental Activities .	_____	_____	_____	_____	_____	_____%
Sub-Total, Technical Costs . .	$_____	$_____	$_____	$_____	$_____	_____%
Summary: Academic + Technical:						
A. Education/Training Costs .	$_____	$_____	$_____	$_____	$_____	_____%
B. Allowances	_____	_____	_____	_____	_____	_____%
C. Travel	_____	_____	_____	_____	_____	_____%
D. HAC	_____	_____	_____	_____	_____	_____%
E. Supplemental Activities .	_____	_____	_____	_____	_____	_____%
I. TOTAL PARTICIPANT COSTS . .	$_____	$_____	$_____	$_____	$_____	_____%

This Quarter: No. Participant Months Projected = ____, No. Participant Months Completed = ____

Total Project: No. Participant Months Projected = ____, No. Participant Months Completed = ____

Project Title: _____ Project Number: _____ Implementor: _____

Date: _____ Report Period: _____ Contract Quarter: _____ of _____

*** SEE "Instructions: Quarterly Report ***

I. PARTICIPANT TRAINING COSTS	Budget	Projected This Qtr	Expended This Qtr	Expended to Date	Balance Remaining	% of Budget
Special Tracking Items:						
E.1. ELT, In-Country	$_____	$_____	$_____	$_____	$_____	_____%
E.2. ELT, U.S.	_____	_____	_____	_____	_____	_____%

NOTE: Special tracking items are costs that are included in Participant Costs, page 1, but are broken out here for special review.

QUARTERLY REPORT

Project Title: _____ Project Number: _____ Implementor: _____

Date: _____ Report Period: _____ Contract Quarter: _____ of _____

II. F. ADMINISTRATIVE COSTS	Budget	Projected This Qtr	Expended This Qtr	Expended to Date	Balance Remaining	% of Budget
1. Salaries	$_____	$_____	$_____	$_____	$_____	_____%
2. Fringe Benefits	_____	_____	_____	_____	_____	_____%
3. Travel	_____	_____	_____	_____	_____	_____%
4. Consultants	_____	_____	_____	_____	_____	_____%
5. Equipment	_____	_____	_____	_____	_____	_____%
6. Sub-Contracts	_____	_____	_____	_____	_____	_____%
7. Indirect Costs	_____	_____	_____	_____	_____	_____%
8. Other	_____	_____	_____	_____	_____	_____%
II. F. TOTAL ADMINISTRATIVE COSTS	$_____	$_____	$_____	$_____	$_____	_____%
GRAND TOTAL, TRAINING COSTS:	$_____	$_____	$_____	$_____	$_____	_____%

NOTE: % of Budget refers to that %age of the total budget (for each line) that has been spent.
% of Budget = [Expended to Date] / [Budget]

BILLING CODE 6116-01-C

6. A new section 752.7033 is added as follows:

752.7033 Proposal worksheet.

The following solicitation provision is to be placed in all solicitations which call for any participant training.

Proposal Worksheet (Date)

(a) The offeror shall use the following proposal worksheet format for the preparation and submission of its cost estimate for participant training in response to this RFP.

(b) General instructions for preparing the proposal worksheet.

(1) Not all activities included in the proposal worksheet format apply to all programs; select only those items that are applicable to the proposed program.

(2) These instructions pertain to the preparation and submission of cost proposals submitted in response to A.I.D. RFPs for the provision of participant training services. Cost proposals in this format are mandatory for prospective offerors being considered to manage A.I.D. sponsored participants. The information will be used by Agency personnel to compare proposed training costs and make contractor selections.

(3) Use Proposal Worksheet for all training programs. Several sets of forms will have to be completed if there are different categories of training to be costed, i.e. academic, short courses, observational tours.

(4) Prepare a separate budget proposal (pages 1–2) for each *year* of the training. Indicate the project year and contract period (in years) in the "Project Year" space.

(5) Prepare a budget estimate for all training over the life of the project. Indicate "All training" in the "Comments" space.

(6) Estimates to be calculated in U.S. dollars.

(7) Prepare separate sheets for in-country or third-country training.

(8) Specify the measurements used as "units" for entries under "Unit Price" (e.g., $1150/*semester*, $200/*year*, $635/*month*, $375/*week*, $75/*participant*—for flat rate items such as professional membership or book shipment).

(9) Administrative costs are estimated by categories. The RFP will indicate which functions are required of the contractor. The proposed costs should reflect the level of effort proposed for each function.

(10) Consult the Glossary of Terms provided with the RFP prior to completing the cost proposal.

(c) Specific Line Item Instructions:

(1) Participant Months Proposed: A measure of total participant months for both academic and technical training provides a standard measure of the amount of training being proposed or provided. Compute this figure for each year of the project and for the project life.

(2) Line I.A. Education/Training Costs: This line must be completed for all training programs. Complete lines I.A.1–I.A.4 first. Then enter the total number of participants for the contract year being reported. (Note: This figure will not always equal the sum of "Number of Participants" proposed in lines I.A.1–I.A.4). Finally enter the sum of the "Subtotal" amounts in the "Total" space.

(3) Lines I.A.1–I.A.4: Optional breakdown. Use the Glossary for definitions for each line item. The "Other (Mission Option)" category allows for special breakouts. For any of these lines, enter: (a) the number of participants to incur the cost, (b) the total number of cost units—see item (8) under "General Instructions—for those participants in the contract year being costed, (c) the unit prices for each cost category, and (d) Education/Training Cost "Subtotals".

(4) Line I.B. Allowances: This line must be completed for all training programs. USE CURRENT A.I.D. APPROVED RATES. As was done for line I.A. complete lines I.B.1 through I.B.10 first, then enter the sum of the "Subtotals" for those lines in the "Total" space for line I.B.

(5) Lines I.B.1–I.B.10: Optional breakdown. Definitions and approved rates for these cost items are contained in Handbook 10 and Participant Training Notices (see "Allowances" in Glossary). The "Other (Mission Option)" category allows for special breakouts (e.g., books used in English Language Training—ELT). For instructions on specific column entries, follow instructions for Lines I.A.1 thru I.A.4.

(6) Line I.C. Travel: This line must be completed for all training programs. Complete the sub-entries and then enter the sum of the "Subtotal" in the "Total" space for line I.C.

(7) Lines I.C.1–I.C.3: Optional breakdown. See Glossary for definitions. Reference instructions for Lines I.A.1 thru I.A.4 for completion.

(8) Line I.D. Insurance: This line must be completed for all training programs. Do sub-entries first and then sum for this line.

(9) Lines I.D.1–I.D.3: Optional breakdown. Definitions and approved rates for these cost items are contained in the Glossary, Handbook 10, and Participant Training Notices (see also "Allowances" in Glossary). Reference instruction for Lines I.A.1 thru I.A.4 for completion.

(10) Line I.E. Supplemental Activities: This line must be completed for all training programs. Complete sub-entries first, sum, and enter the figure in the "Total" space for line I.E.

(11) Lines I.E.1–I.E.12: Optional breakdown. See Glossary for definitions. Reference instructions for Lines I.A.1 thru I.A.4 for completion.

(12) Upon completion of Section I.A. through I.E., total participant costs for each training program are found by (a) summing the "Subtotal" column and (b) summing the "Total" column. The two figures thus obtained should be equal. If the figures fail to equal, check the column entries and make corrections where necessary.

(13) Lines II.F Administrative Costs: Line II.F is the total of the administrative costs on lines II.F.1–II.F.8 as was done for line I.A., complete the sub-entries first, then enter the sum of those figures on line II.F. This is done for each project year. All project years are then totalled to produce line totals for programs. All project years are then totalled to produce line totals for program administrative costs. Adding the "Total Cost" figures for line II.F.1–II.F.8 produces the line II.F "Total Cost." This number should equal the line II.F "Total Cost" obtained by adding line II.F "Year 1" + "Year 2" + etc. If the two numbers thus obtained are not equal, figures should be rechecked.

(14) Separate administrative cost sheet must be completed for academic and technical programs. Where requested, separate administrative costs sheets will be provided for different categories of technical programs.

(15) Lines II.F.1–II.F.8: Information regarding these administrative cost items is contained in the Federal Acquisition Regulations (FAR). While these are standard cost elements, not all elements will be present in all projects. Additional breakouts may be requested.

(16) Total Training Costs: Summing the "total" figures for lines A–F (the six basic cost categories) yields yearly and overall Total Training Costs.

(c) The required proposal worksheet format is illustrated below; the format has been approved by OMB and assigned Control No. 0412–0532, expiration 3/31/89. A.I.D. estimates the reporting burden for this collection of information to be 16 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the date needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Agency for International Development, Office of International Training, Washington, DC 20523; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20523.

BILLING CODE 6116-01-M

PROPOSAL WORKSHEET

Project Title: _____ RFP Number: _____ Project Year: ____ of ____ years

Implementor/Contractor: _____ Participant Months Proposed (This Year) = ____

Date: _____ Comments: _____

*** SEE "Instructions: Proposal Worksheet ***

Program Categories/ Training Activities	Number of Participants	No. of Units	Unit * Price	Subtotal	Total
I. PARTICIPANT TRAINING COSTS					
A. Education/Training Costs . .		xxxxxx	xxxxxxx/xxx	xxxxxxxxxx	$
1. Tuition/Fees			$ /	$	xxxxxxxxxx
2. Training Costs			/		xxxxxxxxxx
3. Package Program Costs . .			/		xxxxxxxxxx
4. Other (Mission Option) .			/		xxxxxxxxxx
B. Allowances		xxxxxx	xxxxxxx/xxx	xxxxxxxxxx	$
1. Maintenance Advance . .			$ /	$	xxxxxxxxxx
2. Living/Maintenance . . .			/		xxxxxxxxxx
3. Per Diem			/		xxxxxxxxxx
4. Books & Equipment . . .			/		xxxxxxxxxx
5. Book Shipment			$ /	$	xxxxxxxxxx
6. Typing (Papers)			/		xxxxxxxxxx
7. Thesis			/		xxxxxxxxxx
8. Doctoral Dissertation . .			/		xxxxxxxxxx
9. Professional Membership .			/		xxxxxxxxxx
10. Other (Mission Option) .			/		xxxxxxxxxx

* Units are standard measures for the cost element (e.g., participants, participant weeks, etc.).

Project Title: _____ RFP Number: _____

Implementor/Contractor: _____ Comments: _____ Year ___ of ___

Program Categories/ Training Activities	Number of Participants	No. of Units	Unit * Price	Subtotal	Total
C. Travel		xxxxxx	xxxxxxx/xxx	xxxxxxxxxx	$
1. International			$ /	$	xxxxxxxxxx
2. Local			/		xxxxxxxxxx
3. Other (Mission Option)			/		xxxxxxxxxx
D. Insurance		xxxxxx	xxxxxxx/xxx	xxxxxxxxxx	$
1. HAC for U.S.			$ /	$	xxxxxxxxxx
2. Required by Institution			/		xxxxxxxxxx
3. Other (Mission Option)			/		xxxxxxxxxx
E. Supplemental Activities		xxxxxx	xxxxxxx/xxx	xxxxxxxxxx	$
1. ELT, In-Country			$ /	$	xxxxxxxxxx
2. ELT, U.S.			/		xxxxxxxxxx
3. Academic Up-Grade			/		xxxxxxxxxx
4. Reception Services			/		xxxxxxxxxx
5. WIC Orientation			/		xxxxxxxxxx
6. Other Orientation			$ /	$	xxxxxxxxxx
7. Interpreters/Escorts			/		xxxxxxxxxx
8. Interpreters/Cooperative			/		xxxxxxxxxx
9. Enrichment Programs			/		xxxxxxxxxx
10. Mid-Winter Community Seminars			/		xxxxxxxxxx
11. Follow-Up/Career Development			/		xxxxxxxxxx
12. Other (Mission Option)			/		xxxxxxxxxx

TOTAL PARTICIPANT COSTS, Line Totals A + B + C + D + E = $_____ = _____

* Units are standard measures for the cost element (e.g., participants, participant weeks, etc.).

PROPOSAL WORKSHEET

Project Title: _____ RFP Number: _____

Implementor/Contractor: _____ Comments: _____ Year ____ of ____

	Person Months	Total Cost		Person Months	Total Cost
II.F. Administrative Costs:					
1. Salaries (Total)	_____	$_____	4. Consultant Fees . .	_____	$_____
a. Professional	_____	_____	a. U.S.	_____	_____
i. U.S.	_____	_____	b. Field	_____	_____
ii. Field	_____	_____	5. Equipment	xxxxxx	_____
b. Support Staff	_____	_____	6. Sub-Contracts . . .	_____	_____
i. U.S.	_____	_____	7. Indirect Costs* . .	xxxxxx	_____
ii. Field	_____	_____	8. Other	_____	_____
2. Fringe Benefits	_____	_____			
3. Travel	xxxxxx	_____			
a. International	xxxxxx	_____			
b. Local	xxxxxx	_____			

Total Administrative Costs, Item II.F. above: $_____

TOTAL TRAINING COSTS (Total Participant Costs from prev. page + Line II.F.) = $_____

* A breakout of these costs should be requested. (See Instructions)

BILLING CODE 6116-01-C

PROPOSAL WORKSHEET SUMMARY

Project Title: _____ RFP Number: _____

Implementor/Contractor: _____ Comments: _____ Year ____ of ____

*** SEE "Instructions: "Proposal Worksheet, Part C-Summary" ***

Item	Costs Academic		Costs Technical		Total
I. PARTICIPANT COSTS:					
A. Education/Training Costs . . .	$ _____		$ _____		$ _____
B. Allowances	_____		_____		_____
C. Travel	_____		_____		_____
D. HAC	_____		_____		_____
E. Supplement Activities	_____		_____		_____
Total Participant Costs	$ _____	+	$ _____	=	$ _____
II. F. ADMINISTRATIVE COSTS:					
1. Salaries	$ _____		$ _____		$ _____
2. Fringe Benefits	_____		_____		_____
3. Travel	_____		_____		_____
4. Consultants	_____		_____		_____
5. Equipment	_____		_____		_____
6. Sub-Contracts	$ _____		$ _____		$ _____
7. Indirect Costs	_____		_____		_____
8. Other	_____		_____		_____
Total Administrative Costs	$ _____	+	$ _____	=	$ _____
GRAND TOTAL, TRAINING COSTS =	$ _____	+	$ _____	=	$ _____

7. A new section 752.7034 is added as follows:

§ 752.7034 Glossary of training cost analysis terms.

The following solicitation provision is to be placed in all solicitations which call for any participant training.

Glossary of Training Cost Analysis Terms (Date)

Academic Training: A program, leading to an academic degree, in an accredited institution of higher education.

Academic Up-grade: Specific training given to overcome academic/technical deficiencies in participant's background in preparation for beginning a full technical or academic program. This training can be given in the host country, a third country or the U.S.

Administrative Costs: Those cost related to the management of participants, not the actual delivery of training. These costs will include:

Salaries
Indirect Costs
Subcontracts (for participant management and related activities)
Consulting Fees (for participant management and related activities)
Equipment (expendable and capital—not used by the participants)
Other Direct Costs (telephone, postage, supplies, equipment, word processing, computer processing)
Overhead/General and Administrative (G&A)
Fixed Fee or Profit

Allowances: Allowances are those rates set by A.I.D.'s Office of International Training which cover maintenance, per diem, and attendant costs of participating in an education program such as books, typing, professional memberships, etc.

Information on allowances is contained in A.I.D.'s Handbook 10 which is updated through periodic release of Training Notices. These are provided to Mission personnel and contractors whenever changes are made to allowances.

Participant Training Notices on allowances are available from: The Agency for International Development, OIT, SA–16, Washington, DC 20523.

Career Development: (see Follow-up and Career Development).

Consulting Fees: Consulting fees may be categorized into two parts: (1) fees paid to consultants for providing training; and (2) fees paid to consultants for assisting in some phase of the management of participants, e.g., setting up computer tracking systems.

Cooperative Training: (see Internship/Cooperative Training).

Counseling: Activities involved with assisting participants to identify and resolve personal or training situations/problems which are adversely affecting performance.

Documentation: The process of providing the Mission or A.I.D. office with all relevant forms and information needed to begin participants' programming and placement.

Documentation normally takes place in the host country. The process includes the collection of information needed to develop the PIO/P (including transcripts/TOEFL scores) and the preliminary identification of training opportunities which best meet the training objectives.

Note: Health clearances, passport photographs, and bio-data should also be collected at this time.

English Language Training (ELT): English language training provided prior to, or in conjunction with, the program of study.

Enrichment Programs: Activities designed to provide participants with cultural/social/educational experiences geared to furthering their understanding of U.S. institutions and mores. These programs are conducted as an adjunct to technical or academic training provided in the U.S.

Equipment, Contractor: (see Federal Acquisition Regulations).

Escort Services: (see Interpreter and Escort Services).

Evaluation: The process of measuring the effectiveness of a participant's training program in achieving the goals and objectives identified by the PIO/P. Tools used to measure program effectiveness both during and after training include post program language testing, on-site training questionnaires and exit interviews and may extend to long term assessments of the impact of the program on the project/country.

Fixed Fee/Profit: (see Federal Acquisition Regulations).

Follow-up and Career Development: Activities which build on the training experience and which are designed to encourage and equip participants to remain professionally involved in their field.

Typical follow-up activities include: Encouraging communication among participants; publication of newsletters; promoting membership in returned participant organizations; promoting professional memberships/ meetings; use of host country follow-up in conjunction with a program evaluation.

Fringe Benefits: (see Federal Acquisition Regulations).

General and Administrative (G&A) Costs: (see Federal Acquisition Regulations).

Health and Accident Coverage (HAC): An A.I.D. self-financed health and accident system designed to provide payment for most reasonable, usual, and customary medical costs incurred by participants. All participants studying in the U.S. are to be covered by HAC. All contractors managing participants in the U.S. are responsible for enrolling their participants in this program. Specific guidelines on HAC coverage are provided in Handbook 10. Periodic training notices are provided to Missions and contractors when there are changes to the rate structure or coverage. HAC coverage may not be replaced by any other medical insurance in the U.S. even though there are educational institutions that require enrollment in their plans as well. (see Insurance, Other).

High-Level Teams: Groups of participants who are in executive level positions in business, industry or government in their home country.

Indirect Costs: Costs that are incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Typical examples are depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

Insurance, Other: (see also Health and Accident Coverage) Insurance coverage arranged for third country training and insurance payments made to training institutions in the U.S. that have mandatory insurance requirements.

Internship/Cooperative Training: Work experience that is designed to enhance the skill the trainee is acquiring through formal training. Paid work experience must be directly related to the field of study undertaken by the trainee or it is not allowed under the Immigration and Naturalization Service rules.

Interpreter and Escort Services: Provision of interpreters, for short-term training or observation tours, for participants who are not proficient in the language of the country of training; also the provision of field program managers (escorts) to accompany high-level teams (which see) on observation tours.

Mid-Winter Community Seminars (MWCS): Brief, structured exposure to educational, social, and cultural experiences. These activities are considered enrichment programs but because they have base funding from A.I.D. are shown as a line item for identification.

Monitoring/Reporting: Regular tracking and updating of the status of the participant from time of arrival in the U.S. to day of departure. In this case status refers to academic progress, visa status, acculturation, living situation, financial matters, general health of participant, etc.

Needs Assessment: (see Training Needs Assessment).

Observation Tours (also Observational Training): Scheduled visits to facilities in several locations to learn a process, method, or system through observation and discussion. Observation tours should emphasize the acquisition of development ideas, attitudes, and values.

Orientation, Pre-departure: Activities designed to provide participants with current and specific information on what is to be accomplished in their training. Pre-departure orientation may include, depending on individual circumstances: an overview of the social/cultural modes of the U.S. (or other program country) to help reduce culture shock; information regarding financial/living arrangements; information regarding basic airport routines of international travel. This orientation often helps establish how a participant will respond/adjust to a U.S. (or other program country) training/living experience. For purposes of costing this activity, only a formal orientation session of 4 or more hours of direct participant contact should be considered as pre-departure orientation.

Orientation, Re-entry: The formal process whereby participant consider the physical, phychological, and professional return to their country. For the long-term participant,

re-entry orientation should begin 3–6 *months* before departing the U.S.; for the short-term participant, 1–3 *weeks* prior to departure. Re-entry activities can also take place upon arrival in-country. In order to consider this a discrete activity, it should be programmed to last a minimum of 4 hours.

Orientation, U.S.: Activities and information designed to acquaint the participant with a broad picture of "life" in the U.S. (macro-view) and to assist the participant in functioning effectively in the specific city/community/campus of the program of study (micro-view). The macro orientation will be most helpful to the participant as a general reference point in understanding life styles in the program's geographical area; it should build on the pre-departure orientation and reinforce the participant's sense of well-being while away from home. The micro orientation typically includes information on housing, shopping, food preparation, check cashing, transportation, correspondence, and communication. Micro orientation also provides an introduction to the training program and the participant's responsibilities. In order to consider this a discrete activity, it should be programmed to last a minimum of 8 hours.

Other Direct Costs: (see Federal Acquisition Regulations).

Overhead/General & Administative (G&A): (see Federal Acquisition Regulations).

Package Programs: Programs of training or instruction where the payment made to the vendor includes the instructional cost, supplies/equipment, and lodging. Some package programs will also include board (food). Both types of packages are to be included in the line item "Packaged Programs."

Participants: Foreign nationals sponsored by A.I.D. to receive training outside their home countries, under A.I.D. sponsorship. This may include those whose training programs are funded by A.I.D. loans or grants, those under partial A.I.D.-funding and those whose training is paid for by other than U.S. resources but are granted a visa to study in the U.S. by A.I.D. As used herein, the term participant is a shortened title for "United States A.I.D. Participant," used since the early years of United States Technical Assistance denoting a "participant in development." Participants' programs are managed either by OIT, and A.I.D. Mission, an A.I.D. contractor, or a host country.

Note: Foreign nationals on international travel orders or financed under general support grants are not considered participants.

Placement: The process of enrolling participants in the selected training program and negotiating appropriate courses or study programs.

Placement is a companion to Programming and is often done at the same time. It may be necessary to modify the training plan to reflect reality once the placement process has begun. The student with less than adequate preparation may have to begin at a more rudimentary level of study than initially anticipated in the training plan. Because placement determines the participant's training location, housing arrangements—although technically programming—are often made at this time.

Professional Enrichment: (see Enrichment Programs).

Profit: (see Fixed Fee/Profit) (see Federal Acquisition Regulations).

Programming: The process of analyzing participants' training/education credentials against the training goals and objectives of the PIO/P. Programming is a companion to Placement and is often done at the same time. The Mission reviews and approves the program. Programming agents may use a variety of mechanisms to gain Mission concurrence. OIT programming agents provide the Mission with a Training Implementation Plan (TIP), and it is suggested that a similar document be required from all contractors and Missions.

Reception Services: Meeting the participant upon arrival in the country of training. Reception services should be provided at the ultimate destination and may take place at the initial arrival point if it is determined that the participant will need assistance with layover accommodations or travel connections.

Recruitment: The process of identifying candidates for a training program. Recruitment may be done using host country mass media, host agency training announcements, staff available under ongoing USAID projects, in-country or home office consultants/staff or any other means available to attract candidates.

Reporting/Monitoring: (see Monitoring/Reporting).

Salaries: (see Federal Acquisition Regulations).

Screening: The process of reviewing candidate applications, interviewing participants, and making recommendations for final selection. Screening may involve the use of A.I.D.-direct hire staff, contractor staff and/or local committees. The screening process may require that preliminary testing be done to assess the candidates' suitability for training.

Selection: The process of choosing qualified candidates for education, training, or observation tours. Selection activities include: developing selection criteria (e.g., English language test scores); candidate interviews; candidate credential reviews; shared cost negotiation for the proposed training. Final selection approval is provided by A.I.D.

Short-term Training (also known as Technical Training): Training which is not designed to lead to the awarding of an academic degree.

Social/Professional Enrichment: (see Enrichment Programs).

Subcontracts: Contracts let by the prime contractor to another entity for the performance of a segment of the contract.

Technical Training: All training not classified as academic training. Technical training may take the form of observational visits, on-the-job training (OJT), special seminars or programs, workshops, and non-degree training in academic institutions.

Testing: The process of examining and/or evaluating, in the host country, participants' skills and achievements for the purpose of properly selecting participants and placing them in appropriate programs. Testing may include the SAT, TOEFL, ALIGU, GRE, and/or GMAT, depending on availability within the host country. Testing of individual's English language skills is most frequently required.

Training Cost: Normally training costs refer to the cost of short-term programs. Academic programs may include attendance at short-term seminars, workshops, etc. and those costs would be training costs while the balance of the program cost would be included under tuition/fees.

Training Needs Assessment: Identification of country, sector, or project-level training needed. Training needs assessments are done using country demographic information, interviews with host government officials and special surveys. The Country Development Strategy Statement and Country Training Plan should also be factored into the assessment. A Training Needs Assessment should be completed or consulted prior to developing any training project or training as a part of a technical assistance project.

Travel Costs: Costs associated with international and local travel and with daily expenses while in travel status in support of a participant's program of study. Travel costs do not include food and lodging as those are allowances and are covered in a different line item.

Tuition Fees: Tuition/fees are the costs of academic programs. Tuition/fees are normally provided on a credit hour, quarter, semester, or yearly basis.

(End of proposed rule)

Date: June 24, 1988.

John F. Owens,

Procurement Executive.

[FR Doc. 88–15306 Filed 7–7–88; 8:45 am]

BILLING CODE 6116–01–M

Notices

Federal Register
Vol. 53, No. 131
Friday, July 8, 1988

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

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.

Date: August 8–10, 1988.

Time: 8:00 a.m.–5:30 p.m., August 8–9, 1988, 8:00 a.m.–12:00 Noon, August 10, 1988.

Place:

Copley Plaza Hotel, August 8, Boston, Massachusetts.

Human Nutrition Center, August 9, Boston, Massachusetts.

Copley Plaza Hotel, August 10, Boston, Massachusetts.

Type of meeting: Open to the public. Persons may participate in the meeting and site visits as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will be meeting with the Joint Council on Food and Agricultural Sciences to review and discuss the changing U.S. agricultural sector, successful research and marketing programs, and research in human nutrition. The Board will hear separate presentations on agricultural biotechnology and nutrition education and urban gardening programs.

Contact Person for Agenda and More Information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; Room 432–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2200; telephone (202) 447–3684. Done in Washington, DC, this 29th day of June 1988.

C.I. Harris,

Associate Administrator.

[FR Doc. 88–15399 Filed 7–7–88; 8:45 am]

BILLING CODE 3410–22–M

Office of International Cooperation and Development

Cooperative Agreements: University of Arkansas

AGENCY: Office of International Cooperation and Development (OICD); Agriculture.

ACTION: OICD intends to award a Grant to the University of Arkansas to support the "1988 Farming System Symposium."

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 USC 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD anticipates the availability of funds in fiscal year 1988 (FY1988) to provide funding support to the University of Arkansas for conduct of the "1988 Farming Systems Symposium." This symposium is recognized as the major international forum for the exchange of research experiences and the development of new approaches related to farming systems research and extension.

Assistance will be provided only to the University which will utilize funds to partially support the publication and staff support costs of the symposium. Based on the above, this is not a formal request for application. An estimated $50,000 will be available in FY1988 as partial support for this symposium. Information on proposed Grant #58–319R–8–033 may be obtained from: Nancy J. Croft, Contracting Officer, USDA/OICD/Management Services Branch, Washington, DC 20250–4300.

Nancy J. Croft,

Contracting Officer.

Dated: June 28, 1088.

[FR Doc. 88–15295 Filed 7–7–88; 8:45 am]

BILLING CODE 3410–DP–M

Cooperative Agreements: University of Maryland

AGENCY: Office of International Cooperation and Development (OICD); Agriculture.

ACTION: Notice of intent.

ACTIVITY: OICD intends to enter into a Cooperative Agreement with the University of Maryland to provide funding for collaborative international assignment in support of international agricultural development in Guatemala.

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 USC 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD announces the availability of funds in fiscal year 1988 (FY 1988) to enter into a cooperative agreement with the University of Maryland to collaborate in the Private Enterprise Development (PED) Project in Guatemala. The scope of the effort will include the participation of the University's International Development Management Center, which will be able to enhance its experience and expertise through involvement with this project.

It is anticipated that this project will be funded over a four-year period. Approximately $112,625 will be available in FY1988 to the University for this collaborative effort.

Assistance will be provided only to the Georgia Tech, which is contributing resources and experience. Funds provided by OICD will be used to supplement costs of supplies, communications, a project management specialist, and travel.

Based on the above, this is not a formal request for application. Funds estimated at $112,625 will be available in FY1988 to support this work. Funding for FY1989–92 will be based on availability.

Information on proposed Agreement #58–319R–8–035 may be obtained from the undersigned at the following address: USDA/OICD/Management Services Branch, Washington, DC 20250–4300.

Date: June 29, 1988.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 88–15296 Filed 7–7–88; 8:45 am]

BILLING CODE 3410–DP–M

DEPARTMENT OF COMMERCE

Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary, Office of the General Counsel and Office of Business Liaison

SUMMARY: The Presidential Board of Advisors on Private Sector Initiatives will hold a meeting on July 29, 1988. Committee meetings will also be held on this date. Public comment is welcome.

Time and Place

Presidential Board of Advisors on Private Sector Initiatives

Full Board Meeting

Friday, July 29, 1988, 10:00 a.m., at the Security Pacific Bank, 333 South Hope Street, Los Angeles, California, 90071. All meetings will be held on the 53rd floor.

Committee Meetings

Friday, July 29, 1988, 8:30 a.m., at the Security Pacific Bank, 333 South Hope Street, Los Angeles, California, 90071. All meetings will be held on the 53rd floor. Rooms to be posted.

FOR FURTHER INFORMATION CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Counsel, U.S. Department of Commerce, (202/377–4772) or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce, (202/377–3942), Main Commerce Building, Washington, DC 20230.

Date: June 30, 1988.

Robert H. Brumley,

General Counsel.

[FR Doc. 88–15336 Filed 7–7–88; 8:45 am]

BILLING CODE 3510-BW-M

Foreign-Trade Zones Board

[Docket 24–88]

Foreign-Trade Zone 100—Dayton, OH; Application for Subzones; General Motors Corp., Electric Motors and Auto Parts Plants, Dayton and Kettering, OH

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Dayton Foreign-Trade Zone, Inc., grantee of FTZ 100, on behalf of General Motors Corporation, Delco Products Division (GM), requesting special-purpose subzone status for GM's electric motors plant in Dayton, Ohio, and its auto parts plant in Kettering, Ohio. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 28, 1988.

The Dayton plant (28 acres) is located at 1619 Kuntz Road. The facility employs 300 persons and is used to produce electric motors for industrial uses. Some 10 percent of the components are dutiable, including velocity controls, armatures, transformers, discharge units, connectors, clamps and bearings. The plant is also used as a distribution facility for imported AC servo motor systems.

The Kettering plant (288 acres) is located at 2000 Forrer Boulevard. The facility employs 4,000 persons and is used to produce shock absorbers, wiper systems, cooling motors, electronic suspension system levelling controls, and antenna actuators. Some 6 percent of the components used at the plant are dutiable, including circuit boards, shock absorber struts and piston arms, shock absorber parts, magnesuim housings, armature assemblies, relays and fasteners.

Zone procedures would exempt GM from Customs duties on the foreign components used in the manufacture of products that are exported. On the motors produced at the Dayton plant and sold in the United States, GM would be able to elect the rate applicable to complete motors. The duty rates on parts for motors range from 2.9 to 11.0 percent, whereas the rates on complete motors range from 0 to 4.2 percent. On the auto components that are produced at the Kettering plant and shipped to U.S. auto assembly subzones, the company would be able to elect the finished product duty rate applicable to passenger automobiles. The duty rates on subcomponents and material used at the plant range from 3.0 to 5.0 percent, whereas the rate on autos is 2.5 percent. GM indicates that the savings will help improve the company's international competitiveness in both product areas.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John F. Nelson, Distric Director, U.S. Customs Service, North Central Region, 6th Floor, Plaza Nine Building, 55 Erieview Plaza, Cleveland, Ohio 44114; and Colonel Robert L. Oliver, District Engineer, U.S. Army Engineer District Louisville, P.O. Box 59, Louisville Kentucky 40201–0059.

Comments concerning the proposed subzone are invited in writing from interested parties. They shall be addressed to the Board's Executive Secretary at the address below and postmarked on or before August 16, 1988.

A copy of the application is available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Dayton International Airport, International Arrivals Area, Vandalia, Ohio 45377

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

Dated: July 1, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–15384 Filed 7–7–88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-559-001]

Certain Refrigeration Compressors From the Republic of Singapore; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On March 10, 1988, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore.

We have now completed that review and determine that Matsushita Refrigeration Industries, Matsushita Electric Trading, and the Government of the Republic of Singapore, the signatories to the suspension agreement, have complied with the terms of the suspension agreement during the period January 1, 1985 through December 31, 1985.

EFFECTIVE DATE: July 8, 1988.

FOR FURTHER INFORMATION CONTACT: Cynthia Sewell or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3337.

SUPPLEMENTARY INFORMATION:

Background

On March 10, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 7778) the preliminary results of its administative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore (48 FR 51167, November 7, 1983). We have now completed that administrative review in accordance

with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Singapore hermetic refrigeration compressors rated not over one-quarter horsepower. Such merchandise is currently classifiable under item number 661.0990 of the Tariff Schedules of the United States Annotated and under item number 8414.30.00—0 of the Harmonized System.

The review covers the period January 1, 1985 through December 31, 1985 and three programs: (1) An income tax exemption on export earnings as provided for in Part IV of the Economic Expansion Incentives Act ("EEIA"); (2) financing provided by the rediscount facility of the Monetary Authority of Singapore; and (3) the payment of technical assistance fees.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from the petitioner, Tecumseh Products Company.

Comment 1: Tecumseh claims that the Department should have considered the exemption under Part IV of the EEIA as the benefit from this program.

Department's Position: Tecumseh misinterprets the nature of the benefit received from this program. The benefit is not the amount of the tax exemption claimed by MARIS under Part IV of the EEIA, but rather the resulting reduction in MARIS' tax liability. We correctly calculated the tax savings by multiplying the amount of the tax exemption by the corporate tax rate.

Comment 2: Tecumseh argues that the Department should use the value of MARIS' ex-factory compressor sales rather than the value of METOS' compressor exports to calculate the *ad valorem* benefit because Part IV of the EEIA provides the benefit directly to MARIS. Tecumseh contends that in using METOS' value of compressor exports, which increases the export value by including various freight, mark-up and administrative charges, the Department dilutes the *ad valorem* benefit to MARIS, the recipient. Consequently, the export charge to offset the total bounty or grant is understated.

Department's Position: The agreement suspending the countervailing duty investigation states that the Government of the Republic of Singapore shall offset the amount of the total bounty or grant by collecting an export charge on the subject compressors exported to the United States and that the export charge on each shipment shall be collected at the time the exporter submits its Outward Declaration to the Import and Export Office of the Singapore Government's Trade Development Board. The amount on the Outward Declaration is METOS' export value. Further, while the Department's use of METOS' exports in calculating the benefit reduces the *ad valorem* rate as compared to using MARIS' ex-factory sales, our allocation of the benefit from this program over METOS' exports fully captures the value of the benefit because the export tax is assessed on the same basis. Conversely, if we allocated the benefit over MARIS' ex-factory sales, the higher *ad valorem* rate would lead to our requiring an excessive collection of the export tax because, according to the terms of the suspension agreement, this rate is to be applied to METOS' export value.

Comment 3: Tecumseh argues that the Department cannot rely solely on the evaluations of Singapore's Internal Revenue Department ("IR") and the Economic Development Board ("EDB") as conclusive evidence that the technical assistance fees paid by MARIS to its parent company were not excessive. Tecumseh further maintains that it is unlikely that the verification team is qualified to determine the true value of technical services under normal commercial considerations and suggests that the technical assistance agreement be scrutinized by an impartial expert in the field of refrigeration compressor manufacturing. Finally, Tecumseh claims that the information relied upon by the Department is insufficient and argues that, in the absence of sufficient information to make a proper determination of the commercial reasonableness of the technical assistance fees, the Department should consider the value of deducting these fees from taxable income to be a countervailable bounty or grant.

Department's Position: The technical assistance fees paid by MARIS are royalties for technical specifications and advice in the manufacture and assembly of products, technical servicing of equipment, and employee training programs. As a general rule, royalties paid for such services are considered allowable business deductions when calculating a firm's tax liability. In the Republic of Singapore, it is the responsibility of the Singapore tax authorities (*i.e.*, the EDB and IR) to determine the kind of assistance being provided and whether the fees paid for such assistance is excessive.

At verification, we examined the process by which the tax authorities reviewed technical assistance agreements. The documents examined established that the tax authorities rigorously reviewed the agreement to determine the commercial reasonableness of the technical assistance fees. Consequently, Tecumseh's concern regarding the technical expertise of the Department's verification team is misplaced. Rather, what is relevant and what we considered sufficient was the thoroughness of the procedure by which the Singapore tax authorities reviewed the amount of the tecnical assistance fees and the services provided, and that the fees were paid for services rendered.

Final Results of Review

After considering all of the comments received, we determine that Matsushita Refrigeration Industries, Matsushita Electric Trading and the Government of the Republic of Singapore have complied with the terms of the suspension agreement, including the payment of the provisional export charge of 5.86 percent for the period January 1, 1985 through July 25, 1985 and 4.92 percent for the period July 26, 1985 through December 31, 1985. In addition, we determine the total bounty or grant to be 4.95 percent of the f.o.b. value of the merchandise for the review period. The suspension agreement states that the Government of Singapore will offset completely with an export charge the total bounty or grant calculated by the Department.

Following the methodology outlined in section B.4. of the agreement, the Department determines that, for the period January 1, 1985 through July 25, 1985, a negative adjustment may be made to the provisional export charge of 5.86 percent established in the Department's notice of suspension of countervailing duty investigation and that, for the period July 26, 1985 through December 31, 1985, a positive adjustment must be made to the provisional export charge of 4.92 percent established in the notice of final results of the first administrative review of suspension agreement (50 FR 33493, July 26, 1985). For the period January 1, 1985 through July 25, 1985, the Government of Singapore may refund the difference to the companies. For the period July 26, 1985 through December 31, 1985, the Government of Singapore shall collect, in accordance with section B.4.c. of the Agreement, the difference plus interest, calculated in accordance with section 778(b) of the Tariff Act, within 30 days of notification by the Department.

The Department will notify the Government of Singapore that the provisional export charge on all exports

to the United States with Outward Declarations filed on or after the date of publication of this notice shall be 4.95 percent of the f.o.b. value of the merchandise.

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 19 CFR 55.10.

Jan W. Mares,

Assistant Secretary, Import Administration.

Date: July 1, 1988.

[FR Doc. 88-15385 Filed 7-7-88; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The eight chairmen of the Regional Fishery Management Councils will convene a public meeting, July 29-30, 1988, at the Land's End Resort in Homer, Alaska, to review and formalize comments on the Secretary of Commerce's draft uniform standards and proposed revisions to the national standard guidelines for fishery conservation and management. There also will be review and discussion of the 1988-1989 budget for the National Marine Fisheries Service, reauthorization of the Marine Mammal Protection Act, the Magnuson Fishery Conservation and Management Act amendments, ecosystems management, and a habitat policy for fishery management plans.

For more information contact Clarence Pautzke, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Date: July 1, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-15387 Filed 7-7-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit Dr. Ronald Schusterman (P410)

On February 11, 1988, notice was published in the **Federal Register** (53 FR 5615) that an application had been filed by DR. Ronald Schusterman, Research Marine Biologist, Institute of Marine Science, University of California, Santa Cruz, California 95064, to take California sea lions for scientific research.

Notice is hereby given that on July 5, 1988 as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Date: July 1, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 88-15363 Filed 7-7-88; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent to Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to The Liposome Company, Inc., having a place of business in Princeton, NJ, an exclusive right in the United States and in certain foreign countries under the rights of the United States of America to manufacture, use, and sell products embodied in the invention entitled "A Synthetic Antigen Evoking Anti-HIV Response", U.S. Patent Application 7-148,692. The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed licenses may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed licenses would not serve the public interest.

Inquiries, comments and other materials relating to the intended licenses must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88-15347 Filed 7-7-88; 8:45 am]

BILLING CODE 3410-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment, Amendment and Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Polish People's Republic

July 5, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing, amending and adjusting import limits.

EFFECTIVE DATE: July 11, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended, Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin board of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: A copy of the current Bilateral Textile Agreements, as amended, between the Governments of the United States and the Polish People's Republic is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 53 FR 59, published in the **Federal Register** on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the agreement, but are designed to assist only in the

implementation of certain of its provisions.

Ronald L. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 5, 1988.

Commissioner of Customers,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 29, 1987 issued to you by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports of cotton, wool and man-made fiber textile products, produced or manufactured in Poland and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on July 11, 1988, you are directed to correct the coverage for sublimit 334pt. also to exclude TSUSA numbers 384.0240 and 384.3007.

Also, the directive of December 29, 1987 should be corrected to indicate that Categories 363, 410 and 620 are sublevels within the aggregate. Charges already made to these categories are to be charged to the aggregate. You are directed to extend coverage of the aggregate limit to include silk blend and other vegetable fiber textile products in Categories 831–859. Coverage of Group II is being extended to include Category 833. Delete the limits established for Categories 333, 340 and 347 in the December 29, 1987 directive.

Also effective on July 11, 1988, you are directed to include the following new, amended and adjusted limits for cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Poland and exported during 1988:

Category	New and amended limits*
Sublevels within the aggregate:	
229	270,270 pounds.
313/315	4,000,000 square yards.
465	3,000,000 square feet.
611	1,300,000 square yards.
617	2,000,000 square yards.
843	204,000 numbers.
Sublevels in Group II:	
333/833	111,269 dozen.
334pt.[b]	21,792 dozen.
337/637	44,000 dozen.
338	835,350 dozen.
339	343,246 dozen.
340/640	105,000 dozen.
341/641	80,000 dozen.
347/348	150,000 dozen.
633	27,624 dozen.
Sublevels in Group III:	
433	8,237 dozen.
434	5,500 dozen.
435	7,119 dozen.
438	10,000 dozen.
448	7,500 dozen.
Group IV:	
443/643/644, as a group.	204,750 numbers.

* The limits have not been adjusted to account for any imports exported after December 31, 1987.

[b] In Category 334pt., a sublevel of Category 334, all TSUSA numbers except 381.3905, 381.0211, 384.0240 and 384.3007.

All of the foregoing limits are subject to the aggregate limit established in the December 29, 1987 directive.

Textile products in Categories 831–859 which have been exported to the United States prior to January 1, 1988 shall not be subject to this directive.

Textile products in Categories 831–859 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.

Also effective on July 11, 1988, the following sublimits are eliminated: 338pt. (now described as other than jogging, warm-up and similar athletic jackets, not ornamented) [1]; 634pt. (men's and boys' coats, not knit) [2]; 634pt. (men's and boys' coats, knit) [3]; 635pt. (women's and girls' coats, not knit) [4]; 647pt. (men's and boys' trousers, not knit) [5]; and 648pt. (women's and girls' trousers, not knit) [6].

[1] In Category 338pt., only TSUSA number 381.4130.

[2] In Category 634pt. (not knit), only TSUSA numbers 376.5609, 376.5635, 381.3120, 381.3323, 381.3331, 381.3341, 381.6968, 381.8664, 381.9505, 381.9520, 381.9525, 381.9530, 381.9836, 381.9838, 381.9842, 381.9962, 384.2321, 384.9132 and 791.7471.

[3] In Category 634pt. (knit), only TSUSA numbers 381.2315, 381.2325, 381.2835, 381.2857, 381.3551, 381.3554, 381.6671, 381.6673, 381.8523, 381.8706, 381.8608, 381.8811, 381.9222, 381.9223, 381.9232, 384.1902, 384.1906, 384.1911, 384.8217 and 791.7460.

[4] In Category 635pt. (not knit), only TSUSA numbers 376.5612, 384.2316, 384.2318, 384.2323, 384.2554, 384.2556, 384.2565, 384.2604, 384.2605, 384.2770, 384.2771, 384.5565, 384.5566, 384.7859, 384.7860, 384.8805, 384.9135, 384.9136, 384.9138, 384.9140, 384.9141, 384.9144, 384.9145, 384.9146, 384.9152, 384.9153, 384.9154, 384.9401, 384.9402, 384.9464, 384.9465, 384.9475, 384.9664, 384.9666 and 791.7473.

[5] In Category 647pt. (not knit), only TSUSA numbers 376.5618, 381.3180, 381.3190, 381.3335, 381.3549, 381.6984, 381.8672, 381.9310, 381.9575, 381.9580, 381.9585, 381.9846, 381.9974, 384.2341, 384.2351, 384.9168, 384.9174 and 791.7480.

[6] In Category 648pt. (not knit), only TSUSA numbers 376.5623, 384.2342, 384.2344, 384.2345, 384.2348, 384.2355, 384.2667, 384.2783, 384.8820, 384.5684, 384.7858, 384.9000, 384.9170, 384.9171, 384.9172, 384.9176, 384.9372, 384.9678 and 791.7481.

For the import period January 1, 1988 through April 30, 1988, charge the following amount to the previously established aggregate limit:

Category and amount to be charged

847—1,455 dozen

All import charges already made to restraint limits previously established for Categories 333, 340 and 347 are to be retained and be charged to the appropriated merged category. Charge the following amounts to the limit established in this directive for Categories 333/833. These charges are for the import period January 1, 1988 through April 30, 1988.

Category and amount to be charged

833—24 dozen

There are no charges to be made to Categories 831, 832, 834, 835, 836, 838, 839, 840, 842, 843, 844, 845, 846, 850, 851, 852, 858 and 859 for the January 1, 1988 through March 31, 1988 import period.

Additional charges will be supplied for the foregoing categories as data become available.

Current charges in Categories 443/643/644 shall be charged to the Group IV limit in square yards equivalent.

The conversion factor for Categories 337/637 is 23.

Imports charged to the category limits for the period January 1, 1987 through December 31, 1987 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-15366 Filed 7-7-88; 8:45 am]

BILLING CODE 3510-DR-M

COMMISSION ON CIVIL RIGHTS

Georgia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Georgia Advisory Committee to the Commission previously announced in 53 FR 22188 (June 14, 1988) has been rescheduled. The meeting will convene at 1:30 p.m. and adjourn at 4:30 p.m., on July 22, 1988, at the Holiday Inn Downtown, 175 Piedmont Avenue NE., Atlanta, Georgia 30326. The purpose of the meeting remains as originally published.

Dated at Washington, DC, June 30, 1988.
Susan J. Prado,
Acting Staff Director.
[FR Doc. 88–15304 Filed 7–7–88; 8:45 am]
BILLING CODE 6335–01–M

Idaho Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Idaho Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:30 p.m. on July 29, 1988, at the Twin Falls Holiday Inn, 1350 Blue Lakes Boulevard North, Twin Falls, Idaho. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Michael Orme, or Philip Montez, Director of the Western Regional Division, (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 30, 1988.
Susan J. Prado,
Acting Staff Director.
[FR Doc. 88–15305 Filed 7–7–88; 8:45 am]
BILLING CODE 6335–01–M

South Dakota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the South Dakota Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 2:00 p.m. on July 27, 1988, at the Holiday Inn City Centre, 100 West 8th Street, Sioux Falls, South Dakota 57102. The purpose of the meeting is to plan project activities for the new charter period and to discuss civil rights issues affecting the State of South Dakota.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Francis Whitebird or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 30, 1988.
Susan J. Prado,
Acting Staff Director.
[FR Doc. 88–15303 Filed 7–7–88; 8:45 am]
BILLING CODE 6335–01–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1988 a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: August 8, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: E. R. Alley, Jr. (703) 557–1145.

SUPPLEMENTARY INFORMATION: On April 22, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (53 FR 13310) of proposed addition to Procurement List 1988, December 10, 1987 (52 FR 46926).

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1988:
Janitorial/Custodial, Targhee National Forest Supervisor's Office Building, 420 North Bridge Street, St. Anthony, Idaho.
E.R. Alley, Jr.,
Acting Executive Director.
[FR Doc. 88–15380 Filed 7–7–88; 8:45 am]
BILLING CODE 6820–33–M

Procurement List 1988; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1988 a commodity to be produced and services to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: August 8, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr. (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and services to Procurement List 1988, December 10, 1987 (52 FR 46926).

Commodity

Buckle, Belt, Yellow Brass
8315–00–275–4513

Services

Janitorial/Custodial
Durward G. Hall Federal Building and Courthouse
302 Joplin Street
Joplin, Missouri

Janitorial/Custodial
Social Security Administration Building
Main and Second
Joplin, Missouri

Janitorial/Custodial
Federal Aviation Administration

Facilities
Albany County Airport
Albany, New York

E.R. Alley, Jr.,
Acting Executive Director.

[FR Doc. 88-15381 Filed 7-7-88; 8:45 am]
BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Department of Defense.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATES: 10-20 August 1988, 9:00 a.m. to 5:00 p.m. each day.

ADDRESSES: HQ USEUCOM (10-18 August 1988); London, England (18-20 August 1988).

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340-1328 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on HUMINT/Scientific and Technical Intelligence Interface.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 1, 1988.

[FR Doc. 88-15359 Filed 7-7-88; 8:45 am]
BILLING CODE 3810-01-M

Department of the Navy

Public Hearing and Availability of the Draft Environmental Impact Statement for; Philadelphia Naval Shipyard; Philadelphia, PA

The U.S. Navy, pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Council on Environmental Quality Regulation (43 CFR Part 1500), has prepared and filed with the U.S. Environmental Protection Agency, a DRAFT Environmental Impact Statement (DEIS) for the proposed Conveyance of U.S. Navy Land to the Philadelphia Municipal Authority for the Establishment of a Stream Generating Facility that Produces Steam for Purchase by the U.S. Navy at the Philadelphia Naval Shipyard in Philadelphia, Pennsylvania. The DEIS has been distributed to various Federal, state and local agencies, local elected officials, interest groups, the media and local public libraries. Copies of the DEIS may also be reviewed during normal business hours (8:00 a.m. through 4:30 p.m.) at the Municipal Services Bulding Room 980, 15th and JFK Blvd., Philadelphia, PA.

A public hearing to inform the public of the study's findings and to solicit comments will be held on July 27, 1988 at the Convention Hall/Civic Center, 3400 Civic Center Blvd. Philadelphia, PA. The hearing will begin at 10:00 a.m. and continue until Midnight with regular breaks, including lunch and dinner breaks, 2 sessions—10:00 a.m..6:00 and 7:00 p.m.–Midnight.

The hearing will be conducted by the U.S. Navy. All interested parties are invited and urged to be present or represented at this hearing. This includes representatives of Federal and non-Federal agencies, commercial, business, industrial, transportation and utilities agencies; civic, ecological and environmental groups, fish and wildlife organizations; interested and concerned citizens and other interests. All parties will be afforded full opportunity to express their views but in order to allow all an opportunity to speak, statements will be limited to five (5) minutes. If longer statements are to be presented, they should be delivered in writing either at the hearing or mailed to the office listed below and summarized at the public hearing: Commanding Officer, Northern Division, Naval Facilities Engineering Command, Building 77-L, U.S. Naval Base, Philadelphia, PA 19112, Attn: Code 09X.

Oral statements will be heard and transcribed by a stenographer but for accuracy of the record all statements should be submitted in writing. All statements both oral and written, will become part of the official record on this study. Equal weight shall be given to both oral and written statements.

The Public Hearing will be reported verbatim. Copies of the transcript of the proceedings may be purchased at the cost of reproduction and will be available three weeks from the date of the hearing. In addition, copies of the transcript will be made available for public review during normal business hours at Northern Division, Naval Facilities Engineering Command, Bldg. 77-L, Naval Base Philadelphia and the Municipal Services Bldg. 15th and JFK Blvd., Phila., PA. All written statements must be postmarked by 09 Aug 1988 and received by 15 Aug 1988 to become part of the official record.

A summary of the DEIS follows.

The DEIS has been prepared in two volumes. Volume 1 contains the main body of the report. Volume 2 contains the Appendices to the report. The Navy's preferred alternative action in the DEIS involves the sale of approximately 21 acres of excess land at the Philadelphia Naval Shipyard to the Philadelphia Municipal Authority (PMA), who in turn would enter into agreements with Ogden Martin Systems (OMS) of Philadelphia for the design, construction, ownership and operation of a 2250-ton per day (TPD) mass-fired refuse-to-steam waterwall incineration facility. The facility would produce steam for purchase by the Navy, with excess steam being converted to electricity for sale to the Philadelphia Electric Company. The facility would receive waste six days a week and process it seven days a week, 24 hours a day. Of the total 700,000 tons per year guaranteed to be processed by OMS, the City of Philadelphia would assure delivery of 560,000 tons. Refuse trucks would deliver waste to the facility, unloading into a fully enclosed refuse pit. Fourteen trucks would be able to unload simultaneously. A one-way flow of air, drawn over the pit and tipping floor into the combustion chamber, is maintained at all times to prevent odors and dust from escaping the building. The facility would be equipped with dry scrubbers with lime injection for control of acidic components of the exit gases and fabric filter baghouses for particulate control. It is estimated that the facility would yield approximately 450 tpd of residual ash. The residual ash would be tested periodically for hazard classification and to insure proper disposal off-site. All residual ash would be stored within enclosed facilities on site and would be transported off-site in covered vehicles.

The DEIS provides a comprehensive analysis of the primary issues identified during the scoping process, which included air emissions, traffic, odors, health risks and potential or decreased local property values. Modeling results confirm that utilization of the Best Available Control Technology will keep the facility air emissions well within the regulatory limits. A traffic analysis of major arterials, expressways, key intersections and refuse truck routes, indicates that there would be no significant increases in volumes nor any significant decreases in the level of

service at affected intersections. Constant negative pressure during plant operation will prevent odors from escaping from the enclosed refuse pit. Minimum incinerator temperatures of approximately 1800 F will prevent odors from escaping through the stack. An analysis and summarization of a comprehensive health risk analysis completed in November of 1986 by the Public Health Advisory Commission of Philadelphia, indicates an extremely remote and insignificant health risk to the surrounding communities resulting from implementation of the proposed action. Interviews with real estate professionals and an analysis of existing communities with estblished similar facilities show no indication of reduced property values associated with such refuse handling facilities.

The alternatives analysis in the DEIS provides a thorough review of technological options (i.e. refuse-derived-fuel, other renewable resource fuels), alternatively sized facilities, leasing as an alternative to the sale of the land, alternative Navy sites considered excess and a "no-action" alternative. The DEIS identified and discusses the applicable requlatory reviews and permit requirements that the PMA and/or OMS must comply with prior to the establishment and operation of the facility.

Questions concerning this public notice may be directed to Mr. Kenneth Petrone at (215) 897–6432.

Date: July 5, 1988.

Jane M. Virga,

Lieutenant, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 88–15370 Filed 7–7–88; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

[CFDA NO: 84.202]

Notice Inviting Applications for New Awards for Fiscal Year 1988 Under the Grants to Institutions to Encourage Minority Participation in Graduate Education Program

Purpose of Program: Provide grants to institutions of higher education to identify and recruit talented undergraduate students who demonstrate financial need and are from minority groups that are traditionally underrepresented in graduate education; and provide those students with an opportunity to participate in a program of research and scholarly activities designed to provide them with effective preparation for graduate study. All funds received under this program must be used for direct fellowship aid.

Deadline for Transmittal of Applications: August 10, 1988.

Available Funds: $3,351,000.

Estimated Range of Awards: $99,000–$111,700.

Estimated Average Size of Awards: $105,000.

Estimated Number of Awards: 15–30.

Project Period: 6 weeks to 1 year.

Application: Since this is the first year of the program, the estimates stated above are projections for the guidance of potential applicants. The Department is not bound by these estimates. This notice is a complete application package containing all the necessary information, application forms, and instructions needed to apply for a grant under this program. No other application package is necessary. Applicants are directed to the Appendix to this Notice for applications and instructions.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

Description of Program: The Grants to Institutions to Encourage Minority Participation in Graduate Education Program is authorized under Pub. L. 99–498, Part A of Title IX of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986. (20 U.S.C. 1134–1134b) Grants under this program are designed to enable institutions of higher education to make available fellowship aid to talented, undergraduate minority students. The program of study may consist of summer research internships augmented by seminars and other educational experiences. Fellowships should provide an opportunity for fellows to spend six to nine weeks on a grantee's campus participating in research and scholarly activities in an environment that is encountered in graduate and professional programs.

Eligibility: (a) An institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, as amended, is eligible to apply for a grant to conduct a fellowship program.

(b) An individual is eligible to apply for a fellowship if the individual—

(1) Is a talented undergraduate student;

(2) Demonstrates financial need;

(3) Is from a minority group that has traditionally been underrepresented in graduate education; and

(4)(i) Is a citizen or national of the United States;

(ii) Is a permanent resident of the United States;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than temporary purposes with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Republic of Palau or the Commonwealth of the Northern Mariana Islands.

(c) The institution of higher education is responsible for making accurate determinations concerning the criteria in paragraph (b).

(d) Additional eligibility requirements may be established by the institution of higher education.

Selection Criteria: (a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under the Grants to Institutions to Encourage Minority Participation in Graduate Education Program.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses with the criterion.

(b) *The criteria*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of the statues that authorizes the program, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purpose of the authorizing statute.

Note.—A statement of the authorizing statutes is found in the Purpose of Program section of this notice.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (28 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures

proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program; and

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective.

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

Note.—The authorizing statute requires that fellowship awards be made to students from Minority groups traditionally underrepresented in minority education.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualification of the project director;

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) of this section will commit to the project; and

(D) 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.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B) of this section, the Secretary considers—

(A) Experience and training in fields related to the objectives of the project, and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

Note.—The authorizing statute provides that all funds received under this program must be used for direct fellowship aid.

(6) *Evaluation plan.* (5 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—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(7) *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.

(c)(1) In making awards under this program, the Secretary shall consider the quality of an applicant's plan for recruiting students, and the quality of the program of study and of the research in which the students will be involved.

(2) The Secretary will ensure an equitable geographic distribution among public and private institutions of higher education.

Assessment of Educational Impact

The Secretary requests comments on whether any information collection in this document, would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Instructions for Transmittal of Applications

No grants may be awarded unless a completed application form has been received. An institution may submit *only one application*, except that those institutions with separate campuses or branches with self-contained faculty and administration may submit an application from each campus.

(a) If an applicant wants a new grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.202, Washington, DC 20202; or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education Application Control Center, Attention: CFDA No. 84.202, Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes.—(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The applicant *must* indicate on the envelope CFDA Number 84.202.

(3) An applicant wishing to know that its application has been received by the Department must include with the application, a stamped, self-addressed post card containing the CFDA number and title of this program.

For Further Information Contact: Mr. Walter T. Lewis, or Mrs. Barbara J. Harvey, U.S. Department of Education, Mail Stop 3327, 400 Maryland Ave., SW., Room 3022, ROB–3, Washington, DC 20202. Telephone: (202) 732–4393 or (202) 732–4863.

Program Authority: 20 U.S.C. 1134–1134b.

Dated: June 7, 1988.

William J. Bennett,

Secretary of Education.

Appendix—Application Instructions and Forms

This application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Federal Assistance Face Sheet (Form SF–424 and Instructions).

Part II: Budget Information.

Part III: Application Narrative.

INSTRUCTIONS FOR PART I

Federal Assistance Face Sheet (SF 424)

This standard form is used by applicants as a required face sheet for preapplications and applications submitted under OMB Circular A–102.

The applicant completes only items 1–23. Items 24–33 are completed by Federal agencies. Where possible, information has been preprinted for your convenience. Items which are not applicable have been marked "N/A".

Below is a list of instructions to assist you in completing the applicable items on the form.

Item

2a. Applicant's own control number, if desired.

2b. Date form is prepared (at applicant's option).

4a–h. 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. If the applicant's organization has been assigned an EDCRS number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full entity number in block 5.

6b. Program title from CFDA. Abbreviate if necessary.

7. Provide the title and a summary description of the project.

8. "City" includes town, township or other municipality.

9. List only largest unit or units affected, such as State, county or city.

10. Indicate the estimated number of persons directly benefiting from the project.

12a. Amount request or to be contributed during the first funding/budget period by the Federal Government.

12f. Enter the amount shown in Item 12a.

13. Self-explanatory.

15. Self-explanatory.

16. Indicate the estimated number of months to complete project after Federal funds are available.

21. Self-explanatory.

23. Name and title of authorized representatives of legal applicant and signature.

BILLING CODE 4000-01-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 84.202
- MULTIPLE ☐
- b. TITLE Grants to Institutions to Encourage Minority Participation in Grad. Ed.

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: 1

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): A

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: A

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) Charles I. Griffith, Director
- c. ADDRESS Washington, D.C. 20202

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER: NA

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)
Mr. Walter T. Lewis
(202) 732-4393
Mrs. Barbara Harvey
(202) 732-4863

32. ENDING DATE (Year month date) 19

33. REMARKS ADDED ☐ Yes ☐ No

NSN 7540-01-008-8162
PREVIOUS EDITION IS NOT USABLE

424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

BILLING CODE 4000-01-C

Part II—Budget Information

Grants to Institutions to Encourage Minority Participation in Graduate Education

Awards made to institutions under this program must be used exclusively to provide direct fellowship aid. Include below the breakdown of Federal funds requested for student expenses:

	Total costs
Stipends: *	
A. Tuition	
B. Room and board	
C. Transportation	
D. Other applicable expenses	
Total Federal request	
Total number of fellowships requested	
Number of weeks of seminar/institute	
List academic area or areas:	

* Calculate each student's need-based stipend for applicable expenses, including room and board, transportation and tuition for courses for which credit is given, following the procedures used by the applicant's student financial aid office. The students' need should be calculated pursuant to Part F of Title IV of the Higher Education Act of 1965, as amended.

Indicate within the total cost of the stipends the amounts charged for each of the specific categories listed above.

C. Transportation costs may include the cost of one round-trip from the student's residence to campus and return, if applicable, and other travel required as part of the program of study.

Instructions for Part III—Application Narrative

Before preparing the Application Narrative an applicant should read carefully the purpose of the program, the description of the program, and the selection criteria the Secretary uses to evaluate applications. This information is included in this application notice.

The narrative should encompass each function or activity for which funds are being requested.

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Include information regarding (a) the program of study, to take the form of summer research, internships, seminars, and other educational experiences; (b) the institution's plan for identifying and recruiting talented minority undergraduates; (c) the participation of faculty in the program and a detailed description of the research in which the students will be involved; and (d) a plan for the evaluation of the effectiveness of the program;

3. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this notice;

4. Applications should include a description of the financial need analysis system or method to be used in determining the level of each fellow's financial need-based stipends, room and board costs, transportation costs, and tuition for courses for which credit is given;

5. Include any other pertinent information that might assist the Secretary in reviewing the application. Please limit the Application Narrative to no more than 25 double-spaced typed pages (on one side only).

(Approved under OMB control no. 1840–0603)

[FR Doc. 88–15451 Filed 7–7–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP88–532–000 et al.]

ANR Pipeline Co. et al.; Natural Gas Certificate Filings

July 1, 1988.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP88–531–000]

Take notice that on June 28, ANR Pipeline Company, (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP88–532–000 an application for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas pursuant to § 284.221 of the Commission's Regulations and a request for waiver of § 284.7(d)(5)(ii)(B) of the Commission's Regulations, all as more fully set forth in the application which is on file with the commission and open to public inspection.

Applicant states that it would comply with the conditions set forth in paragraph (c) of § 284.221 of the Commission's Regulations.

Applicant also requests that in the event the certificate sought is not granted by July 14, 1988, that the Commission waive § 284.7(d)(5)(ii)(B) of the Commission's Regulations so that ANR can continue its business operations on and after that date without massive disruption and inconvenience to the business operations of its numerous shippers.

Comment date: July 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP88–482–000]

Take notice that on June 20, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP88–482–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval authorizing the abandonment in place by Panhandle of seventeen compressor units and related facilities for eight compressor station sites, totaling approximately 9,725 horsepower, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to abandon the seventeen compression units and six of the eight compressor stations on the basis that the facilities are surplus to its needs. More specifically, Panhandle would abandon its compressor stations named Hambert, Coal Sean, Midway, Ewing, Oakdale and Little Mule, and five compressor units located at its Sneed and Huber Stations.

Panhandle explains that the abandonment of facilities is required due to a shift in the function of Panhandle's system from that of a supplier of gas for resale to that of a transporter. Further, Panhandle states that the abandonment would reduce operating expenditures for labor and equipment maintenance. Panhandle advises that the compression facilities subsequently would be relocated, sold, or dismantled and used to repair other compressors, as appropriate. Panhandle estimates that the total cost of abandoning the facilities would be $139,000.

Comment date: July 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Cimarron Transmission Co.

[Docket No. CP88–486–000]

Take notice that on June 21, 1988, Cimarron Transmission Company (Cimarron), 58 Broadlawn Village, Ardmore, OK 73401, filed in Docket No. CP88–486–000 an application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment of sales of natural gas to National Gas Pipeline Company of America (Natural) and abandonment of Cimarron facilities related to such sales, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, cimarron proposes to abandon its sales to Natural made pursuant to a Gas Sales Contract dated November 10, 1958, as amended, which contract Cimarron and Natural have mutually agreed to terminate. It is stated that all of the Cimarron's facilities would be abandoned, as a result of the proposed sales abandonment, and thus,

Cimarron is also proposing to cancel its Gas Tariffs and Rate Schedules. Cimarron advises that its facilities consist of 24 miles of pipeline with an associated lease fuel system of approximately 13 miles and one sweetening facility, all located in Love County, Oklahoma.

Comment date: July 22, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15398 Filed 7-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-197-000]

Williston Basin Interstate Pipeline Co.; Filing To Implement Self-Implementing Transportation Under NGPA Section 311

July 1, 1988.

Take notice that on June 24, 1988, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, ND 58501, tendered for filing as part of its FERC Gas Tariff an Original Volume No. 1-B to implement "open access" natural gas transportation service under NGPA Section 311.

The Company requests an effective date for the FERC Gas Tariff, Volume No. 1-B of July 25, 1988. The Company states that it will commence a transportation request "open season" during the period June 27, 1988 through July 15, 1988.

Williston Basin states that to enable it to implement its transportation program under NGPA Section 311 authority, the Company included in its filing two new transportation rates—Rate Schedule FT-1 (firm transportation) and Rate Schedule IT-1 (interruptible transportation). These initial rates are based upon the cost of service in the Company's last general rate case in Docket No. RP87-115-000.

Williston Basin also respectfully requests herein permission to make a one-time filing as necessary to revise all of its existing and proposed rates that are based upon the cost of service in Docket No. RP87-115-000 to reflect the first year's conversion of contracted firm sales to firm transportation under the FT-1 rate schedule to be effective on January 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions of protests should be filed on or before July 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15351 Filed 7-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-202-000]

Amoco Production Co. et al.; Complaint and Petition for Emergency Relief

June 30, 1988.

In the matter of Amoco Production Company, ARCO Oil and Gas Company, Chevron U.S.A. Inc., Esson Corporation, Mobil Producing Texas & New Mexico Inc., Shell Western E&P Inc., Sun Exploration and Production Company, Texaco Producing Inc., Union Oil Company of California, Union Pacific Resources Company, Union Texas Petroleum Corporation, Complainants [1] v. El Paso Natural Gas Company, Respondent.

Take notice that on June 24, 1988, pursuant to Rules 206 and 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 CFR 385.206 and 385.207 (1987), Indicated Shippers filed a complaint against El Paso Natural Gas Company (El Paso) for allegedly attempting, as of July 1, 1988, to collect transportation rates, which include increased percentage factors for field fuel and plant fuel and plant shrinkage (processing or treating). The complaint asserts that these factors are not set forth in El Paso's transportation rate schedules filed on December 31, 1987, as part of its new rate case at Docket No. RP88-44-000. Indicated Shippers further requests emergency relief from the Commission, whereby pending review of this complaint, the Commission issue an order that would prevent El Paso from charging rates that have not been filed or found to be just and reasonable as required by Section 4 of the Natural Gas Act, 15 U.S.C. 717c 1982), and the Commission's regulations thereunder.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 14, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motin to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this

[1] Hereinafter, Complainants will be referred to as "Indicated Shippers."

complaint shall be due on or before July 14, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–15352 Filed 7–7–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88–169–002]

CNG Transmission Corp.; Filing

July 1, 1988.

Take notice that on June 27, 1988, CNG Transmission Corporation (CNG) filed Second Revised Sheet No. 125 to its FERC Gas Tariff, Volume No. 1.

CNG states that the purpose of this filing is to provide a solution to a conflict that has arisen between the priority of shippers on Texas Gas Transmission Corporation's system and the priority of shippers on CNG's system. CNG states that in accordance with the Commission's order issued June 10, 1988, CNG and its affected local distribution company and end-user shippers agreed to the allocation method proposed in this tariff language.

CNG requests the Commission to waive the usual 30-day notice period and allow the proposed tariff sheet to become effective on June 1, 1988. CNG states that unless the Commission directs otherwise, CNG will implement this new procedure with nominations received in June for TSC service commencing July 1, 1988.

CNG states that copies of this filing are being mailed to its sales, transportation, and storage customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before July 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–15353 Filed 7–7–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88–201–000]

East Tennessee Natural Gas Co.; Filing

July 1, 1988.

Take notice that on June 28, 1988, East Tennessee Natural Gas Company (East Tennessee) filed the following tariff sheets to amend Volume of its FERC Gas Tariff, to be effective July 1, 1988:

Eleventh Revised Sheet No. 5
Original Sheet No. 143
Original Sheet No. 144
Original Sheet Nos. 145 through 189

East Tennessee states that the purpose of the filing is to permit East Tennessee to flow through to its jurisdictional sales customers Tennessee Gas Pipeline Company's (Tennessee) take or pay costs and contracts reformation costs (TOP Costs) that the Commission has allowed Tennessee to recover from East Tennessee in Docket Nos. RP86–119, *et al.*

East Tennessee states that in accord with Order No. 500 and the Commission's policy requiring as-billed flow-through by downstream pipelines, East Tennessee is allocating its share of Tennessee's TOP Costs among East Tennessee's customers using the same cumulative purchase deficiency methodology as Tennessee used in allocating the TOP Costs among Tennessee's customers in Tennessee's demand surcharge tariff filing in Docket No. RP88–191.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

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. All such motions or protests should be filed on or before July 12, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–15354 Filed 7–7–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88–199–000]

Northwest Pipeline Corp.; Petition for Waiver of Amended PGA Regulations

July 1, 1988.

Take notice that on June 24, 1988, Northwest Pipeline Corporation (Northwest) petitioned and requested waiver of a portion of § 154.305(i) of the Commission's amended PGA regulations.

Northwest states that this request for waiver relates only to the requirement to separately identify each adjustment to amounts paid to suppliers in the refund subaccount. Northwest states that the ability to "net" these adjustments would have no effect on other entries to the refund subaccount. All other entries would be separately tracked pursuant to the requirements of Order No. 483.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before July 12, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–15355 Filed 7–7–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP84–94–000, RP85–66–000, CP86–720–000, and CP86–720–001 through 003 [1] (vacated)]

Trailblazer Pipeline Co.; Informal Settlement Conference

July 1, 1988.

Take notice that a conference will be convened in the above-captioned

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[1] The Commission by order issued April 30, 1987 in Docket No. CP86–720–000 authorized Trailblazer Pipeline Company to transport gas under a Part 284 blanket certificate under designated rate schedules. 39 FERC ¶ 61,103 (1987). This blanket certificate was vacated by the order of the Commission issued on April 5, 1988 in Docket Nos. CP86–720–001 through 003. 43 FERC ¶ 61,013 (1988).

proceedings on July 19, 1988,[2] at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Trailblazer Pipeline Company (Trailblazer) has again manifested an interest in becoming an equal-access transporter under Order No. 436 (FERC Statutes & Regulations, Regulation Preambles 1982–1985 ¶ 30,665 (1985)) and evidently desires to discuss this matter in the context of the settlement conference provided for herein. At the settlement conference consideration will be afforded, *inter alia*, to any proposal by Trailblazer for becoming an equal access transporter under Order No. 436.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact John J. Keating (202) 357–5762, or Marsha Gransee (202) 357–5738.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–15397 Filed 7–7–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP86–32–011]

Williams Natural Gas Co.; Filing

July 1, 1988.

Take notice that on June 29, 1988, Williams Natural Gas Company (WNG) filed revised tariff sheets to its FERC Gas Tariff in compliance with the Commission's order of May 5, 1988.

WNG states that at the request of Commission Staff, WNG resubmits tariff sheets identical to those submitted with its January 4, 1988 (as supplemented on January 28, 1988) compliance filing, as further revised by its June 15, 1988 compliance filing, in an integrated package of tariff sheets indicating a proposed effective date on the later of July 1, 1988 or the date of WNG's acceptance of the blanket certificate in WNG's Docket No. CP86–631–001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before July 12, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–15356 Filed 7–7–88; 8:45 am]

BILLING CODE 6717–01–M

[2] If necessary, the settlement conference will be continued through July 20, 1988.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3411–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Motor Vehicle Emission Certification and Fuel Economy Labeling. (EPA ICR #0783.06).

Abstract: Automobile and engine manufacturers must submit engineering data pertaining to emission control with each new engine type introduced for production. EPA uses this information to verify that manufacturers are meeting federal emission standards. Fuel economy figures are also required for both consumer and government use. Information is required upon the introduction of each new engine "family" or type.

Burden Statement: Public reporting burden for this collection of information is estimated to average 13,670 hours per year per respondent. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Motor Vehicle Manufacturers and Importers.

Estimated No. of Respondents: 101.

Estimated Total Annual Burden on Industry: 1,380,600 hours.

Frequency of Collection: Annually.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M St., SW., Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503 (Telephone (202) 395–3084)

Date: June 29, 1988.

Paul Lapsley,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 88–15337 Filed 7–7–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3411–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 20, 1988 through June 24, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No. D–COE–G36141–OK, Rating LO, Coal Creek Local Flood Protection, Implementation, City of Henryetta, Okmulgee County, OK.

Summary: EPA has no objections to the proposed project.

ERP No. D–FHW–F40297–MN, Rating EC2, Shepard/Warner Road/East CBD Bypass Study Corridor Improvements, Randolph Avenue to I–35E, Funding and COE Permit, City of St. Paul, Ramsey County, MN.

Summary: EPA requested an intersection analysis of carbon monoxide emissions be undertaken for busy intersections. Noise mitigation

should also be considered for those areas most severly affected by traffic noise. EPA also requested to review the strategy for investigation of each potential hazardous waste site involved in the highway project and the results of the testing at each site.

ERP No. D-FHW-L40161-AK, Rating EO2, North Douglas Highway Extension, Outer Point to Point Hilda, Funding, Section 404 Permit and Right-of-Way Acquisition, City and Borough of Juneau, AK.

Summary: EPA's objections are based on the ecological risk from direct effects to over 80 acres of aquatic habitat, including wetlands. More importantly, the degree of indirect effects could be significant, thus multiplying the areal extent of the effects and placing more fish and wildlife resources at risk.

ERP No. D-FHW-L40164-WA, Rating EC2, Riverside Parkway/Bothell Bypass Construction, Funding, Section 10 and 404 Permits, City of Bothell, King County, WA.

Summary: EPA is concerned about the effects of stormwater runoff to wetlands and about significant traffic noise effects. Additional information on stormwater treatment, wetland identification, and mitigation for noise effects is needed for the final EIS.

ERP No. DS-NOA-L64015-AK, Rating LO, Groundifish Fishery of the Bering Sea and Aleutian Islands, Fishery Management Plan, Increase of the Optimum Yield Range, Implementation, AK.

Summary: EPA has no objections to the project as described.

Final EISs

ERP No. F-AFS-J02012-UT, Escalante Known Geological Structure (KGS), Oil and Gas Leasing and Development, Dixie National Forest.

Summary: EPA's concerns on the draft EIS relating to additional leasing in the Known Geological Structure was addressed in this document. EPA requested the opportunity to review when available, air quality analysis based on lessee/operation specific plans of operation.

ERP No. F-FHW-F40276-IN, Keystone-Rural Corridor Improvement, Pleasant Run Parkway North Drive to IN-37/Fall Creek Boulevard, Funding, Marion County, IN.

Summary: EPA requested that the Record of Decision includes the selection of a noise mitigation strategy. In addition EPA recommended that if bottom sediment disturbance will occur at Pogues Run that the sample sediments be tested for possible contamination.

Dated: July 5, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-15412 Filed 7-7-88; 8:45am]

BILLING CODE 6560-50-M

[ER-FRL-3411-7]

Environmental Impact Statements; Availability

Responsible Agency:

Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed June 27, 1988 Through July 1, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880205, Final, BLM, AK, Trans-Alaska Gas System (TAGS) and Associated Facilities Construction and Operation, Prudue Bay to Anderson Bay, Right-of-Way Grants, Section 10 and 404 Permits and Special Use Permits, AK, Due: August 8, 1988, Contact: Jules V. Tileston (907) 267-1266.

Department of the Interior/Bureau of Land Management and the U.S. Army Corps of Engineers are Joint Lead Agencies on this project.

EIS No. 880206, Draft, SCS, IA, Soap Creek Watershed Protection and Flood Reduction Plan, Funding and Implementation, Des Moines River, Appanoose, Davis, Monroe and Wapello Counties, IA, Due: August 22, 1988, Contact: J. Michael Nethery (515) 284-4260.

EIS No. 880207, FSuppl, COE, IA, Red Rock Dam and Lake Red Rock Operation and Maintenance Project, Additional and Updated Information, Lake Red Rock Conservation Pool Elevation Plan, Implementation, Des Moines River, Marion County, IA, Due: August 8, 1988, Contact: Frank D. Holly (309) 788-6361.

EIS No. 880208, Draft, BLM, AK, Minto Flats Watershed, Placer Mining Management Plan, Approval and 404 Permit, Implementation, AK, Due: August 29, 1988, Contact: Richard Dworsky (907) 271-3114.

EIS No. 880209, Draft, UAF, WY, TX, LA, AR, WA, ND, MT, MO, MI, Peacekeeper Rail Garrison Deployment Program, Implementation, F.E. Warren AFB, WY; Barksdale AFB, LA; Dyess AFB, TX; Fairchild AFB, WA; Minot AFB, ND; Eaker (formerly Blytheville) AFB, AR; Malmstrom AFB, MT; Whiteman AFB, MO; Wurtsmith AFB, MI; Grand Forks AFB, ND and Little Rock AFB, AR, Due: August 30, 1988, Contact: Peter Walsh (714) 382-3804.

EIS No. 880210, Final, CGD, HI, I-H3 Freeway Construction, Windward to Leeward Oahu, U.S. Coast Guard Approval for I-H3 Right-of-Entry, Collocation and Land Tranfer, Koolaupoko, Island of Oahu, Honolulu County, HI, Due: August 8, 1988, Contact: Jay Silberman (808) 541-2077.

The U.S. Department of Transportation, Coast Guard Department has adopted portions of the Federal Highway Administration's Final EIS and three Final Supplemental EISs'.

EIS No. 880211, Draft, COE, NJ, Sandy Hook to Barnegat Inlet Beach Erosion Control Project, Section I—Sea Bright to Ocean Township, Implementation, Northern End of New Jersey's Atlantic Coast, Monmouth County, NJ, due August 22, 1988, Contact: Karen Sullivan (212) 264-4662.

EIS No. 880212, Final, AFS, OR, Silver Fire Recovery Project Area, August thru November 1987 Silver Complex Fire Land Management Plan, Implementation, Siskiyou National Forest, Josephine and Curry Counties, OR, Due: August 8, 1988, Contact: Richard Stern (503) 476-1425.

EIS No. 880213, Final, COE, CA, Coyote and Berryessa Creeks Flood Control Plan, Implementation, Cities of San Jose and Milpitas, Santa Clara County, CA, Due: August 8, 1988, Contact: Richard Stradford (415) 974-0445.

EIS No. 880214, Final, COE, AZ, Clifton Flood Damage Reduction Plan, Implementation, San Francisco River, Greenlee County, AZ, Due: August 8, 1988, Contact: Byrt Wammack (213) 894-5442.

EIS No. 880215, Draft, SCS, KS, NB, Pony Creek Watershed Protection and Flood Prevention Plan, Funding and 404 Permits, Missouri River Basin, Brown and Nemaha Counties, KS and Richardson County, NB, Due: August 22, 1988, Contact: James N. Habiger (913) 823-4565.

EIS No. 880216, Final, FHW, NC, U.S. 117 Construction, Mt. Olive Bypass to I-40 near Faison, Funding and 404 permit, Wayne, Duplin and Sampson Counties, NC, Due: August 8, 1988, Contact: Kenneth Bellamy (919) 856-4346.

Dated: July 5, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-15411 Filed 7-7-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-400018; FRL-3410-9]

Public Access to the Toxic Chemical Release Inventory Reading Room

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the requirement of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and its related legislation, the Emergency Planning and Community Right-to-Know Act of 1986, also known as Title III, to make Toxic Chemical Release Inventory (TRI) data available

to the public, the Environmental Protection Agency (EPA) has established a TRI Reading Room in the Title III Reporting Center (TRC). Beginning July 18, 1988, the TRI Reading Room is open to the public for the purpose of reviewing TRI forms submitted to the EPA by the regulated industries.

FOR FURTHER INFORMATION CONTACT: Michael Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB44, 401 M St., SW., Washington, DC 20460, (202-554-1404), (TDD: 202-554-0551).

SUPPLEMENTARY INFORMATION: Congress has given the Environmental Protection Agency (EPA) the authority to implement SARA and the Emergency Planning and Community Right-to-Know Act of 1986 (Pub. L. 99-499). Under section 313 of the Act, EPA has issued regulations requiring manufacturing industries to report information on the release of certain chemicals to the environment. These regulations were published in the **Federal Register** of February 16, 1988 (53 FR 4500), and codified under 40 CFR Part 372. Industries must submit section 313 reports annually to EPA and the States. The reporting deadline for submitting these reports is July 1, 1988, and annually thereafter. The legislation also requires that EPA make the submitted information available to the public.

The purpose of this reporting requirement is to allow EPA to create a computerized inventory of these chemical releases to the environment. By the Spring of 1989 EPA plans to have created that inventory and made it available to the public through various means including computer telecommunications.

In order to assist members of the public who have a need to examine individual reports submitted by specific facilities, EPA has established a TRI Reading Room at the Title III Reporting Center (TRC).

The TRC Reading Room will open to the public on July 18, 1988. The TRC is located at 470/490 L'Enfant Plaza East, 7th Floor, Suite 7103, Washington, DC. Hours of operation are 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. In order to guarantee seating for all visitors, EPA strongly encourages visitors to call the TRC and schedule an appointment. Appointments may be made beginning July 11, 1988, by calling the TRC at 202-488-1501.

Dated: July 1, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-15343 Filed 7-7-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44512; FRL-3411-1]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on 2-ethylhexanoic acid (CAS No. 149-57-5) submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submission

Test data for 2-ethylhexanoic acid (2-EHA) was submitted by the Chemical Manufacturers Association EHA Program Panel pursuant to a test rule at 40 CFR 799.1650. It was received by EPA on June 20, 1988.

The submission contains four final research reports: (1) A 90-day oral (dietary administration) toxicity study of 2-EHA in the mouse; (2) a 90-day oral (dietary administration) toxicity study of 2-EHA in the rat; (3) a developmental toxicity evaluation of 2-EHA administered by gavage to Fischer 344 rats; and (4) a developmental toxicity evaluation of 2-EHA administered by gavage to New Zealand white rabbits. Subchronic toxicity and developmental toxicity testing are required by this test rule. This chemical is used as a chemical intermediate or reactant in the production of 2-ethylhexanoate metal soaps, peroxy esters, or other derivatives.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the submission's completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44512). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: June 28, 1988.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 88-15342 Filed 7-7-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51708, FRL-3410-8]

Toxic and Hazardous Substances; 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 the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of one hundred sixty-four such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 88-1424—August 17, 1988;
P 88-1425—August 21, 1988;
P 88-1426, 88-1427, 88-1428, 88-1429, 88-1430—August 17, 1988;
P 88-1431—August 22, 1988;
P 88-1432—August 17, 1988;
P 88-1433, 88-1434, 88-1435—August 20, 1988;
P 88-1436—August 20, 1988;
P 88-1437, 88-1438, 88-1439, 88-1440, 88-1441, 88-1442, 88-1443, 88-1444, 88-1445, 88-1446—August 21, 1988;
P 88-1447—August 22, 1988;
P 88-1448, 88-1449, 88-1450, 88-1451, 88-1452, 88-1453, 88-1454, 88-1455, 88-1456—August 21, 1988;
P 88-1457—August 23, 1988;
P 88-1458—August 21, 1988;
P 88-1459, 88-1460, 88-1461, 88-1462—August 23, 1988;
P 88-1463, 88-1464, 88-1465, 88-1466—August 22, 1988;
P 88-1467—August 21, 1988;
P 88-1469, 88-1470, 88-1471, 88-1472, 88-1473, 88-1474, 88-1475, 88-1476, 88-1477, 88-1478, 88-1479, 88-1480, 88-1481—August 24, 1988;
P 88-1482, 88-1483, 88-1484, 88-1485—August 28, 1988;
P 88-1486, 88-1487, 88-1488, 88-1489, 88-1490, 88-1491, 88-1492, 88-1493, 88-1494, 88-1495, 88-1496, 88-1497—August 29, 1988;
P 88-1498—August 30, 1988;
P 88-1499, 88-1500, 88-1501, 88-1502, 88-1503, 88-1504, 88-1508—August 29, 1988;
P 88-1509, 88-1510, 88-1511, 88-1512—August 30, 1988;
P 88-1513—August 29, 1988;
P 88-1514—August 31, 1988;
P 88-1515—September 3, 1988;
P 88-1516, 88-1517, 88-1518, 88-1519, 88-1520, 88-1521, 88-1522, 88-1523, 88-1524, 88-1525, 88-1526, 88-1527—September 4, 1988;
P 88-1528, 88-1529, 88-1530—September 5, 1988;
P 88-1531, 88-1532, 88-1533, 88-1534, 88-1535, 88-1536, 88-1537, 88-1538, 88-

1539, 88–1540, 88–1541, 88–1542—September 6, 1988;
P 88–1543—September 7, 1988;
P 88–1544, 88–1545, 88–1546, 88–1547, 88–1548, 88–1549, 88–1550, 88–1551, 88–1552, 88–1553, 88–1554, 88–1555—September 10, 1988;
P 88–1556, 88–1557, 88–1558, 88–1559, 88–1560, 88–1561—September 11, 1988;
P 88–1562—September 10, 1988;
P 88–1563—September 11, 1988;
P 88–1564—September 13, 1988;
P 88–1565, 88–1566, 88–1567, 88–1568—September 11, 1988;
P 88–1569, 88–1570, 88–1571, 88–1572—September 12, 1988;
P 88–1573, 88–1574, 88–1575, 88–1576, 88–1577, 88–1578, 88–1579—September 13, 1988;
P 88–1580, 88–1581, 88–1582, 88–1583, 88–1584, 88–1585—September 14, 1988;
P 88–1586—September 17, 1988;
P 88–1587—September 14, 1988;
P 88–1588, 88–1589, 88–1590, 88–1591—September 17, 1988.

Written comments by:

P 88–1424—July 18, 1988;
P 88–1425—July 22, 1988;
P 88–1426, 88–1427, 88–1428, 88–1429, 88–1430—July 18, 1988;
P 88–1431—July 23, 1988;
P 88–1432—July 18, 1988;
P 88–1433, 88–1434, 88–1435—July 21, 1988;
P 88–1436—July 18, 1988;
P 88–1437, 88–1438, 88–1439, 88–1440, 88–1441, 88–1442, 88–1443, 88–1444, 88–1445, 88–1446—July 22, 1988;
P 88–1447—July 23, 1988;
P 88–1448, 88–1449, 88–1450, 88–1451, 88–1452, 88–1453, 88–1454, 88–1455, 88–1456—July 22, 1988;
P 88–1457—July 24, 1988;
P 88–1458—July 22, 1988;
P 88–1459, 88–1460, 88–1461, 88–1462—July 23, 1988;
P 88–1463 88–1464, 88–1465, 88–1466—July 24, 1988;
P 88–1467—July 22, 1988;
P 88–1469, 88–1470, 88–1471, 88–1472, 88–1473, 88–1474, 88–1475, 88–1476, 88–1477, 88–1478, 88–1479, 88–1480, 88–1481—July 25, 1988;
P 88–1482, 88–1483, 88–1484, 88–1485—July 29, 1988;
P 88–1486, 88–1487, 88–1488, 88–1489, 88–1490, 88–1491, 88–1492, 88–1493, 88–1494, 88–1495, 88–1496, 88–1497—July 30, 1988;
P 88–1498—July 31, 1988;
P 88–1499, 88–1500, 88–1501, 88–1502, 88–1503, 88–1504, 88–1508—July 30, 1988;
P 88–1509, 88–1510, 88–1511, 88–1512—July 31, 1988;
P 88–1513—July 30, 1988;
P 88–1514—August 1, 1988;
P 88–1515—August 4, 1988;
P 88–1516, 88–1517, 88–1518, 88–1519, 88–1520, 88–1521, 88–1522, 88–1523, 88–1524, 88–1525, 88–1526, 88–1527—August 5, 1988;
P 88–1528, 88–1529, 88–1530—August 6, 1988;
P 88–1531, 88–1532, 88–1533, 88–1534, 88–1535, 88–1536, 88–1537, 88–1538, 88–1539, 88–1540, 88–1541, 88–1542—August 7, 1988;
P 88–1543—August 8, 1988;
P 88–1544, 88–1545, 88–1546, 88–1547, 88–1548, 88–1549, 88–1550, 88–1551, 88–1552, 88–1553, 88–1554, 88–1555—August 11, 1988;
P 88–1556, 88–1557, 88–1558, 88–1559, 88–1560, 88–1561—August 12, 1988;
P 88–1562—August 11, 1988;
P 88–1563—August 12, 1988;
P 88–1564—August 14, 1988;
P 88–1565, 88–1566, 88–1567, 88–1568—August 12, 1988;
P 88–1569, 88–1570, 88–1571, 88–1572—August 13, 1988;
P 88–1573, 88–1574, 88–1575, 88–1576, 88–1577, 88–1578, 88–1579—August 14, 1988;
P 88–1580, 88–1581, 88–1582, 88–1583, 88–1584, 88–1585—August 15, 1988;
P 88–1586—August 18, 1988;
P 88–1587—August 15, 1988;
P 88–1588, 88–1589, 88–1590, 88–1591—August 18, 1988;

ADDRESS: Written comments, identified by the document control number "(OPTS–51708)" 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: Stephanie Roan, 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 submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is 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 88–1424

Manufacturer. Confidential.

Chemical. (G) Modified fatty acid diethanolamide.

Use/Production. (S) Lubricant & anticorrosive additive. Prod. range: Confidential.

P 88–1425

Importer. Organic Dyestuffs Corporation.

Chemical. (G) Direct Red 9.

Use/Import. (S) Textile dye. Import range: 4,000–8,000 kg/yr.

P 88–1426

Importer. Confidential.

Chemical. (S) 4-bezoxyl-N,N-dimethyl-N-(1-oxo-2-propenyloxy).

Use/Import. (S) Copolymerisable photoinitiator. Import range: Confidential.

P 88–1427

Manufacturer. Confidential.

Chemical. (G) Styrenated alkyd resin.

Use/Production. Confidential. Prod. range: Confidential.

P 88–1428

Importer. Additives Division, Ciba-Geigy Corp.

Chemical. (S) Reaction product of p-nonylphenol phosphitr (3:1) and C12-13-alcohol.

Use/Import. (S) Stabilizer for PVC floor. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 >2,000 mg/kg species (Rat).

P 88–1429

Importer. Additives Division, Ciba-Geigy Corp.

Chemical. (S) Phenol, 4-isononyl-, zinc salt.

Use/Import. (S) Stabilizer for PVC floor covering. Import range: 600–8,000 kg/yr.

P 88–1430

Importer. Confidential.

Chemical. (G) Mineral amino carboxylic acid.

Use/Import. (G) Bleaching agent. Import range: Confidential

Toxicity Data. Acute oral toxicity: LD50 >5 gm/kg species (Rat). Static acute toxicity: time LC50 96H >1000 mg/1 species (Raintrout). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative. Skin sensitization: negative species (Guinea pig).

P 88–1431

Manufacturer. E. I. du Ponte de Nemours & Co., Inc.

Chemical. (G) Neutralized aryl-alkyl organic phosphate.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–1432

Manufacturer. Alcolac, Inc.

Chemical. (S) S-methyl mercaptoethanol.

Use/Production. (S) Chemical intermediate. Prod. range: 1000,000–250,000 kg/yr.

P 88–1433

Manufacturer. Confidential.

Chemical. (G) Acrylic modified vinyl.

Use/Production. (G) Industrial coating. Prod. range: 120,000–600,000 kg/yr.

P 88–1434

Manufacturer. Confidential.

Chemical. (G) Aliphatic polyurea polyacrylate.

Use/Production. (G) Automative coating component. Prod. Range: 20,000–300,000 kg/yr.

P 88–1435

Importer. Confidential.

Chemical. (G) Styrene-N-butylacrylate copolymer.

Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 88–1436

Importer. Florasynth, Inc.

Chemical. (S) Bicyclo(2-2-1) heptane-2-methanol, propanoate (endo + exo).

Use/Import. (S) A raw material of fragrance compound. Import range: Confidential.

P 88–1437

Manufacturer. Products Research & Chemical Corp.

Chemical. (G) Polymer of substituted aromatic amine and epoxy resin.

Use/Production. (S) Curing agent for urethane sealants, adhesives, & encapsulants. Prod. range: 300–40,000 kg/yr.

P 88–1438

Manufacturer. Products Research & Chemical Corp.

Chemical. (S) Benzene, 1,3 diisocyanatomethyl ethanol, 2, 2'-thiobis polymer of 2-propanol, 1-[(2-hydroxyethyl)thio]- and 2,2'-thiobis (ethanol) polymer of 2,2'-thiobis (ethanol); 1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-; and 1-[(2-hydroxyethyl)thiol-2-propanol.

Use/Production. (S) Polymer for sealants, adhesives & encapulants. Prod. range: 10,000–50,000 kg/yr.

P 88–1439

Manufacturer. Huls America, Inc.

Chemical. (S) 1,3,5,7-tetramethyl-1,3,5,7-tetravinyltetrasilazeane.

Use/Production. (S) Ceramic resin additive. Prod. range: Confidential.

P 88–1440

Manufacturer. Huls America Inc.

Chemical. (S) 1,3,5-Trimethyl-1,3,5-Trivinyltrisilazane.

Use/Production. (S) Ceramic resin additive. Prod. range: Confidential.

P 88–1441

Manufacturer. Confidential.

Chemical. (G) Aromatic, polyether urethane.

Use/Production. (S) Coating and additive. Prod. range: 20,000–40,000 kg/yr.

P 88–1442

Manufacturer. Confidential.

Chemical. (G) Aliphatic polyether urethane.

Use/Production. (S) Coating and adhesive. Prod. range: 20,000–40,000 kg/yr.

P 88–1443

Importer. Confidential.

Chemical. (G) Terpene phenolic resin.

Use/Import. (G) Terpene phenolic resin. Import range: Confidential.

P 88–1444

Manufacturer. Confidential.

Chemical. (G) Blocked isocyanate powder coating curing agent.

Use/Production. (S) Powder coating curing agent. Prod. range: Confidential.

P 88–1445

Manufacturer. Confidential.

Chemical. (G) Cyclo-substituted alkyl prognenoic acid derivative.

Use/Production. (G) Formulation component for open, nondispersive use. Prod. range: Confidential.

P 88–1446

Importer. Confidential.

Chemical. (G) 2-hydroxy-3-(1-methyl-9-Oxo-9H-Thioxanthen-4-Yloxy)-N,N,N,-trimethyl propanaminium chloride.

Use/Import. (S) Photo intitator for photo curing of water-based. Import range: Confidential.

P 88–1447

Importer. Hoechst Celanese Corporation.

Chemical. (G) Substituted carbamic acid ester.

Use/Import. (S) Hardener for powder coating resins. Import range: 1,000-2,000 kg/yr.

P 88–1448

Manufacturer. E. I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Hydroxy acrylic polymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–1449

Importer. E. I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Styrene acrylate acrylamide copolymer.

Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 88–1450

Manufacturer. E. I. Du Pont De Nemours & Co., Inc.

Chemical. (G) Hydroxy acrylic polymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–1451

Importer. Organic Dyestuffs Corporation.

Chemical. (G) Aliphatic aromatic sulfonium carboxylate.

Use/Import. (G) Industrial coating resin. Import range: 2000,000–3,000,000 kg/yr.

P 88–1452

Manufacturer. Confidential.

Chemical. (G) Aliphatic aromatic sulfonium carboxylate.

Use/Production. (G) Industrial coating resin. Prod. range: 200,000–3,000,000 kg/yr.

P 88–1453

Manufacturer. Confidential.

Chemical. (G) Aliphatic aromatic sulfonium carboxylate.

Use/Production. (G) Industrial coating resin. Prod. range: 200,000–3,000,000 kg/yr.

P 88–1454

Manufacturer. Confidential.

Chemical. (G) Aliphatic aromatic sulfonium carboxylate.

Use/Production. (G) Industrial coating resin. Prod. range: 200,000–3,000,000 kg/yr.

P 88–1455

Importer. High Point Chemical Corp.

Chemical. (G) Fatty acid esters of glyceral, alkoxylated.

Use/Import. (G) Surfactant. Import range: Confidential.

P 88–1456

Manufacturer. Confidential.

Chemical. (G) Styrene acrylic polymer.

Use/Production. (G) Open, nondispersive. Prod range: Confidential.

P 88–1457

Importer. Organic Dyestuffs Corporation.
Chemical. (G) Disperse yellow 33.
Use/Import. (S) Shading color. Import range: 1,100–2,200 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >3,000 mg/kg species (Rat).

P 88–1458

Importer. Organic Dyestuffs Corporation.
Chemical. (G) Disperse yellow 33.
Use/Import. (S) Shading color. Import range: 1,000–2,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5.0 g/kg species(Rat). Acute dermal toxicity: LD50 >2.0 g/kg species(Rabbit).

P 88–1459

Manufacturer. Confidential.
Chemical. (G) Bis alkoxylated aluminum ethylacetoacetate.
Use/Production. (G) Additive for polymer solutions. Prod. range: Confidential.

P 88–1460

Manufacturer. R. T. Vanderbilt Company, Inc.
Chemical. (G) 2,5-Dimercapto-1,3,4-thiadiazole reaction product.
Use/Production. (S) Antioxidant & antiwear for lubricants. Prod. range: Confidential.

P 88–1461

Manufacturer. R. R. Vanderbilt Company, Inc.
Chemical. (G) 2,5-Dimercapto-1,3,4-thiadiaole reaction product.
Use/Production. (S) Antioxidant & antiwear agent for lubricants. Prod. range: Confidential.

P 88–1462

Manufacturer. Reed Lignin Inc.
Chemical. (G) Sodium lignosulfonate copolymer.
Use/Production. (G) Dispersive & binder in a destructive use. Prod. range: 500,000–3,000,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD 50 >5.0 g/kg species(Rat). Eye irritation: none species(Rabbit). Skin irritation: negligible species(Rabbit).

P 88–1463

Manufacturer. Confidential.
Chemical. (G) Copolymer of acrylic and methacrylic esters.
Use/Production. (S) Modifier for coatings, inks, & adhesives. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 350 mg/kg species(Rat).

P 88–1464

Manufacturer. Confidential.
Chemical. (S) Octane,6-Chloro-2,6-dimethyl-and octane,2-chloro-2,6-dimethyl-mixture.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 88–1465

Manufacturer. Confidential.
Chemical. (G) Blocked polyurethane.
Use/Production. (G) Industrial polymer with open use. Prod. range: 100,000–1,000,000 kg/yr.

P 88–1466

Manufacturer. Confidential.
Chemical. (G) Fatty esters.
Use/Production. (S) Lubricant base. Prod. range: Confidential.

P 88–1467

Manufacturer. Products Research & Chemical Corporation.
Chemical. (G) Resin for adhesion promotion.
Use/Production. (G) Intermediate for adhesive and sealants. Prod. range: 7,500–15,000 kg/yr.

P 88–1469

Importer. Confidential.
Chemical. (G) Halo triazine azo naphthalene sulfonic acid alkali salt.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88–1470

Importer. Confidential.
Chemical. (G) Halo triazine azo naphthalene sulfonic acid alkali salt.
Use/Import. (S) Reactive dye for textile. Import range: Confidential.

P 88–1471

Importer. Confidential.
Chemical. (G) Halo triazine azo naphthalene sulfonic acid alkali salt.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88–1472

Importer. Confidential.
Chemical. (G) Halo triazine azo naphthalene sulfonic acid alkali salt.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88–1473

Manufacturer. Henkel Corporation.
Chemical. (G) 2-propenoic acid, 6-methoxyhexyl ester.
Use/Production. (G) Coatings, inks. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species(Rat). Eye irritation: slight species(Rabbit). Skin irritation: moderate species(Rabbit).

P 88–1474

Manufacturer. Henkel Corporation.
Chemical. (G) 1,6 hexanediol monoethyl ether.
Use/Production. (G) Coatings, intermediate. Prod. range: Confidential.

P 88–1475

Importer. Hoechst Celanese Corporation.
Chemical. (G) Reaction product of a fluorinated alcohol, epichlorohydrine, a diol and an isocyanate.
Use/Import. (S) Soil/water repellant for fibers & leather. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD 50 >2,000 mg/kg species(Rat). Static acute toxicity: time LC50 96 hrs10–100 mg/l species(Zebra fish). Eye irritation: none species(Rabbit). Skin irritation: negligible species(Rabbit).

P 88–1476

Importer. Hoechst Celanese Corporation.
Chemical. (G) Reaction product of a fluorinated alcohol, epichlorohydrine, an alkyl glycol and an isocyanate.
Use/Import. (G) Emulsifier for fiber finish leather chemicals. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >2,000 mg/kg species(Rat). Static acute toxicity: time LD 50 96 hrs.10–100 mg/l species(Zebra fish). Eye irritation: None species(Rabbit). Skin irritation: negligible species(Rabbit).

P 88–1477

Manufacturer. E. I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Dye, nondispersive. Prod. range: Confidential.

P 88–1478

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyester polyurethane.
Use/Production. (S) General purpose adhesive; modifier for coating, & inks. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD 50 4,200 mg/kg species(Rat). Acute dermal toxicity: LD50 8,000 mg/kg species(Rabbit).

P 88–1479

Manufacturer. Texaco Chemical Co.,
Chemical. (S) 1,3-dioxolan-2-one, 4-ethyl.
Use/Production. (G) Chemical intermediate-destructive use. Prod. range: Condifential
Toxicity Data. Acute oral toxicity:LD50 >5 g/kg species (Rat). Acute dermal toxicity: LD50 >3 g/kg

species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative. Skin sensitization: negative species (Human).

P 88–1480

Importer. Dragoco, Inc.
Chemical. (S) Bicyclo (3.2.1) octan-8-ol, 1.5-dimethyl-8-ethyl.
Use/Import. (S) Fragrance mixture. Import range: 600–1,200 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >2.5 g/kg species (Rat). Eye irritation: none species (Rabbit). Skin sensitization: negative species (guinea pig). Phototoxicity: negative species (guinea pig).

P 88–1481

Manufacturer. Dow Chemical Corporation.
Chemical. (G) Fluoro siloxane polymer.
Use/Production. (S) Pressure sensitive release coating. Prod. range: 100–10,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 >2,000 mg/kg species (Rabbit). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 88–1482

Manufacturer. Confidential.
Chemical. (G) Calcium salt of the azo dye.
Use/Production. (G) open, nondispersive. Prod. range: Confidential.

P 88–1483

Manufacturer. Confidential.
Chemical. (G) Silicone polyester copolymer.
Use/Production. (S) Anti-caking agent. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 88–1484

Importer. Stockhausen Inc.
Chemical. (S) N-Maleoy-N-octadecenyl-amino-propinoic acid, partly sodium salt.
Use/Import. (G) Finishing agent to render leather waterproof. Import range: 5,000–10,000 kg/yr.

P 88–1485

Importer. Confidential
Chemical. (S) Siloxanes and Silicones, di-Me, Me vinyl, vinyl group-terminated.
Use/Import. (S) Devices of electronic appliances and automation machines. Import range: 1,000–10,000 kg/yr.

P 88–1486

Importer. Confidential.
Chemical. (G) Styrene-maleic ester copolymer.
Use/Import. (S) Resin in publication gravure painting. Import range: Confidential.

P 88–1487

Manufacturer. Confidential.
Chemical. (G) Polyurethane.
Use/Production. (G) Pigment dispersant. Prod. range: Confiential.

P 88–1488

Manufacturer. Confidential.
Chemical. (G) Hycar amine terminated butadiene/acrylonitrile polymer.
Use/Production. (G) Liquid rubber adhesive. Prod. range: Condidential.

P 88–1489

Importer. Henkel Corporation.
Chemical. (G) Alkyl salt of polycarboxylic acid.
Use/Import. (S) Pigment dispersing agent. Import range: Confidential.

P 88–1490

Manufacturer. Dow Corning Corporation.
Chemical. (G) Fluoro alkyl siloxane polymer.
Use/Production. (S) Pressure-sensitive release coating. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mng/kg species (Rat). Acute dermal toxicity: LD50 >2,000 mg/kg species (Rabbit). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 88–1491

Manufacturer. Henkel Corporation, Process Chemicals.
Chemical. (G) Alkyl aryl polymercaptan.
Use/Production. (G) Curing agent. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 =2.6=0,3 g/kg species (Rat). Acute dermal toxicity: LD50 >10.2 g/kg species (Rabbit). Inhalation toxicity: LC50 >0.1 mg/1 species (Rat). Eye irritation: slight (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: positive.

P 88–1492

Importer. Confidential.
Chemical. (G) Hydroxy-alkyl-aryl-polyether with amino groups.
Use/Importer. (S) Coating for reactors used in the prod. of polymer. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >10,000 mf/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Skin sensitization: positive species (Guinea pig).

P 88–1493

Importer. Confidential.
Chemical. (G) Copper phthalocyanine based reactive-dye.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88–1494

Importer. Confidential.
Chemical. (G) Halo triazine azo naphthalenes sulfonic acid alkali salt.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88–1495

Importer. Confidential.
Chemical. (G) Vinyl sulfone based reactive dye.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88–1496

Importer. Confidential.
Chemical. (G) Sulfonyl benzene diazo substituted naphthalene alkali salt.
Use/Import. (S) Acid textile dye. Import range: Confidential.

P 88–1497

Manufacturer. E. I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Partially neutralized acrylic polymer.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–1498

Manufacturer. E. I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Neutralized aryl-alkyl organic phosphate.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 88–1499

Manufacturer. Harrell Industries.
Chemical. (S) Monosodium titanate: sodium titanium oxide.
Use/Production. (S) Absorbent for stontium 90. Prod. range: 11,500–34,500 kg/yr.

P 88–1500

Importer. Confidential.
Chemical. (G) Halo triazine, azo naphthalene sulfonic acid alkali salt.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88–1501

Importer. Confidential.
Chemical. (G) Fluorinated urethane compound.

Use/Import. (S) Antistain agent. Import range: Confidential.

P 88–1502

Importer. Confidential.
Chemical. (G) Halo triazine sulfonic acid alkali salt.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88–1503

Importer. Confidential.
Chemical. (G) Copper phthalocyanine based reactive dye.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88–1504

Manufacturer. Confidential.
Chemical. (G) Mercaptan terminated polyethyl polymer.
Use/Production. (S) Polymer for adhesive and sealant. Prod. range: 400,000–1,500,000 kg/yr.

P 88–1508

Importer. Confidential.
Chemical. (G) Halo triazine anthraquinon sulfonic acid alkali salt.
Use/Import. (S) Reactive dye for textiles. Import range: Confidential.

P 88–1509

Manufacturer. Confidential.
Chemical. (G) (Sulfonamidoaromatic alkyl) halosubstituted heterocycle.
Use/Production. (G) Contained use in an article. Prod. range: 1,500–10,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 >2,000 mg/kg species (Rat). Eye irritation: moderate species (Rabbit). Skin irritation: negligible species (Rabbit). Skin sensitization: negative species (Guinea pig).

P 88–1510

Manufacturer. Confidential.
Chemical. (S) (Aminoaromatic alkyl) halosubstituted heterocycle.
Use/Production. (G) Chemical intermediate. Prod. range: 1,5000–12,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >5,000 mg/kg species (Rat). Skin irritation: slight species (Guinea pig).

P 88–1511

Manufacturer. Confidential.
Chemical. (G) Alkylphenol sulfonate, metal salt.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–1512

Manufacturer. Confidential.
Chemical. (G) Dialkylaminophenyl substituted heteromonocycle, salt.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–1513

Manufacturer. Confidential.
Chemical. (G) Polyurethane.
Use/Production. (G) Pigment dispersant. Prod. range: Confidential.

P 88–1514

Manufacturer. Henkel Corporation.
Chemical. (G) Complex alkyl aryl imide.
Use/Production. (G) Epoxy curing agent. Prod. range: Confidential.

P 88–1515

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–1516

Manufacturer. Confidential.
Chemical. (G) Polymer of an aromatic diisocyanate, alphatic polyesters, an aliphatic diol and an aliphatic diamine.
Use/Production. (G) Laminating adhesive. Prod. range: Confidential.

P 88–1517

Manufacturer. Confidential.
Chemical. (G) Prepolymer of an aromatic diisocyanate with a doiland aliphatic polyesters.
Use/Production. (G) Intermediate for a laminating adhesive. Prod. range: Confidential.

P 88–1518

Manufacturer. Lithium Corporation of America.
Chemical. (S) Bis 2-Propanamine, N-(methylethyl)-magnesium salt (diispropylamide magnesium).
Use/Production. (S) Polymerization reagent. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >770 mg/kg species (Rat). Acute dermal toxicity: LD50 >5 g/kg species (Rabbit). Inhalation toxicity: LC50 4800 mg/m ^{3} species (Rat).

P 88–1519

Manufacturer. Lithium Corporation of America.
Chemical. (S) Dimethylmagnesium.
Use/Production. (S) Magnesium precursor for electric chemicals. Prod. range: 18,000–36,000 kg/yr.

P 88–1520

Importer. Confidential.
Chemical. (G) Substituted naphthalene azo sulfonic acid.
Use/Import. (S) Reactive for textiles. Import range: Confidential.

P 88–1521

Importer. Confidential.
Chemical. (G) Aliphatic urethane acrylate oligomer.
Use/Import. (S) UV/EB Oligomer. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 >4,000 mg/kg species (Rat). Skin irritation: moderate species (Rabbit).

P 88–1522

Manufacturer. GE Plastics Group.
Chemical. (G) Aryl tetra carboxylic acid, tetra sodium salt.
Use/Production. (S) Monomer precursor. Prod. range: Confidential.

P 88–1523

Manufacturer. Confidential.
Chemical. (G) Substituted maleic anhydride, styrene, acrylate copolymer.
Use/Production. (G) Contained use. Prod. range: Confidential.

P 88–1524

Manufacturer. Koppers Co., Inc.
Chemical. (G) Phenol formaldehyde resin furfural mixture.
Use/Production. (S) Fire-retardant plastic matrix binder resin. Prod. range: Confidential.

P 88–1525

Manufacturer. Koppers Co., Inc.
Chemical. (G) Resorcinol formaldehyde resin acetone mixture.
Use/Production. (S) Pre-retardant reinforced plastic matrix binder res. Prod. range: Confidential.

P 88–1526

Manufacturer. Confidential.
Chemical. (G) Hydroxy functional acrylic resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

P 88–1527

Manufacturer. Hi-Tek Polymers, Inc.
Chemical. (S) Cyanic acid, (2,2,2-trifluoro-1-(trifluoromethyl)ethylidene)di-4, 1-phenylene ester.
Use/Production. (S) Chemical intermediate destructure use. Prod. range: Confidential.

P 88–1528

Manufacturer. Confidential.
Chemical. (G) Polyester with dimethyl isophthalate, dimethyl 5-sodium sulfoisophthalate.
Use/Production. (G) Polymeric binder. Prod. range: Confidential.

P 88–1529

Importer. Hodogaya Chemical (U.S.A.), Inc.

Chemical. (S) Pyrdinium,1-ethyl-3-(2-hydroxy-1-naphthalenyl)azo)-,(T-4)-tetrachlorozincate(2) (2:1).

Use/Import. (S) Dyestuff: used for dyeing on cathionic polyester. Import range: 500–1,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 >5,800 mg/kg species (Rat). Static acute toxicity: time LC50 96 hrs. 110 ppm. Eye irritation: moderate species (Rabbit). Mutagenicity: negative.

P 88–1530

Importer. Hodogaya Chemical (U.S.A.), Inc.

Chemical. (S) Chromate(1-),bis(3-(4,5-dihydro-4-(hydroxy-5-methyl-3-nitrophenyl)azo)-e-methyl-5-oxo-1H-pyrazol-1-yl)benzenesulfonamidato(2-1)-, hydrogen, compd. with 2-ethyl-1-hexanamine(1:)/(CI).

Use/Import. (S) Colorant for toner (used in the manufacture of toner coloring material. Import range: 1,00–1,500 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 >5.0 g/kg species (Rat).

P 88–1531

Manufacturer. Confidential.

Chemical. (G) Polyisocyanate based on hexamethylene diisocyanate.

Use/Production. (S) Crosslinker for water-based resins. Prod. range: 50,000–150,000 kg/yr.

P 88–1532

Manufacturer. Confidential.

Chemical. (G) Blocked polyisocyanate based on toluene diisocyanate.

Use/Production. (S) Blocked polyisocyanate prepolymer for industrial. Prod. range: 46,300–226,800 kg/yr.

P 88–1533

Importer. Confidential.

Chemical. (S) Toluene diisocyanate(2,4 isomer); toluene diisocyanate(2,6 isomer); salicyclic acid; dipropylene glycol; 2-(2-aminoethyl)amino) ethanol;diglycidyl ether of bisphenol Alpha.

Use/Import. (G) Cross-linking agent for open nondispersive use. Import range: 72,576–136,079 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 5 ml/kg species (rat). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 88–1534

Importer. Confidential.

Chemical. (S) 4,4-diphenylmethane diisocyanate; dipropylene glycol; A 2000MW polyester diol.

Use/Import. (G) Crosslinked agent for open, nondispersive use. Import range: 36,288–68,040 kg/yr.

Toxicity Data. Acute oral; toxicity: LD50 5 ml/kg species (Rat).

P 88–1535

Importer. Confidential.

Chemical. (S) Toluene diisocyanate(2,4 isomer); Toluene diisocyanate(2,6 isomer); 4,4-diphenylmethane diisocyanate; triisopropanolamine; 100MW poly.

Use/Import. (G) Cross-linking agent for open, nondispersive use. Import range: 45,360–130,079 kg/yr.

P 88–1536

Importer. Confidential.

Chemical. (S) 4,4-diphenylmethane diisocyanate; triisopropanolamine; 1000 MW polypropylene glycol; 2000 MW polypropylene glycol.

Use/Import. (G) Cross-linking agent for open, nondispervise use. Import range: 10,886–19,958 kg/yr.

P 88–1537

Importer. Confidential.

Chemical. (S) 4,4-diphenylamine diisocyanate; 1000 MW polypropylene glycol prepolymer.

Use/Import. (G) Cross-linking agent for open, nondispersive use. Import range: 36,288–68,040 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 =5 ml/kg species (Rat). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 88–1538

Manufacturer. Confidential.

Chemical. (G) Polyfunctionalized styrenated acrylate.

Use/Production. (S) Automative refinish resin. Prod. range: 212,000–250,000 kg/yr.

P 88–1539

Manufacturer. Vista Chemical Company.

Chemical. (G) C1430 alkylbenzenes.

Use/Produciton. (S) Feedstock for manufacture of oil-soluble surfonate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 40 g/kg species (Rat).

P 88–1540

Manufacturer. Confidential.

Chemical. (G) Polyester resin.

Use/Produciton. (G) Paint additive.

Toxicity Data. Acute oral toxicity: LD50 5 g/kg species (Rat).

P 88–1541

Manufacturer. Confidential.

Chemical. (G) Formaldehyde polymer with 1,3,5-triazine-2,4,6-triamine, stearyl alcohol, C20+alcohols, ethoxylated oleyl alcohol modified.

Use/Production. (S) Sizing of paper products. Prod. range: Confidential.

P 88–1542

Manufacturer. Confidential.

Chemical. (S) Resin, dicyclopentadiene, dimer fatty acid, soya oil.

Use/Production. (S) Printing ink vehicles. Prod. range: 3,000,000–3,700,000 kg/yr.

P 88–1543

Manufacturer. Confidential.

Chemical. (G) Modified aliphatic alicyclic polyester.

Use/Production. (G) Industrial coating component. Prod. range: 212,000–248,000 kg/yr.

P 88–1544

Importer. Confidential.

Chemical. (G) Mercapto functional silicone resin.

Use/Import. (S) Control release additive for use in silicone form. Import range: Confidential.

P 88–1545

Importer. Confidential.

Chemical. (S) Nitrile substituted polyvinyl alcohol.

Use/Import. (S) Binder for inorganic powder. Import range: Confidential.

P 88–1546

Importer. Confidential.

Chemical. (S) Xylene-formaldehyde polymer, raction with resin.

Use/Import. (S) Tackifier for rubber. Import range: Confidential.

P 88–1547

Manufacturer. Armstrong World Industries, Inc.

Chemical. (S) Guanidinium vermiculite.

Use/Production. (S) Prepare inorganic papers. Prod. range: 11,660–1,800,00 kg/yr.

P 88–1548

Manufacturer. Confidential.

Chemical. (S) 2,2,4-trimethyl-1,3 pentane diol; trimethylol propane; adipic acid; isophthalic acid rj-100.

Use/Production. (S) Industrial coatings for metal substrate. Prod. range: 2,000–4,000 kg/yr.

P 88–1549

Manufacturer. NL Chemicals.

Chemical. (G) Water dispersable polyamide resin.

Use/Production. (G) Ink additive. Prod. range: Confidential.

P 88–1550

Manufacturer. Confidential.
Chemical. (G) Silicone.
Use/Production. (S) Coatings. Prod. range: 20,000–40,000 kg/yr.

P 88–1551

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyester urethane.
Use/Production. (S) Coatings. Prod. range: 20,000–40,000 kg/yr.

P 88–1552

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyester urethane.
Use/Production. (G) Coatings. Prod. range: 20,000–40,000 kg/yr.

P 88–1553

Manufacturer. Confidential.
Chemical. (G) Alkylnaphthalene sulfonic acid, magnesium salt.
Use/Production. (S) Corrosion inhibitor for lube oils, greases, & coats. Prod. range: Confidential.
Toxicity Data. Eye irritation: strong species (Rabbit). Skin irritation: moderate species (Rabbit).

P 88–1554

Importer. Himont U.S.A. Inc.
Chemical. (S) Melamine bismuth tribromide.
Use/Import. (S) Flame retardant for polypropylene & ethyl copoly. Import range: 1,000–10,080 kg/yr.

P 88–1555

Importer. Himont U.S.A., Inc.
Chemical. (S) Dicyandiamide bismuth tribromide.
Use/Import. (S) Flame retardant for polypropylene & ethyl copolymer. Import range: 1,000–10,080 kg/yr.

P 88–1556

Manufacturer. Eastman Kodak Company.
Chemical. (G) Substituted phenyl (halosubstituted heterocyclic benzamide).
Use/Production. (G) Contained use in an article. Prod. range: 1,000–2,000 kg/yr.
Toxicity Data. Acute oral toxicity: LD50 >3,200 mg/kg species (Rat & mice). Static acute toxicity: time LC50 96 hr 100 mg/1 species (fathead minnows & daphnia). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Guinea pig).

P 88–1557

Manufacturer. Confidential.
Chemical. (G) Blocked isocyanate.
Use/Production. (G) Cathodic electrocoat Prod. range: Confidential.

P 88–1558

Manufacturer. Confidential.
Chemical. (G) Aminated epoxy-polypropylene glycol.
Use/Production. (G) Cathodic electrocoat. Prod. range: Confidential.

P 88–1559

Importer. Confidential.
Chemical. (G) Aminated epoxy urethane.
Use/Import. (G) Cathodic electrocoat. Import range: Confidential.

P 88–1560

Manufacturer. Confidential.
Chemical. (G) Cationic acrylic resin.
Use/Production. (G) Cathodic electrocoat. Prod. range: Confidential.

P 88–1561

Manufacturer. Confidential.
Chemical. (G) Aminated epoxy urethane.
Use/Production. (G) Cathodic electrocoat. Prod. range: Confidential.

P 88–1562

Manufacturer. Confidential.
Chemical. (G) Aminated polypropylene glycol.
Use/Production. (G) Cathodic electrocoat. Prod. range: Confidential.

P 88–1563

Manufacturer. Confidential.
Chemical. (G) Blocked isocyanate.
Use/Production. (G) Cathodic electrocoat. Prod. range: Confidential.

P 88–1564

Manufacturer. Confidential.
Chemical. (G) Aminated epoxy-polybutadiene.
Use/Production. (G) Cathodic electrocoat. Prod. range: Confidential.

P 88–1565

Manufacturer. Confidential.
Chemical. (G) Blocked isocyanate.
Use/Production. (G) Cathodic electrocoat. Prod. range: Confidential.

P 88–1566

Manufacturer. Confidential.
Chemical. (G) Aminated epoxy.
Use/Production. (G) Cathodic electrocoat. Prod. range: Confidential.

P 88–1567

Importer. Confidential.
Chemical. (S) Thiazolium, 3-methyl-2-(4-(methylphenylamino)phenyl)azo)-, (T-4)-tetrachlorozincate(2) (2:1).
Use/Import. (S) Dyestuff-used for dyeing of cath. polyester fibers. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50=146 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2.0 g/kg species (Rat). Eye irritation: strong species (Rabbit). Mutagenicity: negative.

P 88–1568

Importer. Hodogaya Chemical (U.S.A.), Inc.
Chemical. (S) 1H-1,2,4-triazolium, 5-((((4-chlorophenyl)methyl)methylamino) phenyl)azo) 1.4-dimethyl-, (T-4)-tetrachloro-zincate(2) (2:1).
Use-Import. (S) Dyestuff-used for dyeing of cathionic polyester fibers. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50=3.1 g/kg species (Rat). Eye irritation: strong species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 88–1569

Importer. Marubeni America Corporation.
Chemical. (S) Graft copolymer of polyvinylalcohol with acrylamide, acrylic acid and alky acetoacetate.
Use-Import. (S) Coating binder for heat-sensitive paper. Import range: 60,000-500,000 kg/yr.

P 88–1570

Importer. Marubeni America Corporation.
Chemical. (S) Copolymer of acrylamide and 2H-hydroxypropyl methacrylate.
Use-Import. (G) Coating binder for heat-sensitive paper. Import range: 60,000-500,000 kg/yr.

P 88–1571

Importer. Marubeni America Corporation.
Chemical. (S) Copolymer of acrylamide and acrylonitrile.
Use-Import. (S) Coating binder for heat-sensitive paper. Import range: 60,000-500,000 kg/yr.

P 88–1572

Importer. Marubeni America Corporation.
Chemical. (S) Graft copolymer of polyvinyl alcohol with acrylonitrile.
Use-Import. (S) Coating binder for heat-sensitive paper. Import range: 120,000-1,000,000 kg/yr.

P 88–1573

Manufacturer. Confidential.
Chemical. (G) Urethane modified alkyd.
Use/Production. (s) Automotive primer. Prod. range: Confidential.

P 88–1574

Manufacturer. American Cyanamid Company.
Chemical. (G) Substituted dicarboxylic acid.
Use/Production. (G) Monomer. Prod. range: Confidential.

P 88–1575

Manufacturer. Confidential.
Chemical. (G) Modified acrylatem terpolymer.
Use/Production. (G) Thickener for aqueous sytems, nondispersive use. Prod. range: Confidential.

P 88–1576

Manufacturer. Confidential.
Chemical. (G) Copolymer of ethylene, styrene and oxygenerated vinyl alkane.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–1577

Manufacturer. Confidential.
Chemical. (G) Copolymer of ethylene and oxygenated vinyl alkane.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–1578

Manufacturer. Confidential.
Chemical. (G) Copolymer of propylene, styrene and oxygenated vinyl alkane.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–1579

Manufacturer. Confidential.
Chemical. (G) Copolymer of propylene, styrene and oxygenated vinyl alkane.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–1580

Manufacturer. Confidential.
Chemical. (G) High solids polyester resin.
Use/Production. (S) Protective coatings. Prod. range: 65,000-100,000 kg/yr.

P 88–1581

Importer. DSM Resin U.S., Inc.
Chemical. (G) Amine terminated aliphatic polyurethane resin.
Use/Import. (S) Coatings for plastics. Import range: Confidential.

P 88–1582

Importer. DSM Resins U.S., Inc.
Chemical. (G) Phenolic-formaldehyde modifiec hydrocarbon resin.
Use/Import. (S) Heat-set offset inks. Import range: Confidential.

P 88–1583

Importer. DSM Resins U.S., Inc.
Chemical. (G) Long oil alkyd resin; Based on mixed fatty acids.
Use/Import. (S) Architectural paints. Import range: Confidential.

P 88–1584

Importer. DSM Resins, U.S., Inc.
Chemical. (G) Dibasic acid/glycolester.

P 88–1585

Importer. DSM Resins, U.S., Inc.
Chemical. (G) Dibasic acid/glycolester.
Use/Import. (S) Thermosetting powder paints. Import range: Confidential.

P 88–1586

Importer. DSM Resins, U.S., Inc.
Chemical. (G) Dibasic acid/glycolester.
Use/Import. (S) Theromosetting powder paints. Import range: Confidential.

P 88–1587

Manufacturer. E.I. Du Pont De Nemours & Co., Inc.
Chemical. (G) Acrylic polymer contained quaternary ammonium salts.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 88–1588

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic functional polyol.
Use/Production. (G) Dispersively, used polymeric material. Prod. range: 212,000–250,000 kg/yr.

P 88–1589

Manufacturer. Confidential.
Chemical. (G) Aliphatic alicyclic polyester.
Use/Production. (G) Industrial coating component. Prod. range: 1,500,000 kg/yr.

P 88–1590

Importer. Shin-Etsu Silicone of America, Inc.
Chemical. (S) Trichloromethylsilane; dichlorodimethylsilane; trichlorophenylsilane; dichlorodiphenylsilane.
Use/Import. (S) Varnish for electric insulation.
Import range: 2,000–4,000 kg/yr.

P 88–1591

Importer. Confidential.
Chemical. (G) Cyanated phenolic resin.
Use/Import. (G) Friction materials. Import range: Confidential.

Date: June 30, 1988.

Douglas W. Sellers,

Acting Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

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BILLING CODE 6560–50–M

[FRL–3410–7]

Buried Valley Aquifer System, Ohio (Southern Portion) Sole Source Aquifer Petition: Final Determination

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of final determination.

SUMMARY: Notice is hereby given that, under section 1424(e) of the Safe Drinking Water Act, the U.S. Environmental Protection Agency (EPA) Region V Administrator has determined that the petitioned southern portion of the Buried Valley Aquifer System of the Great Miami/Little Miami River Basins of Southwestern Ohio, hereafter called the Buried Valley Aquifer System (BVAS-South), is the sole or principal source of drinking water in the petitioned area, and that this aquifer, if contaminated, would create a significant hazard to public health. As a result of this action, all Federal financially assisted projects constructed in the BVAS area and its principal recharge zone will be subject to EPA's review to insure that these projects are designed and constructed so that they do not create a significant hazard to public health.

DATES: Because the economic and regulatory impact of this action will be minimal, this determination will be effective as of the date it is signed by the Regional Administrator.

ADDRESSES: The data on which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Office of Ground Water 5WG-TUB8, 230 S. Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Wm. Turpin Ballard, Office of Ground Water, U.S. Environmental Protection Agency, Region V, at 312–353–1435.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C., 300f, 300h–3(e), Pub. L. 93–523) states:

"(e) If the Administrator determines on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer."

Effective March 9, 1987, authority to make a Sole Source Aquifer (SSA) Designation Determination was delegated to the U.S. EPA Regional Administrators.

On March 10, 1988, EPA received a complete SSA petition from the Ohio-Kentucky-Indiana Regional Council of Governments of Cincinnati, Ohio, which petitioned EPA to designate the BVAS-South as a Sole Source Aquifer.

On April 20, 1988, EPA published notice to announce a public comment period regarding the petition. The public was invited to submit comments and information on the petition until June 3, 1988. A public meeting was held on May 18, 1988, at the EPA Research facility in Cincinnati. Comments were accepted for 16 days following the meeting.

II. Basis for Determination

Among the factors to be considered by the U.S. EPA in connection with the designation of an area under Section 1424(e) are: (1) Whether the BVAS-South is the area's sole or principal source of drinking water, and (2) whether contamination of the aquifer would create a significant hazard to public health. On the basis of technical information available to this Agency, the Regional Administrator has made the following findings, which are the bases for the determination noted above:

1. The BVAS-South currently serves as the "sole source" of drinking water for approximately 650,000 residents, of Butler, Warren, Hamilton, Clermont and Clinton Counties.

2. There is no existing alternative drinking water source or combination of sources which provides 50 percent or more of the drinking water to the designated area, nor is there any available, cost-effective potential source capable of replacing the drinking water needs of the communities and individuals that presently rely on the aquifer.

3. The Buried Valley Aquifer System-South is an unconfined to semiconfined aquifer system that transmits water through unconsolidated glacial sediments. The high porosity and permeability of these deposits, coupled with thin overlying soils and shallow depth of water, make the BVAS-South very vulnerable to contamination. Contamination has already occurred, in Hamilton, Butler, Warren, and Clermont Counties. Sources for contamination include, but are not limited to: (A) Leaking underground storage tanks, (B) stormwater drains that discharge to ground water, (C) accidental release of hazardous materials, (D) use and improper storage of agricultural chemicals, (E) salting of roads for ice control, and (F) poorly functioning on-site waste water disposal systems. Should any of the above sources of contamination enter the public water supply, there could be a significant negative effect on drinking water quality, with a consequent adverse effect on public health.

III. Description of the Buried Valley Aquifer System: Hydrogeology; Use; Recharge; Boundaries

The entire BVAS of the Great Miami/Little Miami River Basins was formed when successive glacial events discharged sediment-choked meltwaters through pre-existing bedrock valleys. These meltwaters left behind heterogeneous deposits of gravel, sand, silt, and clay. The gravel and sand deposits form the principal aquifers of the BVAS, and range in thickness from 20 to 400 feet, and in width from 1/10th to 3 miles. The Ohio Department of Natural Resources subdivides the BVAS into Class I and Class II aquifers, based on hydrogeologic characteristics.

Ground water withdrawal from public and private water supply wells in the BVAS-South averages approximately 74 million gallons per day (mg/d) within the proposed area. This resource is so readily available and prolific that few communities and individuals within reach of it have developed alternative sources, with the exception of much of the Cincinnati Metropolitan Area, which relies on water from the Ohio River. In fact, 73 percent of the public water and 100 percent of the private water in the proposed designated area is drawn from the BVAS-South.

The BVAS-South is recharged primarily by precipitation, with a minor amount contributed as inflow from the upland areas. Some of the public supply wellfields produce sufficient drawdown to cause induced recharge from surface water bodies to be the primary recharge to the wellfield. However, according to a USGS report on the aquifer system, "The flow [in the rivers] that is equaled or exceeded 90 percent of the time * * * is generally considered to come primarily from ground water." In other words, ground water contributes the bulk of water to rivers in the area. So the primary recharge mechanism ultimately remains the infiltration of precipitation over the aquifer, and the recharge area boundaries are coincident with the aquifer system boundaries.

The project review area consists of the area over the Class I and II aquifers south a hydrodynamic boundary which occurs just south of the City of Franklin in Warren County, to the southern boundary of the Great Miami Basin and including that portion of the BVAS in the Little Miami Basin in Warren, Clermont, and Clinton Counties. Included are two small "fingers" of aquifer in western Preble County that connect with the main aquifer in the BVAS-South area.

The designated area does not include the Mill Creek Basin in Butler and Hamilton Counties. This basin contains a Class I aquifer, but the population in the drainage basin depends primarily on surface water for their drinking water supply. Although the communities of Wyoming, Lockland, Glendale, and Reading do use ground water as their water source, they can connect to the Cincinnati water system if the aquifer becomes contaminated beyond levels commensurate with public health. When considered as a separate hydrologic system, the Mill Creek Basin does not meet the criteria established by EPA for sole source eligibility. Also excluded is a portion of the Ohio River in southwest Butler County, just upstream from the confluence of the Ohio with the Great Miami River. This designation includes no part of the Ohio River Aquifer.

IV. Alternative Sources

The Petitioner considered two alternatives to the BVAS-South to supply drinking water; existing surface water systems and bedrock aquifers.

Bedrock aquifers do not have the characteristics necessary to enable them to transmit sufficient water to replace the amount currently supplied by the aquifer. In addition, the water is highly mineralized, requiring additional treatment to bring it up to the quality of the current supply. Thousands of new wells would have to be drilled, and additional piping installed for public water supplies. Private users would have the expense either of hooking up to public water, deepening their existing wells, or redrilling.

The City of Cincinnati public water system draws heavily on Ohio River water, using over 27 million gallons per day. Additional river water, as well as water from two reservoirs in Warren and Clermont Counties, could be supplied to nearby, ground water-dependent systems. However, many water systems, are not within a distance that is normal for the area to transport water. Under the EPA Sole Source Aquifer Guidance, for a potential source to be considered as viable, it must be "near" in terms of what is normal for the area. Also, in many cases where the potential source is near, the infrastructure necessary to transfer to that source must be constructed, which would send annual costs to users over the economic thresholds of the guidance.

The potential alternative water sources considered in the petition could not replace the increment supplied by the BVAS-South if it should become widely contaminated. Therefore, from the standpoint of use, the BVAS-South, excluding the Mill Creek Basin Aquifer, meets the criteria of a sole or principal source aquifer.

IV. Information Utilized in Determination

The information utilized in this determination includes the petition, published State and Federal reports on the area, and various technical publications. The petition file is available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region V, Office of Ground Water, 111 W. Jackson, 10th Floor, Chicago, Illinois 60604.

V. Project Review

EPA Region V is working with the Federal agencies that may in the future provide financial assistance to projects in the area of concern. Interagency procedures and Memoranda of Understanding will be developed through which EPA will be notified of proposed commitments of funding by Federal agencies for projects which could contaminate the designated area of the Buried Valley Aquifer System. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including solicitation of public comments where appropriate. Should the Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for Federal financial assistance may be made. However, a commitment for Federal financial assistance may, if authorized under another provision of law, be made to plan or design the project to assure that it will not contaminate the aquifer.

Although the project review process cannot be delegated, the U.S. Environmental Protection Agency will rely to the maximum extent possible on existing or future State and local control mechanisms in protecting the ground water quality of the BVAS. Included in the review of any Federal financially assisted project will be coordination with State and local agencies. Their comments will be given full consideration, and the Federal review process will attempt to complement and support State and local ground water protection mechanisms.

VI. Summary of Public Comments

The City of Oxford, Ohio, requested that a portion of Class II Aquifer within its boundaries be excluded because there are no wells in it that could be impacted by contamination. Because there is no hydrogeologic reason to exclude this portion, EPA will include it in the designated area. However, the absence of drinking water wells will be a factor to consider in future reviews when determining whether contamination from a project would create a hazard to public health.

During a public meeting on May 18, 1988, the question arose as to whether the Mill Creek Basin (MCB) Aquifer should be included in the designated area. When considered as a separate hydrologic system, the MCB aquifer supplies only about 20 percent of the drinking water, with the majority of the population on surface water from the Cincinnati System. The area is highly industrialized, and a substantial portion of the recharge area is already occluded by development. The Mill Creek itself is heavily channelized and, in many stretches, enclosed in a cement channel which prevents it from gaining flow in those stretches from ground water. Proponents for inclusion of the MCB Aquifer maintained that to exclude it from the designated area would disrupt the integrity of the BVAS Sole Source Aquifer and have adverse impacts on the water supply of those communities that do use the MCB Aquifer for their water supply.

In a written comment, the Greater Cincinnati Chamber of Commerce opposed designation of the entire proposed area on the strength of the amount of surface water used by Cincinnati. However, the entire surface-water dependent area need not be included in the Aquifer Service Area, and the Chamber submitted no data to support its claim. The data supplied in the petition is based on U.S. Census figures and field work, and in the absence of data to support the Chamber's position, EPA is accepting the demographic and water use data of the petition.

Cincinnati Gas and Electric Company requested that a portion of the proposed designated area that includes the Ohio River Aquifer in southwest Butler County be excluded from the final designation. Analysis of geologic data suggests that the area in question is separate and upgradient from the Great Miami aquifer and, therefore, will *not* be part of the final designated area.

VII. Economic and Regulatory Impact

Under the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. For purposes of this Certification, the "small entity" shall have the same meaning as given in section 601 of the RFA. This action is only applicable to the designated area of the Buried Valley Aquifer System-South. The only affected entities will be those area-based businesses, organizations, or governmental jurisdictions that request Federal financial assistance for projects which have the potential to contaminate the aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated; accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact of today's action will not be significant. Most projects subject to this review will be preceded by a ground water impact assessment required under other Federal laws, such as the National Environmental Policy Act (NEPA) as amended, 42 U.S.C. 4321, *et seq.* Integration of those related review procedures with Sole Source Aquifer review will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of Federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect

of $100 million or more on the economy, will not cause any major increase in costs or prices, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only provides for an in-depth review of ground water protection measures, incorporating State and local measures whenever possible, for only these projects which request Federal financial assistance.

Dated: June 17, 1988.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 88-15344 Filed 7-7-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Boedker, Rebecca L., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, and city/ state	File No.	MM docket No.
A. Rebecca L. Boedker, Northumberland, PA.	BPH-870827ML	88-304
B. William Phillip Zurick, Northumberland, PA.	BPH-870827MN	
C. Charles W. Loughery, Northumberland, PA.	BPH-870827NI	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue-Heading, and Applicants

1. Air Hazard, B
2. Comparative, A-C
3. Ultimate, A-C

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-15299 Filed 7-7-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Gamble, Larry W. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, and city/ state	File No.	MM docket No.
A. Larry W. Gamble, Madera, CA.	BPH-870825MA	88-302
B. Miguel V. Gutierrez d/b/a Madera FM Radio, Madera, CA.	BPH-870827NL	
C. Madera FM Limited Partnership, Madera, CA.	BPH-870827NM	
D. Cynthia K. Byington, Madera, CA.	BPH-870827NS	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, A,B,C,D
2. Ultimate, A,B,C,D

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone No. (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-15300 Filed 7-7-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Hill, Ernestine et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, and city/ State	File No.	MM docket No.
A. Ernestine Hill, Coeburn, VA.	BPH-870827NE	88-300
B. Preston Lawrence Salyer, Coeburn, VA.	BPH-870827NH	
C. Better Broadcasting, Inc., Coeburn, VA.	BPH-870827NO	
D. MidSouth Communications Corp., Coeburn, VA.	BPH-870827NX	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, and Applicants

1. Comparative, A, B, C, D
2. Ultimate, A, B, C, D

3. If there are any non-standardized issues in this proceeding, the full text of the issues and the applicants to which they apply are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services,

Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–15298 Filed 7–7–88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Marchant, Shirley, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, and city/ state	File No.	MM docket No.
A. Shirley Marchant, Omega, GA.	BPH–870429MD	88–305
B. James Hardy and Douglas M. Sutton, Jr., d/b/a Radio South Georgia, Omega, GA.	BPH–870430ML	
C. Omega FM Limited Partnership, Omega, GA.	BPH–870430MN	

2. Pursuant to section 309(e) of the Communication Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, and Applicants

1. Air Hazard, C
2. Comparative, A, B, C
3. Ultimate, A, B, C

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–15301 Filed 7–7–88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Miller, Scott P., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, and city/ state	File No.	MM docket No.
A. P. Scott Miller, Marvin H. Halberstein and Donald E. Rice, Newberry, FL.	BPH–861215ME	88–303
B. Newberry Broadcasting Corporation, Newberry, FL.	BPH–861217MF	
C. Roberta Roe Johnson, d/b/a Bama Broadcasting Company, Newberry, FL.	BPH–861217MH	
D. Ridden Partnership, Newberry, FL.	BPH–861217MS	
E. Robert J. Adamson, Newberry, FL.	BPH–861217MW	
F. Newberry Broadcast Partnership, Newberry, FL.	BPH–861217ND	
G. Clarence T Barinowski, Newberry, FL.	BPH–861217NG	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, and Applicants

1. Air Hazard, E, G
2. Comparative, A, B, C, D, E, F, G
3. Ultimate, A, B, C, D, E, F, G

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–15297 Filed 7–7–88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

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, D.C. 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.: 203–011063–005

Title: U.S./Jamaica Discussion Agreement

Parties: Crowley Caribbean Transport, Inc., Kirk Lines Ltd., Sea-Land Service, Inc., Zim-American Israeli Shipping Co., Inc., Calypso Container Lines

Synopsis: The proposed amendment would add the Shipping Corporation of Trinidad and Tobago, Ltd. as a party to the agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: July 5, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–15365 Filed 7–7–88; 8:45 am]

BILLING CODE 6730-01-M

Cancellation of Inactive Tariffs

By notice served May 16, 1988 and published in the **Federal Register** on May 20, 1988, the Federal Maritime Commission notified 290 carriers of its intent to cancel their individual tariffs 30 days thereafter, in the absence of a showing of good cause why such tariffs should not be cancelled.

The notice was served on the 290 carriers by certified mail on May 16,

1988; and 32 carriers replied to the Notice requesting that their tariffs remain active. Accordingly, the tariffs of the 32 carriers listed in Attachment A that responded to the notice will be retained in the Commission's active files.

It is misleading to the public, potentially unfair to competing carriers, and an unreasonable administrative burden on the Commission's staff for inactive tariffs to remain on file. Accordingly, the tariffs of the 258 carriers listed in Attachment B to this notice that failed to respond to the May 16, 1988 notice will be cancelled. It should be noted that certain information items on the attached lists may not apply to a particular carrier and are, therefore, designated not applicable (NA).

Now, therefore it is ordered, that the tariffs of the 258 carriers listed on Attachment B be cancelled.

It is further ordered, that a copy of this Order be sent by certified mail to the last known address of the carriers listed in the attachments to this Order.

It is further ordered, That this notice be published in the **Federal Register.**

This Order is issued pursuant to authority delegated to the Director, Bureau of Domestic Regulation by section 9.04 of Commission Order No. 1 (Revised) dated November 12, 1981.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

Attachment A.—Federal Maritime Commission, Bureau of Domestic Regulation, Office of Carrier Tariffs, and Service Contract Operations

Carriers That Responded to the Notice of Intent To Cancel Inactive Tariffs

Acronym: **AEI Ocean Services Corporation**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 120 Tokeneke Road, P.O. Box 1231
City: Darien
State: CT 06820
Country: United States of America
License No.: NA.
Name Number: 007686

Acronym: **American International Forwarding, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 5177 Campbell Run Road
City: Pittsburgh
State: PA 15205
Country: United States of America
License No.: NA.
Name Number: 000227

Acronym: **American Seaway Carriers, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 899 Market Street, P.O. Box 127
City: Paterson
State: NJ 07513
Country: United States of America
License No.: NA.
Name Number: 005856

Acronym: **AVI International, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Seven Dey Street, Suite 711
City: New York
State: NY 10007
Country: United States of America
License No.: NA.
Name Number: 000321

Acronym: **Bilgrey Cargo, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 158–10 Rockaway Boulevard
City: Jamaica
State: NY 11434
Country: United States of America
License No.: NA.
Name Number: 006166

Acronym: **C D Consolidators**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 4519 Wawona Street
City: Los Angeles
State: CA 90065
Country: United States of America
License No.: NA.
Name Number: 006324

Acronym: **Capella Marine Service, S.A.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 37–74 Oficina 105, Via Espana, Edificio Rafael
City: Panama City
State:
Country: Republic of Panama
License No.: NA.
Name Number: 006234

Acronym: **Cargo Point International Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 45 John Street, Suite 902
City: New York
State: NY 10038
Country: United States of America
License No.: NA.
Name Number: 005995

Acronym: **Caribbean American Freight, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1561 N.W. 82nd Avenue
City: Miami
State: FL 33126
Country: United States of America
License No.: NA.
Name Number: 007699

Acronym: **Caribtran, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 6800 N.W. 37th Court
City: Miami
State: FL 33147
Country: United States of America
License No.: NA.
Name Number: 005751

Acronym: **Concord Express (Shipping) Ltd.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Flat E1, 3/Fl. Hoi Bun Industrial Bldg., 6 Wing Yip Street
City: Kwun Tong, Kowloon
State:
Country: Hong Kong
License No.: NA.
Name Number: 006054

Acronym: **Cosmo Sea Freight (USA) Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 147–35 183rd Street, Suite 201
City: Jamaica
State: NY 11413
Country: United States of America
License No.: NA.
Name Number: 002239

Acronym: **Eur-A-Med Shipping, Ltd.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 2700 Azalea Drive
City: Charleston Heights
State: SC 29045
Country: United States of America
License No.: NA.
Name Number: 001247

Acronym: **First Maritime Company, Inc.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 7505 Waters Avenue, Suite C–8
City: Savannah
State: GA 31416
Country: United States of America
License No.: NA.
Name Number: 005731

Acronym: **Gulf Carib Lines Ltd.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box 1500
City: Tampa
State: FL 33601

Country: United States of America
License No.: NA.
Name Number: 007710

Acronym: **Hercules Packing, Shipping & Moving Co., Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 23–96 48th Street
City: Astoria
State: NY 11103
Country: United States of America
License No.: NA.
Name Number: 002222

Acronym: **I.M.S., Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 4416 Wheeler Avenue
City: Alexandria
State: VA 22304
Country: United States of America
License No.: NA.
Name Number: 001316

Acronym: **Kreitz Motor Express, Inc.**
DBA: **KMX International**
Person Type: Non-vessel-operating common carrier
Street: 796 Fritztown Road, P.O. Box 2152
City: Sinking Spring
State: PA 19608
Country: United States of America
License No.: NA.
Name Number: 005777

Acronym: **L.K. Overseas Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 555 E. Ocean Blvd. #818
City: Long Beach
State: CA 90802
Country: United States of America
License No: NA.
Name Number: 005911

Acronym: **Leman of America**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 2920 Wolff Street
City: Racine
State: WI 53404
Country: United States of America
License No: NA.
Name Number: 007731

Acronym: **Medas Int'L Moving & Shipping Corporation**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 803 Sterling Place
City: Brooklyn
State: NY
Country: United States of America
License No: NA.
Name Number: 007733

Acronym: **Milam Cargo, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1364 NW 78th Avenue
City: Miami
State: FL 33126
Country: United States of America
License No: NA.
Name Number: 005959

Acronym: **Oceangate Container Line**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 11222 La Cinecea Blvd., Suite 470
City: Inglewood
State: CA 90304
Country: United States of America
License No: NA.
Name Number: 002789

Acronym: **Reefer Express Lines, Ltd.**
DBA: **Great Circle Lines, Ltd.**
Person Type: Ocean common carrier (vessel operating)
Street: 5 Becker Farm Road
City: Roseland
State: NJ 07068
Country: United States of America
License No: NA.
Name Number: 000864

Acronym: **RJ International Freight Services**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 803 A Linden Avenue
City: San Francisco
State: CA 94080
Country: United States of America
License No: NA.
Name Number: 006671

Acronym: **Skyway Systems**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1334 Brommer Street, P.O. Box 1810
City: Santa Cruz
State: CA 95061
Country: United States of America
License No: NA.
Name Number: 005993

Acronym: **Transamerican Ocean Contractor s, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 22 Gate House Road
City: Stamford
State: CT 06902
Country: United States of America
License No: NA.
Name Number: 006712

Acronym: **Transamerican Steamship Corporation**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 22 Gate House Road
City: Stamford
State: CT 06902
Country: United States of America
License No: NA.
Name Number: 000570

Acronym: **Valley Freight Systems, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 925 Market Street
City: Patterson
State: NJ 07513
Country: United States of America
License No: NA.
Name Number: 006701

Acronym: **Webster Container Line**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 5420 W. 104th Street
City: Los Angeles
State: CA 90054
Country: United States of America
License No: NA.
Name Number: 007771

Acronym: **World Cargo Services (WCS)**
DBA: NA.
Person Type: Non-operating common carrier
Street: P.O. Box 68668
City: Seattle
State: WA 98168
Country: United States of America
License No: NA.
Name Number: 002217

Acronym: **World Express Lines, Inc.**
DBA: NA.
Person Type: Ocean freight forwarder (independent) non-vessel-operating common carrier
Street: 1755 West Walnut Pkwy.
City: Compton
State: CA 90220
Country: United States of America
License No: 2670
Name Number: 005538

Attachment B.—Federal Maritime Commission, Bureau of Domestic Regulation, Office of Carrier Tariffs, and Service Contract Operations

Carriers That Failed To Respond to the Notice of Intent To Cancel Inactive Tariffs

Acronym: **Adriatic Container Line**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Via L. Einuadi
City: 1–34121 Trieste
State:
Country: Italy

License No.: NA.
Name Number: 000168

Acronym: **Africa Ocean Line (NIG) Ltd.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 346 Herbert Macaulay-Jaba-
City: Lagos
State:
Country: Nigeria
License No.: NA.
Name Number: 002845

Acronym: **African Liner Service, Inc.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 39 Broadway
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 007683

Acronym: **Agencija Rudenjak Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 32–08A Broadway
City: Astoria
State: NY 11106
Country: United States of America
License No.: NA.
Name Number: 000175

Acronym: **Agro Marine, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 555 Northeast 15th St. Suite Penthouse B
City: Miami
State: FL 33132
Country: United States of America
License No.: NA.
Name Number: 006618

Acronym: **Agro Steamship Line, Inc.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 3301 Northwest Southriver Drive
City: Miami
State: FL 33132
Country: United States of America
License No.: NA.
Name Number: 006619

Acronym: **AHS Internation, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 603 Kendall Court
City: Schaumburg
State: IL 60194
Country: United States of America
License No.: NA.
Name Number: 007687

Acronym: **Air Ocean Express, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 9808 Bryn Mawer Ave.
City: Rosemont
State: IL 60018
Country: United States of America
License No.: NA.
Name Number: 006301

Acronym: **Airline Booking Center Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 2311 Lee Avenue—Unit 8
City: South El Monte
State: CA 91733
Country: United States of America
License No.: NA.
Name Number: 007689

Acronym: **Altamirano Shipping, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 239 Elm Street
City: Newark
State: NJ 07105
Country: United States of America
License No.: NA.
Name Number: 000214

Acronym: **Amerasia, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 611 Tonnelle Avenue
City: Jersey City
State: NJ 07307
Country: United States of America
License No.: NA.
Name Number: 006190

Acronym: **America/Middle East Line, The**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 17 Battery Place, Suite 1930
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 007679

Acronym: **American Navigation Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: One World Trade Center, Suite 2161
City: New York
State: NY 10048
Country: United States of America
License No.: NA.
Name Number: 007685

Acronym: **American Ocean Freight Carriers Corp.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 65 Springfield Ave.
City: Springfield
State: NY 07081
Country: United States of America
License No.: NA.
Name Number: 007684

Acronym: **American Shipping Lines, Inc.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating) Non-vessel-operating common carrier
Street: 6000 NW. 84th Avenue
City: Miami
State: FL 33166
Country: United States of America
License No.: NA.
Name Number: 007719

Acronym: **American Trader Line**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 7529 Chatham Road
City: Medina
State: OH 44256
Country: United States of America
License No.: NA.
Name Number: 005860

Acronym: **American Transport, Inc.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 307 51st Place
City: Kenosha
State: WI 53140
Country: United States of America
License No.: NA.
Name Number: 007588

Acronym: **American Union Transport**
DBA: NA.
Person Type: Ocean freight forwarder (independent) Non-vessel-operating common carrier
Street: 15 East 26th Street
City: New York
State: NY 10010
Country: United States of America
License No.: 448
Name Number: 004235

Acronym: **Aquarius Intermodal, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1932 Lebanon Street
City: Hyattsville
State: MD 20783
Country: United States of America
License No.: NA.
Name Number: 000265

Acronym: **Aremar C.I.F.S.A.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Viamonte 494
City: Buenos Aires
State:
Country: Argentina
License No.: NA.
Name Number: 006197

Acronym: **Armada Central American Lines Ltd.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 80 Broad Street
City: Monrovia, Liberia
State:
Country: Liberia
License No.: NA.
Name Number: 005882

Acronym: **Arrow Ocean Lines Ltd.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 4896 Pearce St.
City: Huntington Beach
State: CA 92649
Country: United States of America
License No.: NA.
Name Number: 000273

Acronym: **Ascot International, U.S.A.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 2201 W. Lunt Avenue
City: Elk Grove Village
State: IL 60007
Country: United States of America
License No.: NA.
Name Number: 006198

Acronym: **Astram**
DBA: Astratainer
Person Type: Non-vessel-operating common carrier
Street: Noorderlaan, 139
City: 2030 Antwerp
State:
Country: Belgium
License No.: NA.
Name Number: 001766

Acronym: **Atlantic Express Lines**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: C/O Terra Marine Logistic 1602 ITM Bldg No. 2 Canal Street
City: New Orleans
State: LA 70130
Country: United States of America
License No.: NA.
Name Number: 007666

Acronym: **Azalea Shipping and Chartering, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Brookley Industrial Complex, Bldg. 219
City: Mobile
State: AL 36615
Country: United States of America
License No.: NA.
Name Number: 006348

Acronym: **Bahama Adventure Shipping, Ltd.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box N–3587
City: Nassau, NP
State:
Country: Bahama Islands
License No.: NA.
Name Number: 000333

Acronym: **Balikbayan Cargo Consolidators**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1201 Sixth St.
City: San Francisco
State: CA 94107
Country: United States of America
License No.: NA.
Name Number: 007681

Acronym: **Benovi Line S.A.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 3611 N.W. South River Drive
City: Miami
State: FL 33142
Country: United States of America
License No.: NA.
Name Number: 007667

Acronym: **Bermuda Atlantic Line, Ltd.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box 1198
City: Hamilton 5
State:
Country: Bermuda
License No.: NA.
Name Number: 000363

Acronym: **Bermuda Atlantic Lines, Ltd.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 750 N.E. 7th Avenue
City: Dania
State: FL 33004
Country: United States of America
License No.: NA.
Name Number: 007672

Acronym: **Bimini Businessmen's Association**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Box 629
City: Alice Town, Bimini Islands
State:
Country: Bahama Islands
License No.: NA.
Name Number: 000376

Acronym: **Bimini Conveyors, Ltd.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box 601
City: Bimini
State:
Country: Bahama Islands
License No.: NA.
Name Number: 000377

Acronym: **Boat Shippers, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 2505 W. Coast Hwy, Suite 102
City: New Port Beach
State: CA 92663
Country: United States of America
License No.: NA.
Name Number: 007728

Acronym: **Box Caribbean Lines, S.A.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 17 Battery Place
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 007682

Acronym: **Brasil-America Container Line**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box N–4465
City: Nassau Bahamas
State:
Country: Bahama Islands
License No.: NA.
Name Number: 006200

Acronym: **Broadland Freight Services Co., Ltd.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Unit 1515 World Finance Center, South Tower, Harbor City
City: Kowloon
State:
Country: Hong Kong
License No.: NA.
Name Number: 006201

Acronym: **BSK Speditionsgesellschaft**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: OST West Strabe 74
City: 2000 Hamburg 11
State:
Country: German Federal Republic (West)
License No.: NA.
Name Number: 007665

Acronym: **Budget International Transport**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 530 East 8th Street
City: Los Angeles

State: CA 90014
Country: United States of America
License No.: NA.
Name Number: 000394

Acronym: **BWI Transworld, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 3200 4th Avenue South
City: Seattle
State: WA 98134
Country: United States of America
License No.: NA.
Name Number: 007673

Acronym: **C.C. Group Line**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 10920 La Cienega Boulevard
City: Lennox
State: CA 90304
Country: United States of America
License No.: NA.
Name Number: 007693

Acronym: **C.M.T. Lines Sa**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 3701 N.W. South River Drive
City: Miami
State: FL 33142
Country: United States of America
License No.: NA.
Name Number: 007680

Acronym: **C.O.D. Express, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 3660 Wilshire Blvd., Suite 326
City: Los Angeles
State: CA 90010
Country: United States of America
License No.: NA.
Name Number: 006335

Acronym: **C.P. Container Corp.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 277 Broadway, Suite 1005
City: New York
State: NY 10007
Country: United States of America
License No.: NA.
Name Number: 007061

Acronym: **Cargo Line & Services, Inc.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 5360 S.W. 3rd Street
City: Miami
State: FL 33136
Country: United States of America
License No.: NA.
Name Number: 002800

Acronym: **Cargo Transport Corporation**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: C/O Ray Carlisle P.O. Box 55848
City: Houston
State: TX 77255
Country: United States of America
License No.: NA.
Name Number: 007697

Acronym: **Cari-Cargo International, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 8341 N.W. 66th Street
City: Miami
State: FL 33166
Country: United States of America
License No.: NA.
Name Number: 000718

Acronym: **Caribbean Atlantic Line**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 90 Broad Street
City: New York
State: MY 10004
Country: United States of America
License No.: NA.
Name Number: 005969

Acronym: **Caribbean Bulk Lines, Inc.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 999 South Bayshore Drive Tower 1, Suite 1405
City: Miami
State: FL 33131
Country: United States of America
License No.: NA.
Name Number: 002396

Acronym: **Caribbean Container Lines, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: % North Star Airlines, Cargo Bldg 263
City: Jamica
State: NY 11430
Country: United States of America
License No.: NA.
Name Number: 000706

Acronym: **Caribbean Freight Service, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 14068
City: Charlotte
State: NC 28206
Country: United States of America
License No.: NA.
Name Number: 000708

Acronym: **Caribbean Freight Systems, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 2160 N.W. 66 Avenue
City: Miami
State: FL 33152
Country: United States of America
License No.: NA.
Name Number: 007694

Acronym: **Carimar Shipping Line**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 8323 N.W. 66th Street
City: Miami
State: FL 33166
Country: United States of America
License No.: NA.
Name Number: 007700

Acronym: **Caribbean Shipping Services, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 5119 Church Avenue
City: Brooklyn
State: NY 11203
Country: United States of America
License No.: NA.
Name Number: 007698

Acronym: **Celadon Shipping, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 888 Seventh Avenue
City: New York
State: NY 10106
Country: United States of America
License No.: NA.
Name Number: 002795

Acronym: **Celtic Bulk Carriers**
DBA: NA.
Person Type: Foreign Joint Service—Consortium Agreement
Street: Merrion Hall, Strand Road
City: Dublin 4
State:
Country: Ireland
License No.: NA.
Name Number: 000730

Acronym: **Central America Transports Ltd.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: C/O Sel Madura (Florida) Inc. 1040 Port Boulevard
City: Miami
State: FL 33132
Country: United States of America
License No.: NA.
Name Number: 007028

Acronym: **Central American Container Line**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 60469 AMF

City: Houston
State: TX 77205
Country: United States of America
License No.: NA.
Name Number: 007675

Acronym: **China National Chartering Corporation**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Er Li Gou Xi Jou
City: Beijing
State:
Country: People's Republic of China
License No.: NA.
Name Number: 006019

Acronym: **Cht Ltd**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 880 Bergen Avenue
City: New Jersey
State: NJ 07306
Country: United States of America
License No.: NA.
Name Number: 007695

Acronym: **Clipper Shipping Inc.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box N–7788
City: Nassau
State:
Country: Bahama Islands
License No.: NA.
Name Number: 007696

Acronym: **CMA-USA**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 17 Battery Place
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 007747

Acronym: **Coastal & Overseas Shipping, Inc.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 11911 N.E. 1st Street
City: Bellevue
State: WA 98005
Country: United States of America
License No.: NA.
Name Number: 007662

Acronym: **Colombian Maritime Transport, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: C/O Mille Hiller, P.O. Box 623
City: Linden
State: NJ 07036
Country: United States of America
License No.: NA.
Name Number: 007690

Acronym: **Colsa Line**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Place Du Champ De Mars, 5 Boite 36
City: B–1050 Brussels
State:
Country: Belgium
License No.: NA.
Name Number: 006028

Acronym: **Com-Tainer Shipping Line, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 19 Rector Street—Suite 1905
City: New York
State: NY 10006
Country: United States of America
License No.: NA.
Name Number: 007668

Acronym: **Combitrans (U.S.A.) Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: One World Trade Center—Suite 5347
City: New York
State: NY 10048
Country: United States of America
License No.: NA.
Name Number: 006206

Acronym: **Concorde Caribe Lines, Ltd.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 2150 N.W. 70th Avenue
City: Miami
State: FL 33122
Country: United States of America
License No.: NA.
Name Number: 000797

Acronym: **Concorde/Nopal Line**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 2150 NW 70th Avenue
City: Miami
State: FL 33122
Country: United States of America
License No.: NA.
Name Number: 007720

Acronym: **Confreight Marine Line Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 2700 Coyle Avenue
City: Elk Grove Village
State: IL 60007
Country: United States of America
License No.: NA.
Name Number: 007663

Acronym: **Container Marine Transport Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 50 Oak Street
City: East Rutherford
State: NJ 07073
Country: United States of America
License No.: NA.
Name Number: 000814

Acronym: **Container Overseas Agency, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 340 South Stiles Street
City: Linden
State: NJ 07036
Country: United States of America
License No.: NA.
Name Number: 007692

Acronym: **Contranslink, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 61 Broadway—Suite 500
City: New York
State: NY 10006
Country: United States of America
License No.: NA.
Name Number: 007691

Acronym: **Contship Co., Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 450998
City: Miami
State: FL 33145
Country: United States of America
License No.: NA.
Name Number: 006228

Acronym: **Conveyor Freight Co., Ltd.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: C/O John Y. Lau, 8635 Aviation Boulevard
City: Inglewood
State: CA 90301
Country: United States of America
License No.: NA.
Name Number: 007670

Acronym: **Convopal, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1301 N.W. 78th Avenue
City: Miami
State: FL 33126
Country: United States of America
License No.: NA.
Name Number: 007669

Acronym: **Cox Shipping Line, Ltd.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)

Street: South Caicos Island
City: Turks & Caicos Island, B.W.I.
State:
Country: Bahama Islands
License No.: NA.
Name Number: 000837

Acronym: **Crown Overseas Forwarders**
DBA: NA.
Person Type: Non-vessel-operating common carrier, household goods carrier
Street: 2070 Burroughs Avenue
City: San Leandro
State: CA 94577
Country: United States of America
License No.: NA.
Name Number: 007415

Acronym: **Cruise Cargo Company**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1376 York Avenue, Suite 4C
City: New York
State: NY 10021
Country: United States of America
License No.: NA.
Name Number: 007725

Acronym: **CSL Container Lines Ltd.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1102 Join-In Commercial Center, 33 Lai Chi Kok Road, Monkok, Kowloon
City:
State:
Country: Hong Kong
License No.: NA.
Name Number: 005987

Acronym: **Cube Shipping & Warehousing Co. Ltd.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Cunard Building, Water Street
City: Liverpool, L13 1 Ds Merseyside (England)
State:
Country: Great Britain
License No.: NA.
Name Number: 005974

Acronym: **D'Amico Mediterranean Pacific Line**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Corso D'Italia, 35/B
City: Rome
State:
Country: Italy
License No.: NA.
Name Number: 000909

Acronym: **D'Leo International Services Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 3111 W. Montrose
City: Chicago
State: Il 60618
Country: United States of America
License No.: NA.
Name Number: 006078

Acronym: **Damco Internationale Spedition GMBH**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 101340
City: Hamburg 1
State:
Country: German Federal Republic (West)
License No.: NA.
Name Number: 005802

Acronym: **Damco-Baltimore, Inc.**
DBA: NA
Person Type: Non-vessel-operating common carrier
Street: 32 South Street
City: Baltimore
State: Md 21202
Country: United States of America
License No.: NA.
Name Number: 007726

Acronym: **Dansk Steamship Lines**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1 World Trade Center
City: Port of Sacramento, West Sacramento
State: CA 95691
Country: United States of America
License No.: NA.
Name Number: 000912

Acronym: **Davothom Corporation S.A.**
DBA: **Caribrasil Line**
Person Type: Ocean common carrier (vessel operating)
Street: Edificio Tapia Ave. Justo Arusemena Y Calle 31 No. 3–80
City: Panama 5
State:
Country: Republic of Panama
License No.: NA.
Name Number: 006229

Acronym: **Delta Steamship Lines, Inc.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Glenpointe Center East
City: Teaneck
State: NJ 07666
Country: United States of America
License No.: NA.
Name Number: 007742

Acronym: **Demline Egypt**
DBA: NA
Person Type: Ocean common carrier (vessel operating)
Street: 77, Sultan Hussein Street
City: Alexandria
State:
Country: Egypt
License No.: NA.
Name Number: 005831

Acronym: **Deutsche Karibik Linie Thien & Heyenga Shiff.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 6, Raboisen
City: 2000 Hamburg 1
State:
Country: German Federal Republic (West)
License No.: NA.
Name Number: 005741

Acronym: **Diamond M. International Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Calle 151 CM No. 37
City: Carolina
State:
Country: United States of America
License No.: NA.
Name Number: 000933

Acronym: **Dist. Naviera del Caribe C.A.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 301 Broadway, Suite 138
City: Riviera Beach
State: FL 33404
Country: United States of America
License No.: NA.
Name Number: 007749

Acronym: **Domcon Express, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 8849
City: Ponce, Puerto Rico
State:
Country: United States of America
License No.: NA.
Name Number: 006692

Acronym: **Dominicana Shipping Company**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1257 St. Nicholas Avenue
City: New York
State: NY 10032
Country: United States of America
License No.: NA.
Name Number: 000950

Acronym: **Dynacross Liner Services, Ltd.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: C/O Gebr. Van Weelde Scheepvaartkantoor, P.O. Box 1575
City: 3000 BN Rotterdam
State:

Country: The Netherlands, Holland
License No.: NA.
Name Number: 007144
Acronym: **EAC Lines**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 22 Gate House Road
City: Stamford
State: CT 06902
Country: United States of America
License No.: NA.
Name Number: 007718

Acronym: **Eastern Forwarding International, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 161
City: Avenel
State: NJ 07001
Country: United States of America
License No.: NA.
Name Number: 007748

Acronym: **ECH Cargo Services**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 645 E. 219th Street, Unit 6
City: Carson
State: CA 90745
Country: United States of America
License No.: NA.
Name Number: 006758

Acronym: **Elite Shipping Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 2525 North Loop West
City: Houston
State: TX 77008
Country: United States of America
License No.: NA.
Name Number: 007676

Acronym: **Enterprise Shipping Corporation**
DBA: **Euro Pac Lines**
Person Type: Non-vessel-operating common carrier
Street: 49 Geary Street
City: San Francisco
State: CA 94102
Country: United States of America
License No.: NA.
Name Number: 006755

Acronym: **Euramer Consolidators Corp.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Piso 7, Ofic. No. 7A
City: Caracas
State:
Country: Venezuela.
License No.: NA.
Name Number: 001248

Acronym: **Euro Scan Atlantic Line**
DBA: **E.S.A.L.**
Person Type: Ocean common carrier (vessel operating)
Street: Box 1533, S-401
City: 50 Goteborg
State:
Country: Sweden
License No.: NA.
Name Number: 006106

Acronym: **Euromar**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Calle Cathedral Nr. 1009, Room 1602
City: Santiago
State:
Country: Chile
License No.: NA.
Name Number: 006591

Acronym: **Export-Import Service Co., Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 28265 Beverly Road
City: Romulus
State: MI 48174
Country: United States of America
License No.: NA.
Name Number: 004417

Acronym: **Faith International Cargo Services**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 4848 1/2 N. Damen
City: Chicago
State: IL 60625
Country: United States of America
License No.: NA.
Name Number: 006579

Acronym: **FAK Container Lines, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 2–24 Sellers Street
City: Kearny
State: NJ 07032
Country: United States of America
License No.: NA.
Name Number: 007711

Acronym: **Far East Express International Ltd.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 53 Park Place
City: New York
State: NY 10007
Country: United States of America
License No.: NA.
Name Number: 002850

Acronym: **Far East Services, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 4214 Beverly Blvd., Suite 206
City: Los Angeles
State: CA 90004
Country: United States of America
License No.: NA.
Name Number: 006687

Acronym: **Flotamar Container Line, LTD.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box 190
City: Grand Cayman, Cayman Islands B.W.I.
State:
Country: Bahama Islands
License No.: NA.
Name Number: 006987

Acronym: **Four Star Cargo, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 7640 N.W. 63rd Street
City: Miami
State: FL 33166
Country: United States of America
License No.: NA.
Name Number: 005840

Acronym: **Freight Expediters, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 6565 Eastland Rd.
City: Cleveland
Street: OH 44142
Country: United States of America
License No.: NA.
Name Number 000435

Acronym: **Freight-Base Ocean**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 66479
City: Chicago
State: IL
Country: United States of America
License No.: NA.
Name Number: 006245

Acronym: **G.&S. Shipping Co., Inc.**
DBA: NA
Person Type: Non-vessel-operating common carrier
Street: 206–16 Hollis Avenue
City: Hollis Queen
State: NY 11428
Country: United States of America
License No.: NA.
Name Number: 006750

Acronym: **G.A.A.C. Express Cargo**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 7646 De Moss Street
City: Houston
State: TX 77036
Country: United States of America

License No.: NA.
Name Number: 006258

Acronym: **Ganda Overseas Lines**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 2295
City: Los Angeles
State: CA 90051
Country: United States of America
License No.: NA.
Name Number: 005858

Acronym: **Global Cargo and Travel Services, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 14539 Blythe Street, Unit B–1
City: Van Nuys
State: CA 91402
Country: United States of America
License No.: NA.
Name Number: 006608

Acronym: **Global Marine, S.A.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Avenida Prolongacion, Mexico 85
City: Santo Domingo
State:
Country: Dominican Republic
License No.: NA.
Name Number: 006175

Acronym: **Global Operations Line**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 465 California Street
City: San Francisco
State: CA 94104
Country: United States of America
License No.: NA.
Name Number: 005866

Acronym: **Gordon's Shipping Co., Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 137–09 Eastgate Plaza
City: Springfield Garden, Queens
State: NY 11413
Country: United States of America
License No.: NA.
Name Number: 000474

Acronym: **Great Republic Maritime Shipping Co., LTD., The**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: C/O Robert C. McQuigg P.O. Box 11474
City: Washington
State: DC 20008
Country: United States of America
License No.: NA.
Name Number: 007761

Acronym: **Gulfmarine, Inc.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 2000 Post Oak Boulevard
City: Houston
State: TX 77956
Country: United States of America
License No.: NA.
Name Number: 006603

Acronym: **Hakko Maritime Corporation**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 6–13 Nishi-Shinbashi 1-Chome
City: Minatoku, Tokyo
State:
Country: Japan
License No.: NA.
Name Number: 007743

Acronym: **Holiday International Services**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1757 Evangellista St. Bangkal
City: Makati, Metro Manila
State:
Country: Philippines
License No.: NA.
Name Number: 005809

Acronym: **Hoshiko Line**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 128–A West Bay St.
City: Savannah
State: GA 31401
Country: United States of America
License No.: NA.
Name Number: 007449

Acronym: **Hyonik Express Co., Ltd.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 51 Sogong-Dong Rm 1903 New Kal Bldg
City: Chung-Ku, Seoul 100
State:
Country: Republic of Korea
License No.: NA.
Name Number: 005818

Acronym: **Incan Superior Limited Tariff**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Suite 102, 105 South May Street
City: Thunder Bay, ON. (C) P7E 1B1
State:
Country: Canda
License No.: NA.
Name Number: 001328

Acronym: **Indonesia Nusantara Corporation**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 8411 La Cieneoa Blvd.
City: Inglewood
State: CA 90301
Country: United States of America
License No.: NA.
Name Number: 002782

Acronym: **Intercontinental Transport (ICT) B.V.**
DBA: NA.
Person Type: Ocean comon carrier (vessel operating)
Street: Wilhelminakade 39, P.O. Box 545
City: 3000 AM Rotterdam
State:
Country: The Netherlands, Holland
License No.: NA.
Name Number: 002424

Acronym: **Interlink Lines**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 90 West Street, Suite #1100
City: New York
State: NY 10006
Country: United States of America
License No.: NA.
Name Number: 007723

Acronym: **Intermodal S.A.**
DBA: NA.
Person Type: Agent—Filing Ocean common carrier (vessel operating)
Street: 61 Broadway, Suite 2528
City: New York
State: NY 10006
Country: United States of America
License No.: NA.
Name Number: 005931

Acronym: **International Distribution Systems (USA) Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 17 Battery Place
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 002657

Acronym: **International Export Packers, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 4607 Eisenhower Avenue
City: Alexandria
State: VA 22304
Country: United States of America
License No.: NA.
Name Number: 007426

Acronym: **International Shipping Associates, Inc.**
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 90 Western Avenue
City: Allston

State: MA 02134
Country: United States of America
License No.: NA.
Name Number: 001371

Acronym: **International Shipping Company**
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 4201 Cathedral Avenue NW., #1202 W
City: Washington
State: DC 20016
Country: United States of America
License No.: NA.
Name Number: 005567

Acronym: **Interocean Express Line, Inc.**
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 18383 Susana Road
City: Compton
State: CA 90221
Country: United States of America
License No.: NA.
Name Number: 007717

Acronym: **Interocean Marine**
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 2250 Devon Avenue
City: Des Plaines
State: IL 60018
Country: United States of America
License No.: NA.
Name Number: 007772

Acronym: **Interroll S.A.**
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 2021 Union Avenue
City: Montreal, Quebec H3A 2Y5
State:
Country: Canada
License No.: NA.
Name Number: 005905

Acronym: **Intnl Sea Transport Consolidators, Inc.**
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 691 85th Avenue
City: Oakland
State: CA 94621
Country: United States of America
License No.: NA.
Name Number: 007716

Acronym: **Island Consolidation, Inc.**
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 1025 17 St. W.
City: Riviera Beach
State: FL 33404
Country: United States of America
License No.: NA.
Name Number: 001381

Acronym: **ITS Consolidators, Inc.**
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 100 Church Street, Suite 320
City: New York
State: NY 10007
Country: United States of America
License No.: NA.
Name Number: 007737

Acronym: **Jadranska Slobodna Plovidba**
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street:
City: Split
State:
Country: Yugoslavia
License No.: NA.
Name Number: 001401

Acronym: **JC Express**
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 5300 W. Century Blvd., Suite 409
City: Los Angeles
State: CA 90045
Country: United States of America
License No.: NA.
Name Number: 007746

Acronym: **Jetstream Freight Services, Inc.**
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 145 Hook Creek Blvd.
City: Valley Stream
State: NY 11581
Country: United States of America
License No.: NA.
Name Number: 005875

Acronym: **Kamtel Express**
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 2228 Livingston Street
City: Oakland
State: CA 94606
Country: United States of America
License No.: NA.
Name Number: 007729

Acronym: **Keen International Cargo, Inc.**
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: One World Trade Center—Suite 1101
City: New York
State: NY 10048
Country: United States of America
License No.: NA.
Name Number: 007722

Acronym: **Kelso Shipping, Inc.**
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: Western Plaza, Suite 70, 10725 S.W. Barbur Blvd.
City: Portland
State: OR 97219
Country: United States of America
License No.: NA.
Name Number: 007730

Acronym: **Kien Hung Shipping Co., Ltd. S.A.**
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 3rd Floor, No. 127–1, Sung Chiang Road
City: Taipei
State:
Country: People's Republic of China
License No.: NA.
Name Number: 005811

Acronym: **Kinford Group, Inc., The**
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 253 Chesterfield Road
City: Oakdale
State: CT 06370
Country: United States of America
License No.: NA.
Name Number: 005747

Acronym: **Koam Forwarding, Inc.**
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 38 W. 32nd Street—Room 1007
City: New York
State: NY 10001
Country: United States of America
License No.: NA.
Name Number: 007750

Acronym: **Landmark Union Limited**
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Via Enrico Fermi 28, San Giorgio Di Nogaro
City: Udine
State:
Country: Italy
License No.: NA.
Name Number: 001815

Acronym: **Leaseway International Corp.**
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 61 Broad Avenue
City: Fairview
State: NJ 07022
Country: United States of America
License No.: NA.
Name Number: 001596

Acronym: **Liberty Shipping Co., Inc.**
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 796

City: Lakewood
State: CA 90714
Country: United States of America
License No.: NA.
Name Number: 006357

Acronym: **Lignes Centrafricaines**
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Krausstrasse 1–A
City: D–4100 Duisburg 13, West Germany
State:
Country: German Federal Republic (West)
License No.: NA.
Name Number: 001602

Acronym: **Load Line, Inc.**
DBA: NA.
Person Type: Agent—Filing, Non-Vessel-Operating Common Carrier
Street: Route 4, Box 1
City: Beaumont
State: TX 77705
Country: United States of America
License No.: NA.
Name Number: 005812

Acronym: **Loadstar Container Line**
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 55 New Montgomery Street
City: San Francisco
State: CA 94105
Country: United States of America
License No.: NA.
Name Number: 007732

Acronym: **M.L.S. Maritime Logistic Services SA**
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: BD Perolles 1 P.O. Box 587
City: 1600 Fribourg
State:
Country: Switzerland
License No.: NA.
Name Number: 001632

Acronym: **Mandarin Transport Inc.**
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 182–16 149th road
City: Jamaica
State: NY 11413
Country: United States of America
License No.: NA.
Name Number: 005954

Acronym: **Marine Bulk Carriers Inc.**
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 615 S.W. 2nd Avenue, Suite 207
City: Miami
State: FL 33130
Country: United States of America
License No.: NA.
Name Number: 001657

Acronym: **Maritima Atlantica—Danoluz S.A.**
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Plaza Independencia 822, Officina 602
City: Montevideo
State:
Country: Uruguay
License No.: NA.
Name Number: 006359

Acronym: **Maritime Export Services, Inc.**
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 21795
City: Baltimore
State: MD 21222
Country: United States of America
License No.: NA.
Name Number: 005976

Acronym: **Marz International.**
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 8150 S.W. 8th Street
City: Miami
State: FL 33126
Country: United States of America
License No.: NA.
Name Number: 007744

Acronym: **Matina Lines**
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Frankrijklei 115
City: 2000 Antwerp
State:
Country: Belgium
License No.: NA.
Name Number: 007713

Acronym: **Mayaca Container Line**
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 3741 NW 25th Street
City: Miami
State: FL 33142
Country: United States of America
License No.: NA.
Name Number: 005957

Acronym: **Medcon Ser. Schiffahrtsgesellschaft GM BH & Co.**
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Furbringerstrasse 22
City: 1000 Berlin 61
State:
Country: German Federal Republic (West)
License No.: NA.
Name Number: 007714

Acronym: **Merit Container Express, Inc.**
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 2712
City: Trenton
State: NJ 08607
Country: United States of America
License No.: NA.
Name Number: 001707

Acronym: **Modular International Carriers, Inc.**
DBA: NA.
Person Type: Non-Vessel-Operating Common Carrier
Street: 4761 N.W. 72nd Avenue
City: Miami
State: FL 33166
Country: United States of America
License No.: NA.
Name Number: 005900

Acronym: **Naviera Riomar, S.A. DE C.V.**
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Paseo De La Reforma #199 17th Floor
City: Colonia Cuauhtemoc 06500
State:
Country: Mexico
License No.: NA.
Name Number: 007759

Acronym: **Navitalica, Societa di Navigazione, S.R.L.**
DBA: NA.
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Via Cearesa No. 3–10
City: Genoa
Country: Italy
License No.: NA.
Name Number: 006362

Acronym: **Net Consol Service**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Room 810 Donga Mapo Bldg., 16–7 Dowhadong, Mapogu
City: Seoul, Korea
State:
Country: Republic of Korea
License No.: NA.
Name Number: 006676

Acronym: **Ocean Cargo Services**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 5726 La Mirada Avenue
City: Los Angeles
State: CA 90038
Country: United States of America
License No.: NA.
Name Number: 006606

Acronym: **Ocean/Air Freight Consolidators**

DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 521188
City: Miami
State: FL 33152
Country: United States of America
License No.: NA.
Name Number: 006577

Acronym: **OCS/USA, Inc.**
DBA: Orient Consolidation Service
Person Type: Non-vessel-operating common carrier
Street: 74 Trinity Place, Suite 610
City: New York
State: NY 10006
Country: United States of America
License No.: NA.
Name Number: 006696

Acronym: **Omega Ocean Line, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1700 South Highland Avenue
City: Baltimore
State: MD 21224
Country: United States of America
License No.: NA.
Name Number: 007724

Acronym: **Oniedan Line Corp.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1121 Lincoln Ave.
City: Holbrook
State: NY 11741
Country: United States of America
License No.: NA.
Name Number: 001297

Acronym: **OPL Line**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 4th Floor, Takeshin Bldg., 11–10, Ginza 2-Chome
City: Chuo-Ku, Tokyo 104
State:
Country: Japan
License No.: NA.
Name Number: 007712

Acronym: **Overocean Transport Corporation**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Outlook Street
City: Stamford
State: CT 06902
Country: United States of America
License No.: NA.
Name Number: 006207

Acronym: **Pace Lines**
DBA: P.A.C.E. Lines
Person Type: Non-vessel-operating common carrier
Street: 465 California St.
City: San Francisco
State: CA 94101
Country: United States of America
License No.: NA.
Name Number: 002456

Acronym: **Pacific Cargo Line**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 7315 NW 79th Terrace
City: Miami
State: FL 33166
Country: United States of America
License No.: NA.
Name Number: 007735

Acronym: **Pacific Caribbean Shipping (U.S.A.) Inc.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 231 East Millbrae Avenue, Suite 219
City: Millbrae
State: CA 94030
Country: United States of America
License No.: NA.
Name Number: 007751

Acronym: **Pacific Marine Transport, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 100 California Street, Suite 1060
City: San Francisco
State: CA 94111
Country: United States of America
License No.: NA.
Name Number: 007745

Acronym: **Pacific Star Express Corp.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Room 907, 346, Sec. 3, Nanking East Road
City: Taipei
State:
Country: Taiwan
License No.: NA.
Name Number: 006329

Acronym: **Pacline Pacific Shipping Ltd.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Achilles House, 2nd Floor, CNR Customs and Commerce Streets
City: Auckland, New Zealand
State:
Country: New Zealand
License No.: NA.
Name Number: 006731

Acronym: **Palm Beach International Shipping Corp.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 251–A Royal Palm Way 3rd Floor
City: Palm Beach
State: FL 33480
Country: United States of America
License No.: NA.
Name Number: 007734

Acronym: **Pan Africa Shipping Corporation (USA)**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 4500 Bissonnet, Suite 340
City: Bellaire
State: TX 77401
Country: United States of America
License No.: NA.
Name Number: 007715

Acronym: **Pan Caribbean Freightliners, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 2780 SW Douglas Road
City: Miami
State: FL 33133
Country: United States of America
License No.: NA.
Name Number: 007709

Acronym: **PanAmerCaribe, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 44–1404
City: Miami
State: FL 33144
Country: United States of America
License No.: NA.
Name Number: 007708

Acronym: **PanAtlantic CCS, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 74 Broad Street
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 007740

Acronym: **R.E. Rogers, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 17 Battery Place—Suite 1629
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 000878

Acronym: **Rahming Shipping, Ltd.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Lowe Sound
City: Andros Bahamas
State:
Country: Bahama Islands
License No.: NA.

Name Number: 005819

Acronym: **Republic Marine Lines Inc.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 1300 Market Street
City: Wilmington
State: DE 19801
Country: United States of America
License No.: NA.
Name Number: 007739

Acronym: **Rical Ocean Forwarding Co., Ltd.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Flat 8, Newport Centre 21F, 116 MA Taukok Rd.
City: Tokwawan, Kowloon
State:
Country: Hong Kong
License No.: NA.
Name Number: 002848

Acronym: **S.F. Enterprises**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 265 Cabrillo Avenue
City: Vallejo
State: CA 94591
Country: United States of America
License No.: NA.
Name Number: 007758

Acronym: **Salen Dry Cargo AB**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Norrlandsgatan 15
City: S–106 09 Stockholm
State:
Country: Sweden
License No.: NA.
Name Number: 007741

Acronym: **Sam Jung Shipping Los Angeles, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1070 East Dominguez St., Suite B
City: Carson
State: CA 90746
Country: United States of America
License No.: NA.
Name Number: 001056

Acronym: **Sam Jung Shipping USA Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 17 Battery Place Room 1443
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 001057

Acronym: **Samba Caribe Line, S.A.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box 6719
City: Panama 5
State:
Country: Republic of Panama
License No.: NA.
Name Number: 006025

Acronym: **Scindia Container Line, S.A.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 20 Stone Street
City: New York
State: NY 10004
Country: United States of America
License No.: NA.
Name Number: 005991

Acronym: **Sea-Bridge Express, Inc.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: R.W. Murphy, P.O. Box 877
City: Westfield
State: NJ 07091
Country: United States of America
License No.: NA.
Name Number: 007721

Acronym: **Sea Trade Shipping**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1401 N.W. 78th Avenue
City: Miami
State: FL 33126
Country: United States of America
License No.: NA.
Name Number: 006086

Acronym: **Sea-Bridge International, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 600 Richmond Terrace
City: Staten Island
State: NY 10301
Country: United States of America
License No.: NA.
Name Number: 006729

Acronym: **Seabreeze Steamship Ltd.**
DBA: Family Island Line
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box 105
City: Georgetown, Grand Cayman
State:
Country: Bahama Islands
License No.: NA.
Name Number: 002805

Acronym: **Seacorp Shipping, Ltd.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 1001 N. America Way, Room 102
City: Miami
State: FL 33132
Country: United States of America
License No.: NA.
Name Number: 007736

Acronym: **Seagate Line, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: J.G. Kim, Issuing Officer, 215 Long Beach Blvd., Suite 408
City: Long Beach
State: CA 90802
Country: United States of America
License No.: NA.
Name Number: 007738

Acronym: **Sealine Shipping Company**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Medawar Avenue Charles Helou
City: IMM Sehnaoul, Beruit
State:
Country: Lebanon
License No.: NA.
Name Number: 001112

Acronym: **Seaonic Mecante Shipping Co.**
DBA: NA.
Person Type: Non-Vessel-operating common carrier
Street: 1032 Winthrop Street
City: Brooklyn
State: NY 11211
Country: United States of America
License No.: NA.
Name Number: 006224

Acronym: **Seko Ocean Forwarding, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 3839 North Willow
City: Shiller Park
State: IL 60176
Country: United States of America
License No.: NA.
Name Number: 002846

Acronym: **Sesko International, Inc.**
DBA: NA.
Person Type: Ocean freight forwarder (independent) non-vessel-operating common carrier
Street: 4715 N.W. 72nd Ave.
City: Miami
State: FL 33166
Country: United States of America
License No.: 1171
Name Number: 001132

Acronym: **Sino-Piff International Freight Ltd.**
DBA: NA.
Person Type: Non-Vessel-operating common carrier
Street: 267–275 Des Voeux Road, Rm. 1201 Loon Kee Bld.
City: Central
State:
Country: Hong Kong
License No.: NA.

Name Number: 006055

Acronym: **Smith's Transfer Corporation**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 1000
City: Staunton
State: VA 24401
Country: United States of America
License No.: NA.
Name Number: 002784

Acronym: **Societe General d'Armement et de Navigation**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 16, Rue Washington
City: Paris
State: 75008
Country: France
License No.: NA.
Name Number: 007755

Acronym: **Sonthel International Cargo Services, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 4553 Santa Monica Blvd.
City: Los Angeles
State: CA 90029
Country: United States of America
License No.: NA.
Name Number: 006221

Acronym: **Sonymont Shipping**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1811 W. Katella, Suite 231
City: Anaheim
State: CA 92804
Country: United States of America
License No.: NA.
Name Number: 006368

Acronym: **Square Deal Shippers**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 925 Utica Avenue
City: Brooklyn
State: NY 11203
Country: United States of America
License No.: NA.
Name Number: 007677

Acronym: **Stalker Enterprises, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 10320 little Patuxent Parkway, Equitable Bank Center
City: Columbia
State: MD 21044
Country: United States of America
License No.: NA.
Name Number: 001177

Acronym: **Steebo B.V.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Rollostraat 55
City: 3084 PL Rotterdam
State:
Country: The Netherlands, Holland
License No.: NA.
Name Number: 001189

Acronym: **Sunjin Shipping Company, Ltd.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 217 Broadway, Suite 412
City: New York
State: NY 10007
Country: United States of America
License No.: NA.
Name Number: 001202

Acronym: **Superior B and C, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 55 Dowd Avenue
City: Elizabeth
State: NJ 07201
Country: United States of America
License No.: NA.
Name Number: 006103

Acronym: **Tagship Sales International, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O Box 350627
City: Fort Lauderdale
State: FL 33335
Country: United States of America
License No.: NA.
Name Number: 006371

Acronym: **Tasman Jebsen New Zealand Line**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 9th Fl., Air New Zeland House, 1 Queen Street, P.O. Box 3917
City: Auckland, New Zealand
State:
Country: New Zealand
License No.: NA.
Name Number: 007058

Acronym: **TCI Carriers Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 14 West Main Street
City: Oyster Bay
State: NY 11771
Country: United States of America
License No.: NA.
Name Number: 000510

Acronym: **Tem Fresh Exxpress**
DBA: NA.
Person Type: Non/vessel-operating common carrier
Street: 655 Montgomery Street
City: San Francisco
State: CA 94111
Country: United States of America
License No.: NA.
Name Number: 005797

Acronym: **Texas Antilles Shipping Corp, Inc.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box 1584
City: La Porte
State: TX 77571
Country: United States of America
License No.: NA.
Name Number: 007754

Acronym: **Thermotank, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 2001 San Sebastian
City: Houston
State: TX 77058
Country: United States of America
License No.: NA.
Name Number: 006372

Acronym: **Todd Logistics, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 30 Pulaski Street
City: Bayonne
State: NJ 07002
Country: United States of America
License No.: NA.
Name Number: 007753

Acronym: **Todman Express Lines, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 14802 N. Dale Mabry, Suite 333
City: Tampa
State: FL 33624
Country: United States of America
License No.: NA.
Name Number: 006714

Acronym: **Topman Express Lines, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Atlantic Shipping Agencies Ltd., 14802 N. Dale Mabry, Suite 333
City: Tampa
State: FL 33624
Country: United States of America
License No.: NA.
Name Number: 007760

Acronym: **Total Transportation Corporation**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 429 Moon Clinton Rd.
City: Corapolis

State: PA 15108
Country: United States of America
License No.: NA.
Name Number: 005488

Acronym: **Trans-Med Lines**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: C/O OSTE, 1146 Hemoor
City: Beirut
State:
Country: Lebanon
License No.: NA.
Name Number: 007757

Acronym: **Trans-Modal, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 1121 North Tower Lane
City: Bensenville
State: IL 60106
Country: United States of America
License No.: NA.
Name Number: 007782

Acronym: **Trans-Oceanica Paraguaya S.R.L.**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Calle Tte V. Kanonnikoff 998
City: Ascuncion, Paraguay
State:
Country: Paraguay
License No.: NA.
Name Number: 005785

Acronym: **Trans-Orient Express, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 149–10, 183 Street
City: Jamaica
State: NY 11413
Country: United States of America
License No.: NA.
Name Number: 000596

Acronym: **Transglobal Lines Ltd.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 6 Caledonia Place
City: St. Helier, Jersey
State: NJ
Country: United States of America
License No.: NA.
Name Number: 006171

Acronym: **Transhansa Projects, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 21 West Street—Suite 2306
City: New York
State: NY 10006
Country: United States of America
License No.: NA.
Name Number: 007756

Acronym: **Translog, S.A.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 15 Ave Des Alpes
City: CH–1211 Geneva 1
State:
Country: Switzerland
License No.: NA.
Name Number: 000585

Acronym: **Transmar**
DBA: Transmar
Person Type: Ocean common carrier (vessel operating)
Street: Suite 200, 3750 N.W. 28th Street
City: Miami
State: FL 33142
Country: United States of America
License No.: NA.
Name Number: 006819

Acronym: **Transportacion Maritima Y Fluvial, S.A. De Cv**
DBA: Mayan Line
Person Type: Ocean common carrier (vessel operating)
Street: Moras 850, Col. Del Valle
City: C.P. 03100, Mexico, D.F.
State:
Country: Mexico
License No.: NA.
Name Number: 006607

Acronym: **Transrose Marine Corporation**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 39 Broadway Room 1801
City: New York
State: NY 10006
Country: United States of America
License No.: NA.
Name Number: 007752

Acronym: **Tri-State International**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 3910 E. Coronado Street, #202
City: Anaheim
State: CA 92807
Country: United States of America
License No.: NA.
Name Number: 006237

Acronym: **Trinamco International, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 6595 N.W. 36th Street, Suite 103
City: Miami
State: FL 33166
Country: United States of America
License No.: NA.
Name Number: 002778

Acronym: **Triport International, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 822 Broadway
City: Bayonne
State: NY 07002
Country: United States of America
License No.: NA.
Name Number: 005789

Acronym: **Twin Express Trailer Corporation**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Bldg. 2141 (MIAD), Miami Int'l Airport
City: Miami
State: FL 33148
Country: United States of America
License No.: NA.
Name Number: 007769

Acronym: **Unimodal Container Line**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Phoenix House, New Road
City: Rainham Essex Rm13 8RJ
State:
Country: Great Britain
License No.: NA.
Name Number: 006153

Acronym: **Union Internacional De Vapores, S.A.**
DBA: **Univsa Lines**
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box 172A–7A. Avenida 5–10 Zona 4
City: Guatemala
State:
Country: Guatemala
License No.: NA.
Name Number: 006155

Acronym: **United American Tank Container, Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier, ocean freight forwarder (independent)
Street: P.O. Box 837
City: Fulton Beach
State: TX 78358
Country: United States of America
License No.: 2510
Name Number: 005405

Acronym: **United Cargo Corporation**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 45 Rockefeller Plaza
City: New York
State: NY 10020
Country: United States of America
License No.: NA.
Name Number: 001754

Acronym: **Universal Express**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 3530 Wilshire Blvd., Suite 100–0

City: Los Angeles
State: CA 90010
Country: United States of Aemrica
License No.: NA.
Name Number: 006674

Acronym: **Ventana Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 36–50 31st Street
City: Long Island City
State: NY 11106
Country: United States of America
License No.: NA.
Name Number: 000011

Acronym: **Victory International Transport**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: Building No. 62, Office No. 8
City: Port Everglades Station, Ft. Lauderdale
State: FL 33316
Country: United States of America
License No.: NA.
Name Number: 000014

Acronym: **VNV Filserv**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 15825 Greenworth Drive
City: La Mirada
State: CA 90638
Country: United States of America
License No.: NA.
Name Number: 006374

Acronym: **Weltrans International Corp.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 6F, No. 73, Fu Hsin N. Rd.
City: Taipet, Taiwan
State:
Country: Taiwan
License No.: NA.
Name Number: 006293

Acronym: **West Gulf Services**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 41173
City: Houston
State: TX 77241
Country: United States of America
License No.: NA.
Name Number: 002842

Acronym: **Westchase Transportation Group, Inc.**
DBA: Westchase Transportation Group, Inc.
Person Type: Non-vessel-operating common carrier
Street: 9800 Richmond, Suite 366
City: Houston
State: TX 77042
Country: United States of America
License No.: NA.
Name Number: 001763

Acronym: **World Trade Shipping Corporation**
DBA: NA.
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box 88
City: Oyster Bay
State: NY 11771
Country: United States of America
License No.: NA.
Name Number: 000121

Acronym: **World Transportation Services, Inc., Agent**
DBA: NA.
Person Type: Agent—Rules Tariff
Street: 1331 H Street, N.W.
City: Washington
State: DC 20005
Country: United States of America
License No.: NA.
Name Number: 001803

Acronym: **Worldline Shipping Co. (USA), Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: C/O Barry Brenno, 10777 Northwest Freeway
City: Houston
State: TX 77092
Country: United States of America
License No.: NA.
Name Number: 007678

Acronym: **Worldwide Shipping Co. (USA), Inc.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 10777 Northwest Freeway, Suite 500, P.O. Box 53180
City: Houston
State: TX 77052
Country: United States of America
License No.: NA.
Name Number: 006697

Acronym: **Wyllie's Worldwide Shipping Corp.**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 431 Rutland Road
City: Brooklyn
State: NY 11203
Country: United States of America
License No.: NA.
Name Number: 000132

Acronym: **YSH International**
DBA: NA.
Person Type: Non-vessel-operating common carrier
Street: 5440 Pomona Blvd.
City: Los Angeles
State: CA 90022
Country: United States of America
License No.: NA.
Name Number: 006331

[FR Doc. 88–15367 Filed 7–7–88, 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Meetings: Vital and Health Statistics National Committee

ACTION: Notice of meeting.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics Subcommittee on Medical Classification Systems established pursuant to 42 USC 242k, section 306(k)(2) of the Public Health Service Act, as amended, announces the following Subcommittee meeting (working sesion).

NAME: National Committee on Vital and Health Statistics Subcommittee on Medical Classification Systems.

TIME AND DATE: 9:00 am—5:00 pm—July 25, 1988, 9:00 am—3:00 pm—July 26, 1988.

PLACE: Hubert H. Humphrey Building, Room 337A, 200 Independence Avenue, SW., Washington, DC 20201.

STATUS: Open.

PURPOSE: The purpose of this meeting (working session) is for the Subcommittee to develop various possible options for future implementation of morbidity guidelines and/or a clinical modification of ICD–10. Formal public testimony will not be taken at this meeting.

CONTACT PERSON FOR MORE INFORMATION: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Richard J. Havlik, M.D., Staff, National Committee on Vital and Health Statistics, Room 2–12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Dated: July 1, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88–15358 Filed 7–7–88; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 88N-0250]

Drug Export; Ornade-A.F.® Spansule® Capsules

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Smith Kline & French Laboratories has filed an application requesting approval for the export of the human drug Orande-A.F.® Spanule® Capsules to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Smith Kline & French Laboratories, a Smithkline Beckman Co., 1500 Spring Garden ST., P.O. Box 7929, Philadelphia, PA 19101, has filed an application requesting approval for the export of the drug Ornade-A.F.® Spansule® Capsules, to Canada. This product is indicated for use in the relief of allergy symptoms. The application was received and filed in the Center for Drug Evaluation and Research on June 21, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seem in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 8, 1988, and to provide an additional copy of the submission directly to the contact person indentified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Evaluation and Research (21 CFR 5.44).

Dated: June 22, 1988.

Sammie R. Young,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88-15334 Filed 7-7-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Partition agreement between the Cherokee Nation of Oklahoma, and the Kaw, Otoe-Missouria, Pawnee, Ponca, and Tonkawa Indian Tribes of Oklahoma

June 20, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Correction of Notice.

DATE: Effective December 1, 1987.

SUMMARY: In 52 FR 45695, published on Tuesday, December 1, 1987, the following correction is hereby made: Appearing on page 45695, colum 2, the legal description on line 30 is corrected by deleting "NW¼" and inserting in lieu thereof "NE¼."

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 88-15401 Filed 7-7-88; 8:45 am]

BILLING CODE 4310-22-M

Bureau of Land Management

[(AK-963-4213-15) AA-50369]

Publication; Alaska Native Claims Selection; Bethel Native Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Bethel Native Corporation for approximately 12.91 acres. The lands involved are in the vicinity of Bethel, Alaska:

A parcel of land located within portions of Section 11 and 14, T. 8 N., R. 72 W., Seward Meridian.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in The Tundra Drums. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 Street, Box 13, Anchorage, Alaska 99513, ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 8, 1988 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Ann Johnson,

Chief, Branch of Calista Adjudication.

[FR Doc. 88-15307 Filed 7-7-88; 8:45 am]

BILLING CODE 4310-JA-M

Availability of Draft Environmental Impact Statement; Minto Flats Watershed, AK

AGENCY: Bureau of Land Management.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)c of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Land Management (BLM), prepared a Draft Environmental Impact Statement (DEIS) covering placer mining within portions

of the Minto Flats watershed, which drains into the Tanana River.

The Minto Flats watershed is defined as those lands which are drained by the Tolovana River, Chatanika River, and Goldstream Creek. The three drainages are located in the Yukon-Tanana Hills Uplands, which is in East-Central Alaska, bounded by the Yukon and Tanana Rivers. The study area lies within the Circle, Livengood, and Fairbanks quadrangles. At issue are the cumulative impacts of multiple placer mining operations on the environment; in particular, subsistence, water quality, and visual resources.

A Proposed Action and two alternatives incorporating management options ranging from emphasis on regulations under 43 CFR 3809 to a "no action" alternative are presented. The Proposed Action evaluates BLM's conditions of approval of plans of operations for placer mining in the affected watershed. Environmental consequences of the Proposed Action and two alternatives are analyzed and presented.

DATES: The DEIS will be available for review and comments from July 11, 1988 to August 29, 1988. Comments received after August 29 may be too late to be integrated into the Final EIS (FEIS). Public meetings, with ANILCA 810 subsistence hearings immediately following, will be held at the locations below beginning at 7:00 p.m., July 26, 1988, at the Noel Wien Library, 1215 Cowles Street, Fairbanks, Alaska; July 27, 1988, at the BLM Anchorage District Office, 6881 Abbott Loop Road, Anchorage, Alaska; August 9, 1988, at the Departmentof Transportation building, Livengood, Alaska; and August 10, 1988, at Lakeview Lodge, Minto, Alaska. The public meetings in Anchorage and Fairbanks will also provide the opportunity for making comments on the previously released Fortymile River DEIS.

ADDRESSES: Comments on the DEIS should be sent to Richard F. Dworsky, 3809 EIS Project Manager, Alaska State Office, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Richard Dworsky—Project Manager, or Page Spencer—Technical Coordinator, at (907) 271–3114..

Michael J. Penfold,

State Director.

[FR Doc. 88–14997 Filed 7–7–88; 8:45 am]

BILLING CODE 4310-JA-M

Availability of the Record of Decision for the Lower Gila South Resource Management Plan, Arizona

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Availability of the Record of Decision for the Lower Gila South Resource Management Plan (RMP).

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a Record of Decision (ROD) for the Lower Gila South (RMP). This Record of Decision documents the approval of the RMP that will guide the Lower Gila South planning area for the next 15 to 20 years. The approved RMP addresses the management of approximately 2,000,000 acres of public lands in southwestern Arizona. The planning area includes portions of La Paz, Maricopa, Pima, Pinal and Yuma Counties, Arizona.

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision are available from BLM's Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. William T. Childress, Lower Gila Area Manager, may be contacted at (602) 663–4464 for further information. Reading copies may be reviewed at the Phoenix District and BLM's Arizona State Office, 3707 North Seventh Street, Phoenix, Arizona 85011, (602) 241–5504.

Date: June 30, 1988.

Henri R. Bisson,

District Manager.

[FR Doc. 88–15348 Filed 7–7–88; 8:45 am]

BILLING CODE 4310-32-M

[NM-060-08-4220-90]

Roswell District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Roswell District Grazing Advisory Board Meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Roswell District Grazing Advisory Board.

DATE: Thursday, August 11, 1988, beginning at 10 a.m. A public comment period will be held following conclusion of the agenda.

Location: BLM Roswell District Office, 1717 West Second St., Roswell, NM 88201.

FOR FURTHER INFORMATION CONTACT: David L. Mari, Associate District Manager, or Terry Keim, Public Affairs Specialist, Bureau of Land Management, P. O. Box 1397, Roswell, NM 88201, (505) 622–9042.

SUPPLEMENTARY INFORMATION: The agenda will be limited to discussion of the FY 89 Range Improvement Projects. The meeting is open to the pubilc. Interested persons may make oral statements to the Board during the public comment period or may file written statements. Anyone wishing to make an oral statement should notify the Associate District Manager by August 4, 1988. Summary minutes will be maintained in the District Office and will be available for public inspection during regular business hours within 30 days following the meeting. Copies will be available for the cost of duplication.

David L. Mari,

Associate District Manager.

[FR Doc. 88–15402 Filed 7–7–88; 8:45 am]

BILLING CODE 4310-FB-M

[UT-050-08-4410-08]

Richfield District Advisory Council Meeting

AGENCY: Bureau of Land Management; Interior.

ACTION: District Advisory Council Meeting.

SUMMARY: The Richfield District Advisory Council will hold a meeting on August 9, 1988 at 9:00 a.m., in the BLM District Office, 150 East 900 North, Richfield, Utah. The agenda for the meeting will be:

1. Review of the National Advisory Council Resolutions.
2. Update on the Deep Creek Exchange.
3. Progress update on Tabernacle Hill.
4. The Wilderness Program.
5. Update on the proposed amendment to the R&PP Act.
6. The ORV Program.
7. Fremont River Project.
8. Clear Spot Rehabilitation.
9. Update on Henry Mountain Coordinated Resource Management Proposal.

The meeting is open to the public and interested persons may make oral statements to the Council between 2:00 p.m. and 3:00 p.m. or file written comments for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 150 East 900 Richfield, Utah 84701.

Date: June 29, 1988.

Larry R. Oldroyd,

District Manager, Richfield District Office.

[FR Doc. 88–15316 Filed 7–7–88; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ-920-08-4212-24; A-22994]

Donation of Private Lands

June 29, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of donation of private lands in Cochise County, AZ.

SUMMARY: On June 16, 1988, the United States accepted title to 6.06 acres of land pursuant to section 205 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1715). The land designated Lehner Mammoth Kill Site, National Historic Landmark, is located in the NW¼NE¼, section 21, T. 23 S., R. 22 E., Gila and Salt River Meridian, Arizona.

FOR FURTHER INFORMATION CONTACT: John Gaudio, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 241–5534.

SUPPLEMENTARY INFORMATION: The land acquired by the Federal government is internationally recognized as one of the most important archaeological sites in the New World. It will be managed in a manner consistent with its scientific and educational values.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88–15308 Filed 7–7–88; 8:45 am]

BILLING CODE 4310-32-M

[ID-943-08-4212-13; I-21501]

Issuance of Land Exchange Conveyance Document; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The United States has issued an exchange conveyance document to Blaine and Connie Larsen of Hamer, Idaho 83425, for the following-described lands under section 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian, Idaho

T. 8 N., R. 36 E.
Sec. 2, lot 4, SW¼NW¼, W½SW¼;
Sec. 3, lot 1, SE¼NE¼, E½SE¼;
Sec. 11, NW¼NW¼;
Sec. 12, W½SE¼.
T. 9 N., R. 36 E.
Sec. 22, SE¼NW¼, NE¼SW¼;
Sec. 26, SE¼NW¼;
Sec. 27, W½;
Sec. 28, E½SE¼NE¼, E½E½SE¼;
Sec. 34, N½NW¼, SE¼SE¼;
Sec. 35, SW¼SW¼.
T. 9 N., R. 34 E.
Sec. 4, lot 4;
Sec. 5, lots 1, 2, 3, and 4.
T. 9 N., R. 37 E.
Sec. 19, lots 3 and 4;
Sec. 30, lot 1.

Comprising 1,410.37 acres of public land.

In exchange for these lands, the United States acquired the following-described lands:

Boise Meridian, Idaho

T. 8 N., R. 35 E.
Sec. 22, E½NE¼, NW¼NE¼, N½NW¼;
Sec. 23, S½NW¼, NE¼SW¼.
T. 9 N., R. 35 E.
Sec. 1, lots 1, 2, and 3, S½NE¼, SE¼NW¼, NE¼SW¼, NW¼SE¼;
Sec. 34, S½.
T. 9 N., R. 36 E.
Sec. 6, lots 1 and 2, S½NE¼.
T. 13 N., R. 39 E.
Sec. 15, NE¼SE¼;
Sec. 16, W½NW¼NE¼, NW¼, SE¼SW¼;
Sec. 21, E½NW¼;
Sec. 22, W½SW¼, SE¼SW¼, SW¼SE¼.

Comprising 1,620.16 acres of private land.

The purpose of the exchange was to acquire non-federal land that has high public value for wildlife. The public interest was well served through completion of this exchange.

The values of the federal public land and the non-federal land in the exchange were appraised at $211,500 and $218,500 respectively. The exchange proponents, Blaine and Connie Larsen, waived the $7,000 difference in values.

Dated: June 30, 1988.

John Davis,

Acting Deputy State Director for Operations.

[FR Doc. 88–15312 Filed 7–7–88; 8:45 am]

BILLING CODE 4310-GG-M

[ID-943-08-4212-13; I-22245]

Issuance of Land Exchange Conveyance Document; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The United States has issued an exchange conveyance document to James E. and Lucile H. Campbell, 2019 E. 2950 S., Wendell, Idaho 83355, for the following-described lands under section 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian, Idaho

T. 7 S., R. 16 E.
Sec. 19, lot 2, SE¼NW¼, SW¼NE¼;
Sec. 20, E½;
Sec. 29, W½NE¼, NW¼SE¼.

Comprising 545.01 acres of public land.

In exchange for these lands, the United States acquired the following-described lands:

Boise Meridian, Idaho

T. 1 N., R. 16 E.
Sec. 5, SW¼NE¼, W½NW¼, SE¼NW¼, N½SW¼, NW¼SE¼;
Sec. 6, NE¼, NE¼NW¼, NE¼SE¼.
T. 2 N., R. 16 E.
Sec. 34, lots 1 and 2, NE¼NE¼, S½NE¼, N½SE¼;
Sec. 35, lots 3 and 4, NW¼, N½SW¼.

Comprising 1,130.35 acres of private land.

The purpose of the exchange was to acquire rough and mountainous private lands containing critical wildlife habitat and to improve the manageability of the public lands for both livestock and wildlife habitat. The public lands exchanged adjoin other private lands in a valley bottom setting where irrigated agricultural crop production is the primary land use. The public interest was well served through completion of this exchange.

The values of the federal public land and the non-federal land in the exchange were appraised at $40,900 and $39,600, respectively. An equalization payment of $1,300 was paid to the United States by James Campbell.

Dated: July 1, 1988.

John Davis,

Acting, Deputy State Director for Operations.

[FR Doc. 88–15314 Filed 7–7–88; 8:45 am]

BILLING CODE 4310-GG-M

[NV-930-08-4212-11; N-34192]

Realty Action; Lease of Public Land for Recreation and Public Purposes; Douglas County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action classifying public land.

SUMMARY: The following described 10 acres of public land has been examined and identified as suitable to be classified for lease under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, et seq.):

Mount Diablo Meridian, Nevada

T. 12 N., R. 20 E.,
Sec. 13, NE¼NW¼NW¼.

The Nevada Department of Transportation has requested this 10 acres as an addition to the Gardnerville Maintenance Site. The land will be fenced and used for equipment storage, a mixing table and stockpiles.

The land is not required for Federal projects. Classification is consistent with Bureau planning for this area and will be in the public interest.

The lease, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservation to the United States:

1. All mineral deposits in the said land, and to it, or persons authorized by it, the right to prospect, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

Detailed information concerning this action is available for review at the Bureau of Land Management Carson City District Office.

Upon publication of this Notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws and location under the general mining laws, but not the Recreation and Public Purposes Act and the mineral leasing laws and material sales. The segregative effect of this notice will terminate as specified in an opening order to be published in the **Federal Register.**

For a period up to and including August 22, 1988, interested parties may submit comments to the District Manager, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706–0638.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective September 6, 1988.

Dated this 29th day of June 1988.

Norman L. Murray,

Acting District Manager, Carson City District.

[FR Doc. 88–15404 Filed 7–7–88; 8:45 am]

BILLING CODE 4310-HC-M

[OR–943–08–4220–11; GP–08–176; OR–36647]

Conveyance of Public Land; Order Providing for Opening of Land in Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 30 acres of public land out of Federal ownership. This action will also open 160 acres of reconveyed land to surface entry, mining and mineral leasing.

EFFECTIVE DATE: August 12, 1988.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 30 acres of land in Klamath County, Oregon, from Federal to private ownership.

2. In the exchange, the following described land has been reconveyed to the United States:

Willamette Meridian

T. 40 S., R. 10 E.,
Sec. 12, E½SW¼;
Sec. 13, E½NW¼.

The area described contains 160 acres in Klamath County.

3. At 8:30 a.m., on August 12, 1988, the land described in paragraph 2 will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on August 12, 1988, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on August 12, 1988, the land described in paragraph 2 will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. At 8:30 a.m., on August 12, 1988, the land described in paragraph 2 will be open to applications and offers under the mineral leasing laws.

Catherine Crawford,

Acting Chief, Branch of Lands and Minerals Operations.

Dated: June 28, 1988.

[FR Doc. 88–15313 Filed 7–7–88; 8:45 am]

BILLING CODE 4310-33-M

[NV–930–08–4410–08]

Resource Management Plans for Nellis Air Force Range, NV

June 30, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a resource plan for the Nellis Air Force Range in accordance with Pub. L. (Pub. L.) 99–606 (Military Lands Withdrawal Act of November 6, 1986); and an invitation for the public to participate in the identification of issues, review of planning criteria, and formulation of alternatives for the plan.

SUMMARY: This notice describes the action to be analyzed for the Nellis Air Force Range Resource Plan, the geographic area affected, the anticipated issues and preliminary planning criteria and alternatives, the disciplines to be used to prepare the plan, the kind and extent of public participation activities and the Bureau of Land Management (BLM) office to contact for further information.

DATES: Public comment and participation are integral parts of the planning process. Written comments on the preliminary issues, planning criteria, and alternatives should be sent to the Area Manager, Bureau of Land Management, Caliente Resource Area, P.O. Box 237, Caliente, Nevada 89008 no later than August 12, 1988. Three informal public workshops are scheduled for Tuesday, July 26, 1988 at 7 p.m. at the Lincoln County Annex, 100 South 1 West, Alamo, Nevada; Wednesday, July 27, 1988 at 7 p.m. at the Tonopah Convention Center, 301 Brougher, Tonopah, Nevada; and Thursday, July 28, 1988 at 7 p.m. at the BLM Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Curtis G. Tucker, Area Manager, Caliente Resource Area, Bureau of Land Management, P.O. Box 237, Caliente, Nevada 89008, (702) 726–3141.

SUPPLEMENTAL INFORMATION:

1. Description of the Proposed Planning Action

As a result of the Military Lands Withdrawal Act 1986, the Bureau of Land Management (BLM) will prepare a resource plan for the Nellis Air Force Range. This Act states that the Secretary of the Interior, in consultation with the Secretary of the Air Force, will develop a resource plan for the area withdrawn.

This plan shall—(1) be consistent with applicable law; (2) be subject to

conditions and restrictions as may be necessary to permit the military use of such lands for the purpose specified in the withdrawal; (3) include such provisions as may be necessary for proper management and protection of the resources and values of such areas; and (4) be developed not later than three years after the date of enactment of this Act (November 6, 1989).

2. The Geographic Area Covered by the Resource Plan

The Nellis Air Force Range includes lands comprising approximately 2,945,000 acres of land in Clark, Nye, and Lincoln Counties, Nevada. A copy of the legal description and the map depicting the involved lands are on file for public inspection in the following offices:

Director (322), Bureau of Land Management, Room 3643, Interior Bldg., 18th and C Streets, NW., Washington, DC 20240.

State Director, Bureau of Land Management, Nevada State Office, P.O. Box 12000, 850 Harvard Way, Reno, Nevada 89520.

District Manager, Bureau of Land Management, Las Vegas District Officer, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126.

Director, U.S. Fish and Wildlife Service, Room 3256, Interior Bldg., 18th and C Street, NW., Washington, DC 20240.

Director, U.S. Fish & Wildlife Service, Lloyd 500 Bldg., Suite 1692, 500 NE., Multnomah Street, Portland, Oregon 97232.

Commander, Nellis Air Force Base, 5547th Range Group/DOX, Nellis Air Force Base, Nevada 89191.

Office of the Secretary, Department of Defense, The Pentagon, Washington, DC 20301–1000.

Area Manager, Bureau of Land Management, Caliente Resource Area, P.O. Box 237 Caliente, Nevada 89008.

3. General Types of Issues Anticipated

The public is invited to participate in the identification of issues related to the Nellis Air Force Range Resource Plan as required by Pub. L. 99–606. The following planning issues are anticipated:

A. Wild Horse and Burro Management

Determine if the current objectives of the wild horse and burro activity plan are adequate.

A consultation and coordination process was undertaken in 1984–85 to prepare a Herd Management Area Plan (HMAP) for the Nellis Range Complex/Nevada Wild Horse Range. An appropriate management level of 2,000 animals was identified.

The resource plan will reference and update, if necessary, existing management direction for the wild horses on the Nellis Range.

B. Vegetation

Determine what vegetative condition is desirable and what management actions are needed to obtain and maintain that condition. Determine what special management actions are needed to protect Threatened or Endangered (T&E) plant species.

C. Wildlife

Determine wildlife habitat objectives for existing wildlife species and what areas require habitat management plans. Determine what special management actions are needed to protect T&E animal species.

D. Cultural Resource

Determine what special management actions are needed for the protection of archeological and historical sites.

4. Preliminary Planning Criteria

The public is invited to participate in the development of planning criteria to guide the data collection, analysis and decision making during planning.

Preliminary planning criteria for the Nellis Range Resource Plan call for the following:

A. Recognize that the lands on the Nellis Range are reserved for use by the Secretary of the Air Force: (1) As an armament and high-hazard testing area; (2) for training for aerial gunnery, rocketry, electronic warfare, and tactical maneuvering and air support; and (3) subject to other defense-related purposes consistent with the purposes specified in the Act.

B. the Nellis Range Resource Plan will not address access per se, but will address the extent to which access restrictions and limitations have a bearing on the resource management issues identified for analysis in this resource plan.

C. A Memorandum of Understanding between the Secretary of the Interior and Secretary of the Air Force shall be prepared to implement the resource plan. Any such memorandum of understanding shall provide that the Director of the Bureau of Land Management will provide assistance in the suppression of fires resulting from the military use of lands withdrawn if requested by the Secretary of the military department concerned.

D. Lands within the Desert National Wildlife Range will be managed in accordance with the National Wildlife Refuge System Administration Act of 1966, and other applicable laws and will not be changed or modified by this resource plan.

E. Relegate site-specific resource management direction to the existing activity plan (e.g. Nellis Range Complex/Nevada Wild Horse Range Wild Horse Herd Management Area Plan and Environmental Assessment).

F. Apply the principles set forth in the Military Lands Withdrawal Act of November 6, 1986 (Pub. L. 99–606).

G. Use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, social, and environmental aspects of public land management.

H. Rely on available inventories of the lands withdrawn by Pub. L. 99–606 (identified as the Nellis Air Force Range), their resources, and other values to reach sound management decisions.

I. Give consideration to present and potential uses of the lands withdrawn by Pub. L. 99–606, as defined in the Act.

J. Consider impacts of uses on adjacent or nearby non-Federal lands and on non-public land surface over federally-owned minerals.

K. Weigh long-term benefits and detriments against short-term benefits and detriments.

L. Comply fully with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans, consistent with the stated purpose of the Nellis Range withdrawal.

M. Coordinate BLM resource inventory, planning and management activities with the resource planning and management programs of other Federal departments and agencies, State and local governments, and Indian tribes to the extent consistent with the laws governing the administration of the lands withdrawn by Pub. L. 99–606, as defined in the Act.

5. Preliminary Plan Alternatives

The public is invited to participate in the formulation of alternatives to be analyzed in the plan and associated environmental impact statement. The No Action Alternative and a Resource Management Alternative (Alternative A), at a minimum, will be analyzed.

6. Disciplines Represented on the Planning Team

An interdisciplinary team representing the following disciplines will be assigned to this planning effort: planning coordination, wildlife, wild horses and burros, cultural resources, hydrology, and fire management. All documentation will be reviewed by an interdisciplinary team.

7. Public Participation

Public comment is currently solicited in regards to the anticipated issues, preliminary planning criteria and alternatives. Three informal public workshops to address these three items are scheduled for July 26–28, 1988 (see above for locations and times).

Persons interested in participating in the planning process should submit their name and address for inclusion on the Nellis Range Resource Plan mailing list to Bureau of Land Management, Caliente Resource Area, P.O. Box 237, Caliente, Nevada 89008.

An additional opportunity for public comment will be offered after publication of the Draft Resource Plan and Environmental Impact Statement.

8. Location of Planning Documents

Planning documents and other pertinent materials may be examined at the Caliente Resource Area Office located in Caliente, Nevada between 7:30 a.m. and 4:15 p.m. Monday through Friday.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 88–15310 Filed 7–7–88; 8:45 am]

BILLING CODE 4310-MC-M

[AK-080-08-4333-02]

Special Rules and Regulations for the Steese National Conservation Area et al.

These special rules and regulations apply to all lands and water surfaces within the Steese National Conservation Area (Steese NCA), the Pinnell Mountain National Recreation Trail, the Bedrock Creek Campground, and the Ketchum Creek Campground, as shown on the Steese National Conservation Area Off-Road Vehicle Designations Map, and are subject to valid existing rights.

This order is issued pursuant to 43 CFR Subpart 8364.1 and implements provisions of the Steese NCA Resource Management Plan signed on February 2, 1986. This order will remain in effect until rescinded or modified by the District Manager, Steese/White Mountains District.

1. Motorized Equipment

a. The operation of off-road vehicles (ORVs) is restricted in some areas. See the Steese National Conservation Area Off-Road Vehicle Designations Map for information on designated ORV use areas.

b. The use of motorized equipment for mineral collection for personal use is prohibited. Mineral collection for personal recreation, using a gold pan, shovel, portable sluice box (maximum size is 16" x 5'), rocker box, or other non-motorized means is allowed, without written authorization, in areas where there are no existing mining claims or private lands. The use of motorized equipment permitted under 43 CFR Subpart 3809 may require written authorization from the District Manager, Steese/White Mountains District.

c. The use of hovercraft or airboats is prohibited.

2. Occupancy and Use

a. Camping at one site or campground within the area covered by this order for a period longer than ten (10) days (consecutive days, in the case of a campground) in any one calendar year is prohibited without written authorization from the District Manager, Steese/White Mountains District.

b. The discharging of firearms within one-quarter (¼) mile of campgrounds and public recreation cabins, as well as across or along roads and trails, is prohibited.

c. Leaving burning or smoldering campfires unattended is prohibited.

d. Subject to valid existing rights, construction of permanent or semi-permanent structures, including cabins, caches, water dams, or diversions without written authorization from the District Manager, Steese/White Mountains District is prohibited.

The foregoing provisions are not applicable to any federal, state, or local law enforcement officer or any member of any organized rescue or fire suppression force in the performance of an official duty.

Maps identifying designated areas are available at the office listed below. Any person convicted of violating this order is subject to the penalties prescribed in 43 CFR Subpart 8340.0–7 and/or 43 CFR 8360.0–7.

Direct questions and responses to: Steese/White Mountains District Manager, Bureau of Land Management, 1541 Gaffney Road, Fairbanks, Alaska 99703, (907) 356–5367.

Date: June 27, 1988.

Donald E. Runberg,

District Manager, Steese/White Mountains District.

[FR Doc. 88–15408 Filed 7–7–88; 8:45 am]

BILLING CODE 4310-JA-M

[AK-080-08-4333-02]

Special Rules and Regulations for the White Mountains National Recreation Area et al.

These special rules and regulations apply to all lands and water surfaces within the White Mountains National Recreation Area (WMNRA), that portion of BLM-managed lands between the WMNRA and the Steese and Elliott Highways, and the Cripple Creek Campground, as shown on the White Mountains National Recreation Area Off-Road Vehicle Designation Map, and are subject to valid existing rights.

The order is issued pursuant to 43 CFR Subpart 8364.1 and implements provisions of the White Mountains NRA Resource Management Plan signed on February 2, 1986. This order will remain in effect until rescinded or modified by the District Manager, Steese/White Mountains District.

1. Motorized Equipment

a. The operation of off-road vehicles (ORVs) is restricted in some areas. See the White Mountains National Recreation Area Off-Road Vehicle Designations Map for information on designated ORV use areas.

b. The use of motorized equipment for mineral collection for personal use is prohibited. Mineral collection for personal recreation, using a gold pan, shovel, portable sluice box (maximum size is 16" x 5'), rocker box, or other non-motorized means is allowed, without written authorization, in areas where there are no existing mining claims or private lands. The use of motorized equipment permitted under 43 CFR Subpart 3809 may require written authorization from the District Manager, Steese/White Mountains District.

e. The use of hovercraft or airboats is prohibited.

2. Occupancy and Use

a. Camping at one site or campground within the area covered by this order for a period longer than ten (10) days (consecutive days, in the case of a campground) in any one calendar year without written authorization from the District Manager, Steese/White Mountains District is prohibited.

b. Under the authorities of 36 CFR 71 and 43 CFR 8372.1, a daily use fee of $15.00 per party is collected in advance for overnight occupancy of public use recreation cabins located in, and associated with, the White Mountains National Recreation Area. Holders of Golden Age or Golden Access Passports pay at a rate of 50 percent of the daily use fee.

Users must register prior to occupying a public recreation cabin. Reservations may be made up to 30 days in advance, but must be paid for at the time they are made, or within 48 hours if reserving by phone. The original signed permit must accompany the user(s) during their stay at the cabin(s). Maximum stay is three consecutive nights per cabin.

The following cabins located within or near the White Mountains National Recreation Area are specialized sites requiring special recreation use permits and fees:

Colorado Creek Cabin
Windy Gap Cabin
Borealis-LeFevre Cabin
Moose Creek Cabin
Cripple Creek Cabin

c. The discharging of firearms within one-quarter (¼) mile of campgrounds and public recreation cabins, as well as across or along roads and trails, is prohibited.

d. Leaving burning or smoldering campfires unattended is prohibited.

e. Subject to valid existing rights, construction of permanent or semi-permanent structures, including cabins, caches, water dams, or diversions without written authorization from the District Manager, Steese/White Mountains District is prohibited.

The foregoing provisions are not applicable to any federal, state, or local law enforcement officer or any member of any organized rescue or fire suppression force in the performance of an official duty.

Maps identifying designated areas are available at the office listed below. Any person convicted of violating this order is subject to the penalties prescribed in 43 CFR Subpart 8340.0–7 and/or 43 CFR 8360.0–7.

Direct questions and responses to: Steese/White Mountains District Manager, Bureau of Land Management, 1541 Gaffney Road, Fairbanks, Alaska 99703, (907) 356–5367.

Date: June 27, 1988.

Donald E. Runberg,

District Manager, Steese/White Mountains District.

[FR Doc. 88–15407 Filed 7–7–88; 8:45 am]

BILLING CODE 4310–JA–M

July 1, 1988

[AZ–942–08–4520–12]

Arizona; Filing of Plats of Survey

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A supplemental plat showing amended lottings created by the cancellation of the survey of the unpatented Good Luck No. 1, Good Luck No. 2 and Protection XIII lodes, M.S. 3768 and the segregation of H.E.S. 62 and H.E.S. 76 in section 5, Township 12 North, Range 1 East, Gila and Salt River Meridian, Arizona, was accepted May 24, 1988, and was officially filed May 31, 1988.

A supplemental plat showing amended lottings created by the segregation of H.E.S. 62, H.E.S. 76, H.E.S. 340, the Trinity lode, M.S. 1597, the Grand Central lode, M.S. 1769, and the Protection XII lode, M.S. in 3768, in section 6, Township 12 North, Range 1 East, Gila and Salt River Meridian, Arizona, was accepted May 24, 1988, and was officially filed May 31, 1988.

A supplemental plat showing amended lottings created by the cancellation of the survey of the unpatented Grape Vine, West Side 1 and Good Luck No. 2 lodes, M.S. 3768, in sections 7 and 8, Township 12 North, Range 1 East, Gila and Salt River Meridian, Arizona, was accepted May 24, 1988, and was officially filed May 31, 1988.

These plats were prepared at the request of the U.S. Forest Service, Prescott National Forest.

A plat representing a dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, and metes-and-bounds surveys in section 24, Township 2 North, Range 6 East, Gila and Salt River Meridian, Arizona, was accepted June 15, 1988, and was officially filed June 17, 1988.

This plat was prepared at the request of the Arizona State Land Department.

A plat representing a dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, and the survey of subdivisions and metes-and-bounds in section 13, Township 20 North, Range 6, East, Gila and Salt River Meridian, Arizona, was accepted June 29, 1988, and was officially filed June 30, 1988.

This plat was prepared at the request of the Federal Land Exchange, Inc.

A plat representing a dependent resurvey of the south, east, west, and north boundaries and the subdivisional lines, and the survey of the subdivision of certain sections in Township 26 North, Range 29 East, Gila and Salt River Meridian, Arizona, was accepted June 17, 1988, and was officially filed June 20, 1988.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Area Office, Window Rock, Arizona.

A plat (in 3 sheets) representing a dependent resurvey of a portion of the east boundary (Gila and Salt River Meridian) and a portion of the subdivisional lines, and a survey of subdivisions in section 14, Township 5 North, Range 1 West, Gila and Salt River Meridian, Arizona, was accepted May 9, 1988, and was officially filed May 13, 1988.

A plat (in 3 sheets) representing a dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines in Township 3 North, Range 5 West, Gila and Salt River Meridian, Arizona, was accepted May 9, 1988, and was officially filed May 13, 1988.

A plat (in 6 sheets) representing a dependent resurvey of a portion of the subdivisional lines, and metes-and-bounds surveys in certain sections in Township 3 North, Range 6 West, Gila and Salt River Meridian, Arizona, was accepted May 9, 1988, and was officially filed May 13, 1988.

A supplemental plat showing amended lotting created by the segregation of the Central Arizona Project Canal in section 6, Township 2 North, Range 7 West, Gila and Salt River Meridian, Arizona, was accepted May 9, 1988, and was officially filed May 13, 1988.

A plat (in 4 sheets) representing a dependent resurvey of portions of the south, east and west boundaries and a portion of subdivisional lines, and a metes-and-bounds survey in section 32, Township 3 North, Range 7 West, Gila and Salt River Meridian, Arizona, was accepted May 9, 1988, and was officially filed May 13, 1988.

A plat (in 4 sheets) representing a dependent resurvey of portions of the east and north boundaries and a portion of the subdivisional lines, and metes-and-bounds surveys in certain sections in Township 2 North, Range 8 West, Gila and Salt River Meridian, Arizona, was accepted May 9, 1988, and was officially filed May 13, 1988.

These plats were prepared at the request of Bureau of Land Management, Phoenix District Office.

A supplemental plat showing a subdivision of original lots 2 and 3, section 5, Township 1 South, Range 23 West, Gila and Salt River Meridian, Arizona, as accepted April 5, 1988, and was officially filed April 8, 1988.

This plat was prepared at the request of Bureau of Land Management, Yuma District Office.

A plat representing a dependent resurvey of a portion of the east boundary of Township 22 South, Range 22 East, and a portion of the subdivisional lines, and a survey of the subdivisions in section 18 in Township 22 South, Range 23 East, Gila and Salt

River Meridian, Arizona, was accepted May 25, 1988, and was officially filed June 1, 1988.

This plat was prepared at the request of the Bureau of Land Management, Safford District Office.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open file and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

James P. Kelley,

Chief, Branch of Cadastral Survey.

[FR Doc. 88-15349 Filed 7-7-88; 8:45 am]

BILLING CODE 4310-32-M

[ID-943-08-4520-12]

Filing Plats of Survey; Idaho

AGENCY: Bureau of Land Management, Interor.

The plats of survey of the following lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho on the dates hereinafter stated:

Boise Meridian, Idaho

T. 17 N., R. 2 W., accepted March 15, 1988, officially filed June 3, 1988.
T. 14 N., R. 18 E., accepted March 23, 1988, officially filed April 13, 1988.
T. 9 S., R. 25 E., accepted April 4, 1988, officially filed April 26, 1988.
T. 20 N., R. 22 E., accepted April 29, 1988, officially filed May 19, 1988.
T. 13 S., R. 25 E., accepted April 21, 1988, officially filed June 13, 1988.
T. 45 N., R. 6 W., accepted May 9, 1988, officially filed June 22, 1988.
T. 15 N., R. 25 E., accepted May 12, 1988, officially filed June 29, 1988.

The above plats represent dependent resurveys and subdivisions.

Inquiries about these lands should be addressed to Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: June 30, 1988.

Anita Mayers,

Acting Chief, Land Services Section.

[FR Doc. 88-15317 Filed 7-7-88; 8:45 am]

BILLING CODE 4310-GG-M

[OR-943-08-4520-12: GP8-178]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 31 S., R. 12 W., accepted May 20, 1988.
T. 30 S., R. 3 W., accepted June 10, 1988.
T. 39 S., R. 11½E., accepted June 10, 1988.
T. 29 S., R. 10 W., accepted June 17, 1988.
T. 26 S., R. 10 W., accepted June 24, 1988.

T. 8 S., R. 11 E., accepted June 24, 1988.

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 825 NE. Multnomah, Portland, Oregon 97208, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: June 30, 1988.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-15318 Filed 7-7-88; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-08-4520-12: GP8-174]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, forty-five (45) calendar days from the date of this publication.

Willamette Meridian

Washington

T. 36 N., R. 19 E.

The plat of T. 36 N., R. 19 E., Willamette Meridian, Washington, represents a dependent resurvey of a portion of Homestead Entry Survey No. 95 and Homestead Entry Survey No. 226, designed to restore the corners in their true original locations according to the best available evidence, and the metes-and-bounds survey of Tract 39, T. 36 N., R. 19 E., Willamette Merridian, Washington. The plat returns areas of unsurveyed land totaling 6.69 acres.

The lands included in the foregoing survey are situated about four and one-half miles northwesterly of the hamlet of Mazama, Washington, and on the northeast side of the Methow River. Access is by Forest Service Road No. 9140, which is on the northeast boundary of Tract 39. There is an abandoned campground at Gate Creek, within Tract 39.

The area is drained by the Methow River and by Gate Creek which drains southwesterly into it. The elevation is approximately 2,300 feet, with less than 50 feet of variation throughout the area.

The soil is composed generally of sandy and gravelly loam. Timber is primarily pine, fir, cedar, and cottonwood. The undergrowth is deerbrush and willow.

No evidence of mineral was noted in the area surveyed.

Willamette Meridian

Washington

T. 33 N., R. 20 E.

The plat of T. 33 N., R. 20 E., Willamette Meridian, Washington, represents a dependent resurvey of a portion of Homestead Entry Survey Nos. 67, 69, and 238, designed to restore the corners in their true original locations according to the best available evidence and the metes-and-bonds survey of Tract 37 and the meanders of a portion of the left bank of the Twisp River, in unsurveyed T. 33 N., R. 20 W., Willamette Meridian, Washington. The plat returns an area of unsurveyed land totaling 49.63 acres.

The land encompassed in this survey is located about 10 miles west of the town of Twisp, Washington. The land is stiuated on a gentle south slope of the Twisp River Valley. The area is drained

by the Twisp River which grounds southeasterly turning northeasterly and functions as a major portion of the boundary of Tract 37. The elevation of the area is mainly constant at 2,200 feet.

Access is by way of County Road No. 9114, which crosses through the northerly portion of Tract 37. A dirt road leaves the county road near angle point No. 2 and traverses along the Twisp River, dead ending near angle point No. 5.

The timber consists of pine, fir, spruce, cedar, and cottonwood, the predominant species being pine. The area along the Twisp River is covered with heavy undergrowth of willow, wild rose, young alder, and cottonwood.

The principal uses of the area are timber harvesting and livestock grazing. The Forest Service land is used for recreation by hunters, fisherman, and picnickers.

There are many small farms in the vicinity of this survey. The only improvements noted on Tract 37 are a dirt road and an irrigation ditch.

There were no mineral deposits noted during the survey.

If protests against a survery, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land management, 825 NE. Multnomah, Portland, Oregon 97208, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protst prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys and survey.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE., Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: June 29, 1988.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-15309 Filed 7-7-88; 8:45 am]

BILLING CODE 4310-33-M

[WY-930-08-4332-09]

Wilderness Study Areas; Characteristics, Inventories, etc.: Mineral Survey Reports—Wyoming

AGENCY: Bureau of Land Management, Interior, Wyoming.

ACTION: Notice of availability of three mineral survey reports produced by the U.S. Bureau of Mines on three Bureau of Land Management Wilderness Study Areas (WSA's) in Wyoming. Announcement of a sixty-day comment period to obtain previously unknown mineral information on the areas.

SUMMARY: The Federal Land Policy and Management Act (Pub. L. 94-579) requires the U.S. Geological Survey and the U.S. Bureau of Mines to conduct mineral surveys on certain BLM WSA's to determine the mineral values, if any, that may be present. The reports are for the Sand Dunes WSA in Sweetwater County, the Honeycomb Buttes WSA in Fremont and Sweetwater Counties, and the Ferris Mountain WSA in Carbon County, Wyoming. This notice gives the public an opportunity to obtain the reports and to review and offer previously unknown mineral information on these three WSA's.

DATES: The public review of the three mineral survey reports named in this notice shall begin on July 15, 1988, and continues for sixty days (September 13, 1988).

ADDRESSES: All data and written comments should be directed to the State Director (WY-910), Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003. Copies of these reports must be purchased from: Books and Open-File Reports Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, Colorado 80255.

FOR FURTHER INFORMATION CONTACT: Wayne Erickson, Wilderness Coordinator, (307) 772-2073, Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

SUPPLEMENTAL INFORMATION: The three mineral reports are available for review or purchase from the Geological Survey. When ordering the bulletin number and name should be used. The price listed is that charged by the Books and Open-File Reports Section, U.S. Geological Survey (303-276-7476) and includes third or fourth class mailing. First class or foreign mailings require an addition of ten percent.

Sand Dunes WSA, Sweetwater County, (U.S.G.S. 1757-A) $1.50.

Honeycomb Buttes WSA, Fremont and Sweetwater Counties, (U.S.G.S. 1757-B) $1.75.

Ferris Mountains WSA, Carbon County, (U.S.G.S. 1757-C) $1.50.

The reports are also available for review in the offices of the BLM in Cheyenne, Rawlins, and Rock Springs, Wyoming. County libraries in Laramie County (Cheyenne), Albany County (Laramie), Carbon County (Rawlins), Sweetwater County (Green River), and Fremont County (Lander). Any new public comment information/data will be screened by the BLM. The Wyoming State Director may ask the Geological Survey or the Bureau of Mines to determine if the information contains significant new data or an interpretation that was not available at the time the mineral survey report was prepared. The Geological Survey or the Bureau of Mines would determine if additional field investigations should be undertaken. Recommendations for the designation of an area as wilderness will be made to the Secretary of the Interior by the BLM. The Secretary shall, in turn, make recommendations to the President who will advise Congress. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress.

Hillary A. Oden,

State Director, Wyoming.

July 1, 1988.

[FR Doc. 88-15311 Filed 7-7-88; 8:45 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service

[DES 88-37]

Availability of Draft Wilderness Review Amendment and Supplemental Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability of a Draft Wilderness Review Amendment and Supplemental Environmental Impact Statement for the Wilderness Proposal of the Final Comprehensive Conservation Plan/Environmental Impact Statement/Wilderness Review for the Becharof National Wildlife Refuge, Alaska.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared for public review a Draft Wilderness Review Amendment and Supplemental Environmental Impact Statement for the Wilderness Proposal of the Final Comprehensive Conservation Plan/ Environmental Impact Statement Wilderness Review for the Becharof Natonal Wildlife Refuge, Alaska, pursuant to section 3(d) of the Wilderness Act of 1964, section 1317 of the Alaska National Interest Lands Conservation Act of 1980 (Alaska Lands Act), and section 102(2)(C) of the National Environmental Policy Act of 1969. The Draft Wilderness Review Amendment and Supplemental Environmental Impact Statement analyzes the impacts of three alternative wilderness proposals for the Becharof National Wildlife Refuge.

DATES: Comments on the draft document must be submitted on or before August 23, 1988, to receive consideration in the preparation of the Final Supplemental Environmental Impact Statement.

ADDRESS: Comments should be sent to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503–6199 (Attn: William Knauer).

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503–6199; telephone (907) 786–3399.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the Draft Statement may be obtained by contacting Mr. Knauer.

Copies of the Draft Wilderness Review Amendment and Supplemental Environmental Impact Statement are also available for review at the Office of the Regional Director, address as listed previously, as well as at the office of the Becharof National Wildlife Refuge, King Salmon, Alaska, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuges, Main Interior Bldg., 18th and C Streets, NW., Washington, DC 20240;

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 NE Multnomah Street, Suite 1692, Portland, OR 97232;

U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Avenue, SW., Albuquerque, NM 87103;

U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111;

U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Bldg., 75 Spring Street, SW., Atlanta, GA 30303;

U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 700, Newton Corner, MA 02158; and

U.S. Fish and Wildlife Service, Refuges and Wildlife, 134 Union Blvd., Lakewood, CO 80225.

The Draft Wilderness Review Amendment and Supplemental Environmental Impact Statement for the Wilderness Proposal of the Final Comprehensive Conservation Plan/ Environmental Impact Statement/ Wilderness Review for the Becharof National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, U.S. Department of the Interior, to fulfill and requirements of section 1317(a) of the Alaska Lands Act. This section requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all lands in refuges in Alaska not Congressionally designated as wilderness as to their suitability or nonsuitability for preservation as wilderness and report Department recommendation to the President.

Although large tracts of land in the refuge were found to meet the criteria of the Wilderness Act for designation as wilderness, not all of these lands were proposed for wilderness designation because of management strategies that will be used to meet refuge purposes. As a result, a range of wilderness alternatives were evaluated subsequent to the Service's selection of its proposed management alternative in the Final Becharof Plan. Three wilderness proposals, ranging from recommending all refuge lands that qualify for wilderness designation to recommending no additional lands for wilderness designation, were examined in the Draft Statement. The Record of Decision for the Final Becharof Plan recommended that an additional 347,000 acres be proposed for designation as wilderness as does the proposed action in the Wilderness Review Amendment and Supplemental Environmental Impact Statement.

The wilderness review in the Final Becharof Plan/Environmental Impact Statement/Wilderness Review discussed the wilderness suitability of lands on the refuge, but did not adequately evaluate the environmental impacts of the wilderness proposal. To ensure full compliance with the Wilderness Act and the National Environmental Policy Act, the Fish and Wildlife Service has prepared this Wilderness Review Amendment and Supplemental Environmental Impact Statement, clearly discussing the proposal for and environmental impacts of wilderness designation on the refuge.

All agencies and persons wishing to comment are urged to do so as soon as possible. However, all comments received by the date given above will be considered in preparation of the Final Supplemental Environmental Impact Statement.

Date: July 1, 1988.

Bruce Blanchard,

Director, Environmental Project Review

[FR Doc. 88–15292 Filed 7–7–88; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Outer Continental Shelf; Western Gulf of Mexico; Leasing Systems, Sale 115

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the **Federal Register:**

1. Identifying the bidding systems to be used and the reasons for such use; and

2. Designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. Bidding systems to be used. In the Outer Continental Shelf (OCS) Sale 115, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): (a) bonus bidding with a fixed 16⅔-percent royalty on all unleased blocks in less than 400 meters of water; and (b) bonus bidding with a fixed 12½-percent royalty on all remaining unleased blocks.

a. Bonus Bidding with a 16⅔-Percent Royalty. This system is authorized by section (8)(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and imposes greater risks on the lessee than systems with higher contingency payments, but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. Bonus Bidding with a 12⅔-Percent Royalty. This system is authorized by section (8)(a)(1)(A) of the OCSLA. It has been chosen for certain deeper water blocks proposed for the Western Gulf of Mexico (Sale 112) because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow water blocks. Department of the Interior analyses indicate that the

minimum economically developable discovery on a block in such high-cost areas under a 12½-percent royalty system would be less than for the same blocks under a 16⅔-percent royalty system. As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. Designation of Blocks. The selection of blocks to be offered under the two systems was based on the following factors:

a. Lease terms on adjacent, previously leased blocks were considered to enhance orderly development of each field.

b. Blocks in deep water were selected for the 12⅔-percent royalty system based on the favorable performance of this system in these high-cost areas as evidenced in our analyses.

The specific blocks to be offered under each system are shown on Map 2 entitled "Western Gulf of Mexico Lease Sale 115—Final, Bidding Systems and Bidding Units." This map is available from the Minerals Management Service, Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

William D. Bettenberg,

Director, Minerals Management Service.

Approved:

J. Steven Griles,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 88–15346 Filed 7–7–88; 8:45 am]

BILLING CODE 4310–MR–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance office and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Surface Coal Mining and Reclamation Operations; Coal Exploration Operations; Termination of Jurisdiction 30 CFR 700.

Abstract: Information collected in § 700.11(d) is used by OSMRE and States to establish a point where a mine site is no longer a surface coal mining and reclamation operation and regulatory jurisdiction ends. Information collected under § 700.12(b) is used by OSMRE to consider need, costs, and benefits of a proposed regulatory change in order to grant or deny a petition that has been submitted. Information collected in § 700.13 identifies the person and nature of a citizens suit, so that OSMRE or a State can appropriately respond.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Surface Coal Mining Operators.

Annual Responses: 799.

Annual Burden Hours: 1,173.

Bureau Clearance Officer: Nancy Ann Baka (202) 343–5981.

Date: June 15, 1988.

Richard O. Miller,

Chief, Regulatory Development and Issues Management.

[FR Doc. 88–15315 Filed 7–7–88; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31280, Sub-No. 1]

Norfolk & Western Railway Co.; Acquisition and Operation Exemption

Norfolk & Western Railway Company (N&W) has filed a notice of exemption to acquire by purchase from CMC Real Estate Corporation (CMC), a noncarrier, and to operate 15.5 miles of rail line in Polk County, IA, consisting of: (1) the Clive Branch, from milepost 0.0 at or near Des Moines to milepost 8.0 at or near Clive; and (2) the Grimes Branch, from milepost 0.0 at or near Clive to milepost 7.5 at or near Grimes. The lines are now operated for CMC by Des Moines Union Railway Company (DMU), a common carrier jointly owned by N&W and CMC.

This notice is related to Finance Docket No. 31280, *Norfolk & Western Ry. Co.—Control Exemption—Des Moines Union Ry. Co.*, in which N&W seeks an exemption to acquire CMC's ownership interest in DMU. Simultaneous consummation is scheduled. Any comments must be filed with the Commission and served on:

Robert J. Cooney, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510–2191.

N&W must preserve intact all sites and structures more than 50 years old until compliance with the requirements of Section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption — Acq. & Oper. of R. Lines under 49 U.S.C. 10901*, 4 I.C.C. 2d 305 (1988).[1] The notice is filed under 49 CFR 1150.31.[2] If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Railway Labor Executives' Association and United Transportation Union have requested the imposition of labor protective conditions, and N&W indicated that it is willing to accept their imposition. However, under Commission policy, labor protection is imposed in an exemption from 49 U.S.C. 10901 only upon a showing of exceptional circumstances. Because exceptional circumstances have neither been alleged nor demonstrated, no conditions will be imposed. N&W is, of course, free to offer labor protective conditions absent their imposition by this Commission.

Dated: July 5, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–15480 Filed 7–7–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on June 28, 1988, a proposed consent decree in *United States v. Industrias La Famosa, Inc.*, Civil Action No. 87–368 CG, was lodged with the United States District

[1] N&W certified that it has indentified such sites and structures to the Iowa State Historic Preservation Officer.

[2] Although N&W is a Class I railroad, no new Class I or II railroad would be created by this transaction. Therefore, it is properly classified under 49 CFR 1150.33(h) and subject to the procedures at 49 CFR 1150.32–1150.34 and not to the procedures of section 1150.35. *Class Exemption — Acq. & Oper. R. Lines under 49 U.S.C. 10901*, 4 I.C.C. 2d 309 (1988).

Court of the District of Puerto Rico. This consent decree settles a lawsuit filed in March 1987. The lawsuit, based on sections 301 and 309 of the Clean Water Act, 33 U.S.C. 301 and 309, sought injunctive relief and civil penalties of up to $10,000 per day of violation before February 4, 1987, and $25,000 per day of violation on or after February 4, 1987. The complaint alleges, among other things, that the defendant discharged pollutants not authorized by its National Pollutant Discharge Elimination System ("NPDES") permit, thus violating Section 301, 33 U.S.C. 1311.

The consent decree require the defendant to pay a civil penalty of $435,000 for past violations of the Act, and contains stipulated penalties for failure to comply with the terms of the consent decree.

The consent decree also requires the defendant to design and implement a plan to prevent spillage from the truck loading area from reaching navigable waters. Steps to prevent all other wastestreams from reaching navigable waters have already been implemented by the defendant.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States v. Industrias La Famosa, Inc.*, D.J. Ref. 90–5–1–1–2713.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region II

Contact: David Brook, Esq., Office of Regional Counsel, U.S. Environmental Protection Agency, Region II, 25 Federal Plaza, New York, New York 10278 (212) 264–0404.

United States Attorney's Office

Contact: Eduardo Toro Font, Esq., Assistant United States Attorney, District of Puerto Rico, 101 Federal Building, Carlos E. Chandon Street, Hato Rey, Puerto Rico 00918, (809) 753–4656.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $1.20 payable to Treasurer of the United States.

Richard J. Leon,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–15319 Filed 7–7–88; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. BNS Inc.; and Gifford-Hill & Co., Inc., Civil No. 88–01452 (C.D. Cal.)

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (a) and (b), the United States publishes below the comments it received on the Competitive Impact Statement and proposed Final Judgment in the captioned case, filed in the United States District Court for the Central District of California, together with the response of the United States to these comments.

Copies of the public comments and response are available on request for inspection and copying in Room 3233, Antitrust Division, Department of Justice, Washington, DC, and for inspection at the Office of the Clerk of the United States District Court for the Central District of California in Los Angeles.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Howard J. Parker, Phillip R. Malone, James E. Figenshaw, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, Telephone: (415) 556–6300, Attorneys for the United States.

United States District Court for the Central District of California

United States of America, plaintiff, v. BNS Inc.; and Gifford-Hill & Company, Inc., Defendants. Civil No. 88–01452–R.

Memorandum of the United States in Response to Comments on the Proposed Final Judgment

The Department of Justice has received two letters of comment concerning the Proposed Final Judgment ("judgment") in this case. The Department has carefully reviewed and considered the comments. After this review, the Department continues to believe that entry of the judgment is in the public interest.

Summary of Comments

The first comment received by the Department was a letter dated June 9, 1988, from Ira Reiner, District Attorney for the County of Los Angeles ("Reiner letter"). The second comment was a letter dated June 13, 1988, from Bill B. Betz, the president of Monolith Portland Cenment Company ("Betz letter"). Both letters are reproduced in an appendix attached hereto.

Both comments expressed concern that the assets required to be divested under the judgment be operated in a competitively viable manner. The Reiner letter, after outlining the observations of three County officials with responsibility for construction activity and/or the purchase of building materials, stated that any "remedial efforts by way of divestiture should take" two factors into account: (1) "the depletion of readily accessible" deposits of aggregate and (2) "the need to insure that any divested entity will be a viable one, possessing all of the factors of production that are needed to effectively compete." Reiner letter 3, 4. The letter did not, however, take the position that any aspect of the judgment was inadequate to address the violation alleged in the Complaint or suggest that any portion of the judgment should be modified. The Betz letter, by contrast, took the position that the assets required to be divested under the judgment "should be placed in the possession and/or control of an independent master or trustee" pending divestiture in order to avoid "practices and relationships (although unwritten and informal) that will effectively circumvent the intended purpose of the" divestiture. Betz letter 1–2.

Both letters also commented briefly on the potential competitive implications of the acquisition in markets other than the market alleged in the government's Complaint. The Reiner letter took the position that any concerns the District Attorney had in this regard were "addresse[d] * * * and resolve[d] * * * satisfactorily" by the "letter agreement between the California Attorney General and counsel for BNS." Reiner letter 4–5. The Betz letter expressed concern that the acquisition would lessen competition in the sale of aggregate and ready-mix concrete in the Ventura-Oxnard area. It also expressed the view that ready-mix concrete companies that purchase their aggregate from BNS or Calmat (the other major aggregate producer in the Ventura-Oxnard area) would feel "real or imagined" pressure to purchase their

cement requirements from BNS or Calmat.

Response

The United States agrees with the comment in the Reiner letter that known aggregate reserves in the Irwindale Aggregate District are being steadily depleted and that it is important to preserve competition in the sale of aggregate. In our view, the judgment addresses the aggregate reserves issue in at least four ways.

First, the purchaser of the Assets to be Divested under paragraph IV(A) of the judgment will acquire the very same aggregate reserves that the Irwindale aggregate facility possessed when it was owned by Koppers Company. The competitive status quo with regard to aggregate reserves will therefore be preserved. Second, the purchaser will have the same opportunities as Koppers had to pursue the acquisition of additional aggregate reserves. Third, the purchaser, having made a substantial investment in an aggregate extraction and processing facility, will have the same economic incentives as Koppers had to make acquisitions of new reserves, since new reserves will eventually be needed to continue operation. Finally, because the purchaser will have to be approved by the United States as adequately capitalized, the purchaser will have the financial capability to pursue replacement reserves. Under Paragraph IV(B) of the judgment, the purchaser must have the "financial capacity to compete effectively in the extraction, processing and sale of aggregate."

The United States also agrees that, in order for divestiture to be effective, the purchaser must possess all of the factors of production that are needed to compete effectively in the relevant market. See Reiner letter 4. The United States believes that the judgment fully and adequately ensures that the Assets to be Divested can be operated as an independent, stand-alone, viable competitor in the extraction, processing and sale of aggregate. The judgment contains three provisions that will accomplish this objective.

First, the Assets to be Divested will include all of the assets that were used before the acquisition for the extraction, processing and sale of aggregate at Irwindale. Paragraph IV(A) of the judgment extends to "any and all interest that [defendants] have or shall acquire in all of the real and personal property used in the extraction, processing and sale of aggregate at Blue Diamond's aggregate property located at Irwindale, California." Industry experience demonstrates that a purchaser could use these assets to compete successfully in the market at issue there without at the same time owning or operating asphalt or ready-mix concrete manufacturing plants. Other stand-alone aggregate operations exist in the industry. Moreover, the demand for aggregate is high and reserves are decreasing in the Irwindale Aggregate District. There is, accordingly, as Blue Diamond personnel have testified, no reason to believe that a firm that produces only aggregate will have difficulty selling that aggregate to third party customers or will be at a competitive disadvantage relative to aggregate competitors who also own concrete facilities.

Second, the Assets to be Divested must be organized, to the complete satisfaction of the United States, as a viable, ongoing business. This will ensure, for example, that there are adequate management and accounting services for the Assets to be Divested. Paragraph IV(B) of the judgment requires that the divestiture "shall be accomplished in such a way as to satisfy plaintiff, in its sole determination, that the Assets to be Divested can and will be operated by the purchaser or purchasers as a viable, ongoing business, engaged in the extraction, processing and sale of aggregate."

Third, pending divestiture, defendants are subject to stringent requirements to preserve the Assets to be Divested. Under the provisions set forth in Paragraph VIII of the judgment, defendants are required to maintain the Irwindale aggregate facility as a fully viable, ongoing business. They must maintain all facilities and assets, including all administrative and support facilities; maintain all necessary operating permits; maintain complete and separate accounting records; provide and maintain working capital and lines and sources of credit; and maintain management and other personnel, among other things. More broadly, the judgment prohibits the defendants from taking any "action that would have the effect of reducing the scope or level of competition between the Assets to be Divested and other producers of aggregate * * * [or] jeopardize the sale of the Assets to be Divested as a viable going concern." These provisions will ensure that the Assets to be Divested are fully viable and capable of being operated as an effective competitor.

Further, the defendants are required under the judgment to hold, manage and operate these assets "separate, distinction and apart from" any other assets they own or control. Paragraph VIII(A). The United States therefore disagrees with the suggestion in the Betz letter that "BNS should be precluded from gaining posession or control of any of the assets" even for the limited period of time allowed under the judgment for the defendants to effect divestiture. The Betz letter states that, because such possession and control could foster "practices and relationships" that might circumvent the purpose of the judgment, the better course is to place the assets in the hands of an independent master or trustee immediately. Betz letter 2.

Such a course is unnecessary. The judgment does not permit the defendants to engage in anticompetitive "practices" or enter into anticompetitive "relationships" pending divestiture. It does impose stringent limitations on how the assets may be used, how they must be maintained, and grants the defendants only a limited amount of time to find a competitively viable purchaser. Under the judgment, if the defendants have failed to divest the assets by January 1, 1989, a trustee will be selected and appointed to effect divestiture. The government has found that the procedure employed here—allowing the merging parties a short length of time [1] to effect a curative divestiture before turning the assets over to a trustee for disposition—generlly results in a prompt but orderly sale of assets at fair market value to a purchaser capable of operating the business as a viable competitor. The merging parties are generally in the best position to dispose of assets quickly and at minimum expense. Accordingly, it is premature to resort to a trustee until it appears that the defendants cannot or will not comply with their obligations under the judgment.

The Betz letter also suggests possible competitive problems outside the market alleged in the Complaint.[2] The Complaint in this case is limited to the extraction, processing and sale of aggregate in the Irwindale Aggregate District. Because it would be inappropriate to include in this judgment relief aimed at markets other than the

[1] Six months is generally the shortest length of time parties are accorded in Antitrust Division consent decrees to make a divestiture on their own before the responsibility is transferred to a trustee.

[2] The Reiner letter also mentioned briefly markets other than those alleged in the Complaint but, as noted above, the letter stated that arrangements between defendant BNS and the State of California satisfactorily resolved any concerns the County of Los Angeles had with respect to those markets. As the United States has stated previously, it considers this extra-judicial arrangement between BNS and the State to be irrelevant to this proceeding. The agreement cannot be enforced in this case or otherwise become a prerequisite to entry of the judgment.

specific market alleged in the Complaint, the evaluation of the adequacy of the judgment under the Tunney Act must be limited to that market. Accordingly, it is unnecessary to address here competitive issues outside the scope of the Complaint.

Nevertheless, while we do not believe that the acquisition violates Section 7 in any market other than that alleged in the Complaint, we would note first that it is not at all clear that after the acquisition the problem raised by Mr. Betz, that BNS may "tie" the sales of aggregate and cement, would arise.[3] Further, we emphasize that the acquisition will not increase concentration in either cement or in aggregate in the Ventura-Oxnard area. In any case, if tying practices occur and if they violate the antitrust laws, they can be challenged either by an injured party, under Section 4 of the Clayton Act (15 U.S.C. § 15), or by the government. The mere possibility that conduct in another market might violate some other provision of the antitrust laws or any other law, however, provides no basis for questioning the adequacy of the judgment in this case under the Tunney Act.

Conclusion

For the reasons stated above, after thoroughly reviewing the comments filed in this case with respect to the judgment, the United States continues to believe that entry of the judgment is in the public interest.[4] Accordingly, the government requests that the judgment be entered forthwith.

Dated:

Respectfully submitted,

Howard J. Parker

Phillip R. Malone

James E. Figenshaw

By _____

Howard J. Parker

Attorneys, U.S. Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102, Telephone: (415) 556-6300, Attorneys for the United States.

June 9, 1988.

Howard J. Parker, Esq.,

Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102

Dear Mr. Parker: Pursuant to the Antitrust Procedures and Panalties Act, ("Tunney Act") 15 U.S.C. 16(b)-(h), the undersigned representatives of the Los Angeles County District Attorney's Office hereby provide the following written comments in response to the proposal for entry of a consent judgment in the matter of *United States of American* v. *BNS, Inc., et al.*, No. CV 88-1452 R.

District Attorney's Offices in this state share concurrent jurisdiction with the Attorney General in enforcing California's principal antitrust statute, the Cartwright Act. The undersigned act on behalf of the Los Angeles County District Attorney in that antitrust role, and as such we have sought comments from the Los Angeles County agencies that purchase or use significant amounts of aggregate and other construction materials supplied by the Koppers Company entities, or by the competitors of those entities.

Roland E. Etcheverry was contacted by the undersigned. Mr. Etcheverry is the Assistant Deputy Director of the Los Angeles County Department of Public Works (DPW) and is in charge of the Construction Division of DPW. Mr. Etcheverry expressed the following views:

The Construction Division (CD) has had a long-standing relationship with Sully-Miller Contracting Company. In his view, Sully-Miller has been an extremely responsible and reliable contractor for the CD. All of the CD's road construction of resurfacting work is obtained by advertised competitive bids. In fiscal year 1986-87, Sully-Miller entered into approximately fifty (50) contracts with the CD for a total dollar volume of some $8.3 million. In the first three quarters of fiscal year 1987-88 (through March 31, 1988), Sully-Miller had entered into 25 such contracts worth a total amount of $6.4 million.

Mr. Etcheverry characterized the aggregate, asphaltic concrete and ready-mix concrete materials industry in Southern California as being, in his view, tight-knit and closely controlled, which he said raised concerns for him over the "potential for abuse." On the other hand, he stated that the CD has not had any difficulty in obtaining bids from a number of contracting entities, and further that materials prices quoted to the CD have in recent years been generally stable. He was unable to offer any definitive view on whether the loss of Sully-Miller as a separate entity would affect this situation, since it would entail speculation. However, he said that as a relatively large user of road construction services, the CD would prefer to see the largest number of potential bidders to be available for proposal requests from the Division.

The Los Angeles County Department of Purchasing and Stores purchases construction materials on behalf of various County departments that use public employees to do construction work. Within the Department of Public Works, the Road Maintenance Division and the Flood Control Division perform so-called "force account" work (utilizing the DPW's own employee work force) with aggregate and other construction materials which are purchased directly by Purchasing and Stores on the basis of DPW's requisition requests.

Senior Deputy Purchasing Agent Pamela McKenzie is in chare of handling such construction material bids for the County of Los Angeles. She was contacted on May 31, 1988, and stated that Los Angeles County does direct purchasing for County Departments in four major categories with a total dollar volume of approximately $900,000-$1,000,000 annually. These categories are: 1) asphaltic concrete, 2) transit mix, 3) rock, sand and gravel, and 4) crushed aggregate base.

Ms. McKenzie expressed a concern that these building materials markets are "going to be closed up" to the detriment of buyers such as Los Angeles County due to two factors: the exhaustion of resources within a reasonable radius of the sites where it is needed, and the increasing concentration and consequent market power among those firms remaining in the industry in Southern California.

Ms. McKenzie's concern over resource depletion centers on the fact that the aggregate supply available from such locations as Irwindale and Sun Valley is diminishing. While other aggregate quarriers exist, such as those in Simi Valley, they are not always competitive. This is principally because long-distance hauling entails transportation costs that can quickly become greater than the aggregate cost itself. Thus, for example, Ms. McKenzie has observed that in her experience it is difficult for a Simi Valley-based bidder, such as P. W. Gillibrand Co., to be competitive on bids for delivery to job sites in the central County area. The transportation charges are computed largely on the basis of "Rock Zones" established by the California Public Utilities Commission. The County obtains bids at various prices for the materials themselves, but at greater distances the cost of the aggregate or other material is less significant to the overall price than is the transportation component. For this reason, the County is particularly interested in the continued viability of bidders who are located in areas that can provide coverage to those communities that include major population centers. Blue Diamond Materials, the aggregate division of Sully-Miller Contracting, is such a firm.

While it has been true that the quoted prices for aggregate and other construction

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[3] The government's economic expert, Jerry J Bodily, considered a similar allegation by Koppers, made in connection with its Application for Preliminary Injunction:

" " " Koppers argues that, because aggregate is in short supply, Gifford-Hill [BNS] will be in a position to insist that independent ready-mix concrete plants it supplies with aggregate also purchase cement from Gifford-Hill. This argument is without merit. Gifford-Hill's position as an integrated owner of both aggregate and cement will remain unchanged. Even if there existed some highly unlikely incentive for Gifford-Hill to attempt to tie cement sales to aggregate sales, the proposed acquisition will not further the goal. Gifford-Hill will be in no better position to make such a demand of independent ready-mix concrete purchasers of aggregate as a result of the proposed acquisition. No allegation that Gifford-Hill, or any other aggregate supplier, is currently making such demands has been made and there is no reason to believe that such behavior will be any more likely as a result of the proposed acquisition.

Declaration of Jerry J Bodily in support of Government's Memorandum in Opposition to Koppers' Application for Preliminary Injunction, ¶ 19.

[4] Simultaneously with this memorandum, the government is filing with the Court a Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act ("APPA"). This certificate addresses the requirements of the APPA that had to be met before the Court could appropriately enter the judgment.

materials have been relatively stable in recent years. McKenzie expects that to change soon. Moreover, she has seen an increasing tendency by the largest suppliers to refuse to accept what was previously acceptable terms in Los Angeles County bid proposals. Such contract changes can of course operate as the functional equivalent of price increases. For example, a recent bid included the imposition of certain vendor terms as part of its proposal: the former price guarantee language was stricken, the "freeway time" (or possible delay due to freeway congestion) cost risk was put on the County instead of the vendor as had been done previously, the delivery time was no longer within 48 hours of County notice, etc. In the past, the accepted County proposal requests provided that liability for additional costs for substitute materials incurred by reason of non-delivery in emergencies would be imposed on the vendor; now, McKenzie reports, at least one major vendor insists on a provision excluding such liability. She believes that this increasing insistence on particular contract terms is an indication of growing market power by certain aggregate producers, and she fears that this may soon be translated into higher prices to Los Angeles County and other buyers.

Her views were echoed by Supervising Deputy Purchasing Agent Wayne Nakano, who claimed that the County had had increasing difficulty obtaining a desirable number of bids for construction materials.

While the County would prefer to see the largest possible number of qualified bidders, it has been the experience of the Purchasing Department that there are often fewer bidders responding to County proposal requests. For example, in a May 20, 1988, bid opening for crushed aggregate base, only three bids were received in response to a proposal request which had been mailed to fourteen vendors. Of those three, one included a large number of unfavorable contractual language changes of the type described above. McKenzie contrasted this situation to that of the aggregate base for the preceding year, when a total of six bids were received for the same material.

The concerns expressed by the representatives of Los Angeles County thus focus on the issue of increasing market power on the part of construction materials bidders. In an industry that appears to be growng increasingly concentrated, any remedial efforts by way of divestiture should in our view take into account both the depletion of readily accessible resources (and the effects of such depletion on the issue of potential barriers to entry), and the need to insure that any divested entity will be a viable one, possessing all of the factors of production that are needed to effectively compete in the construction materials industry, as well as the appropriate schedule for structural relief.

In addition to concern about relief for the alleged violations in the Complaint in this matter, the general competitive concerns of this Office are substantially identical to those expressed by the California Attorney General and his staff in their April 4, 1988, submission to the Hon. Manuel L. Real of the District Court for the Central District of California. In particular, the issue raised by the California Attorney General, concerning the viability of the newly divested firm in the market for construction materials other than aggregate, is reflective of the concerns of the County. In our view, the proposed additional relief incorporated in the letter agreement between the California Attorney General and counsel for BNS, Inc., addresses those concerns and resolves them satisfactorily. This Office and the County of Los Angeles endorse these remedies, while taking no position on the precise procedural mechanisms to be used to implement them.

Thank you for your consideration of our comments in this regard.

Very truly yours,

Ira Reiner,

District Attorney.

By:

Michael J. Delaney,

Deputy-in-Charge, Antitrust Section.

By:

Thomas A. Papageorge,

Head Deputy District Attorney, Consumer Protection Division.

June 13, 1988.

Gary R. Spratling,

Chief, San Francisco Office, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046 San Francisco, CA 94102

Re: United States of America vs. BNS, Inc. and Gifford-Hill & Company, Inc. (U.S. District Court, Central District California; Civil Case No. 88 01452 R)

Subject: Comments On Proposed Judgement

Dear Mr. Spratling: Monolith Portland Cement Company ("Monolith") submits these comments on the proposed final judgement in the referral to matter with the understanding that the conditions to BNS, Inc.'s ("BNS") acquisition of Koppers Company, Inc. include its disposition of the Sully-Miller Irwindale, California aggregates reserves and plant and (pursuant to agreement with the Attorney General of the State of California) its disposition of four Sully-Miller ready-mixed concrete plants located in Los Angeles County.

1. BNS should be precluded from gaining possession or control of any of the assets and facilities that are to be disposed. Commencing with BNS's acquisition of Koppers, such assets and facilities should be placed in the possession and/or control of an independent master or trustee.

BNS's possession and/or control of the assets prior to their disposition will give BNS the opportunity to establish practices and relationships (although unwritten and informal) that will effectively circumvent the intended purpose of the dispositions. Monolith has observed that in other transactions involving dispositions, it is not uncommon for competitive practices and relationships to continue virtually unchanged after disposition. While the purpose of a disposition may be open up a share of the market for competition, practice and relationship established prior to disposition in effect maintain the status quo.

2. The Ventura-Oxnard markets for aggregates and ready-mixed concrete are separate from those of Los Angeles, Irwindale, San Fernando Valley, etc., and the effect of BNS's acquisition on competition in the Ventura-Oxnard market should be considered separately.

3. BNS's aquisition of the aggregate and ready-mixed concrete plants of Koppers that are operating in Venture County, California as Southern Pacific Milling Company ("S.P Milling") will result in the cement, aggregates and ready-mixed concrete markets in the Ventura-Oxnard area of California being dominated by and concentrated in two cement manufacturers having integrated cement-aggregates-ready-mixed concrete operations.

At present, the aggregates and ready-mixed concrete markets in the Ventura-Oxnard area are dominated by CalMat and S.P. Milling. They operate the major aggregates plants in the area, and their ready-mixed concrete plants dominate the concrete market. CalMat is an integrated cement-aggregates-ready-mixed concrete operator. S.P. Milling operates both aggregates and ready-mixed concrete plants, and purchases, or has purchased, cement from several cement manufacturers (including Monolith). The remaining ready-mixed concrete operations in the Ventura-Oxnard area are relatively small as compared to S.P. Milling and CalMat, and usually dependent upon S.P. Milling and CalMat for aggregates, or they are located outside the market area and able to effectively compete only on the fringes thereof. In other words, the aggregates and ready-mixed concrete markets are already fairly concentrated; and if BNS acquires the Koppers-S.P. Milling aggregates and ready-mixed concrete plants, competition will be lessened even further.

BNS's acquisition of the Koppers-S.P. Milling plants will further compress both the cement and ready-mixed concrete markets in the Ventura-Oxnard area. By controlling the aggregates market, BNS and CalMat will be in a position to dominate the aggregates and concrete markets and virtually eliminate outside competition for cement in the Ventura-Oxnard area. Non-integrated ready-mixed concrete companies that must purchase their aggregates from integrated cement-aggregates-ready-mixed concrete companies usually find it is "advisable" or "prudent" to purchase both their aggregates and a substantial part of their cement requirements from the integrated supplier. The "pressure" to purchase cement (in order to purchase aggregates) may be real or imagined. It is nevertheless apparent.

Respectfully submitted,

Monolith Portland Cement Company,

By: Bill B. Betz,

President.

[FR Doc. 88-15294 Filed 7-7-88; 8:45 am]

BILLIG CODE 4410-01-M

[Order No. 1285-88]

Delegation of Authority

By virtue of the authority vested in me by 28 U.S.C 509 and 510, and pursuant to

28 U.S.C. 0.5(f), I hereby delegate the authority vested in me by Executive Order No. 12580, 52 FR 2923, January 29, 1987, to the Assistant Attorney General for the Land and Natural Resources Division. In the event that the Assistant Attorney General for the Land and Natural Resources Division determines that an order from the Environmental Protection Agency to a federal agency should not be issued, such determination shall be subject to the approval of the Deputy Attorney General.

Effective enforcement must be timely enforcement. The Assistant Attorney General for the Land and Natural Resources Division will assure that requests for concurrence by the Department of Justice as provided for in Executive Order No. 12580 are reviewed as expeditiously as possible.

Edwin Meese, III,

Attorney General.

June 30, 1988.

[FR Doc. 88–15320 Filed 7–7–88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budgt (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report or keep records. Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

NEW

Employment and Training Administration
Job Training Partnership Act Compliance Review
New; no forms
Annually; Bienially
State or local governments
54 respondents; 7,920 total hours; 164 hrs per response; no forms
To ensure that States operate Federally funded Training and Employment Programs in accordance with the requirements of the Job Training Partnership Act and its implementing regulations.

Employment and Training Administration
State Employment Security Agency Compliance Review System
New; no forms
Annually; Bienially
State or local governments
54 respondents; 3,672 total hours; 27 hrs per response; no forms
To ensure that federally funded State Employment Security Agency programs are operated in accordance with applicable statutory and regulatory regulations.

Extension

Employment and Training Administration
Service Delivery Area Reorganization Plan Appeal
1205–0243
State and local governments
20 respondents; 40 hours; 2 hours per response; no forms
The information collected will be used to determine whether JTPA recipients denial of a reorganization plan for a service delivery area is in conformance with JTPA.

Signed at Washington, DC, this 5th day of July, 1988.

Paul E. Larson,

Departmental Clearance Officer.

[FR DOC. 88–15413 Filed 7–7–88; 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 comment 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.

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:

District of Columbia
DC88-1(Jan. 8, 1988)—pp. 78, 80-82, 84
West Virginia
WV88-2(Jan. 8, 1988)—pp. 1182-1186, pp. 1188-1191
West Virginia
WV88-3(Jan. 8, 1988)—p. 1208

Volume II:

Indiana
IN88-2(Jan. 8, 1988)—pp. 249-252, pp. 257, 261
Wisconsin
WI88-8(Jan. 8, 1988)—p. 1116-1117
WI88-10(Jan. 8, 1988)—p. 1137, pp. 1143-1144

Volume III:

California:
CA88-2(Jan. 8, 1988)—pp. 51-64
CA88-4(Jan. 8, 1988)—pp. 77-102b
Idaho:
ID88-1(Jan. 8, 1988)—pp. 142-144
Nevada:
NV88-2(Jan. 8, 1988)—p. 260
Oregon:
OR88-1(Jan. 8, 1988)—p. 305
Washington:
WA88-1(Jan. 8, 1988)—pp. 360, 364
WA88-2(Jan. 8, 1988)—p. 387

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, D.C. 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 1 day of July 1988.

Alan L. Moss,

Director, Division of wage Determinations.

[FR Doc. 88-15237 Filed 7-7-88; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-20,729]

Owens-Illinois-Nippon Electric Glass Television Products, Columbus, OH; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 13, 1988 in response to a worker petition received on June 13, 1988 which was filed by the Glass, Pottery, Plastics and Allied Workers Union, Local No. 106, on behalf of workers at Owens-Illinois-Nippon Electric Glass, Television Products, Columbus, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 29th day of June 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-15325 Filed 7-7-88; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Ad Hoc Challenge III Cross-Cut Committee to the National Council on the Arts will be held on July 26, 1988, from 9:00 a.m.-5:30 p.m., in room M0-9 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including dicussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be

closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–15321 Filed 7–7–88; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting Agenda

The Advisory Committee on Nuclear Waste will hold its second meeting on July 21–22, 1988, Room 1046, 1717 H Street, NW., Washington, DC.

Thursday, July 21, 1988

Room 1046, 1717 H Street, NW., Washington, DC

8:30 a.m.–8:45 a.m.: Comments by ACNW Chairman (Open)

The ACNW Chairman will report briefly regarding items of current interest.

8:45 a.m.–10:15 a.m.: Below Regulatory Concern (Open)

The NRC Staff will present their proposed policy statement to the ACNW.

10:30 a.m.–12:00 Noon: Dry Cask Storage Study (Open)

The DOE Staff will brief the ACNW on their Dry Cask Storage Study. This study is required by the Nuclear Waste Policy Amendments Act of 1987 to be submitted to Congress in October 1988.

1:00 p.m.–2:00 p.m.: Rulemaking on Anticipated and Unanticipated Events (Open)

The NRC Staff will discuss the proposed rulemaking on this topic.

2:00 p.m.–3:30 p.m.: Center for Nuclear Waste Regulatory Analyses (Open)

The NRC Staff will brief the ACNW on the status of this program.

3:45 p.m.–5:15 p.m.: Environmental Monitoring of low-Level Waste Facilities (Open)

The NRC Staff will discuss the NRC Draft Technical Position on this topic.

5:15 p.m.–6:00 p.m.: ACNW Activities and Preparation of ACNW Reports (Open)

The ACNW will discuss ACNW activities, future meeting agendas, and organizational matters.

Friday, July 22, 1988

8:30 a.m.–10:30 a.m.: Consultation Draft Site Characterization Plan (CDSCP) (Open)

The State of Nevada will be invited to brief the ACNW on its review of the DOE Consultation Draft Site Characterization Plan for the Yucca Mountain Nevada Site.

10:45 a.m.–12:15 p.m.: EPA Standards for HLW Geologic Repository

The EPA will provide a briefing on the status of this topic.

1:15 p.m.–3:45 p.m.: Briefing on Barnwell/Savannah River/Chem-Nuclear and LN Technologics (Open)

The NRC Staff and, it possible, representatives of the above organizations and the state of South Carolina will brief the members of the ACNW to prepare them for their proposed visit to these facilities in early August.

4:00 p.m.–4:30 p.m.: NRC Staff Actions on ACNW Recommendations (Open)

The ACNW will discuss the actions that the NRC Staff has taken on ACNW recommendations.

4:30 p.m.–5:30 p.m.: ACNW Activities and Preparation of ACNW Reports (Open)

The ACNW will discuss ACNW activities, future meeting agendas, and organizational matters.

Procedures for the conduct of and participation in ACNW meetings are similar to those used by ACRS and published in the **Federal Register** on October 2, 1987 (51 FR 32241). The procedures which will be used are as follows:

Background

Procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act by the Nuclear Regulatory Commission's Advisory Committee on Nuclear Waste (ACNW), are published in this notice. These procedures are set forth and may be incorporated by reference in future individual meeting notices. The Advisory Committee on Nuclear Waste has been established pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 94–463, 86 Stat. 770–776). The Commission has determined that the establishment of this Committee is necessary and in the public interest in order to obtain input, advice and recommendations on all aspects of the management of radioactive wastes within the purview of NRC regulatory responsibilities. The purpose of the Committee is to provide advice and recommendations on topics, issues, and activities related to the regulation of nuclear wastes. Such activities encompass:

- Regulation of high-level waste, including the licensing of high-level waste repositories;
- Licensing and regulation of low-level waste disposal repositories; and
- Handling, processing, transporting, storing and safeguarding wastes, including but not limited to spent fuel, nuclear wastes mixed with other hazardous substances, and uranium mill tailings.

The Committee's reports will become part of the public record.

Although ACNW meetings are ordinarily open to the public and provide for oral or written statements from members of the public to be considered as a part of the Committee's information gathering procedure, they are not adjudicatory hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety and Licensing Board as part of the Commission's licensing process.

General Rules Regarding ACNW Meetings

An agenda is published in the **Federal Register** for each full Committee meeting. Practical considerations may dictate some alterations in the agenda. The Chairman of the Committee or Subcommittee which is meeting is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incomplete session from one day to the next.

With respect to public participation in ACNW meetings, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by providing a readily reproducible copy at the beginning of the meeting. When meetings are held at locations other than Washington, DC, reproduction facilities are usually not available. Accordingly, 15 additional copies should be provided for use at such meetings. Comments should be limited to safety-related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a

readily reproducible copy addressed to the Office of the Executive Director, in care of the ACNW, NRC, Washington, DC 20555. Comments postmarked no later than one calendar week prior to a meeting will normally be received in time for reproduction, distribution, and consideration at the meeting.

(b) Persons desiring to make an oral statement at the meeting should make a request to do so prior to the beginning of the meeting, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to its purview at an appropriate time chosen by the Chairman.

(c) Further information regarding topics to be discussed, whether a 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, on the working day prior to the meeting, to the Office of the Executive Director (telephone: 202–634–3265) between 7:30 a.m. and 4:15 p.m., Washington, DC time.

(d) Questions may be asked only by ACNW Members, Consultants, and Staff.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will be allowed while the meeting is in session at the discretion of the Chairman to a degree that is not disruptive to the meeting. When use of such equipment is permitted, appropriate measures will be taken to protect proprietary or privileged information which may be in documents, folders, etc., being used during the meeting. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept.

(f) A copy of the transcript of the open portions of the meeting where factual information is presented will be available at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555, for inspection within one week following the meeting. A copy of the minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate charges.

Special Provisions when Proprietary Sessions Are To Be held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of ACNW meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director should be informed of such an agreement at least three working days prior to the meeting so that it can be confirmed and a determination made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting.

Date July 5, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–15379 Filed 7–7–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–249]

Commonwealth Edison Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 94 to Facility Operating License No. DPR–25 issued to Commonwealth Edison Company, which revises the Technical Specifications for operation of the Dresden Nuclear Power Station, Unit No. 3, located in Grundy County, Illinois.

The amendment issued revises the Technical Specifications to support: (1) Changes specific to Cycle II reload fuel and analyses; (2) changes resulting from analyses performed to allow equipment out-of-service; and (3) changes provided for clarification or as administrative changes. The amendment also revises the license to delete a condition requiring a safety evaluation for coastdown operation with abnormal feedwater temperature.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this was published in the **Federal Register** on May 13, 1988 (53 FR 17129). No request for a hearing or petition for leave to intervene was filed following this notice.

Also in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on May 23, 1988 (53 FR 18361).

For further details with respect to the actions see (1) the application for amendment dated March 9, 1988, (2) Amendment No. 94 to License No. DPR–25 and (3) the Commission's related Safety Evaluation and Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this 20th day of June 1988.

For the Nuclear Regulatory Commission.

Leif J. Norrholm,

Acting Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–15371 Filed 7–7–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–373]

Commonwealth Edison Co. Issuance of Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 58 to Facility Operating License No. NPF–11 issued to Commonwealth Edison Company, which revised the Technical Specifications for operation of the LaSalle County Station, Unit 1, located in LaSalle County, Illinois. The amendment was effective as of the date of its issuance.

The amendment modifies the Technical Specifications in support of the second reload (Cycle 3) for LaSalle Unit 1.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act

of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Oportunity for Hearing in connection with this was published in the **Federal Register** on January 28, 1988 (53 FR 2553). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the actions see (1) the application for amendment dated January 19, 1988, (2) Amendment No. 58 to License No. DPR-11, and (3) the Commission's related Safety Evaluation and Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., and at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61438. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated: at Rockville, Maryland, this 23rd day of June 1988.

For the Nuclear Regulatory Commission.

Leif J. Norrholm,

Acting Director, Project Directorate III-2, Division of Reacotr Projects—III, IV, V and Special Projects

[FR Doc. 88-15372 Filed 7-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-454 and STN 50-455]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF-37 and NPF-66, issued to Commonwealth Edison Company, for operation of Byron Station, Units 1 and 2 located in Ogle County, Illinois.

The amendment would revise an action statement concerning the ultimate heat sink to state that the provisions to specification 3.0.4 do not apply in accordance with the licensee's application dated June 22, 1988.

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 regulations.

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 of consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Rock River is one of two makeup sources for the ultimate heat sink at Byron Station. This proposed amendment revises a Technical Specification action requirement concerning Rock River water level and flow. The action requirement is being revised to state that the provisions of Technical Specification 3.0.4 are not applicable. This will have the effect of permitting changes in operations modes while the action requirement is still effective.

Water level and flow in the Rock River have no effect on the probability of previously evaluated accidents. Therefore, the probability of previously evaluated accidents will not be increased.

The affected action requirement permits reactor operation to continue as long as river flow and level stay above minimum requirements. The minimum flow and level limits that assure adequate suction for the essential service water makeup pumps are not being changed by this amendment. As a result, the consequences of previously evaluated accidents will not be increased.

This proposed amendment does not allow any new mode of operation beyond what is already permitted of the action requirement. In addition, this amendment does not allow any modification to the plant. Therefore, operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Since the Technical Specification minimum flow and level limits for the Rock River are not being changed, this amendment does not involve a significant reduction in a margin of safety.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 8, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules or Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of

the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceedings as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: Petitioner's name and telephone number; date petition was mailed; plant number; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel—Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.174(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

Dated at Rockville, Maryland, this 1st day of July 1988.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Project Manager, Project Directorate III-2, Division of Reactor Projects-III, IV, V and Special Projects.

[FR Doc. 88-15373 Filed 7-7-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co. et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-10 and NPF-15 issued to Southern California Edison Company (SCE), San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the Licensees), for operation of San Onofre Nuclear Generating Station, (SONGS) Units 2 and 3 located in San Diego County, California. The request for amendment was submitted by letter dated June 14, 1988 and identified by the licensee as Proposed Change PCN-263.

The proposed change would revise Technical Specification 3/4.1.3.4 "CEA Drop Time" to increase the allowable drop time from 3.0 to 3.2 seconds. The purpose of Technical Specification (TS) 3/4.1.2.4 to ensure that the actual drop times for full length Control Element Assemblies (CEAs) are consistent with the maximum drop time assumed in the accident and transient analyses.

Prior to SONGS Unit 2 Cycle 4 startup, CEA drop times were measured individually. Beginning with Unit 2 Cycle 4 startup, a new method of measuring CEA drop times was used. This method initiates a Core Protection Calculator (CPC) trip and simultaneously monitors the positions of all 91 CEAs as a function of time. In this method, the reactor trip breakers are the point at which power is interrupted to the CEA gripper coils, rather than the individual breakers as in the previous method.

The CEA drop times measured using the new method during Unit 2 startup were unexpectedly longer than those measured using the previous method. Although no CEAs failed to meet the 3.0 second drop time requirement, some

CEAs were close to the limit. Drop times for the five slowest CEAs were remeasured using the previous method which confirmed that there was no degradation in CEA performance compared with previous tests. Since the new method uses the reactor trip breakers to interrupt power to the CEAs, it more accurately reflects the operation of the reactor protection system as assumed in the safety analysis.

The new test method will be used for CEA drop time measurements during SONGS Unit 3 Cycle 4 startup. A recent review of past Unit 3 CEA drop time measurements revealed that there is the potential for one CEA to fail to meet the 3.0 second requirement. The proposed change would increase the allowable drop time to 3.2 seconds. The effect of the proposed change on the accident and transient analyses is addressed in the licensee's June 14, 1988 submittal.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By August 8, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 02555, and to Mr. Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington and Sutcliffe, Attn: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111, attorneys for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not entertained absent a determination by the Commission, the presiding officer, or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated June 14, 1988 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the General Library, University of California at Irvine, Irvine, California 92713.

Dated at Rockville, Maryland, this 29th day of June, 1988.

For the Nuclear Regulatory Commission.

Harry Rood,

Senior Project Manager, Project Directorate V Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–15375 Filed 7–7–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–206]

Southern California Edison Co. et al.; Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–13 issued to Southern California Edison Company, *et al.* (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California. The request for amendment was submitted by letter dated May 27, 1987.

The proposed amendment would revise the Technical Specification (TS)

section on Control Room Emergency Air Treatment System to include testing and surveillance requirements of a planned modification. It would also revise the TS to allow for suspension of PORV Block Value surveillance testing during periods when the block valves are being maintained closed in order to satisfy the action requirements of the TS.

Prior to 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 regulations.

By August 8, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esq., Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714 (a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 29th day of June 1988.

for the Nuclear Regulatory Commission.

Harry Rood,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–15376 Filed 7–7–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–206]

Southern California Edison Co. et al.; Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–13 issued to Southern California Edison Company, *et al.* (the licensee), for operation of San Onofre Nuclear Generating Station, Unit No. 1, located in San Diego County, California. The request for amendment was submitted by letter dated August 31, 1987.

The proposed amendment would revise (1) Technical Specification (TS) 3.9, "Core Average Burnup" to be a Moderator Temperature Coefficient based specification and would revise this limiting condition for operation to be based directly upon the safety parameter that the core burnup specification was designed to limit (Proposed Change #170), and (2) TS 3.10, "Incore Instrumentation" and TS 3.11, "Continuous Power Distribution Monitoring to incorporate more frequent correlation verification of the excore axial offset monitoring instrumentation and revise the formula for determining incore axial offset. (Proposed Change #171).

Prior to 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 regulations.

By August 8, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject provisional operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles R. Kocher, Assistant General Counsel, and James Beoletto, Esq., Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the General Library, Unviersity of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 29th day of June 1988.

For the Nuclear Regulatory Commission.

Harry Rood,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–15377 Filed 7–7–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–322–OL–3 (Emergency Planning)]

Atomic Safety and Licensing Board; Long Island Lighting Co.; Hearing

July 1, 1988.

Notice is hereby given that, in accordance with the Licensing Board's Order in a teleconference on June 29, 1988, an evidentiary hearing on discovery relating to emergency plans will commence in Bethesda, Maryland, beginning at 9:30 a.m. on July 11 and continuing through July 13, 1988. The hearing will take place in the Appeal Board Hearing Room on the fifth floor of the East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland. Parties to the proceedings are the Long Island Lighting Company, New York State, Suffolk County, the Town of Southampton, Federal Emergency Management Agency, and the Nuclear Regulatory Staff.

For the Atomic Safety and Licensing Board.

James P. Gleason,

Chairman Administrative Judge.

[FR Doc. 88–15378 Filed 7–7–88; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–66]

Termination Notice; Investigation Concerning Japan's Restrictions on Imports of Fresh Oranges and Orange Juice

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of termination of an investigation under section 302.

SUMMARY: The U.S. Trade Representative has terminated the investigation initiated May 25, 1988 concerning the Government of Japan's policies and practices with respect to the importation of fresh oranges and orange juice. This action responds to the petitioner's withdrawal of its petition, and the recent successful resolution of this issue between the United States Government and the Government of Japan.

EFFECTIVE DATE: July 5, 1988.

FOR FURTHER INFORMATION CONTACT: Ellen Terpstra, Advisor to the Assistant U.S. Trade Representative for Agricultural Affairs, 395–5006; Amelia Porges, Associate General Counsel, (202) 395–7305; or Glen Fukushima, Deputy Assistant Trade Representative for Japan, (202) 395–5070, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: On May 6, 1988, Florida Citrus Mutual, Florida Citrus Packers, the Florida Citrus Processors Association, the Florida Department of Citrus and the Indian River Citrus League filed a petition under section 302(a) of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2412(a). The petition alleged that the Government of Japan engages in acts, policies and practices that violate obligations of Japan under the General Agreement on Tariffs and Trade ("GATT") and are unjustifiable, unreasonable and burden or restrict U.S. commerce.

Specifically, the petition stated that Japan maintains import quotas on fresh oranges and orange juice, and that these trade restrictions contravene Article XI of the GATT. It also stated that Japan requires that importers of orange juice blend such imported juice with domestic orange juice, in contravention of Article III, paragraph 5 of the GATT. The petitioners estimated that elimination of the import quota restrictions and the juice blending requirement could increase United States exports to Japan by $50 to $100 million annually.

On May 25, 1988, the U.S. Trade Representative initiated an investigation of the Japanese government's policies and practices restricting imports of oranges and orange juice into Japan.

After initiation of the investigation, we continued to pursue bilateral negotiations with the object of expeditiously resolving this matter. We also continued to pursue proceedings under the dispute settlement procedures of Article XXIII of the GATT concerning these practices and Japanese governmental restrictions on imports of beef. On June 20, 1988, we reached an *ad referendum* settlement, which was formally completed by an exchange of notes on July 5, 1988. The petitioners withdrew their petition on the same date.

The provisions of the settlement concerning fresh citrus are as follows:

—Quantitative restrictions on imports will be ended effective April 1, 1991 for fresh oranges and April 1, 1992 for orange juice.

—During Japanese fiscal years ("JFY") 1988 through 1990, market access for fresh oranges will be expanded by 22,000 metric tons annually, reaching 192,000 MT in JFY 1990. Market access for orange juice concentrate will be expanded from 8,500 MT in JFY 1987 to 15,000 MT in JFY 1988, 19,000 MT in JFY 1989, 23,000 MT in JFY 1990 and 40,000 MT in JFY 1991.

—The blending requirement will be lifted for 40 percent of concentrated orange juice imports in JFY 1988 and 60 percent in JFY 1989, and it will be completely eliminated effective April 1, 1990.

—Special access, not subject to the blending requirement, will be provided for imports of single-strength orange juice and orange juice mixtures as follows: 15,000 kiloliters in JFY 1988, 21,000 kiloliters in JFY 1989 and 27,000 kiloliters in JFY 1990. As of April 1, 1991, imports of these products will be permitted in unlimited quantities. Imports of single-strength orange juice in small containers for use in hotels will be permitted in unlimited quantities this year.

—In addition, the Government of Japan has agreed to reduce tariffs on fresh grapefruit, lemons, and various other products as a part of the overall settlement.

Accordingly, section 301 investigation number 301–66 has been terminated, as provided for in 15 CFR 2006.6.

Judith Hippler Bello,

General Counsel, Chairman, Section 301 Committee.

[FR Doc. 88–15364 Filed 7–7–88; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 35–24672]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 30, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 25, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

General Public Utilities Corporation et al. (70–7282)

General Public Utilities Corporation, 100 Interpace Parkway, Parsippany, New Jersey 07054 ("GPU"), a registered holding company, and its subsidiaries, Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, Metropolitan Edison Company ("Met-Ed"), 2800 Pottsville Pike, Reading, Pennsylvania 19605 and Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, have filed a post-effective amendment to their application-declaration pursuant to sections 9(a), 10 and 12(c) of the Act and Rule 42 thereunder.

By order dated October 6, 1986 (HCAR No. 24207), the Commission authorized GPU, JCP&L, Med-Ed and Penelec ("GPU Companies") to enter into a renewal of their Revolving Credit Agreement ("New Credit Agreement") with a group of commercial banks ("Banks") for which Citibank N.A. acts as agent and Chemical Bank acts as co-agent, and to issue, sell and renew to the Banks from time to time, through March 31, 1989, their respective promissory notes maturing not more than six months from the date of issue, under

and pursuant to the terms thereof. Borrowings by the GPU Companies under the New Credit Agreement are limited to an aggregate of $110 million, with an individual sublimit of $20 million applicable to GPU only.

By that same number, the GPU Companies were permitted from time to time through March 31, 1989 to issue or renew their respective unsecured promissory notes, maturing not more than nine months after issue, to various commercial banks pursuant to informal lines of credit. In the case of GPU, the total principal amount of such unsecured borrowings outstanding at any one time, when added to its total principal amount of notes then outstanding under the New Credit Agreement, may not exceed $50 million. At April 30, 1988, GPU had such unsecured borrowings outstanding in the amount of $23 million.

GPU now believes that it will need to borrow up to a total of $100 million in connection with the proposed repurchase of up to 8 million shares of its common stock described in Post-Effective Amendment No. 1 to its pending Application-Declaration in S.E.C. File No. 70-7473 and for other corporate purposes. GPU requests authority to issue or renew from time to time during the period ending on March 31, 1989 its unsecured promissory notes, maturing not more than nine months after issue, to various commercial banks pursuant to informal lines of credit. The total principal amount of such increased borrowings outstanding at any one time, when added to the principal amount of GPU's notes then outstanding under the New Credit Agreement, would not exceed $100 million. In all other respects, the transactions as heretofore authorized by the Commission herein would remain unchanged.

General Public Utilities Corporation (70-7473)

General Public Utilities Corporation, 100 Interpace Parkway, Parsippany, New Jersey 07054 ("GPU"), a registered holding company, has filed a post-effective amendment to its application-declaration pursuant to sections 9(a), 10 and 12(c) of the Act and Rule 42 thereunder.

By orders dated December 29, 1987 (HCAR No. 24550) and March 30, 1988 (HCAR No. 24612), among other things, the Commission authorized GPU to repurchase from time to time through December 31, 1991 up to five million shares of its common stock, par value $2.50 per share, such repurchases to be made in the open market, through one or more odd-lot tender offers, and/or from shares held under GPU's Tax Reduction Act Employees Stock Ownership Plans upon termination of those plans. The timing of such repurchases will depend upon existing market conditions and the anticipated capital needs of GPU and its subsidiaries. GPU now proposes (a) to increase to eight million the total number of shares of common stock it may repurchase and (b) to extend the period during which such repurchase may be made to December 31, 1992. In all other respects, the transactions as heretofore authorized by the Commission in this matter would remain unchanged.

The Columbia Gas System, Inc. et al. (70-7529)

The Columbia Gas System, Inc., 20 Montchanin Road, Wilmington, Delaware 19807 ("Columbia"), a registered holding company, and its subsidiary, Columbia Gas Transmission Corporation, P.O. Box 4621, Houston, Texas 77210-4621 ("Transmission"), have filed an application-declaration pursuant to sections 6(a), 7, 9(a) and (10) of the Act.

Columbia proposes to issue up to $850 million of subordinated unsecured promissory notes to a group of commercial banks under a Subordinated Revolving Credit Agreement ("Agreement") having a term of five years. The Notes will, at the option of Columbia, bear interest at one of the agent bank's: fluctuating Prime Rate ("Prime"); Adjusted Certificate of Deposit Rate ("CD") plus ¾% or the Adjusted London Interbank Offered Rate ("LIBOR") plus ⅝%, through August 31, 1991, and thereafter these rates, plus ⅛%, ⅞% and ¾%, respectively. The maturities on the notes will be: up to 30 days for Prime loans; 30, 60, 90 or 180 days for CD loans; and 1, 2, 3 or 6 months on LIBOR loans. No amortization of the notes will be required during the term of the Agreement. In addition, an annual commitment fee of ⅛% times the amount of the undrawn portion of the commitment will be paid to the participating banks.

Columbia also proposes to enter into one or more interest rate exchange agreements in national amounts of up to $550,000,000, in order to fix the rates on new borrowings to reduce exposure to fluctuating interest rates.

Borrowings under the Agreement will be used to restructure its financings Columbia by eliminating three existing financing vehicles, and for other corporate purposes. First, they will be used as a replacement for Transmission's $350 million Limited Recourse Loan Agreement (HCAR No. 23813, August 30, 1985). Second, they will be used to retire a $300 million outstanding amount under Columbia's Credit Agreement (HCAR Nos. 21546 and 24196, July 31, 1982 and September 23, 1986, respectively). Finally, proceeds will be used to redeem and retire all of Columbia's preferred stock, outstanding in three series and with a combined par value of $110 million (HCAR Nos. 18979, 22886 and 23007, May 12, 1975, March 22, 1983 and July 21, 1983, respectively).

Columbus Southern Power Company (70-7539)

Columbus Southern Power Company ("CSP"), 215 North Front Street, Columbus, Ohio 43215, an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration pursuant to section 12(d) of the Act and Rule 44 thereunder.

CSP proposes to sell certain of its utility assets (the "Facilities") to E. I. duPont de Nemours & Co., Inc., ("duPont"). The Facilities are comprised of Substation DuPont No. 182, which is located on land owned by duPont in Circleville, Ohio. The Facilities are dedicated solely to serving duPont's property, are not used to serve any other customer of CSP, and are not adaptable, at that location, for use in serving any customer other than duPont. DuPont will grant an easement to CSP as necessary to allow CSP's transmission lines within the boundary of the substation. According to the declaration, duPont will pay CSP $1,479,046 in cash, which includes all expenses CSP expects to incur in the sale, for the Facilities.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-15361 Filed 7-7-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-25874; File No. SR-NASD-88-24]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. relating to NASDAQ companies providing the NASD with notice of material new releases

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 21, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items

have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendments to Part II of Schedule D to the NASD By-Laws would require NASDAQ issuers to provide notice to the NASD of material news releases no later than simultaneously with the release of such information to the press and to respond to information requests by the NASD. The proposed amendment to the "Notification to NASD of News Releases," also contained in Part II of Schedule D, would recommend that issuers notify the NASD of such material information at least ten minutes prior to its release to the press. These proposed amendments were approved by the Commission for a period of 60 days on June 9, 1988 in Release No. 34–25792.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

The proposed rule change would make permanent the requirement that NASDAQ companies provide notice to the NASD Market Surveillance section, at least simultaneously with the release of such information to the news media. The current provisions of Schedule D require the public disclosure of material information but only recommend that notification to the NASD take place simultaneously with such release. It is the belief of the NASD Board of Governors that in view of recent market events and of proposals by the NASD to mandate the use of the NASD's Small Order Execution System for transactions in NASDAQ National Market System securities, it will be of critical importance for the NASD to be notified in a timely fashion of material news. This will be necessary in order to make appropriate determinations with respect to trading halts.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(11) of the Act, which mandates that the rules of the NASD include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange, and that such rules shall be designed to produce fair and informative quotations, to prevent fictitious and misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations. The NASD believes that requiring issuers to provide the NASD with material information will substantially assist the NASD in carrying out its obligations under this provision of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed amendments impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 29, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Shirley E. Hollis,
Assistant Secretary.

Dated: July 1, 1988.

[FR Doc. 88–15360 Filed 7–7–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 03/03–0178]

D.C. Bancorp Venture Capital Co.; Filing of Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to the Regulations governing small business investment companies (13 CFR 107.601 (1988)) for a transfer of ownership and control of D.C. Bancorp Venture Capital Company (DCBVCC), 1801 K Street, NW., Washington, DC 20006, a Federal Licensee under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*). The proposed transfer of ownership and control of DCBVCC, which was licensed July 18, 1985, is subject to the prior written approval of SBA.

The transfer of ownership and control relates to the proposed purchase of Money Management Associates' 33 and 1/3 percent interest of DCBVCC by Sovran Financial Corporation (SFC). SFC, by virtue of its 100 percent ownership of Sovran Bank/DC National, indirectly owns 33 1/3 percent of DCBVCC. Allowing for the consummation of the proposed transfer of ownership and control SFC will own 66 2/3 percent of DCBVCC.

The proposed officers, directors and shareholders of the Applicant are as follows:

Name	Position	Percentage of outstanding share to be owned	
		Directly	Indirectly
Allan A. Weissburg, 7914 Lysander Court, McLean, VA 22101	President and General Manager	0	0
Thomas D. Walsh, 3224 Juniper Lane, Falls Church, VA 22044	Vice President and Director and holder of 15% interest and partner in JMW Investment Partnership.	0	5.0
James C. Brandon, 7003 Braddock Mews Place, Springfield, VA 22151	Vice President	0	0
Albert A. D'Alessandro, 9201 Warfield Road, Gaithersburg, MD 20879	Secretary-Treasurer	0	0
Joanne McDowell, 1529 Farlow Avenue, Crofton, MD 21114	Assistant Secretary	0	0
Jeffrey R. Reider, 4805 Dorset Avenue, Chevy Chase, MD 210815	Director	0	0
DC Bancorp Investment Company, 1801 K Street, NW., Washington, DC 20006.	Direct Stockholder	33.3	0
Sovran Bank/DC National, 1801 K Street, NW., Washington, DC 20006	100% owner of DC Bancorp Investment Company.	0	33.3
Sovran Financial Corp., One Commercial Place, 6th Floor, Norfolk, VA 23510	100% owner of Sovran Bank/DC National	0	33.3
Sovran Financial Corp., One Commercial Place, 6th Floor, Norfolk, VA 23510	Direct Stockholder	33.3	0
JMW Investment Partnership, Suite 490, 1050 Connecticut Avenue, NW., Washington, DC 20036.	Direct Stockholder	33.3	0

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitablity and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed transfer of ownership and control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Washington, DC area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 1, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-15326 Filed 7-7-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 1, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45672

Date Filed: June 27, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 25, 1988.

Description: Application of Trans World Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for an amendment of its certificate of public convenience and necessity for Route 147 authorizing it to provide air transportation services between Frankfurt and Vienna with full local rights between such points on a routing New York-Frankfurt-Vienna.

Docket No. 45673

Date Filed: June 27, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 25, 1988.

Description: Application of Airbc Limited pursuant to section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit to carry persons, property and mail between Seattle, Washington, and Pemberton, British Columbia, Canada on a scheduled basis.

Docket No. 44055

Date Filed: June 28, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: July 26, 1988.

Description: Application of Japan Air Lines Company, Ltd. pursuant to section 402 of the Act and Subpart Q of the Regulations submits an Amendment No. 1 to the Application for amendment of its foreign air carrier permit filed May 23, 1986. The purpose of this amendment is to request that JAL's permit be amended to give JAL authority to coterminalize Seattle, Washington and Atlanta, Georgia.

Docket No. 45364

Date Filed: July 28, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 26, 1988.

Date Filed: Amendment No. 1 to the Application of I.L.P.O. Aruba N.V. for a foreign air carrier permit requests authority to provide scheduled services to Miami, Florida, San Juan, Puerto Rico and to the U.S. Virgin Islands. Intermediate points in the Caribbean requested at this time are Curacao and Haiti.

Docket No. 45681

Date Filed: July 1, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 29, 1988.

Description: Application of American Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for renewal of its certificate of public convenience and necessity for Route 325 [Houston/Dallas/Ft. Worth-Toronto/Montreal].

Docket No. 45683

Date Filed: July 1, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 29, 1988.

Description: Application of Millon Air, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, requests amendment of its certificate of public convenience and necessity authorizing it to perform scheduled all-cargo service between the United States

and El Salvador, and between the United States and Guatemala.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-15350 Filed 7-7-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of a notice of intent.

SUMMARY: The FHWA advises the public of the withdrawal of the February 25, 1988 Notice of Intent to prepare an Environmental Impact Statement for the relocation of existing US-27 to a new location generally outside the Chickamauga-Chattanooga National Military Park, Walker-Catoosa Counties, Georgia (project #MLP-813(1)). Current plans are to use alternative funding sources not involving FHWA for this project.

Thomas D. Myers,

District Engineer, Federal Highway Administration, Atlanta, GA.

[FR Doc. 88-15322 Filed 7-7-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 28, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0410
Form Number: IRS Form 6469 and 6468
Type of Review: Revision
Title: Tape Label for Form W4 (6469) How to Prepare Form 6469, Tape label for Form W4 (6468)
Description: 26 USC 3402 requires all employers making payment of wages to deduct (withhold) tax upon such payments. Employers are further required under Regulation 31.3402(f)(2)-1(g) to submit certain withholding certificates (W-4) to the IRS. Form 6469 (labels) and 6468 (instructions) are sent to employers who prefer to file this information on magnetic tape.
Respondents: State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations
Estimated Number of Respondents: 70
Estimated Burden Hours Per Response: 6 minutes
Frequency of Response: Quarterly
Estimated Total Reporting Burden: 28 hours

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports.

[FR Doc. 88-15393 Filed 7-7-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 30, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: IRS Form 9003
Type of Review: New collection
Title: Additional Questions to be Completed by All Applicants for Permanent Residence in the United States
Description: Form 9003 is to be used by the State Department and the Immigration and Naturalization Service to gather certain additional information of "green card" applicants for the IRS as required by section 6039E (b) of the Tax Reform Act. The answers will be transcribed into a database for IRS computer processing.
Respondents: Individuals or households
Estimated Number of Respondents: 650,000
Estimated Burden Hours Per Response: 5 minutes
Frequency of Response: When applying for green card
Estimated Total Reporting Burden: 54,166 hours

OMB Number: New
Form Number: IRS Form 8644-A
Type of Review: New collection
Title: Annual Return of Shareholder Information under Section 1295
Description: Form 8644-A is used by certain foreign investment companies to report information to its shareholders who are U.S. persons. These shareholders use the information to report amounts in gross income when filing their income tax returns. The IRS uses the information on Form 8644-A to determine if the correct amount has been included in income.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 100
Estimated Burden Hours Per Response: 14 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 1,539 hours

OMB Number: 1545-0393
Form Number: IRS Form 109C and 109(SC)
Type of Review: Extension
Title: Duplicate of Refund Return Requested Statement of Nonreceipt of Refund Shown on Tax Return
Description: The Internal Revenue Code requires tax returns to be filed. It also authorizes IRS to refund any overpayment of tax. If taxpayers inquire about their non-receipt or refund or no return is found, this letter is sent requesting the taxpayer to file another return.
Respondents: Individuals or households
Estimated Number of Respondents: 18,223
Estimated Burden Hours Per Response: 5 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1,513 hours

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive

Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-15394 Filed 7-7-88; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Supplement to Department Circular; Public Debt Series No. 16-88]

Treasury Notes; Series AC-1990

The Secretary announced on June 22, 1988, that the interest rate on the notes designated Series AC-1990, described in Department Circular—Public Debt Series—No. 16-88 dated June 16, 1988, will be 8 percent. Interest on the notes will be payable at the rate of 8 percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-15331 Filed 7-7-88; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular; Public Debt Series No. 17-88]

Treasury Notes; Series N-1992

Washington, June 24, 1988.

The Secretary announced on June 23, 1988, that the interest rate on the notes designated Series N-1992, described in Department Circular—Public Debt Series—No. 17-88 dated June 16, 1988, will be 8-¼ percent. Interest on the notes will be payable at the rate of 8-¼ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 88-15332 Filed 7-7-88; 8:45 am]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition

SUMMARY: The United States Information Agency hereby modifies a notice found at 52 FR 13170 [April 21, 1987] regarding immunity from judicial seizure for the art exhibit "Son of Heaven: Imperial Arts of China" to provide revised dates and venues of its temporary exhibition in the United States.

EFFECTIVE DATE: This modification is effective upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Lorie J. Nierenberg, Office of the General Counsel, United States Information Agency, 301-4th Street, SW., Washington, DC 20547.

SUPPLEMENTATY INFORMATION: The United States Information Agency hereby modifies a notice published at 52 FR 13170 [April 21, 1987]. The notice rendered immune from judicial process certain items to be included in the exhibit entitled "Son of Heaven: Imperial Arts of China." this modification of notice indicates the new locations and dates of exhibition, which are as follows: the Flag Pavilion/Art Pavilion, Seattle Center, Seattle, Washington, beginning on ar about July 28, 1988, to on or about December 31, 1988, and the Central High School Building, Columbus, Ohio, beginning on or about March 1, 1989, to on or about August 31, 1989.

Date: July 1, 1988.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 88-15323 Filed 7-7-88; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 131
Friday, July 8, 1988.

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).

July 5, 1988.

COMMISSION ON CIVIL RIGHTS

PLACE: 1121 Vermont Avenue, NW., Room 512, Washington, DC 20425.

DATE AND TIME: Friday, July 15, 1988, 9:00 a.m.—5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda.
II. Approval of Minutes of June Meeting.
III. Staff Director's Report:
  A. Status of Earmarks.
  B. Personnel Report.
  C. Activity Report.
IV. Resolution: Briefing on Campus Violence.
V. Incomes of Americans Report: Asian Americans.
VI. Project Proposal: Hearing on Congressional Exemption from Civil Rights Laws.
VII. SAC Report: "Minority Political Participation in Selected Alabama Jurisdictions".
VIII. SAC Report: "Bigotry and Violence in Illinois".
IX. SAC Report: "Missouri Human Rights Agencies".
X. SAC Report: "Desegregating Cabrini-Green".
XI. SAC Report: "Reporting on Bias-Related Incidents in New York State.
XII. SAC Recharters:
XIII. Presentations by SAC Chairmen.

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division, (202) 376-8312.

William H. Gillers,
Solicitor, 376-8514.

[FR Doc. 88-15410 Filed 7-5-88; 5:06 pm]
BILLING CODE 6335-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published July 5, 1988.

PREVIOUS ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Wednesday, July 6, 1988.

CHANGE IN THE MEETING:

Open Session

The itme listed below has been taken off the agenda:

"Regulations Implementing section 504 of the Rehabilitation Act in the Commission's Federally Conduct Programs: FINAL RULE: Response to Public Comment on Notice of Proposed Rulemaking"

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat. (202) 634-6748.

Date: July 1, 1988.

Frances M. Hart,
Executive Officer, Executive Secretariat.

[FR Doc. 88-15395 Filed 7-6-88; 9:34 am]
BILLING CODE 6750-06-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—July 13, 1988.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573-0001.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion open to the public:

1. Proposed Interpretive Rule Regarding Shippers' Associations.

Portion closed to the public:

1. Docket No. 86-7—Secretary of the Army v. Port of Seattle—Petition for Reconsideration.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,
Secretary.

[FR Doc. 88-15488 Filed 7-6-88; 3:47 pm]
BILLING CODE 6730-01-M

Corrections

Federal Register
Vol. 53, No. 131
Friday, July 8, 1988

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.

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 8c

[Docket No. 40923-7270]

Enforcement of Nondiscrimination on the Basis of Handicap in Department of Commerce Programs

Correction

In rule document 88-9009 beginning on page 19270 in the issue of Friday, May 27, 1988, make the following corrections:

§ 8c.3 [Corrected]

1. On page 19278, in the first column, in § 8c.3, in the fifth line, "participant" should read "participate".

§ 8c.70 [Corrected]

2. On page 19280, in the third column, in § 8c.70(b), in the sixth line, "Part 613" should read "Part 1613".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Temporary Child Care for Handicapped Children and Crisis Nurseries

Correction

In notice document 88-14991 beginning on page 25262 in the issue of Tuesday, July 5, 1988, make the following correction:

On page 25265, in the first column, under "*D. Closing Date for Receipt of Applications*", in the third line, "September 26" should read "September 6".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-08-4212-13; A-22971]

Realty Actions; Exchange of Public and Private Lands in Mohave County; Arizona

Correction

In notice document 88-9952 beginning on page 16197 in the issue of Thursday, May 5, 1988, make the following corrections:

1. On page 16197, in the third column, in the land description for Gila and Salt River Meridian, Arizona, under T. 25 N., R. 17 W., immediately following the description for Sec. 33, insert a new line reading "Sec. 35, S½NW¼, N½SW¼."

2. On page 16198, in the first column, in the 19th line, "South 9 degrees" should read "South 89 degrees".

BILLING CODE 1505-01-D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

Payment of Premiums

Correction

In rule document 88-14792 beginning on page 24906 in the issue of Thursday, June 30, 1988, make the following corrections:

1. On page 24907, in the third column, in the first complete paragraph, in the seventh line, "414(1)" should read "414(l)".

2. On page 24908, in the first column, in the second complete paragraph, in the 10th line, "interim" was misspelled.

3. On the same page, in the same column, in the third complete paragraph, in the 10th line, "eight" should read "eighth".

4. On the same page, in the second column, in the last line, "new" should read "newly".

5. On page 24909, in the third column, in the second complete paragraph, in the 14th line, after "$1" insert "of".

6. On page 24910, in the first column, in the second complete paragraph, in the ninth line, after "from" insert "the".

§ 2610.10 [Corrected]

7. On page 24914, in the second column, in § 2610.10(b)(1), in the third line, "414(1)" should read "414(l)".

§ 2610.22 [Corrected]

8. On the same page, in the third column, in § 2610.22(b), in the 12th line, "also" should read "all".

§ 2610.23 [Corrected]

9. On page 24915, in the first column, in § 2610.23(a), in the 44th line, after "plan" insert "that".

10. On page 24916, in the first column, in § 2610.23(d)(3), in the third line, "414(1)" should read "414(l)".

§ 2610.26 [Corrected]

11. On page 24917, in the second column, in § 2610.26(b), in the 12th line, "on" should read "of".

§ 2610.34 [Corrected]

12. On page 24918, in the second column, in § 2610.34(a)(6)(ii), in the fifth line, after "following" insert "the".

13. On the same page, in the third column, in § 2610.34(a)(7)(ii), in the fifth line, after "following" insert "the".

14. In the same column, in § 2610.34(a)(8), in the seventh line, after "before" insert "the".

15. In the same column, in § 2610.34(a)(8)(ii), in the second line, remove "before" and insert "on or after". **NOTE**: For a Pension Benefit Guaranty Corporation correction to this document see the Rules section of this issue.

BILLING CODE 1505-01-D

Federal Register

Friday
July 8, 1988

Part II

ACTION

Agency Information Collection Activities Under OMB Review; Notice

ACTION

Agency Information Collection Activities Under OMB Review

AGENCY: Action.

ACTION: Information Collection Request Under Review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the Federal Domestic Volunteer Agency.

Background: Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents [requests for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents] may be obtained from the agency clearance officer.

Need and Use: Study mandated by Congress (Pub. L. 99-551, Section 416) to evaluate RSVP and SCP Family Caregiver Programs which provide, through volunteers, respite services to families caring for frail or disabled relatives. Findings will provide information useful for technical assistance and program development and monitoring. Key Words: Program evaluation, Volunteer services.

To Obtain Information About or To Submit Comments On This Proposed Information Collection, Please Contact Both:

Melvin E. Beetle, Clearance Officer, ACTION, Room M-600, 806 Connecticut Ave., NW., Washington, DC 20525, Tel: (202) 634-9321
and
James Houser, Desk Officer for ACTION, Office of Management and Budget, New Executive Office Bldg., Room 3002, Washington, DC 20503, Tel: (202) 395-7316.

Office of ACTION issuing the Proposal: Office of the Inspector General, Program Analysis and Evaluation Division.

Title of Form: OAVP Family Caregiver Evaluation.

Type of Request *and* Respondent's Obligation to Reply: New Response is Voluntary.

General Description of Respondents: RSVP and SCP Project directors, station supervisors, Volunteers, elderly clients and family caregivers.

Estimated Response Burden: Overall Figure in Burden Hours—1,337.8 hrs.

Number of respondents by group	Average burden minutes per response	Frequency of response
170 Project Directors	90	One time only.
10 Project Directors	60	Do.
590 Station Supervisors.	90	Do.
30 Station Supervisors.	66	Do.
90 Volunteers	42.6	Do.
90 Family Caregivers	39.6	Do.
90 Clients	21	Do.

Date: June 23, 1988.

Melvin E. Beetle,

Clearance Officer, ACTION.

Supporting Statement for Request for Approval of OAVP Family Caregiver Evaluation

Introduction

The Family Caregiver Program is one of the activities of ACTION's Retired Senior Volunteer Program (RSVP) and Senior Companion Program (SCP). Legislated under Title II of the Domestic Volunteer Service Act of 1973, as amended, RSVP and SCP enable Americans aged 60 and older to aid in solving community problems.

SCP affords volunteer opportunities for low-income men and women while providing them with a modest stipend for assisting the frail elderly. Their assistance is designed to (1) help to prevent inappropriate institutionalization of elderly homebound persons, and (2) contribute to the deinstitutionalization of other elderly during their readjustments to the community. In addition, Senior Companions serve as advocates, linking their clients to community services and other resources.

SCP volunteers are placed in their assignments through community health and social service agencies and State long-term care networks. Approximately 80 percent of the 5,300 Senior Companions helping some 18,000 clients nationwide in 1986 where assigned to the homebound, both those who live alone and with family.

RSVP offers retirees volunteer opportunities in a variety of settings throughout their communities, e.g., courts, libraries, schools, economic development agencies, hospitals, day care centers, hospices and families. Proffered volunteer services include adult literacy, guardians ad litem, tax aids, guides, home repair, telephone assurance and in-home care.

In the area of in-home care for elderly persons who live alone as well as with family, RSVP volunteers provide personal care, escorting, shopping and recreation services. RSVP volunteers serve without compensation but may be reimbursed for some volunteer expenses.

During 1986, approximately 365,000 RSVP volunteers were assigned to 51,000 community agencies through 750 projects nationwide, with a substantial number of these volunteers working with the homebound.

Volunteers in the RSVP and SCP Family Caregiver Programs provide relief to family members caring for frail or disabled elderly relatives. This relief might be going to the family home for a few hours a week to groom or feed the older family member so that the family caregiver can have much needed time to do other family chores or just relax. Or it might be accompanying an elderly family member to an adult day care center once or twice a week to provide the caregiver some relief from the 24 hours a day, 7 days a week caregiving. Or it might be sitting with an elderly hospice patient once a week to give the family caregiver a brief respite.

The Family Caregiver Program has generally been accepted as a success across the country as a long-term care activity and an alternative to nursing home placement. Unfortunately, little systematic information exists nationally or within ACTION about the extent of family caregiver assistance provided by RSVP and SCP volunteers. To this end, in 1986 Congress amended ACTION's legislation to include an evaluation of the assistance given to family caregivers by RSVP and SCP.

This evaluation combines both process and goal evaluation. The process aspect of the evaluation directs attention to the target service populations, services delivered, paid and volunteer personnel, uses of resources, training and qualifications of participating personnel, decisionmaking and patterns of interactions. Goal attainment evaluation goes beyond project description and process determination in order to ascertain more in-depth information on whether program objectives and goals are being achieved, perceived effects on people being served, problems encountered/resolved and other insights and issues.

The evaluation was delineated by ACTION as having two aspects. The first aspect is to gather a wide range of information about family caregiver volunteer activities from a sample of RSVP and SCP projects since the Older American Volunteer Project (OAVP) Project Profile does not at present contain any category of assistance to

family caregivers and evaluation information on assistance to family caregivers does not exist. The second aspect is in-depth interviews with just a few projects, the selection of which will be done after 50 percent of the mail questionnaires are analyzed. To adhere to the Congress' mandate that the report of this evaluation be submitted not later than December 31, 1988, this OMB submission includes instruments for both aspects.

A. Justification

1. Circumstances that Make Information Collection Necessary. Pub. L. 99–551, section 416 mandates that ACTION conduct an evaluation of the Title II programs that assist families caring for frail and disabled adult family members. Specifically, Congress mandated that the evaluation "shall include information on—

(A) The range and extent of service needs of, and the services provided to, family caregivers assisted by volunteers;

(B) The characteristics of volunteers and the skills, training and the supervision necessary to provide various types of volunteer assistance to family caregivers;

(C) Administrative cost, including recruitment, training and supervision cost associated with volunteer assistance to family caregivers; and

(D) Such other issues as may be relevant to provide services to assist family caregivers."

(See Attachment 1)

2. Use of the Information. The results of this evaluation, in addition to informing Congress, will be useful to ACTION, and state and local RSVP and SCP projects for program description, developing monitoring plans, technical assistance and program development.

3. Consideration of Improved Information Technology to Reduce Burden. Technical or Legal Obstacles to Reducing Burden. For the mail survey (Aspect 1) descriptive data about the RSVP and SCP projects can be obtained from existing records by project directors and station supervisors. During the pretest it was found that client and volunteer characteristics, financial and other programmatic data are readily available and easily retrieval. For some projects, this information is computerized which further enhances information retrieval and reduces burden. For the face-to-face interviews (Aspect 2), optimal survey methodology is used in data collection to reduce burden. That is, the questionnaires have been designed to reduce respondent burden through the use of "skip patterns." "Skip patterns" ensure that respondents will not be asked questions that do not apply directly to them.

Through the process of design, pretest and revisions, the length of the instruments has been reduced. In both aspects information is targeted only to the most appropriate respondent. Only factual, demographic and opinion data will be asked of each respondent. These approaches also allow burden to be reduced.

No technical or legal obstacles to reducing burden are applicable.

4. Efforts to Identity Duplication. Some information has been gathered on caregiver assistance as part of the SCP Homebound Elderly Demonstration Program Evaluation, but the information gathered is a small part of SCP and caregiver assistance was but a part. Within ACTION little information exists on what standard SCP and RSVP projects volunteers are accomplishing in family caregiver assistance. No information on family caregiver assistance is currently collected by OAVP's Project Profile. The Family Caregiver Evaluation is the first evaluation to focus solely on family caregiver services provided by RSVP and SCP volunteers.

5. Use of Similar Information. There is no similar information that can be used or modified to meet the purpose of the evaluation.

6. Efforts to Minimize Burden to Small Organizations. The seven (7) data collection instruments have been designed to minimize the completion time with both RSVP and SCP project directors, station supervisors, volunteers, elderly clients and their family caregivers. Simplifications were made following the pretest as described in Item 3 above. Exhibit 1 (page 8) of this submission outlines the estimates of burden to collect the data.

The mail questionnaires (Aspect 1) to project directors and station supervisors are restricted to programmatic information—volunteer recruitment, training, supervision and associated costs; volunteer skills and activities; and extent of services provided to the elderly and their family caregivers. To facilitate arranging for interviews (Aspect 2) with the volunteers, clients and caregivers, RSVP and SCP project or station staffs will be asked to provide the contractor with their names, addresses, phone numbers, and some other relevant information (such as client disability). To minimize interruption of interviewees schedules, all appointments will be scheduled in advance and at respondents' convenience.

7. Consequence to Federal Program If the Collection Conducted Less Frequently. This is the first systematic evaluation of the RSVP and SCP Family Caregiver Programs. As mandated by Congress, the results of the evaluation must be submitted no later than December 31, 1988.

8. Circumstances Requiring Collection Inconsistent with 5 CFR 1320.6. The proposed data collection will be in compliance with 5 CFR 1320.6.

9. Consultations with persons outside ACTION. The following people were consulted during the design of the study and the development of the instruments:

(1) Dr. Michael Kahn, Ph.D. (Contractor Consultant), Montien Corp., 5442 Luckpenny Pl., Columbia, MD 21045, (301) 992-4159

(2) Ms. Winifred Dowling, President, National Association of RSVP Project Directors, 2 Civic Center Plaza, 3rd Floor, El Paso, TX 79901–1196, (915) 541–4374

(3) Ms. Berryl Thompson, President, National Association of SCP Project Directors, SCP, P.O. Box 1510, Opelousa, LA 70570, (318) 948–3651

The following people were consulted during the pretest regarding clarity of instructions, recordkeeping, disclosure and reporting format:

(4) Ms. Millie Aven, RSVP and SCP Project Director, SEVAMP, Inc., 7 Koger Executive Center, #100, Norfolk, VA 23502, (804) 461–9481

(5) Ms. Maxine Brown, Project Director, Southern MD SCP, Hartman Bldg., P.O. Box 279, Hughesville, MD 20637

(6) Ms. Greta Armstrong, Project Director, Baltimore City SCP, Baltimore City Health Dept., 620 N. Caroline St., Baltimore, MD 21205, (301) 396–9248

(7) Dr. Robert Cosby, Ph.D., Director, Family and Child Services, 929 L Street, NW., Washington, DC 20001, (202) 289–1510

(8) Ms. Holly Dugan, SCP-Elder Call, Francis Scott Key Medical Center, 4940 Eastern Avenue, Baltimore, MD 21224, (301) 550–1250

(9) Mr. Orville A. Swafford, Director, Special Home Services, 303 E. Fayette Street—Room A–210, Baltimore, MD 21202, (301) 396–4494

(10) Ms. Debbie Luddington, Alexandria Adult Day Care Center, 11108 Jefferson Street, Alexandria, VA 22314, (703) 838–4844

There were no substantive problems that could not be resolved during consultation.

There were no other public contacts. Opportunities for public comment were not appropriate.

10. Assurance of Confidentiality. All information collection procedures will

comply with the provisions of the Privacy Act of 1974 and OMB Circular A-108 "Responsibilities for the Maintenance of Records about Individuals by Federal Agencies."

In accordance with the Privacy Act, a statement regarding use and confidentiality of the information collected will be incorporated into the introduction of the interviews and will be read to each prospective respondent. This statement will be included in the appropriate instruments (see Attachment 2). The interviewer will, through the use of this introduction, explain that participation in the study is voluntary and that the interviewee may refuse to answer any question or may stop the interview at any time he or she wishes.

EXHIBIT 1.—PROJECTED RESPONDENT BURDEN FOR ACTION FAMILY CAREGIVER PROGRAM SURVEY

	Aspect I (mail survey)				Aspect II (face-to-face interviews)				Both aspects
	Average length (hours)		Number of respondents	Respondent burden (hours)	Average length (hours)		Number of respondents	Respondent burden (hours)	Total burden (hours)
Project Director	1.5	×	170 =	255.0	1	×	10 [a] =	10.0	265.0
Volunteer Station	1.5	×	590 =	885.0	1.1	×	30 [b] =	33.0	918.0
Volunteer					.71	×	90 [c] =	63.9	63.9
Caregiver					.66	×	90 [c] =	59.4	59.4
Client					.35	×	90 [c] =	31.5	31.5
Total				1,140.0				197.8	1,337.8

[a] 10 projects will be included in the face to face interviews.
[b] An averge of 3 volunteer stations will be selected for each of the 10 projects.
[c] An average of 3 clients, 3 caregivers and 3 volunteers will be interviewed for each of the 30 volunteer stations selected.

Before beginning the interview, each potential respondent will be asked to sign a consent form. (Attachment 3) A copy of the form will be left with each respondent and the original signed copy will be sent to the contractor by the interviewers along with the completed questionnaire. Upon receipt, the form will be kept in a locked file.

No permanent records will be maintained that identify individual respondents. Data will be kept in individual identifiable form only long enough to assure access for follow-up of interview verification and until a complete data file can be constructed in a format not allowing individual identification. Completed questionnaires, identified only by anonymous ID numbers, will be stored separately and securely and will be submitted to ACTION for destruction upon completion of the evaluation. Only the ACTION project manager for this evaluation and project personnel authorized by him will have access to the confidential files.

11. Sensitive Questions. This evaluation will include no questions deemed to be sensitive in nature. During the pretest no respondent refused to answer any question, including age and household income, because it was considered to be sensitive or private.

12. Estimates of Cost to the Federal Government. The contract was awarded under a cost plus-fixed-fee contract. The total cost of this evaluation is $226,994 in FY '88. There is no separate cost for the two data collection aspects.

13. Estimates of the Burden of Information Collection. The estimated respondent burden, by respondent type and data collection method, is shown in Exhibit 1. These estimates are based on the pretest experience, debriefing meetings following the pretest and subsequent revisions.

Aspect 1 data collection involves mailing questionnaires to projects directors and station supervisors. There is no difference between RSVP and SCP station supervisor questionnaires, and there is no difference between RSVP and SCP project director questionnaires. These two instruments are included as Attachment 4.

The face-to-face questionnaires (Aspect 2) for the project director, station supervisor, elderly client, family caregiver and volunteer are included in Attachment 5. With the exception of three questions on fees directed to RSVP station supervisors, there is no difference between instruments administered to RSVP and SCP respondents.

In order to remain within the budget and rigorous timetable of this evaluation, none of the face-to-face questionnaires will be translated into another language. Hence, sites that are discovered to have significant non-English-speaking populations will not be included in the second aspect of this evaluation.

14. Reasons for Changes in Burden. As ACTION has no Information Collection Budget (ICB), there is no change in burden.

15. Plans for Tabulation, Statistical Analysis and Time Schedule— a. Tabulation and Statistical Analysis

The analysis plan centers on the following methodological questions:

(1) How will the different levels or units of analysis be linked?

(2) How will data be examined and adjusted, if necessary?

(3) What kind of statistical analysis will be performed?

(4) How will results be inferred?

(1) *Linking Units of Analysis.* The primary units of analysis for this evaluation are the RSVP and SCP projects. (The RSVP and SCP projects are two independent samples.) Each project will be analyzed separately but, where appropriate, comparisons will be made. The evaluation design calls for gathering information using two methods, the mail survey and face-to-face interviews. The mail survey will gather data from the project directors and the station supervisors. The interviews will gather in-depth information from project directors, station supervisors, volunteers, elderly clients and family caregivers. While analysis will be done for each group of respondents, all will be linked to the principal units of analysis, the projects. Linkages will be made in two ways: (1) Using a system of ID numbers that captures project, station, volunteer, elderly client and family caregiver and (2) using aggregate measures, such as measures of central tendency to permit construction of indices.

(2) *Examination and Adjustment of Sample Data.* Frequency distributions and other measures of central tendency and dispersion will be used to study skewness of some critical variables. Should this step reveal unexpected patterns, appropriate adjustments will be made using standard statistical

techniques such as Z-squared before performing other analyses.

(3) *Statistical Analysis.* Univariate, bivariate and, multivariate techniques, when appropriate, will be used. Univariate analysis will be used to describe RSVP and SCP projects. Key projects characteristics such as urban-rural distinction, size and auspices will be used to further highlight description. Bivariate analysis will involve the study of the distributions of two variables of interest at a time. Bivariate statistical tests will depend on the level of measurement of the variables (nominal, ordinal, interval). It is anticipated that measures of significance such as Student's *t* and measures of association such as Chi-square will be calculated. Multivariate analysis will be applied only to selected variables and in consultation with ACTION. Multivariate analysis will be used to answer questions that may arise from the first two stages of analysis.

Both statistical and management techniques will be used to handle missing data. The management approach for overcoming incomplete information includes (1) complete editing in the field (Aspect 2) and in the contractors's office and (2) follow-up phone calls to clear up ambiguities and missing information in both Aspect 1 and Aspect 2.

The statistical approach includes generating and displaying frequencies on missing responses to each survey question to determine further how missing data should be handled. That is, depending upon their proportional representation for the responses to a question, missing responses may be presented but excluded from other analysis or presented and treated as available responses with assigned scores. Missing data analysis also involves comparing respondents and nonrespondents. Programmatic data will be used to compare responding and nonresponding projects and stations. Demographic information will be used to compare responding and nonresponding volunteers, elderly clients and caregivers. (Basic information will be gathered by the interviewers on nonresponding volunteers, clients and caregivers. See Item B–3.) Estimation of response bias effects will be done using Chi-square.

(4) *Inferring Results.* When the population standard deviation is known for certain variables Z-squared is an appropriate procedure to infer sample results to the population. But because the population parameters (variance and standard deviation for given variables) are not known in this study, Student's *t* test will be used to infer results. (Cf. T. Anderson and S. Slove. *Statistical Analysis of Data.* Palo Alto: Scientific Press, 1986).

b. Schedule for Data Collection and Analysis. Our schedule for collecting and analyzing Aspect 1 (mail survey) and Aspect 2 (face-to-face interviews) data is as follows (approximate dates):

Aspect 1 data collection; July 15—August 19, 1988

Aspect 1 data analysis partial (50 percent); August 3–12, 1988

Aspect 2 data collection; September 19–23, 1988

Aspects 1 and 2 data analysis; October 2—December 16, 1988

B. Collection of Information Employing Statistical Methods

1. Universe of Projects and Potential Respondents. This evaluation is concerned with the Family Caregiver Program of RSVP and SCP projects. However, family caregiving is not a separate category in the OAVP's Project Profile. To identify which RSVP and SCP projects should compose the universe, ACTION asked OAVP regional directors and ACTION state RSVP and SCP program directors, in January 1988, to indicate projects that had volunteers who provide family caregiver services to families involved in caring for frail or disabled elderly persons in a home setting. Initial application of this definition to the information provided, excluded projects which offered services in senior day care centers, senior nutrition sites, and home meal programs. However, after subsequent discussion with the ACTION project officer, a decision was made to broaden the original definition. The revised operational definition became:

RSVP and SCP volunteers who provide direct care to a frail or disabled elderly person on a one-to-one basis in a private home, and institutional or day care setting as a single service in such a manner as to relieve the family caregiver. Application of this definition to projects reported on in January, resulted in a universe of 273 RSVP and a universe of 83 SCP projects.

In constructing the final two separate sampling frames or lists (one of RSVP projects and one of SCP projects), several problems were found. These, which could have affected specification of the universes, were:

1. Reporting volunteer stations which were clearly outside the scope of the definition, e.g., adult literacy programs;

2. Reporting a volunteer station when there was not one;

3. Nonreporting by some substate regions and localities;

4. Reporting a project as both RSVP and SCP;

5. Reporting the project site as located in the entire state rather than located in an urban or rural area.

The latter two problems were handled in the sample design. The first three problems were dealt with by calling selected OAVP regional directors or SCP station managers to correct information that appeared incorrect. Information about RSVP is being affirmed with the assistance of the President of the National Association of RSVP Project Directors who is sending letters to each project director. It is expected that this affirmation procedure may reduce burden as the size of the RSVP universe may become smaller.

Exhibits 2 and 3 present data on the potential respondents and the sample size that will be drawn for the mail and interview aspects. For the 83 projects in the SCP universe there are 466 stations involved in providing family caregiver services. For the 273 projects in the RSVP universe there are 829 RSVP stations involved in providing family caregiver services. In the mail survey sample design, 57 SCP projects and 169 of their stations were selected, and 113 RSVP projects and 421 of their stations were selected.

The universe for the face-to-face aspect consists of five (5) different respondents. These are: (1) Project director, (2) station supervisor, (3) volunteer, (4) elderly client and (5) family caregiver. While it is not possible to calculate the number of certain respondents for both RSVP and SCP (Exhibits 2 and 3), pretest data indicate that 31 respondents—1 project director, 3 station supervisors, 9 volunteers, 9 elderly clients and 9 caregivers—can be interviewed per site (10 in all) and still maintain the project's timetable and budget. For SCP, this represents about 1 in 18 projects, 1 in 32 stations and 1 in 45 volunteers, and for RSVP, this represents about 1 in 55 each for projects and stations, and 1 in 139 volunteers.

EXHIBIT 2.—SCP RESPONDENT UNIVERSE

Type of respondent	Universe	Sample size.[1]
Project director	88	57
Volunteer station	466	169
On Site Interviews:		
Project director	88	5
Volunteer station	466	15
Clients	Unknown	45
Family Caregivers	Unknown	45
Volunteers	2,006	45

[1] 5 sites for Aspect 2.

EXHIBIT 3.—RSVP RESPONDENT UNIVERSE

Type of respondent	Universe	Sample size.[1]
Project director	273	113
Volunteer station	829	421
On Site Interviews:		
Project director	273	5
Volunteer station	829	15
Clients	Unknown	45
Family Caregivers	Unknown	45
Volunteers	6,263	45

[1] 5 sites for Aspect 2.

2. *Procedures for the Collection of Information—a. Site Selection*

The Mail Survey—Aspect 1. The following criteria were used in deciding the sampling approach for the mail survey (Aspect 1):

(1) Samples have to be representative of their respective RSVP and SCP projects.

(2) Urban and rural projects have to be included in proportion to their appearance in the population.

(3) Measured values have to be within ±10% of the population values with a confidence level of 95%.

The efficacy of each of the four basic types of probability sampling—(1) random sampling, (2) systematic sampling, (3) stratified sampling, and (4) cluster sampling—was considered. In light of the requirements of the project, including the requirement to maintain an urban-rural distinction, all except stratified sampling were rejected. Cluster sampling was rejected because its disadvantage tended to outweigh its advantage for the Family Caregiver mail survey. While cluster sampling is cost effective, particularly for face-to-face interview studies, it extracts other prices. Variance (probable margin of error) is much greater than for stratified random sampling for the same number of cases. Moreover, the costs and problems of statistical analysis are much greater than for the other three types of probability sampling.

Both systemic sampling and simple random sampling were rejected because of the desire to *ensure* an urban-rural distinction in the samples.

Stratified random sampling was used to select the RSVP sample and the SCP sample. An urban-rural stratum was created for each of the sampling frames to ensure the inclusion of a representative number of both urban and rural projects. (The urban-rural stratum was operationalized as Metropolitan Statistical Area (MSA)—Nonmetropolitan Statistical Area (nonMSA).) Each project in the two strata of the two sampling frames had an equal chance of being selected from their respective stratum. It should be noted that projects that reported as serving the entire state were placed in the urban stratum. Projects that reported as being both RSVP and SCP, also mentioned above, were included in both the RSVP and SCP sampling frames.

Graphically, the universe of projects by the urban-rural distinction before sampling appeared as:

	RSVP	SCP
Urban	128	58
Rural	145	25
Total	273	83

The following standard formula was used to determine sample size.

$n^{-1}=N^{-1}+E^2[Z^2\pi(1-\pi)]^{-1}$

where:

n = sample size
N = total number of cases in the universe
E = acceptable error, 10%
π = estimate of population value (=.5 when value is unknown)
Z = standardized normal deviate associated with the level of confidence (Z=1.96 at 95% confidence level)

Samples for the two projects which met the specified location and statistical criteria are as follows:

	RSVP	SCP
Urban	55	37
Rural	58	20
Total	113	57

These samples were selected using a table of random numbers.

As a provision of achieving a 75% response rate, one-third more cases within each stratum of each sample was selected as replacement cases using the methods described above. Replacement cases were selected because there is the likelihood that some projects will be found during the actual mail survey not to meet the criteria (see operational definition) or will not reply to the questionnaire.

The mail survey sample design (Aspect 1) also involved selecting RSVP and SCP volunteer stations. A maximum of ten stations per project were sampled. When a project had more than ten stations, a simple random sample of 10 was drawn.

2. *The Face-to-Face Interviews—Aspect 2.* The locations of projects for Aspect 2 are predicated on findings from Aspect 1, the mail survey. These findings relate to presence of family caregiver services in September 1988 and sufficient numbers of stations, volunteers, clients and caregivers to ensure 31 completed interviews per site. Ten (10) sites—5 RSVP projects and 5 SCP projects—will be selected. They will be spread over four geographic regions—East, South, Midwst and West.

b. Respondent Selection—1. *The Mail Survey—Aspect 1.* Only RSVP and SCP project directors and station supervisors will be sent questionnaires. There is one questionnaire that will be sent to RSVP and SCP project directors. And another different questionnaire that will be sent to station supervisors.

2. *The Face-to-Face Interviews—Aspect 2.* As mentioned in Item B–2b above, 31 interviews will be conducted at each RSVP and SCP site. The number and type of respondents are:

1 Project director
3 Station supervisors
9 Volunteers (3 per station selected station)
9 Elderly clients (1 each assigned to the 9 volunteers)
9 Family caregivers (1 relative of the 9 elderly clients)

(A simple random sample of station supervisors, volunteers, elderly clients and family caregivers will be selected when the numbers in each group exceed specified sample size.) In cases where the elderly client is unable to respond, e.g., some dementia and Alzheimer's disease patients, interviewers will randomly select another elderly client. However, interviewers will be instructed to interview at least six (6) elderly client and family caregiver dyads.

c. Special Procedures. This evaluation involves no special procedures.

3. Methods to Maximize Response Rates. It is anticipated that cooperation among project directors and stations supervisors in the mail survey will be sufficient to achieve the desired return rate of 75% or more of *acceptable* mail questionnaires. Good cooperation was encountered during the pretest, and other ACTION evaluations report response rates of at least 90 percent. Correspondence about the project's worthiness has already been sent by ACTION to OAVP regional directors and ACTION state and local project directors. Additional correspondence will be sent to them just prior to the mail survey. Project directors will also receive a letter about the project—how it came about, its worthiness and cooperation, both theirs and the station supervisors, is important.

Moreover, project directors will be called when either their questionnaire or the station supervisor's questionnaire has not been returned by the "due date" to encourage further participation.

Projects or stations that refuse to participate or that no longer offer family caregiver services will be replaced as described in the Item B–2a above.

Prior to site visits, project directors and station supervisors will be asked to help arrange interviews with volunteers, elderly clients and caregivers. Since advance appointments for interviews will be made and very high cooperation is anticipated, the response rate is estimated to be between 90 and 100 percent. Only illness or absence of potential respondents on site visit days should cause nonresponse.

Interviewers will be required to gather basic demographic information on respondents who refuse or are unable to participate. The form shown in Attachment 6 will be used for this purpose.

4. Test of Procedures or Methods. The data collection instruments were tested May 9–13 and May 23–25, 1988 in Hughesville, Md., Baltimore, Md., Norfolk, Va., Alexandria, Va. and Washington, DC. In all, five (5) project directors, nine (9) station supervisors, and nine (9) each of volunteers, elderly clients and caregivers were interviewed. The instruments were refined following testing. Refinements included deleting items found irrelevant, adding new skip patterns to decrease respondent burden, and re-wording items to increase clarity and enhance administration.

5. Individual Consulted on Statistical Aspects and Design. In addition to the individuals mentioned in Item A–9, the following ACTION staff were consulted in the design of the statistical aspect of this study: Mr. Melvin E. Beetle (202) 634–9321 and Mr. Thomas Bonczar (202) 634–9321.

The evaluation contractor is: Sociometrics, Inc., 6525 Belcrest Rd., Presidential Building, Suite 655, Hyattsville, MD 20782, (301) 277–9319.

Carol J. Godley is project director for the study. Dr. Michael Kahn consulted on the sampling and statistical aspects of the design.

Attachment 2—Introductory Statement

Introduction

Hello (Name of Respondent) my name is (Your Name).

I'm an interviewer with Sociometrics who (Person Who Arranged Interview) told you would be coming to talk with you about the volunteer services provided by (Volunteer Station).

Everything you tell me will be grouped with information we collect from all other respondents into a report we are writing on the family caregiver (respite care) program. Nothing you tell me personally will be used in any identifiable way and everything you specifically tell me will remain confidential. You may refuse to answer any questions and you may stop the interview at any time.

May I take a few minutes of your time to interview you concerning these services?

(Hand Respondent Consent Form)

Please read and sign this consent form which states that you agree to participate in this study.

Attachment 3—Consent Form

OAVP Family Caregiver Evaluation

Consent Form

"I agree to be interviewed as part of this national study. I understand that my answers will be kept confidential, that anything I say will only be reported anonymously together with opinions from the people, and that I may refuse to answer any or all questions."

Signed: _____
Name (Printed): _____
Date: _____

ACTION Technical Project Manager's Name: Mel Beetle, Program Analysis and Evaluation Division, Telephone: 1–800–424–8867, (or in Washington, D.C. area, 202–634–9321)

Sociometrics Project Director: Carol Godley, Telephone 1–301–277–9319

Attachment 4—Mail Survey Questionnaires

Project Director, Station Supervisor

ACTION Family Caregiver Program Survey Project Director Questionnaire

Public reporting burden for this collection of information is estimated to average 90 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Melvin E. Beetle, Clearance Officer, ACTION, Room M–600, 806 Connecticut Avenue, N.W., Washington, D.C. 20525; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

Project: _____
Completed by: _____
Title: _____
Date: _____

PROJQUX
6–23–82

Project #_____

Section 1. Project Characteristics

1. Which *one* category best describes your organization?

(Circle one number only)
1 State agency on aging
2 Other state agency
3 Local agency on aging
4 Other local agency
5 Private non-profit social service agency
6 Private non-profit community action agency
7 Religious organization
8 Community or civic organization
9 Private non-profit volunteer agency
10 Other (please specify)

_____
_____

2A. Do you receive funding from sources other than ACTION.

1 Yes (go to Q.2B)
2 No (skip to Q.3)

2B. (If Yes) Please *circle all* sources of funding.

1 State government
2 Local government
3 Private institution(s)
4 Religious organization(s)
5 Business(es)
6 Other Federal source(s)
7 Other (specify)

_____
_____

3. Please circle the number that best describes the area your project serves.

(Circle one number only)
1 Totally urban
2 Predominantly urban
3 Totally rural
4 Predominantly rural
5 Approximately an equal mix of urban and rural

4. About how many people in the service area are aged 60 and over?

_____
Number

The focus of this survey is on RSVP volunteers and Senior Companions who provide direct care to a frail or disabled elderly person on a one-to-one basis in a private home, an institutional or day care setting in such a manner as to relieve the family caregiver. For short, this volunteer activity is referred to as family caregiver or respite services.

5A. On a scale of 1 to 5, with 1 being very low and 5 being very high, how would you rate the need for family caregiver or respite services in the area served by your project?

Very low	Low	Moderate	High	Very high
1	2	3	4	5

5B. What is your best estimate of the number of people in your service area aged 60 and over who need family caregiver or respite services?

_____

Number 60 and over

6A. Does your project currently have volunteer or companion activities that can be categorized as family caregiver or respite services?

1 Yes (skip to Q. 7)
2 No (complete Q. 6B only. Do no complete the remainder of the questionnaire. Be sure that your name, title and date are recorded on the cover and return the questionnaire in the self-addressed envelope. Thank you.)

6B. Why did your project elect not to establish a family caregiver or respite component or activity?

_____

_____

7. In what month and year did this project begin offering family caregiver or respite services?

_____ 19___

Month Year

8. At the present time, how many clients receive family caregiver or respite services from your RSVP volunteers or SCP companions?

_____

Current number

9. What is the average number of clients that receive family caregiver or respite services from your RSVP volunteers or SCP companions in a given week?

_____

Number per week

10. Again, this survey is only concerned with RSVP volunteers or Senior Companions who provide direct care to a frail or disabled elderly person on a one-to-one basis in a private home, an institutional or day care setting in such a manner as to relieve the family caregiver. For short, this activity is referred to as family caregiver or respite services.

Please complete the chart below for stations that provide services described in the statement above. (If more space is needed, please use next page.)

Station	Volunteers/companions		Respite clients		Total hours care provided per week
	Number serving	Number wait-listed	Number being served	Number wait-listed	
Totals					

Station	Volunteers/companions		Respite clients		Total hours care provided per week
	Number serving	Number wait-listed	Number being served	Number wait-listed	
Totals					

Section 2. Administration

11. What is the total number of staff members you supervise in your project?

_____

Number

12. How many are:

_____ Associate or Assistant Director(s)
_____ Secretary(ies)
_____ Bookkeeper(s)
_____ Coordinator(s)
_____ Clerk/Recordkeeper(s)
_____ Driver(s)
_____ Other (specify) _____
_____ Other (specify) _____

13. Including you, how many staff members are directly involved in managing or supporting the family caregiver or respite program?

_____

Number

14. What percentage of your time is spent administering the family caregiver or respite program?

_____

Percent

15. Which of the following programmatic activities does this project get involved in?

(Circle all that apply)

1 Program planning and development
2 Informal recruiting of volunteers or companions (e.g., talking to individuals, etc.)
3 Formal recruiting of volunteers or companions (e.g., placing ads, group presentations, etc.)
4 Maintaining or monitoring volunteer program records and reports
5 Identifying and obtaining program resources to support volunteer activities
6 Serving as liaison with community organizations and other programs
7 Conducting volunteer or companion performance appraisals
8 Assessing station performance
9 Assisting with station staff training
10 Other (specify)

16. Which of the following volunteer or companion support activities does this project get involved in?

(circle all that apply)

1 Providing volunteer or companions orientation or training
2 Assigning volunteers or companions to specific clients
3 Serving as clearinghouse for information to volunteers or companions
4 Providing consultation to volunteers or companions on personal matters
5 Providing one-on-one volunteer or companion support or supervision within specific client placements
6 Giving volunteers or companions recognition or awards
7 Other (specify)

17. Which of the following direct client activities does this project get involved in?

(Please circle all that apply)

1 Recruiting clients for family caregiver or respite services
2 Screening clients for family caregiver or respite services
3 Creating client care plans
4 Periodically evaluating care plans
5 Screening clients for appropriate placement of volunteers or companions
6 Other (specify)

18. Please indicate the 3 most effective methods you use to assess the need for family caregiver or respite services in your community by placing a "1", a "2" or a "3" on the appropriate line. *Please use a number only once.*

Please note:

1 = The Most Effective
2 = Second Most Effective
3 = Third Most Effective

___Informal meetings with station staff
___In-person interviews with volunteers or clients or caregivers
___Group meetings with volunteers or clients or caregivers
___Community group or coalition meetings
___Networking with other service provider agencies such as hospitals, nursing homes, social service agencies, etc.
___Information gathering surveys
___Other (please specify) _____
___Other (please specify) _____
___Other (please specify) _____

Section 3. Fiscal Characteristics

Questions 19–30 pertain to fiscal year 1987.

19. Was your project in operation for all of FY '87?

1 Yes (skip to Q.21)
2 No (go to Q.20)

20. (If No) Please indicate the total number of months you were in service in FY '87.

_____
Number of months

21. What was the total cost of your project in FY '87?

$_____

22. Of the total FY '87 project cost, how much was contributed by Action?

$_____

23. Of the total FY '87 project cost, how much was contributed by non-ACTION sources?

Non-Action Sources	Contribution
a.	$_____
b.	$_____
c.	$_____
d.	$_____

Please answer the fiscal questions below by separately listing both the ACTION and non-ACTION expenditures for operation of your RSVP or SCP project in FY '87.

	Action expenditures	Non-Action expenditures
24. Staff salaries (Only include portions of salaries covering services provided to RSVP or SCP project.)	$_____	$_____
25. Direct volunteer or companion costs (including travel, stipends, physicals, meals, and insurance)	$_____	$_____
26. Volunteer or companion recruitment	$_____	$_____
27. Training (including speakers, workshops and materials)	$_____	$_____
28. Other administrative costs (including supplies, equipment, staff travel, bookkeeping, fringe benefits and communications)	$_____	$_____

29. What were the total number of RSVP volunteer or SCP companion hours that your project logged for FY '87?

_____
Hours

30. In your estimation, what percent of the total volunteer hours in FY '87 were spent providing family caregiver or respite services? (If you have actual figures for family caregiver or respite services, please use them in your calculation.)

_____
Percent

Section 4. Range and Extent of Service

31. For each of the services below, please indicate its availability in the area your project serves. Circle "1" if it is available through your project and/or circle "2" if available through another agency; circle "3" if not available at all.

Available through your project	Available through other agency	Not available	
1	2	3	Adult Day Care Centers.
1	2	3	Advocacy for seniors.
1	2	3	Alzheimer's Disease and Related Disorders Association (ADRDA) services.
1	2	3	Caregiver support group.
1	2	3	Chores services.
1	2	3	Emergency alert or screening.
1	2	3	Escort services.
1	2	3	Family support services.
1	2	3	Financial counseling.
1	2	3	Homemakers services.
1	2	3	Home delivered meals.
1	2	3	Home health services (including nursing care, occupational therapy, etc.).
1	2	3	Hospice services.
1	2	3	Hospital or medical services.
1	2	3	Legal counseling.
1	2	3	Mental health center.
1	2	3	Nutrition education.
1	2	3	Occupational therapy center.
1	2	3	Physically handicapped or developmentally disabled services.
1	2	3	Recreational services.
1	2	3	Shopping assistance.
1	2	3	Social work or case management services.
1	2	3	Telephone reassurance.
1	2	3	Transportation services.
1	2	3	Visitation services.

32. Please indicate the 3 most effective methods you use to *advertise* family caregiver or respite services by placing a "1", a "2" or a "3" on the appropriate line. *Please use a number only once.*

Please note:
1=The Most Effective
2=Second Most Effective
3=Third Most Effective

___Presentation at an agency or organization frequented by older persons (e.g., senior or adult day care center or nutrition site)
___Presentation at a religious organization
___Presentation to a citizen or community group
___Presentation to other social service agency
___Sponsoring organization media (newsletters, brochures, ads, etc.)
___Broader coverage media (newspapers, radio, TV, etc.)
___Individual who works with program
___Distribution of Action brochures
___Other (please specify)_____
___Other (please specify)_____
___Other (please specify)_____

33. Please indicate the 3 most effective methods you use to *recruit* volunteers or companions by placing a "1", a "2" or a "3" on the appropriate line. *Please use a number only once.*

Please note:
1=The Most Effective
2=Second Most Effective
3=Third Most Effective

___Presentation at an agency or organization frequented by older persons (e.g., senior center or adult day care center or nutrition site)
___Presentation at a religious organization
___Presentation to a citizen or community group
___Presentation to other family caregiving or respite or social service agency
___From waiting lists for the Senior Community Service Employment Program

____Sponsoring organization media (newsletters, brochures, ads, etc.)
____Broader coverage media (newspapers, radio, TV, etc.)
____Through individual who works with program
____Other (please specify)_____
____Other (please specify)_____
____Other (please specify)_____

34. What areas of training are provided for *volunteers or companions*?
(Please circle all that apply)
1 Agency policy and procedures
2 How to counsel people with problems
3 How to get along with different people
4 How aging affects the mind, emotions, and body
5 Availability of community resources or services
6 How to help people obtain rights and services
7 Housekeeping skills
8 Health and personal care assistance
9 Hands on experience in family caregiver or respite services
10 Procedures for handling crisis situations
11 Care of Alzheimer's disease or dementia patients
12 Other (Please specify)

35. What areas of training are provided for *station staff*?
(Please circle all that apply)
1 Agency policy and procedures
2 How to counsel people with problems
3 How to get along with different people
4 How aging affects the mind, emotions, and body
5 Availability of community resources or services
6 How to help people obtain rights and services
7 Housekeeping skills
8 Health and personal care assistance
9 Hands on experience in family caregiver or respite services
10 Procedures for handling crisis situations
11 Care of Alzheimer's disease or dementia patients
12 Other (Please specify)

36. Please indicate the 3 greatest problems or frustrations that you have in the administration of family caregiver or respite services by placing a "1", a "2" or a "3" on the appropriate line. *Please use a number only once.*
Please note:
1=The Most Frustrating
2=Second Most Frustrating
3=Third Most Frustrating
____ Inadequate financial resources
____ Inflexible program requirements or regulations
____ Limited scope of possible volunteer or companion services
____ Inadequate benefits to volunteers or companions
____ Difficulties in scheduling volunteers or companions
____ Not enough volunteers or companions to serve demand
____ Unrealistic demands from clients or caregivers
____ Other (please specify) _____
____ Other (please specify) _____
____ Other (please specify) _____

37. Please list the names and types of all other community organizations and/or agencies with which you collaborate in the delivery of services to the elderly? By collaborate we mean that *you have a formal or informal working relationship with these agencies or organizations, not just the sharing of public information.*

Organization	Type of organization	Type of collaboration
Examples:		
1. Amer. Red Cross.	Non-profit health support agency.	Helps us with traning by providing speakers.
2. Happy Meals.	Senior Nutrition Site.	Shares cost and use of van and driver.

38. Is there an RSVP or SCP counterpart to this agency which provides services to family caregivers in this community?
1 Yes (go to Q.39)
2 No (skip to Q.40)
3 Don't Know (skip to Q.40)

39. To what extent do you coordinate your activities with your RSVP or SCP counterpart?

40. Please describe the type of activities undertaken by your RSVP volunteers or SCP companions on behalf of families caring for frail or disabled elderly?

Thank you!

ACTION Family Caregiver Program Survey Station Supervisor Questionnaire

Public reporting burden for this collection of information is estimated to average 90 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Melvin E. Beetle, Clearance Officer, ACTION, Room M-600, 806 Connecticut Avenue NW., Washington, DC 20525; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Project: _____
Station: _____
Completed by: _____
Title: _____
Date: _____

Statquex
6-23-88

Project# _____
Station# _____

Section 1. Station Characteristics

1. Which *one* category best characterizes your organization?
(Please circle *one* number only)
1 Nursing home or convalescent hospital
2 Acute care hospital
3 Rehabilitation association or center
4 Private nonprofit health agency
5 Home health care agency
6 Public health department
7 Nonresidential public or private nonprofit mental health agency or association
8 Residential mental health center or hospital or institution
9 Residential mental retardation center or hospital or institution
10 Adult day care center
11 Nutrition site
12 Public or private nonprofit Agency on Aging
13 Other public or private nonprofit social service agency
14 Religious organization
15 Military or VA affiliated health care facility
16 Other (please specify)

2. In what month and year was this volunteer station established?
_____ 19____
Month Year

3. Circle the number that best describes the area your project serves.
(Please circle *one* number only)
1 Totally urban
2 Predominantly urban
3 Totally rural
4 Predominantly rural
5 Approximately an equal mix of urban and rural

The focus of this survey is on RSVP volunteers and Senior Companions who provide direct care to a frail or disabled elderly person on a one-to-one basis in a private home, an institutional or day care setting in such a manner as to relieve the family caregiver. For short, this volunteer activity is referred to as family caregiver or respite services.

4A. On a scale of 1 to 5, with 1 being very low and 5 being very high, how would you rate the need for family caregiver or respite services in the area served by our station?

Very low	Low	Moderate	High	Very high
1	2	3	4	5

4B. Does your station currently have volunteer or companion activities that can be categorized as family caregiver or respite services?

1 Yes (skip to Q.5)
2 No (Complete Q.4C only. Do not complete the remainder of the questionnaire. Be sure that your name, title and date are recorded on the cover and return the questionnaire in the self-addressed envelope. Thank you.)

4C. Why did your station elect not to establish a family caregiver or respite component or activity?

5. In what month and year did this station begin offering family caregiver or respite services?

_____ 19____
Month Year

Section 2. Fiscal Characteristics

Questions 6–17B pertain to fiscal year 1987.

6. Was your program in operation for all of FY '87?

1 Yes (skip to Q.8)
2 No (go to Q.7)

7. (If No) Please indicate the total number of months you were in service in FY '87.

_____
Number of months

8. What was the total costs of your RSVP or SCP services for FY '87?
$_____

9. Of the total FY '87 costs for RSVP or SCP services, how much was contributed by the RSVP or SCP project?
$_____

10. Of the total FY '87 programmatic costs, how much was contributed by non-RSVP or non-SCP project sources?

Non-RSVP or non-SCP project sources	Contribution
a.	$_____
b.	$_____
c.	$_____
d.	$_____

Please answer the fiscal questions below by separately listing RSVP or SCP expenditures in column 1 and other expenditures in column 2 for operation of your station in FY '87.

	Column 1: RSVP or SCP expenditures	Column 2: Other expenditures
11. Staff salaries (only include portions of salaries covering services provided to RSVP or SCP activities.)	$_____	$_____
12. Direct volunteer or companion costs (including travel, stipends, physicals, meals, and insurance)	$_____	$_____
13. Volunteer or companion recruitment	$_____	$_____
14. Volunteer or companion supervision	$_____	$_____
15. Training (including speakers, workshops and materials)	$_____	$_____
16. Other administrative costs (including supplies, equipment, staff travel, bookkeeping, fringe benefits and communications)	$_____	$_____

17A. What were the total number of RSVP volunteer or SCP companion hours that your station logged for FY '87?

_____
Hours

17B. In your estimation, what percent of the total volunteer hours in FY '87 were spent providing family caregiver or respite services? (If you have actual figures for family caregiver or respite services, please use them in your calculation.)

_____
Percent

Section 3. Home Settings

18A. Does this station provide family caregiver or respite services in home settings where an elderly person lives with a family member who takes care of him or her?

1 Yes
2 No (skip to Q.19A)

18B. For each volunteer or companion who provides family caregiver or respite services in a home setting, please complete the following chart.

Volunteer/companion	Client (name)	Client disability	Number of visits per week	Average hours per visit

Section 4. Institutional Settings

19A. Does this station provide family caregiver or respite services in institutional, long-term or adult day care setting outside the client's or caregiver's residence?

1 Yes
2 No (skip to Q.20)

19B. For each volunteer or companion providing family caregiver or respite services in institutional, long term, or day care settings, please complete the following chart.

Volunteer/companion	Client (name)	Client disability	Number of visits per week	Average hours per visit

20. Which of the following programmatic activities does this station get involved in?

(Please circle all that apply)

1 Program planning and development
2 Informal recruiting of volunteers or companions (e.g., talking to individuals, etc.)
3 Formal recruiting of volunteers or companions (e.g., placing ads, group presentations, etc.)
4 Maintaining or monitoring volunteer program records and reports
5 Identifying and obtaining program resources to support volunteer activities
6 Serving as liaison with community organizations and other programs
7 Conducting volunteer or companion performance appraisals
8 Other (specify)

21. Which of the following volunteer or companion support activities does this station get involved in?

(Please circle all that apply)

1 Providing volunteer or companion orientation or training
2 Assigning volunteers or companions to specific clients
3 Serving as clearinghouse for information to volunteers or companions
4 Providing consultation to volunteers or companions on personal matters
5 Providing one-on-one volunteer or companion support or supervision within specific client placements
6 Giving volunteers or companions recognition or awards
7 Other (specify)

22. Which of the following direct client activities does this station get involved in?

(Please circle all that apply)

1 Recruiting clients for family caregiver or respite services
2 Screening clients for family caregiver or respite services
3 Creating client care plans
4 Periodically evaluating care plans
5 Screening clients for appropriate placement of volunteers or companions
6 Other (please specify)

Section 5. Range and Extent of Services

23. How many elderly clients have been served by your station within the last twelve months?

____
Number

24. How many families caring for the elderly got family caregiver or respite services from this station within the last twelve months?

____
Number

25. During what hours are family caregiver or respite services available?

(Please circle to indicate a.m. *or* p.m.)

From ____ a.m. to ____ a.m.
From ____ p.m. to ____ p.m.

26. RSVP and SCP volunteers or companions provide a variety of services to elderly clients living with families, some of which are more needed than others. Of the services below, please indicate which are most needed to assist families in taking care of frail or disabled elderly. Place a "1" by the most needed, or a "2" by the second must needed, or a "3" by the third most needed, or "0" if not generally needed.

Please note:
1=The Most Needed
2=Second Most Needed
3=Third Most Needed
0=Not Generally Needed

A. Personal Care

____ a. feeding elderly clients
____ b. bathing elderly clients
____ c. dressing elderly clients
____ d. combing or cutting hair, clipping nails, or shaving elderly clients
____ e. helping elderly clients with walking
____ f. helping elderly clients with getting in and out of bed
____ g. helping with medical or physical therapy
____ h. reminding elderly clients to take medicine
____ i. encouraging elderly clients to exercise
____ j. taking walks with elderly clients (going out with elderly clients in the wheelchair)

B. Nutrition

____ k. preparing food for elderly clients
____ l. planning meals for elderly clients
____ m. labeling and organizing foods for elderly clients

C. Social/Recreation

____ n. talking or listening to elderly clients
____ o. playing games or cards with elderly clients
____ p. helping elderly clients get along with family and friends

D. Home Management

____ q. going shopping for elderly clients
____ r. helping elderly clients with shopping
____ s. running errands for elderly clients (e.g. going to post office or bank, getting prescriptions, etc.)
____ t. helping elderly clients run errands (e.g. going to post office or bank, getting prescriptions, etc.)
____ u. writing letters for elderly clients
____ v. reading to elderly clients
____ w. helping elderly clients fill out forms
____ x. doing light housekeeping for elderly clients
____ y. doing light gardening for elderly clients
____ z. helping elderly clients with managing or budgeting funds or pay bills
____ aa. making minor repairs on elderly clients' homes

E. Information and Advocacy

____ bb. providing information about things elderly clients needs to get or do
____ cc. helping elderly clients get needed service
____ dd. driving elderly clients places
____ ee. going places with elderly clients

F. Other

____ ff. doing anything else for elderly clients (please specify)

27. What types of services are volunteers or companions not allowed to do?

28. For each of the services below, please indicate its availability in your community. Circle "1" if it is available through your station and/or circle "2" if it is available through another agency. Circle "3" if the service is not available at all.

Available through your station	Available through other agency	Not available	
1	2	3	Adult Day Care Centers
1	2	3	Advocacy for seniors
1	2	3	Alzheimer's Disease and Related Disorders Association (ADRDA) services
1	2	3	Caregiver support group
1	2	3	Chores services
1	2	3	Emergency alert or screening
1	2	3	Escort services
1	2	3	Family support services
1	2	3	Financial counseling
1	2	3	Homemakers services
1	2	3	Home delivered meals
1	2	3	Home health services (including nursing care, occupational therapy, etc.)
1	2	3	Hospice services
1	2	3	Hospital or medical services
1	2	3	Legal counseling
1	2	3	Mental health center
1	2	3	Nutrition education
1	2	3	Occupational therapy center
1	2	3	Physically handicapped or developmentally disabled services
1	2	3	Recreational services
1	2	3	Shopping assistance
1	2	3	Social work or case management services
1	2	3	Telephone reassurance
1	2	3	Transportation services
1	2	3	Visitation services
1	2	3	Other (specify) _____ _____

Section 6. Volunteer Characteristics

29. For the last 12 months, please indicate volunteer or companion enrollment and placement for your station.

____ Number enrolled in entire station
____ Number placed in entire station
____ Number placed in private homes in family caregiver or respite services
____ Number placed in institutional setting in family caregiver or respite services
____ Number place in adult day care in family caregiver or respite services

30. How many male and female RSVP volunteers or SCP companions provide family caregiver or respite services under the auspices of this station?

____ Males
____ Females

31. Please indicate the number of volunteers or companions providing family caregiver or respite services by race.

____ American Indian
____ Asian, Pacific Islander
____ Black
____ Oriental
____ Spanish Surname
____ White
____ Other (please specifiy)

32. What motivates the average volunteer or companion who specifically decides to get involved in family caregiver or respite services?

(Please circle all that apply)

1 Sees a genuine need for provision of this type of service
2 Desires to feel useful
3 Has previous experience in this area
4 Has a knack for or really enjoys working with people close to their own age
5 Other (specify)

33. On the average, how long does a volunteer or companion stay in the family caregiver or respite program?

(Please write number on line and circle month or year)

____ Months
____ Years

34. On the average, how long does a volunteer or companion remain in a single family caregiver or respite placement?

(Please write number on line and circle month or year)

____ Months
____ Years

35. What reasons to do volunteers or companions give most often for leaving a family caregiver or respite assignment or leaving the family caregiver or respite program altogether?

(Please circle all that apply)

1 Too physically demanding
2 Too emotionally draining
3 Own deteriorating health
4 Other volunteer interest
5 Other (please specify)

36. On the average, how many miles does a family caregiver or respite volunteer or companion travel to provide services in the course of a week?

Miles traveled per week

Section 7. Administration

37. Please indicate the 3 most effective techniques used to recruit volunteers or companions for family caregiver or respite activities by placing a "1", "2" or "3" on the appropriate line. *Please use a number only once.*

Please note:
1 = The Most Effective
2 = Second Most Effective
3 = Third Most Effective

____ Presentation at an agency or organization frequented by older persons (such as senior center or adult day care center or nutrition site)
____ Presentation at a religious organization
____ Presentation to a citizen or community group
____ Presentation to other family caregiver or respite or social service agency
____ From waiting lists for the Senior Community Service Employment Program
____ Sponsoring organization media (newsletters, brochures, ads, etc.)
____ Broader coverage media (newspapers, radio, TV, etc.)
____ Through individual who works with program
____ Other (please specify) _____
____ Other (please specify) _____
____ Other (please specify) _____

38. What are the three (3) most important things you look for when screening volunteers or companions for family caregiver or respite placements?

(Circle only three please)

1 Previous experience in caregiving
2 Sensitivity
3 Interest in this type of placement
4 Commitment
5 Patience
6 Physical stamina
7 Good health
8 Congeniality or warmth
9 Other (specify)

39. What types of training are provided by station staff for volunteers or companions *before* placing them in family caregiver or respite situation?

(Please circle all that apply)

1 Agency policy and procedures
2 How to counsel people with problems
3 How to get along with different people
4 How aging affects the mind, emotions, and body
5 Availability of community resources/services
6 How to help obtain rights and services
7 Housekeeping skills
8 Health and personal care assistance
9 Hands on experience in family caregiver or respite services
10 Procedures for handling crisis situations
11 Care of Alzheimer's disease or dementia patients
12 Other (please specify)

40. About how many times a quarter do family caregiver or respite volunteers or campanions receive on-site supervision from your staff?

Numbers of times

41. Who on your staff provides this supervision?

42. About how many times a quarter are meetings held with family caregiver or respite care volunteers or companions to review activities, problems and progress?

Number of times

43. About how many times a month do you or your staff talk on the phone with volunteers or campanions regarding their activities, problems or progress?

Number of times

44. What are most of these calls about?

(Please circle all that apply)

1 Personal matters about themselves
2 Concerns about elderly clients' condition or progress
3 Availability of other services for elderly clients
4 Unreasonable demands from elderly clients or their families
5 Suspected elder abuse
6 Other (please specify)

45. What other types of support or supervision do you provide to family caregiver or respite volunteers or companions?

(Please circle all that apply)

1 In-service meetings
2 On-site visits
3 Telephone support initiated by station
4 In-person counseling
5 Other (please specify)

46. Does the station have a care plan for each of its elderly clients?

1 Yes (go to Q.47A)
2 No (skip to Q.51)

47A. (If Yes) Who generally creates these care plans?

47B. Is this a member of the station staff?

1 Yes
2 No

48. What part does the station play in creating the care plans?

49. How frequently does the station participate in evaluating existing care plans?

50. Who is responsible for overseeing implementation of the care plans?

(Please circle all that apply)

1 Station supervisor
2 Station staff
3 RSVP or SCP project
4 Referring agency other than station
5 Other (please specify)

Section 8. Service Needs

51. Please indicate the 3 most effective methods used to assess family caregiver or respite services needs of the community by placing a "1", "2" or "3" on the appropriate line. *Please use a number only once.*

Please note:

1 = The Most Effective
2 = Second Most Effective
3 = Third Most Effective

____Informal meetings with station staff
____In-person interviews with volunteers or clients or caregivers
____Group meetings with volunteers or clients or caregivers
____Community group or coalition meetings
____Networking with other service provider agencies such as hospitals, nursing homes, social service agencies, etc.
____Information gathering surveys
____Other (please specify) _____
____Other (please specify) _____
____Other (please specify) _____

52. What additional services need to be developed by your station or project to better serve family members caring for elderly persons?

(Please circle all that apply)

1 Family counseling or therapy or support groups
2 Transportation services
3 More staff
4 Other (please specify) _____
5 Other (please specify) _____

53. What other services need to be made available to caregivers and frail elderly clients from *other sources* to make the family caregiver or respite program more effective?

54. How does this station get families caring for elderly relatives for family caregiver or respite assignments?

(Please circle all that apply)

1 Accept referrals from agencies
2 Get leads from components within parent agency
3 Word of mouth from families that use(d) us
4 Other (specify)

55. What criteria are used to select families for family caregiver or respite services?

(Please circle all that apply)

1 Financial need
2 Indication of stress by caregiver
3 Referrals from your parent institution
4 First come, first served
5 Degree of need
6 Location or proximity to available volunteer or companion
7 Families in need of special services we provide
8 Other (specify)

56. Are there clients for which your station cannot provide family caregiver or respite services?

(Please circle all that apply)

1 Those above our income level
2 Those who are incontinent
3 Those diagnosed as violent
4 Elderly older than ____ (age)
5 Elderly younger than _____ (age)
6 Other (please specify)

7 Other (please specify)

57. Indicate the 3 most frustrating problems in administrating the family caregiver or respite activities by placing a "1", "2" or "3" on the appropriate line. *Please use a number only once.*

Please note:

1 = The Most Frustrating
2 = Second Most Frustrating
3 = Third Most Frustrating

____Inadequate financial resources
____Inflexible program requirements or regulations
____Limited scope of possible volunteer or companion services
____Inadequate benefits to volunteers or companions
____Difficulties in scheduling volunteers or companions
____Not enough volunteers or companions to serve demand
____Unrealistic demands from clients or caregivers
____Not enough space to serve all clients needing service (i.e., in institutional settings)
____Other (please specify) _____
____Other (please specify) _____
____Other (please specify) _____

58. How crucial is the availability of RSVP volunteers or SCP companions in allowing this station to provide family caregiver or respite services?

(Please circle the one answer which best describes your situation)

1 We could not run a family caregiver or respite program without them.

2 We would have to significantly curtail our program without them.
3 We have sufficient other avenues for getting family caregiver or respite care volunteers or companions but it would require more staff effort or resources.
4 Though we appreciate the efforts of the RSVP or SCP program, we would still have an abundant source of volunteers or other staff to operate the program.

Section 9. Benefits

59. Please indicate the 3 greatest benefits of the family caregiver or respite program to *frail or disabled clients* by placing a "1", "2" or "3" on the appropriate line. *Please use a number only once.*

Please note:
1=The Greatest Benefit
2=Second Greatest Benefit
3=Third Greatest Benefit

___ Companionship with other elderly person(s)
___ Abiity to remain at home vs. institutionalization
___ Improved sense of well-being
___ Improved relationship with caregiver
___ Improved physical health
___ Improved mental health
___ Access to other community services
___ Decreased family stress
___ Client receives better care from family caregiver
___ Other (please specify)
_____
___Other (please specify)
_____
___ Other (please specify)
_____

60. Please indicate the 3 greatest benefits of the family caregiver or respite program to the *family caregivers* by placing a "1", "2" or "3" on the appropriate line. *Please use a number only once.*

Please note:
1=The Greatest Benefit
2=Second Greatest Benefit
3=Third Greatest Benefit

___ Just being able to take a breather
___ Ability to plan activities
___ Normalizing effect on family relations
___ Decreased stress
___ Emotional support from an empathetic individual
___ Feeling less overwhelmed by elderly client's care reponsibility
___ Decreased sense of isolation
___ Reduced cost of caring for elderly clients
___ Ability to care for elderly clients at home rather than institutionalize them
___ Other (please specify)
_____
___ Other (please specify)
_____
___ Other (please specify)
_____

61. Please indicate the 3 greatest benefits to *RSVP volunteers or SCP companions* providing family caregiver or respite services by placing a "1", "2" or "3" on the appropriate line. *Please use a number only once.*

Please note:
1=The Greatest Benefit
2=Second Greatest Benefit
3=Third Greatest Benefit

___ Satisfaction of helping someone in need
___ Standard of living improved by stipend
___ Sense of well-being
___ Sense of being needed or useful
___ Decreased loneliness, less isolation
___ Motivation to get involved
___ Increased independence
___ Other (please specity)
_____
___ Other (please specify)
_____
___ Other (please specify)
_____

Thank you!

Attachment 5—Face-to-Face Questionnaires

Project Director, Station Supervisor, Volunteer, Elderly Client, Caregiver

Response Cards (Blue, Yellow, Pink)

Action Family Caregiver Program Survey Project Director Face-to-Face Questionnaire

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Date: _____

Interview time:
Begin:_____
End:_____

Project: _____
Respondent: _____
Title: _____
Interviewer: _____

ID# _____

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Section 1. Administration

1. What prompted your agency to develop a family caregiver (respite) component in your (RSVP/SCP) project? (Probe: "Anything else?")

_____
_____

How would you *best* describe the way the family caregiver (respite) component fits into the overall scheme of your (RSVP volunteer/SCP companion) services to families caring for frail and disabled elderly relatives?

_____
_____

3. What is the minimum number of hours per week that a volunteer or companion, is required to put in when they are assigned to provide family caregiver or respite services?

_____
Number of hours

4. What is your responsibility to the (volunteer/companion) once they have been assigned to a specific station?

_____
_____

5. As project director, what are some of the more difficult problems you face in the administration of the family caregiver (respite) component of your project? (Probe: "Anything else?")

(Circle all that apply)
1 Lack of in-kind support or resources
2 Transportation
3 Not enough funds to adequately serve family caregiver (respite) needs
4 Not enough (volunteers/companions) to adequately serve family caregiver (respite) needs
5 High degree of (volunteer/companion) burn-out
6 Other (specify)

_____
_____

6. Do you generally have sufficient (volunteers/companions) to provide family caregiver (respite) services to all who request it?

1 Yes (skip to Q.8)
2 Sometimes (go to Q.7)
3 No (go to Q.7)

7. To what do you attribute this (fluctuation lack)?

1 Not enough funds to pay additional stipends or other volunteer reimbursement
2 Unable to recruit sufficient (volunteers/companions) interested in working in respite care
3 Unable to recruit sufficient (volunteers/companions) to generally meet the requests of stations

4 Seasonal fluctuations
5 Program schedule or time requirements (probe for explanation)

6. Other (specify)

Section 2. Service Needs

8. Outside of requests for family caregiver (respite) services, what kinds of requests for information do you get most frequently from: (Read each category; record R's exact words.)
A. (Volunteers/Companions)?

B. Clients?

C. Caregivers?

9. Other than family caregiver (respite) services, what kinds of other services are most frequently requested by: (Read each category; record R's exact words.)
A. (Volunteers/Companions)?

B. Clients?

C. Caregivers?

10. What gaps do you see in your community's family caregiver or respite services delivery system? (Circle all that apply)
1 Not enough adult day care centers
2 Lack of affordable programs
3 Limited weekend services
4 Limited after hours services
5 Limited client transportation to institutional settings
6 Limited transportation for volunteers or companions
7 Lack or limited services for incontinent elderly
8 Lack of medicare or medicaid funding for respite services
9 Limited geographic coverage within service area
10 Other (specify)

11 No gap in service

11. What additional resources are needed to further support (volunteers/companions) working with family caregiver or respite services? (Probe: "Any other resources?")
1 Additional funding
2 Volunteer or companion support groups
3 Additional training
4 Adequate or reliable transportation
5 Other (specify)

12. On a scale of 1 to 5—with 1 being very low and 5 being very high—how would you rate the need for family caregiver or respite services in your community?

Very low		Low	Moderate	High	Very high
	1	2	3	4	5

13. On a scale of 1 to 5—with 1 being very low and 5 being very high—how would you rate the need for increased family caregiver (respite) services in your community within the next *five* years?

Very low		Low	Moderate	High	Very high
	1	2	3	4	5

14. In what ways have your family caregiver (respite) (volunteers/companions) assisted in making you aware of incidences of elder abuse?

15. Are you aware of any cases of suspected elder abuse that were reported to this project and/or any of its stations by (volunteers/companions) during the last twelve month period?

16. How important do you feel that (volunteers/companions) are in affecting decrease in elder abuse? Why?

Section 3. Benefits

We know that family caregiver (respite) services benefit everyone involved in some way. We also know that for several reasons, some types of placements may be more beneficial than others, either for the volunteer or companion themselves, the caregiver or the client.

17. What types of family caregiver (respite) service placements are most beneficial for: (Read each category; record R's exact words.)
A. (Volunteers/Companions)?

B. Clients?

C. Caregivers?

18. What types of family caregiver (respite) service placements are less beneficial for: (Read each category; record R's exact words)
A. (Volunteers/Companions)?

B. Clients?

C. Caregivers?

Section 4. Accomplishments

19. What are some of the achievements of the family caregiver (respite) activities that you are proudest of?

20. What type of recognition has the family caregiver (respite) services component received from the community?

Interviewer Observations

1. Rate R's understanding of the question.
1 High
2 Moderate
3 Low

2. Rate R's cooperation
1 Cooperation
2 Evasive, Suspicious
3 Hostile

3. Make your comments here, please.

Action Family Caregiver Program Survey Station Supervisor Face-to-Face Questionnaire

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Date: _____

Interview time:

Begin: _____

End: _____

Project: _____

Station: _____

Respondent: _____

Title: _____

Interviewer: _____

ID _____

VSGUIDE

6–23–88

Section 1. Respite Program Background

1. How did this station come to the decision to include a family caregiver (respite) component in its (RSVP/SCP) program?

Section 2. Volunteer/Companion Characteristics

2. Please describe the average (volunteer/companion) providing family caregiver (respite) services under the auspices of (volunteer station).

Section 3. Administration—General

3. Please describe for me the (volunteer/companion) placement process, start from the client referral to the point where the (volunteer/companion) is serving in the home or institutional setting.

4. Please describe for me how (RSVP/SCP) placements are developed? What does this station do *and* what does (project) do?

Section 4. Administration—Respite Care

5. Please describe for me the average family caregiver (respite) services that (volunteer station) provides.

6. In your experience, what preparation is necessary for *creating* a successful, satisfying family caregiver (respite) placement for the (volunteer/companion)?

(Probe: "What else?" and circle all that apply.)

1 Matching (volunteer/companion) and client personalities or interest)
2 Adequate training prior to placement
3 Informing volunteer of what family caregiver (respite) services entail
4 Informing client and family of what family caregiver (respite) services does/does not include
5 Other (specify)

7. What support or other factors are necessary for *maintaining* a successful and satisfying family caregiver (respite) palcement for the (volunteer/companion)?

(Probe: "What else?" And circle all that apply)

1 Reliable public transportation system
2 Maintaining open lines of communications between station and (volunteers/companions)
3 Providing adequate (volunteer/companion) supervision
4 Other (specify)

8. In what ways are (volunteer/companion) assignments set up to ensure continuity in family caregiver (respite) services for a household?

9. What criteria are used to match (volunteers/companions) with family caregiver (respite) services clients? (Probe: "What else?," and circle all that apply)

1 Gender
2 Personality
3 Race
4 Intellectual capacity/interest
5 Availability to meet clients' time needs
6 Skills
7 Physical capability
8 Other (specify)

10. Once a (volunteer/companion) is in place, how do you deal with changes in client conditions? (Record R's exact response)

11. During the last twelve months, how many cases have been terminated for each of the following reasons?

____ Death of client
____ Death of caregiver
____ Death of (volunteer/companion)
____ Client condition worsened
____ Client condition improved
____ (Volunteer/companion) became ill or disabled
____ Client dissatisfied with (volunteer/companion)
____ Caregiver dissatisfied with (volunteer/companion)
____ (Volunteer/companion) dissatisfied with placement
____ Client/family taking advantage of (volunteer/companion)
____ Other (specify)

For RSVP Stations Only

12. Do you ever charge fees for your services?

1 Yes (go to Q. 13)
2 No (Skip to Q. 15)

13. How are fees generally determined?

1 Everyone pays the same fee
2 Charge fees on a sliding scale
3 Decide fees on a case by case basis
4 Other (specify)

14. What arrangements are made for those clients who are unable to pay?

(Circle all that apply)

1 Use local funds
2 Use State funds
3 Use Federal funds from other programs (specify)

4 Other (specify)

15. Are you aware of other RSVP or SCP agencies in your locality that provide family caregiver (respite) services? (Probe: "What are they?")

16. What other agencies in your locality provide family caregiver (respite) services? (Probe: "Any others?")

17. How does this station interact with these other agencies to ensure the optimum level of family caregiver (respite) services for this community?

Section 5. Benefits—General

We know that family caregiver (respite) services benefit everyone involved in some way. We also know that for several reasons, some types of placements may be more beneficial than others, either for the volunteer or companion themselves, the caregiver or the client.

18. What types of family caregiver (respite) service placements are most beneficial for:

A. (Volunteers/Companions)?

B. Clients?

C. Caregivers?

19. What types of family caregiver (respite) service placements are less beneficial for:

A. (Volunteers/Companions)?

B. Clients?

C. Caregivers?

Section 6. Service Needs

20. What additional types of training would be beneficial to station staff to further support delivery of family caregiver (respite) services?

21. What additional types of resources would be beneficial for this station to further support family caregiver (respite) services?

1 Transportation
2 Additional funds for meals
3 Additional funds for training
4 Funds for additional stipends
5 Other (specify)

22. What kinds of requests for information or services does this station most frequently receive from:

A. (Volunteers/Companions)?

B. Caregivers?

C. Clients?

23. How many additional (volunteers/companions) would this station need to adequately address clients currently in need of family caregiver (respite) services?

(Number of additional volunteers/companions)

24. What are this station's greatest problems or frustrations in using RSVP volunteers/SCP companions to provide family caregiver (respite) services?

1 Not enough volunteers/companions to service need
2 Lack of adequate transportation system
3 Unavailability of medicaid/medicare funding for services
4 Lack of training funds
5 Other (specify)

Section 7. Other Issues—Elder Abuse

25. In what ways have (volunteers/companions) assisted in making station personnel aware of incidences of elder abuse?

26. Within the last year, how many cases of elder abuse were reported to this station? (formally or informally) by a (volunteer/companion)?

Number or cases reported

27. What is the station's procedure when suspected elder abuse is reported by a (volunteer/companion)?

28. How does training equip family caregiver (respite) (volunteers/companions) to both identify and report incidences of elder abuse?

Section 8. Accomplishments

29. What achievements are your program proudest of in the area of family caregiver (respite) services?

30. What individual achievements by a single (volunteer/companion) working in family caregiver (respite) are you proudest of ?

Section 9. Documentation

31. May I have copies of the following materials:

a. Sample client care plan for family caregiver (respite) services
b. Volunteer/companion training schedule
c. Family caregiver (respite) activity goal statement
d. Volunteer/companion job description

Thank you

Interviewer Observation

1. Rate R's understanding of the questions.

1 High
2 Moderate
3 Low

2. Rate R's cooperation.

1 Cooperative
2 Evasive, Suspicious
3 Hostile

3. Your comments here please.

Action Family Caregiver Program Survey Volunteer Face-To-Face Questionnaire

Public reporting burden for this collection of information is estimated to average 43 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Melvin E. Beetle, Clearance Officer, ACTION, Room M–600, 806 Connecticut Avenue, NW., Washington, DC 20525; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Date:

Interview time:
Begin:
End:

Project:
Station:
Volunteer:
Interviewer:
Id#

Volinst
6–23–88

Section 1. Family Caregiver or Respite Clients

Please gather the following information from the project or station before you interview the companion or volunteer.

1. Interviewer: How many family caregiver or respite clients does companion or volunteer serve?

(Number)

2. List their names and type of place where service provided. Record names and place of service in Q.6–1 and Q.6–2 right now.

Name	Place of service (home, adult day care, hospice, etc.)
1.....	
2.....	

Name	Place of service (home, adult day care, hospice, etc.)
3.	
4.	
5.	
6.	

Remove This Page After Interview

Project ID# _____
Station ID# _____
Volunteer ID# _____

Section 2. Becoming a Companion/ Volunteer

3. How did you *first* learn about the (SCP/RSVP) project?

(Record R's exact words. Circle the *one* appropriate response after interview is completed.)

01 ACTION brochure
02 Agency or organization frequented by older persons (e.g., senior center, adult day care center, nutrition site)
03 Broader media coverage (local newspaper, radio, TV, etc.)
04 Presentation to citizen's group
05 Presentation at religious organization
06 Presentation to other community agency
07 Recruited from waiting lists for the senior community service employment program
08 Recruited directly by individual who works with the project or station
09 Sponsoring organization media (newsletter, brochures, ads, etc.)
10 Other (specify) _____

4. How long have you been a companion (volunteer)?

(Probe for months or years and circle appropriate one.)
____ Months
____ Years

5. How long have you been a companion (volunteer) who helps elderly people who live with their families?

(Probe for months or years and circle appropriate one.)
____ Months
____ Years

Section 3. Extent of Services

ASK ALL QUESTION 6.3–6.6 READING COMPLETELY DOWN THE COLUMN FOR CLIENT NO. 1, THEN REPEATING THE PROCEDURE FOR ALL REMAINING CLIENTS

	(Client No. 1)	(Client No. 2)	(Client No. 3)	(Client No. 4)	(Client No. 5)	(Client No. 6)
6–1. Clients from Q.2 6–2. Place of care from Q.2						
6–3. How many hours are you with (client)?						
6–4 What type of illness or handicap does (client) have?						
6–5 How do you help (client)?						
6–6 What problems have you had helping (client)?						
Coding only						

7. Hand R Blue Card.

Next, I'll read some things (companions/volunteers) can get involved in while providing care. For each one, please tell if you usually, sometimes or never do these for the clients we just talked about.

Would you say you sometimes, usually or never get involved in: (Read each item and the response categories. Circle "1" for usually or "2" for sometimes or "3" for never)

Usually	Sometimes	Never	
	A. Personal Care		
1	2	3	a. feeding clients
1	2	3	b. bathing clients
1	2	3	c. dressing clients
1	2	3	d. combing or cutting client's hair, clipping nails, (shaving) clients
1	2	3	e. helping clients with walking,
1	2	3	f. helping clients getting in and out of bed,
1	2	3	g. helping clients with medical or physical therapy
1	2	3	h. reminding clients to take their medicine
1	2	3	i. encouraging clients to exercise
1	2	3	j. taking walks with clients (going out with clients in the wheelchair)
	B. Nutrition		
1	2	3	k. preparing food for clients
1	2	3	l. planning meals for clients
1	2	3	m. labeling and organizing foods for clients
	C. Social/Recreation		
1	2	3	n. talking or listening to clients
1	2	3	o. playing games or cards with clients
1	2	3	p. helping clients get along with family and friends

Usually	Sometimes	Never	
			D. Home Management
1	2	3	q. going shopping with clients
1	2	3	r. helping clients with shopping
1	2	3	s. running errands for clients (probe: post office, bank, get prescriptions, etc.)
1	2	3	t. helping clients run errands (probe: post office, bank, get prescriptions, etc.)
1	2	3	u. writing letters for clients
1	2	3	v. reading to clients
1	2	3	w. helping clients fill out forms
1	2	3	x. doing light housekeeping for clients
1	2	3	y. doing light gardening for clients
1	2	3	z. helping clients with managing or budgeting funds or paying bills
1	2	3	aa. making minor repairs clients' (caregivers') home
			E. Information and Advocacy
1	2	3	bb. providing information about things clients need to get or do
1	2	3	cc. helping clients get needed services
1	2	3	dd. driving clients anywhere. (If usually or sometimes) where?_____
1	2	3	ee. going with clients anywhere. (If usually or sometimes) where?_____
			F. Other
1	2	3	ff. doing anything else for clients. (If usually or sometimes) What else?_____
			Get Blue Card

Section 4. Training

8. Have you received training from (station) or (project) on: (read response categories).

Yes	No	
1	2	a. Agency policy and procedures.
1	2	b. How to counsel people with problems.
1	2	c. How to get along with different people.
1	2	d. Resources and services available in your community.
1	2	e. How to help people obtain rights and services.
1	2	f. Housekeeping skills.
1	2	g. Health and personal care assistance.
1	2	h. Other (specify).

9. How often do you get additional training. Would you say: (read response categories).

1. About 4 times a month
2. About 3 times a month
3. About twice a month
4. About once a month
5. Less than once a month
6. Not at all

10. Do you feel the training you got has been adequate in helping you work with the elderly clients and their families that we talked about earlier?

1 Yes
2 No

11. What other training do you feel you need to help you in providing services to the elderly clients and their families? (Record R's exact words. Circle all that apply after interview is completed.)

_____

_____

1 Dealing with dementia or Alzheimer's disease
2 Dealing with physically incapacitated persons
3 Agency policy and procedures
4 How to counsel people with problems
5 How to get along with different people
6 Resources and services available in your community
7 How to help people obtain rights and services
8 Housekeeping skills
9 Health and personal care assistance
10 Other (specify)

_____

Section 5. Support, Supervision

12. How do you *usually* get to the elderly clients we talked about earlier? (Read response categories).

1 Public transportation
2 Own personal transportation
3 Volunteer station provides transportation

13. Have you had any problems with the family caregiver or respite program? (Record R's exact words)
(Probe: Has there been a problem with the project or station * * * the elderly clients * * * or their families)

_____

_____

(If no problem, skip to Q.16)

14. Did you ask for help from (station) or (project) in handling the problem(s)?

1 Yes
2 No (skip to Q.16)

15. What help did you receive from (station) or (project) with the problem(s)?
(Record R's exact words)

_____

_____

16. Is there someone at (station) that you can contact when problems arise at the elderly clients' homes?

1 Yes
2 No
8 Don't know

Section 6. Benefits, Satisfaction

17. What do you feel is the greatest benefit of your services to the *elderly clients* we talked about earlier?
(Record R's exact words)

_____

_____

(Circle all that apply after interview is completed)

1 Friendship/companionship
2 Keeping client our of institution
3 Improved sense of well-being
4 Improved relation with caregiver
5 Improved physical condition
6 Improved mental condition
7 Access to community services
8 Decreased family stress
9 Other (specify) _____

18. What is the greatest benefit of your services to the *family members* who care for the elderly clients we talked about earlier?
(Record R's exact words)

_____

_____

(Circle all appropriate responses after interview is completed)

1 Freed up to do other things
2 Companionship
3 Ability to keep working
4 Peace of mind
5 Decreased stress or tension
6 Has time to (himself/herself)
7 Improved relation with client
8 Reduced cost of caring for client
9 Feels less isolated
10 Emotional support of another adult in caring for client
11 Feels less overwhelmed with client care
12 Just being able to take a breather
13 Ability to plan activities
14 Ability to keep client out of institution
15 Other (specify) _____

19. What do *you* like about helping elderly clients and their family members who care for them?
(Record R's exact words)

_____

_____

(Circle all that apply after interview is completed)

1 Being able to help someone in need
2 Having something to do with my time
3 Money helps make ends meet
4 Having someone to spend time with
5 Provides me greater mobility
6 Sense of well-being
7 Sense of usefulness
8 Feel less lonely
9 Motivates me to get involved in activities
10 Other (specify)

20. In general, how satisfied are you with the elderly clients and the families that you are assigned to? Would you say: (Read response categories).

1 Very satisfied
2 Satisfied
[3 Uncertain—do not read]
4 Dissatisfied
5 Very dissatisfied

21. In general, how satisfied are you with the (SCP/RSVP) program? Would you say: (READ RESPONSE CATEGORIES).

1 Very satisfied
2 Satisfied
[3 Uncertain—do not read]
4 Dissatisfied
5 Very dissatisfied

Section 7. Demographics

Just a few more questions.

22. How old are you?

(Age)

23. What did you do in the twelve month period before you got involved with the (SCP/RSVP PROGRAM)? Were you * * *:

(Read response categories)

1 Retired (go to Q. 24)
2 Employed full-time (go to Q. 24)
3 Employed part-time (go to Q. 24)
4 A homemaker (skip to Q. 25)

24. (If retired or employed) What was your previous occupation? (Record R's exact words).

25. In the twelve month period before you got involved with the (SCP/RSVP Program)? Were you:

(Read response categories)

1 A companion/volunteer with another (SCP/RSVP) program
2 A volunteer for another agency
3 Not involved in volunteering

26. Do you currently live: (Read response categories)

1 Alone
2 With other family member(s)
3 With other family member(s) and non-related individuals
4 With other non-related individuals
5 In a group or congregate setting such as a seniors building?

(Hand R Yellow Card)

27. Which letter on this card best describes your total household income during the past 12 months?

Letter

28. R's sex (by observation)

1 Male
2 Female

29. R's race (by observation)

1 American Indian
2 Asian, Pacific Islander
3 Black
4 Oriental
5 Spanish surname
6 White
7 Can not determine

Get Yellow Card

Thank you!

Interview Observation

1. Did you get blue and yellow cards?

1 Yes
2 No—Get them now, please.

2. Did you remember to code Q.3, Q.17, Q.18 and Q.19?

1 Yes
2 No—Code them now, please.

3. Rate R's understanding of the questions.

1 High
2 Moderate
3 Low

4. Rate R's cooperation.

1 Cooperative
2 Evasive, Suspicious
3 Hostile

5. Make your comments here, please.

Action Family Caregiver Program Survey Caregiver Face-To-Face Questionnaire

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DATE: _____
Interview time:
Begin: _____
End: _____
Project: _____
Station: _____
Caregiver: _____
Client: _____
Interviewer: _____
Id# _____

Careinst
6-23-88

Action Family Caregiver Program Survey Caregiver Face-To-Face Questionnaire

Based on pretest experience, it should take about 40 minutes for us to complete this questionnaire.

DATE: _____
Interview time:
Begin: _____
End: _____
Project: _____
Station: _____
Caregiver: _____
Client: _____
Interviewer: _____
Id# _____

Careinst
6.10.88

Section 1. Previous Companions/ Volunteers

The following information should be gathered from the project or station before you interview the caregiver.

1. Interviewer, how many companions/volunteers has this family had, including current one(s)?

(Number) — (record this number in Q.32)

2. List them, beginning with the first one.

Name	Date served
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	

(Remove this page after interview)

Project _____
Station _____
Caregive _____
Client _____

Section 2. Benefits—General

3. Please tell me what it means to you to have (current companion/volunteer) help you?

(Record R's exact words)

Section 3. Before SCP/RSVP Services

4. Including (current companion/volunteer) how many companions (volunteers) have helped you with (client)?

Let's talk for a few minutes about what it was like to care for (client) before (1st companion/volunteer).

5. Before (1st companion/volunteer) began helping you, was there anyone who would take care of (client) so that you could do some other things such as errands, housework, or just relax?

1 Yes (go to Q.5–1)
2 No (skip to Q.6)

5–1. Please tell me if any of the following helped you? (If "1" circled in 5–1, *only* then ask 5–2) 5–2. Did you pay * * *?

5-1. Helped?		5-2. Paid?		
Yes	No	Yes	No	
1	2	1	2	a. Family members.
1	2	1	2	b. Neighbors.
1	2	1	2	c. Friends.
1	2	1	2	d. Private duty nurse, sitters, maids.
1	2	1	2	e. People from other agencies or programs such as homemakers or aides.
1	2	1	2	f. Anyone else? (specify) _____

6. *Before* (1st companion/volunteer) began helping you, had you done or considered doing any of the following for (client)?

(If "1" circled in 6–2 or 6–3, ask 6–4) use codes below to code responses. If R's response is not on code list write it in)

6-1. Care situation	6-2. Used?		6-3. Considered?		6-4. Reason not using?
	Yes	No	Yes	No	
a. Having (client) live with another relative or friend?	1	2	1	2	
b. Having a relative or friend live in your home to help care for (client)?	1	2	1	2	
c. Hiring someone part-time or full-time to help you care for (client)?	1	2	1	2	
d. Having (client) go to an adult day care center?	1	2	1	2	
e. Placing (client) in hospice care?	1	2	1	2	
f. Having (client) live in a group home or V.A. home	1	2	1	2	

Codes For Reason Not Using

1 Unaffordable
2 Prefer (client) at home
3 Guilt
4 (Client) Did not want it
5 Other family member(s) did not want it
6 Condition improved
7 No one to help
8 Got SCP/RSVP help
9 Caregiver will not ask for help

7. *Before* (1st companion/volunteer) to what degree was nursing home care considered for (client)?

Was it: (Read response categories)

1 Seriously considered
3 Considered some
2 Considered a little
4 Never considered (skip to Q.9)

(If "1", "2", or "3" circled):

8. Why did you decide not to use nursing home? (Record R's exact words, circle codes after interview is completed).

1 Unaffordable
2 Prefer (client) at home
3 Guilt
4 (Client) did not want it
5 Other family member(s) did not want it
6 Condition improved
7 No one to help
8 Got SCP/RSVP help
9 Caregiver will not ask for help
10 Other (Specify)_____

9. (Hand R pink card)

Please use this card to answer the next questions about the degree you may have experienced the following before (1st companion/volunteer) came to help you?

(For each condition, say): To what degree did you experience (condition)? Would you say: (Read response categories)

(circle one number only)

	Always	Usually	Some	Seldom	Never
a. Stress or worry	1	2	3	4	5
b. Feeling that you were all alone in the world without anyone to help you	1	2	3	4	5
c. Misunderstandings between you and (client)	1	2	3	4	5
d. Tension among other family members	1	2	3	4	5
e. Weakening of your own health or feeling very tired or exhausted	1	2	3	4	5
f. The inability to give (client) proper care	1	2	3	4	5
g. The inability to leave home to do other things such as tend to business, go to church or visit friends	1	2	3	4	5
h. The inability to meet the needs of other family members	1	2	3	4	5
i. Financial burden	1	2	3	4	5
k. Other (specify)	1	2	3	4	5
	1	2	3	4	5

(Get pink card)

10. Once you applied for family caregiver or respite services, how long did it take before (1st companion/volunteer) began helping you?

(Probe: Weeks, months, years. Circle appropriate one below.)

Weeks
Months
Years

11. Did you *first* talk to the (1st companion/volunteer) on the phone or in person before he (she) began to help you with (client)?

1 Yes, talked to by phone
2 Yes, talked to in person
3 No
8 Don't remember

12. Did someone from the program (agency) interview you about the services you needed?

1 Yes
2 No
8 Don't remember

13. What characteristics were important to you in choosing a companion (volunteer) to help you care for (client)?

(Record R's exact words, circle codes at end of interview.)

(Circle all that apply)

1 Empathetic, loving, caring, understanding, patient, calm
2 Age
3 Experience, maturity
4 Dependability
5 Adaptability to client family routines
6 Common sense
7 Physical stamina
8 Cheerfulness, positive attitude
9 Intelligence, stimulating
10 Cleanliness/neatness
11 Other (specify) _____

14. Did the (project/station) ask you what kind of person you would like to help you or did they assign a (companion/volunteer) to you?

1 Asked me what I would like
2 Companion/volunteer assigned
8 Don't remember

15. Were you employed either full-time or part-time outside the home before you began taking care of (client) on a regular basis?

1 Employed full-time (go to Q.16)
2 Employed part-time (go to Q.16)
3 Neither (skip to Q.17)

16. Once you started caring for (client) on a regular basis, and before (1st companion/volunteer) began help you, how did your work schedule change? (Read response categories)

1 Schedule did not change
2 Switched from full to part-time
3 Quit working

Section 4. The Client

Let me ask you a few specific questions about (client).

17. What is your relationship to (client)?

Are you: (Read response categories)

1 His/her (wife/husband)
2 His/her child
3 His/her (sister/brother)
4 An other family member
5 A non-related individual

18. About how many years have you been taking care of (client) on a regular basis?

Number of years (if less than one year, write 01)

19. What type of illness or handicap does (client) have?

(Record R's exact words. Probe: "Is there any thing else?")

20. What is (client)'s current physical health?

Is it: (read response categories)

1 Excellent
2 Good
3 Fair
4 Poor
5 Very poor

21. What is (client)'s current mental health?

Is it: (read response categories)

1 Excellent
2 Good
3 Fair
4 Poor
5 Very poor

22. Is (client) bedridden?

1 Yes
2 No

23. Is (client) confined to a wheelchair?

1 Yes
2 No

Section 5. Seeking Services

Now, let's talk about how you first found out about the (SCP/RSVP) program that (1st companion/volunteer) came from and the services if offers.

(Make sure R knowns that you are talking the family caregiver station/project.)

24. How did you *first* learn about the program that (1st companion/volunteer) came from?

(Record R's exact words. Probe for type person/organization circle code at end of interview.)

(Circle the first response mentioned only)

1 A companion/volunteer
2 SCP/RSVP project staff
3 SCP/RSVP station staff
4 Doctor/health facility
5 Social worker/social service facility
6 Family member/friend/neighbor
7 Support/advocacy organization
8 Agency/organization frequented by older persons
9 Presentation at religious organization
10 Local media
11 Other (specify)

25. What caused you to seek the services that (1st companion/volunteer)'s program offers?

(Record R's exact words, circle codes at end of interview.)

(Circle all that apply)

1 Didn't seek; someone suggested/recommended
2 Internal stress
3 Increased stress between caregiver and client
4 Increased stress from others in family
5 Increased stress from other outside family (e.g., employer, school)
6 Caregiver tired/health deteriorating/ill
7 Needed someone to stay with client while away/or while did household chores
8 To have time for self
9 To keep job/stay in school
10 Client deteriorated (mentally/physically/behaviorally)
11 Other (specify)

Section 6. Extent of Services

26. Next I'll read a list of items that companions (volunteers) might do for (client).

26–1. and 26–2. For each item, please tell me (1) is the (station/project) told you (companion/volunteer) would do it and (2) then tell me if he (she) does it.

26-1. Project, station said?			26-2. Companion, volunteer does?		
Yes	No	Don't know	Yes	No	
					A. Personal Care
1	2	8	1	2	a. feed (client)
1	2	8	1	2	b. bath (client)
1	2	8	1	2	c. dress (client)
1	2	8	1	2	d. comb or cut (client)'s hair, clip nails, (shave (client))
1	2	8	1	2	e. help (client) with walking,
1	2	8	1	2	f. help (client) with getting in and out of bed,
1	2	8	1	2	g. help (client) with medical or physical therapy
1	2	8	1	2	h. remind (client) to take medicine
1	2	8	1	2	i. encourage (client) to exercise
1	2	8	1	2	j. take walks with (client) go out with (client) in the wheelchair)
					B. Nutrition
1	2	8	1	2	k. prepare food for (client)
1	2	8	1	2	l. plan meals for (client)
1	2	8	1	2	m. label and organize foods for (client)
					C. Social/Recreation
1	2	8	1	2	n. talk or listen to (client)
1	2	8	1	2	o. play games or cards with (client)
1	2	8	1	2	p. help (client) get along with family and friends
					D. Home Management
1	2	8	1	2	q. go shopping for (client)
1	2	8	1	2	r. help (client) with shopping
1	2	8	1	2	s. run errands for (client) (probe: go to post office or bank, get prescriptions, etc.)
1	2	8	1	2	t. help (client) run errands (probe: got to post office or bank, get prescriptions, etc.)
1	2	8	1	2	u. write letters for (client)
1	2	8	1	2	v. read to (client)
1	2	8	1	2	w. help (client) fill out forms
1	2	8	1	2	x. do light housekeeping for (client)
1	2	8	1	2	y. do light gardening for (client)
1	2	8	1	2	z. help (client) with managing or budget (client) funds or pay bills
1	2	8	1	2	aa. make minor repairs to (your/client's) home
					E. Information and Advocacy
1	2	8	1	2	bb. provide information about things (client) needed to get or do
1	2	8	1	2	cc. help (client) get needed service
1	2	8	1	2	dd. drive (client) anywhere. (If Yes) Where? _____
1	2	8	1	2	ee. go with (client) anywhere. (If Yes) Where? _____

26-1. Project, station said			*26-2. Companion, volunteer does*		
Yes	No	DK	Yes	No	F. Other
1	2	8	1	2	ff. do anything else for (CLIENT). (IF YES) What else does (companion/volunteer) do for (CLIENT)?

Section 7. Benefits—Specific

27. In general, has having (companion/volunteer) helped (client) to:

Yes	No	
1	2	a. Be less dependent on you?
1	2	b. Feel better physically?
1	2	c. Be able to get around better?
1	2	d. Be more mentally alert?
1	2	e. Have a more positive attitude?
1	2	f. Stay at home rather than go to a nursing home, or rest home, or group home (include V.A. home when appropriate)?
1	2	g. Have some companionship
1	2	h. Other (specify).

28. (Hand R pink card).

Please use this card to answer the next questions. (for each condition, say): Since (companion/volunteer) has been helping you, to what degree do you experience (condition)? Would you say:

Read response categories; Circle one number only for each condition.)

	Always	Usually	Some	Seldom	Never
a. Stress or worry	1	2	3	4	5
b. Feeling that you were all alone in the world without anyone to help you	1	2	3	4	5

	Always	Usually	Some	Seldom	Never
c. Misunderstandings between you and (client)	1	2	3	4	5
d. Tension among other family members	1	2	3	4	5
e. Weakening of your own health or feeling very tired or exhausted	1	2	3	4	5
f. Inability to give (client) proper care	1	2	3	4	5
g. Inability to leave home to do other things such as tend to business, go to church or visit friends	1	2	3	4	5
h. Inability to meet the needs of other family members	1	2	3	4	5
i. Financial burden	1	2	3	4	5
k. Other (specify)	1	2	3	4	5
	1	2	3	4	5

(Get pink card)

29. Since (companion/volunteer) began helping you, is there anyone who will take care of (client) so that you can do other things such as errands, housework, or just relax?

1 Yes (go to Q. 29–1)
2 No (skip to Q. 30)

29–1. Please tell me if any of the following helped you? (If "1" circled in 29–1, *only* then ask 29–2) 29–2. Did you pay * * *?

29–1 Helped?		29–2. Paid?		
Yes	No	Yes	No	
1	2	1	2	a. Family members
1	2	1	2	b. Neighbors
1	2	1	2	c. Friends
1	2	1	2	d. Private duty nurse, sitters, maids
1	2	1	2	e. People from other agencies or programs such as homemakers or aides
1	2	1	2	f. Anyone else? (SPECIFY) _____

30. What do you generally do when (companion/volunteer) is here?

(Record R's exact words, circle codes at end of interview.)

(Circle all that apply)

1 Visit friends or relatives
2 Run personal errands
3 Run errands for client
4 Rest/relax at home
5 Do other household chores
6 Participate in recreational/volunteer activities
7 Work
8 Other (specify)

Section 8. Satisfaction

31. What specific problems or frustrations have there been with the companion(s) (volunteer(s)) who have helped you with (client)?

(Record R's exact words)

32. (Interviewer: Record from Q. 1 number of companions/volunteers R has had, including current one?)

Number

(If only "1," skip to Q. 34)

33. What are some reasons you have had (NUMBER) companions (volunteers)?

(Record R's exact words)

34. In general, how satisfied are you with the services provided by (companion/volunteer)? Would you say * * *?

(Read response categories)

1 Very satisfied
2 Satisfied
[3 Uncertain do not read]
4 Dissatisfied
5 Very dissatisfied

Section 9. Other Services

35. Does (client) receive help from: (Read each item).

Yes	No	
1	2	a. Home delivered meals.
1	2	b. Visiting nurse.
1	2	c. Volunteer chore service.
1	2	d. Transportation to medical care.
1	2	e. Telephone support.
1	2	f. Homemaker service or paid chore service.
1	2	g. Paid companion.
1	2	h. Other (specify).
1	2	_____
1	2	_____

36. What additional services would you like to receive to enable you to better care for (CLIENT)?

(RECORD R'S EXACT WORDS.)

Section 10. Demographics

Just a few more questions.

37. What is the makeup of your family? Is it: (Read response categories).

1 You and (client) only
2 You, (client) and other family members
3 (client) lives alone, but you spend several hours a day/week caring for him (her) in his (her) own home.

38. Do you care for any of the following: * * *?

(Read response categories; circle all that apply)

1 Other adult(s) over 65
2 Minor child(ren)
3 Disabled child(ren)
4 Other disabled adult(s)

39. Are you * * *?

(Read response categories; circle only one)

1 Employed full time
2 Employed part time
3 Unemployed
4 Retired
5 Homemaker (skip to Q. 41)

40. What kind of work do (did) you do?

41. How old were you on your last birthday?

(Age)

(Hand R yellow card)

42. Which letter on this card best describes your total household income during the past 12 months?

Letter

43. R's Sex (by observation)

1 Male
2 Female

44. R's race (by observation)

1 American Indian
2 Asian, Pacific Islander
3 Black
4 Oriental
5 Spanish Surname
6 White
7 Can not determine

Thank you!
Get yellow card

Interviewer Observation

1. Did you get pink and yellow cards?

1 Yes
2 No [Get them now, please!]

2. Did you remember to code Q.6, 7, 13, 24, 25 & 30.

1 Yes
2 No [Do it now please!]

3. Rate R's understanding of the questions.

1 High
2 Moderate
3 Low

4. Rate R's cooperation.

1 Cooperative
2 Evasive, Suspicious
3 Hostile

5. Make your comments here, please.

ACTION Family Caregiver Program Survey Client Face-to-Face Questionnaire

Public reporting burden for this collection of information is estimated to average 21 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Melvin E. Beetle, Clearance Officer, ACTION, Room R-600, 806 Connecticut Avenue, N.W., Washington, D.C. 20525; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

Date: _____
Interview time:
Begin: _____
End: _____
Project: _____
Station: _____
Caregiver: _____
Client: _____
Interviewer: _____
ID # _____

CLIEINST
6.23.88

Client Questionnaire
Project # _____
Station # _____
Caregiver # _____
Client # _____

Section 1. Benefits—General

1. Please tell me what it means to have (Companion/volunteer) help you.

Section 2. Extent of Services

2. Now, I'd like to ask you about some of the things (Companion/volunteer) might do for you when (he/she) is with you.

Does (Companion/volunteer): (Read each item and circle either "1" for Yes or "2" for No)

Yes	No	
		A. Personal care
1	2	a. feed you
1	2	b. bath you
1	2	c. dress you
1	2	d. comb or cut your hair, clip your nails, (shave you)
1	2	e. help you with walking,
1	2	f. help you with getting in and out of bed,
1	2	g. help with medical or physical therapy
1	2	h. remind you to take your medicine
1	2	i. encourage you to exercise
1	2	j. take walks with you (go out with you in the wheelchair)
		B. Nutrition
1	2	k. prepare food for you
1	2	l. plan meals for you
1	2	m. label and organize foods for you
		C. Social/Recreation
1	2	n. talk or listen to you
1	2	o. play games or cards with you
1	2	p. help you get along with family and friends
		D. Home Management
1	2	q. go shopping for you
1	2	r. help you with shopping
1	2	s. run errands for you (e.g., go to post office or bank, get prescriptions, etc.)
1	2	t. help you run errands (e.g., go to post office or bank, get prescriptions, etc.)
1	2	u. write letters for you
1	2	v. read to you
1	2	w. help you fill out forms
1	2	x. do light housekeeping for you
1	2	y. do light gardening for you
1	2	z. help you with managing or budget your money or pay bills
1	2	aa. make minor repairs to you (caregiver's) home
		E. Information and Advocacy
1	2	bb. provide information about things you needed to get or do
1	2	cc. help you get needed service
1	2	dd. drive you anywhere. (If Yes) Where? _____
1	2	ee. go with you anywhere. (If Yes) Where? _____
		F. Other
1	2	ff. do anything else for you. (If Yes) What else does (Companion/volunteer) do? _____ _____

Section 3. Benefits—Specific

3. Let's talk some more about how you think (Companion/volunteer) has helped you.

Do you think that (Companion/volunteer) has: (read each item and circle either "1" for yes or "2" for no)

Yes	No	
1	2	a. helped you do things you would not usually do?
1	2	b. helped you eat better and more nutritious meals?
1	2	c. helped improve your physical health?
1	2	d. helped you feel better about yourself?
1	2	e. helped you feel less lonely?
1	2	f. helped cheer you up when you feel down?
1	2	g. helped your family understand each other better?

4. Do you feel that you can confide in (Companion/volunteer)?

1 Yes
2 No

5. Do you feel that you can trust (Companion/volunteer) to handle your personal matters?

1 Yes
2 No

6. Name three positive qualities which best describe (Companion/volunteer).

(Record first three qualities mentioned. Code below at end of interview.)

Rankings

1 _____
2 _____
3 _____

Transer rankings here.

____ kind/gentle
____ compassionate/caring/comforting
____ accepting/tolerant
____ ethical/trustworthy
____ skillful/resourceful
____ accommodating/responsive
____ respectful
____ prompt/dependable
____ patient/calm
____ enthusiastic/cheerful/positive
____ understanding
____ clean/neat
____ self-assured/confident
____ knowledgeable
____ friendly/communicative

7. Name three additional qualities you wish (Companion/volunteer) had more of.

(Record first three qualities mentioned. Code below at end of interview).

Rankings

1 _____
2 _____
3 _____

(Transfer rankings from here.)
___ kind/gentle
___ compassionate/caring/comforting
___ accepting/tolerant
___ ethical/trustworthy
___ skillful/resourceful
___ accommodating/responsive
___ respectful
___ prompt/dependable
___ patient/calm
___ enthusiastic/cheerful/positive
___ understanding
___ clean/neat
___ self-assured/confident
___ knowledgeable
___ friendly/communicative

8. In general, how satisfied are you with the help (Companion/volunteer) provides?

Would you say that you are:

1 Very Satisfied
2 Satisfied
[3 Uncertain———Do not read]
4 Dissatisfied
5 Very Dissatisfied

Let's talk for a moment about (Caregiver).

9. How is (caregiver) different since (Companion/volunteer) began helping you?

Does (caregiver): (Read each item and circle either "1" for yes or "2" for no)

Yes	No	Don't know	
1	2	8	a. seem less tense?
1	2	8	b. seem happier?
1	2	8	c. has more time to do the things that need to be done?
1	2	8	d. has more time just for himself (herself)?
1	2	8	e. able to take care of your physical needs better?
1	2	8	f. have more time to spend with you?
1	2	8	g. any other ways (caregiver) is different? (If Yes) How? ___ ___

Section 4. Demographics

Just one more question.

10. How old are you?

___
(Age)

11. R's Sex (by observation).

1 Male
2 Female

12. R's Race (by observation).

1 American Indian
2 Asian, Pacific Islander
3 Black
4 Oriental
5 Spanish surname
6 White
7 Can not determine

Thank you!

Interviewer Observations

1. Did you remember to transfer ranks in Q.6 and Q.7?

1 Yes
2 No [Do it now, please]

2. Rate R's understanding of the questions.

1 High
2 Moderate
3 Low

3. Rate R's cooperation.

1 Cooperative
2 Evasive, Suspicious
3 Hostile

4. Make your comments here, please.

(Blue Card)
Usually
Sometimes
Never

(Yellow Card)
Income categories
A UNDER $2,000
B $2,000—$4,999
C $5,000—$9,999
D $10,00—$14,999
E $15,000—$19,999
F $20,000—$24,999
G $25,000—$29,999
H $30,000—$34,999
I $35,999—$39,999
J $40,000—$44,999
K $45,000—$49,999
L $50,000 or more

(Pink Card)
Always
Usually
Some
Seldom
Never

Attachment 6—Non-Response Form

Project_____
Station_____

FIELD SAMPLE AND NONRESPONSE DATA FORM

[For Each Placement in the Field Sample, Record the Following Information]

Volunteer	Caregiver	Client
Name:		
Age:		
Sex:		
Race:		
Disability:		
Address:		
Phone:		
Interview Site:		
NR Reason:		
Name:		
Age:		
Sex:		
Race:		
Disability:		
Address:		
Phone:		
Interview Site:		
NR Reason:		
Name:		
Age:		
Sex:		
Race:		
Disability:		
Address:		
Phone:		
Interview Site:		
NR Reason:		

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federal register

Friday
July 8, 1988

Part III

Department of Health and Human Services

Office of Community Services, Family Support Administration

Request for Applications Under the Office of Community Services' Fiscal Year 1989 Discretionary Grants Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services, Family Support Administration

[Program Announcement No. OCS-89-1]

Request for Applications Under the Office of Community Services' Fiscal Year 1989 Discretionary Grants Program

AGENCY: Office of Community Services, Family Support Administration, HHS.

ACTION: Request for applications under the Office of Community Services' Discretionary Grants Program.

SUMMARY: The Office of Community Services [OCS] announces that, based on the availability of funds, competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under section 681(a)(2) of the Community Services Block Grant Act of 1981, as amended. This Program Announcement consists of seven parts. Part A covers information on legislative authorities and defines terms used in the Program Announcement. Part B lists the program priority areas under which grants will be made and describes the types of projects that will be considered for funding under each priority area and who is eligible to apply. Part C provides details on application prerequisites, funds available in each priority area, the amount of matching funds applicants are required to commit, limitations on administrative costs, and program beneficiaries. Part D provides information on application procedures including the availability of forms, where to submit an application, criteria for initial screening of applications, and project evaluation criteria. Part E provides guidance on the content of an application package and the application itself. Part F provides instructions for completing an application. Part G details post-award requirements.

CLOSING DATES: The closing date for submission of applications is August 29, 1988 EXCEPT for those proposals submitted under the $2.5 million set aside under Priority Area 1.0. The closing date for applications submitted under the $2.5 million set aside under Priority Area 1.0 will be March 15, 1989.

Note.—There will be no other announcement for this set aside program.

FOR FURTHER INFORMATION CONTACT:

Prior to July 28, 1988 contact:

Office of Community Services, Office of State and Project Assistance, 330 C Street SW., Room 2054, Washington, DC 20201. You may also call (202) 475–0396.

After July 28, 1988 contact:

Office of Community Services, Office of State and Project Assistance, 370 L'Enfant Promenade SW., Washington, DC 20447. You may also call (202) 252–5263.

Part A—Preamble

1. Legislative Authority

Section 681(a)(2) of the Community Services Block Grant Act authorizes the Secretary to make funds available to support program activities of national or regional significance to alleviate the causes of poverty in distressed communities. Included are special emphasis programs which sponsor enterprises providing employment and business development opportunities for low-income residents of the community, technical assistance and training programs in rural housing and community facilities development, and assistance for migrants and seasonal farmworkers.

2. Definitions of Terms

For purposes of this Program Announcement the following definitions apply:

—*Displaced worker*: An individual who is in the labor market but has been unemployed for six months or longer.

—*Distressed community*: A geographic urban neighborhood or rural community of high unemployment and pervasive poverty.

—*Eligible applicant*: (See appropriate Priority Area under Part B.)

—*Indian tribe*: A tribe, band, or other organized group of Indians recognized in the State in which it resides or considered by the Secretary of the Interior to be an Indian tribe or an Indian organization for any purpose.

—*Migrant farmworker*: An individual who works in agricultural employment of a seasonal or other temporary nature who is required to be absent from his/her place of permanent residence in order to secure such employment.

—*Rural*: An area that is not within the outer boundary of a metropolitan entity having a population of 25,000 or more and the contiguous communities with population density of 100 persons or more per square mile according to the latest decennial census. Such an area may be located entirely within one State or made up of contiguous interstate communities.

—*Seasonal farmworker*: Any individual employed in agricultural work of a seasonal or other temporary nature who is able to remain at his/her place of permanent residence while employed.

Part B—Program Priority Areas

The program priority areas of the Office of Community Services' Discretionary Grants Program and their purposes are as follows:

Priority Area 1.0 Urban and Rural Community Economic Development
Priority Area 2.0 Assistance for Rural Housing and Community Facilities Development
2.1 Rural Housing Repairs and Rehabilitation
2.2 Rural Community Facilities Development (Water and Waste Water Treatment Systems Development)
Priority Area 3. Assistance to Migrants and Seasonal Farmworkers

Priority Area 1.0 Urban and Rural Community Economic Development

The purpose of this priority area is to encourage the creation of projects intended to provide employment and business development opportunities and generally improve the quality of the economic and social environment of low-income residents, including displaced workers and at-risk teenagers, of the areas they plan to serve. It is intended to provide resources to eligible applicants but also has the broader objectives of arresting tendencies toward dependency, chronic unemployment, and community deterioration in urban and rural areas. The emphases of projects must be self-help and mobilization of the community-at-large and on providing opportunities for employment and/or ownership within the targeted population. To this end, the program seeks (a) to attract additional private capital into distressed communities, including enterprise zones; (b) to build and expand the ability of local institutions to better serve the economic needs of local residents; and (c) to provide new employment and ownership opportunities for low-income people through business, physical or commercial development.

Projects must further agency goals of public-private partnerships, and Federal initiatives such as urban and rural enterprise zones. OCS is particularly interested in receiving applications that stress public-private partnerships that are directed toward the development of economic self-sufficiency through a focus on economic expansion.

Applicants located in State-designated enterprise zone, i.e. and area in which a legislative entity has enacted a program of tax and regulatory relief to encourage business development, are encouraged to submit applications. Such applications must be linked with—and

complement—enterprise zone initiatives, and may be for either a business development project or for a demonstration of innovative ways involving the poverty community in the implementation of enterprise zone concept.

Applications must show that the proposed project: (1) Will create a significant number of new permanent private sector jobs and/or will maintain existing jobs, all of which are targeted towards low-income residents who are either unemployed or underemployed. Emphasis should be on employment of individuals who are on public assistance including at-risk teenagers. While projected employment in future years may be included in the application, it is essential that the focus of employment projections concentrate on those jobs saved or created during the duration of the OCS grant period; and/or (2) will create a significant number of business development opportunities for low-income residents of the community or significantly aid such residents in maintaining economically viable businesses.

Any funds that are proposed to be used for training purposes must be limited to providing specific job-related training to poverty level individuals who have been selected for employment in the grant supported project or who have been selected for training or participation in a project where potential jobs have actually been identified.

Projects which would result in the relocation of a business from one geographic area to another are discouraged.

Of the funds available for supporting projects under this priority area, approximately $2.5 million will be set aside for grants to be made to those organizations who received grants from OCS in FY 87 under the Pre-Developmental grant program. These organizations will compete only among themselves for the $2.5 million.

OCS will not consider applications that propose to establish or expand revolving loan funds nor proposals that are geared towards the establishment of Small Business Investment Corporations or Minority Enterprise Small Business Investment Corporations.

OCS does not anticipate approving grants that subsequently will be subgranted to an unrelated entity.

See Part F, Section 4, for special instructions on developing a work program for this priority area.

Eligible applicants are private, locally initiated, non-profit community development corporations (or affiliates of such corporations) governed by a board consisting of residents of the community and business and civil leaders. In addition, applicants competing for funds under the $2.5 million set aside must have received a grant from OCS in FY 87 under the Pre-Developmental grant program.

Priority Area 2.0 Assistance for Rural Housing and Community Facilities Development

2.1 Rural Housing Repairs and Rehabilitation

The purpose of this priority area is to assist low-income residents in rural communities by providing grants to eligible applicants to: (a) Provide technical assistance to help low-income families and individuals to more effectively utilize existing local, State and Federal housing assistance programs; and (b) develop innovative ways to meet the housing needs of low-income people, e.g. the rehabilitation or repair of existing substandard housing units for occupancy by low-income residents, the conversion of non-residential buildings to low-income residential use, and the purchase of homes by low-income people.

OSC encourages applications that will assist low-income homeowners to improve their housing through self-help rehabilitation. These efforts should not be duplicative of programs which can be funded through other existing Federal programs.

OCS is interested in proposals which will result in the following types of tangile improvements and benefits related to housing conditions for rural poor people:

—Interior or exterior structural repairs including weatherization and alternative energy systems;
—job opportunities for local unskilled residents while assuring quality work;
—technical assistance and professional services related to housing and community planning by community-based design and planning organizations. (Projects should be conducted with maximum use of voluntary services of professional and community personnel); and
—development of innovative housing strategies to help low-income rural residents acquire housing.

Applicants calling for new construction or 'gut' rehabilitation will only be considered if there is insufficient existing housing stock that can be economically rehabilitated.

Funds will not be available for the repair or rehabilitation of low-income rental housing unless the structure is either occupied by a low-income owner or the properties to be repaired are (a) owned by a private non-profit organization and (b) covered by a written agreement which will ensure continued occupancy, after completion of repairs and rehabilitation, for at least three years by low-income people, as defined by DHHS Poverty Income Guidelines. (Additional information about these Guidelines is set out in Part C, paragraph 7.)

Funds will not be available under this program priority area for establishing or expanding a revolving loan fund.

See Part E, Section 4, for special instruction and developing a work program for this priority area.

Eligible applicant are States, public agencies or private non-profit organizations. OCS is particularly interested in receiving applications from such entities as rural housing development corporations, cooperatives, and other public and private organizations with proven accomplishments in the area or rural housing.

2.2: Rural Community Facilities Development (Water and Waste Water Treatment Systems Development)

Funds will be provided under this priority area to help low-income rural communities develop the capability and expertise to establish and maintain or preserve affordable, adequate and safe water and waste water treatment facilities.

Funds provided under this priority area may not be used for construction of water and waste water treatment systems or for operating subsidies for such systems but matching funds may be used for these activities. Therefore, it is suggested that applicants coordinate projects with the Farmers Home Adminstration (FmHA) and other Federal and State agencies to ensure that funds for hardware for local community projects are available.

See Part F, Section 4, for special instructions on developing a work program for this priority area.

Eligible applicants are Regional Technical Resource Centers and public or private non-profit organizations with proven technical expertise and accomplishments in water and waste water treatment programs. In accordance with the authorizing legislation, funding priority will be given to private non-profit organizations that, before the date of the enactment of the Human Services Reauthorization Act of 1986, carried out such programs under the authority found at Section 681(a)(2)(D) of the Community Services Block Grant Act.

Priority Area 3.0 Assistance to Migrants and Seasonal Farmworkers

The purpose of this priority area is to fund a limited number of projects which focus exclusively on the problems and special needs of migrants and seasonal farmworkers in order to improve their quality of life and advance self-sufficiency.

OCS will entertain proposals that directly meet farmworker needs in such areas as: Crisis nutritional relief; the development of self-help systems of food production; emergency health and social services referral and assistance; home repair, rehabilitation, and ownership; direct assistance to low-income farmworkers (including at-risk teenagers) in improving their job skills so as to qualify them for longer term and permanent full-time employment in agriculture; and/or assistance to low-income farmworkers, including at-risk teenagers, who which to leave agricultural employment and find jobs in other lines of work.

OCS encourages applicants to develop linkages with other public and private sector service providers who also are working with migrant and seasonal farmworkers or with issues affecting this target group. Applicants who mobilize projects support over and above the requirement matching share to directly benefit the proposed project, will receive special consideration under the rating criteria.

OCS will not consider applications proposing to use funds exclusively for classroom instruction. Placement must be an integral activity. Applications submitted under this priority area must not contain requests for OCS funding for projects that would duplicate Community Services Block Grant funding or activities for which funding is available from other Federal agencies such as the Department of Labor, the Department of Agriculture's Food and Women, Infants and Children (WIC) programs, etc.

See Part F, Section 4, for special instructions on developing a work program for this priority area.

Eligible applicants are States, public agencies, and private non-profit organizations.

Part C—Application Prerequisites

1. Eligible Applicants

Priority areas included in this Program Announcement have differing restrictive eligibility requirements. Therefore, eligible applicants are identified in the individual priority area descriptions found in Part B., above.

2. Availability of Funds

a. FY 89 Funds

OCS is spreading its administrative review process more evenly across the fiscal year. In order to accomplish this, OCS is publishing this Program Announcement prior to the Congress completing its deliberations on appropriations for this program for FY 89. Grants will only be made based on the availability of funds. The amount of funds available and the expected number of grants that will be made when, and if, such funds become available is not known at the present time.

b. Grant Amounts

Under Priority Area 1.0

General Program: No more than $500,000 will be provided for real estate projects. (Any project that involves, in part or in whole, the purchase, construction or rehabilitation of property will be considered a real estate project.) Applicants for funding of other activities under this priority area are strongly encouraged to refrain from submitting requests for more than $500,000.

Set Aside Program (for organizations which received grants under the FY 87 Pre-Development Program): No more that $250,000 will be provided for projects funded under this set aside.

Under Priority Areas 2.0 and 3.0: Applicants requesting funds under these priority areas should assure that the total project costs are reasonable in light of the activities to be undertaken.

3. Grant Duration

For most projects OCS will grant funds for one year. However, a grant may be made for a longer period of time, i.e. up to two years, depending on the characteristics of any individual project and the justification presented by the applicant in its proposal.

4. Matching Funds

An applicant is required to obtain commitment of at least the following amounts of private or public funds to match each OCS dollar awarded:

For projects submitted under Priority Area 1.0 (including the $2.5 million set-aside), two public or private sector dollars are required for each OCS dollar awarded for real estate projects and two public sector dollars or one private sector dollar for all other economic development projects.

For projects submitted under Priority Areas 2.1 and 3.0, a match of at least one private of public sector dollar to each dollar of OCS funds awarded is required.

For projects submitted under Priority Area 2.2, one private sector or two public sector dollars are required for each OCS dollar awarded.

Exception: The match for projects submitted under Priority Areas 1.0 and 2.2 which will be carried out on Indian Reservations must be at least one private or public sector dollar for each dollar of OCS funds awarded.

Matching funds must be definitely committed or contingent only on receipt of the OCS grant. Speculative match, or match based on independent contingencies (such as receipt of another grant or lines of credit at the current market rate set aside by banks for program participants), will not be counted towards the matching requirement.

Matching fund may be in the form of cash or in-kind fairly converted into their dollar equivalent. Some examples are loans for construction financing; mortgages; grants from States, counties, municipalities; contributions from private individuals or organizations; equity investments that are made to the project supported by the OCS grant; correlated training programs; related water or waste water installations; foundation support; and/or private and charitable contributions. OCS will accept as a match Federal monies from State-administered block grants with compatible purposes when those programs do not prohibit their use as matching funds. Examples of block grant programs which do not have such a prohibition include the Job Training Partnership Act, the Social Services Block Grant, and Low Income Home Energy Assistance Program.

Funds that are eligible to be counted as "matching" funds must be committed for specific project activities within the OCS-approved project and used only for project purposes during the duration of the OCS grant.

A grantee may not claim as matching funds wages earned as a result of training of skill improvements funded by the OCS grant.

Funds expended or obligated prior to the approved OCS starting date for a grant cannot be considered as matching funds although currently-owned assets which will be used in the OCS project may be applied against the matching requirement.

While the matching requirement outlined in this section must be met for an application to be eligible for consideration, applicants generating support either greater than that required and/or from private sector sources, may be eligible for additional points to be awarded by the reviewers. Except in

unusual circumstances, documentation of any commitment of matching funds must be in the form of letters of commitment from the organizations/individuals from which funds will be received and the commitment must be valid at least through the grant period.

5. Maintenance of Effort

The activities funded under this Program Announcement must be in addition to, and not in substitution for, activities previously carried on without Federal assistance. Also, funds or other resources devoted to activities within a community, area, or state should not be diminished in order to provide the required matching contributions.

6. Administrative Costs

The OCS will accept applications that include administrative costs. However, since grant funds are extremely limited, no awards for only administrative costs will be made and no more than 10% of the OCS discretionary funds awarded under a single grant may be used for administrative purposes.

Administrative costs are defined as costs that are necessary to protect, monitor, properly account for, and apply to the approved project those Federal funds awarded. Costs associated with the internal operational management of the approved project are not considered to be administrative costs nor are costs for conducting the final audit.

In all cases where an applicant has negotiated and claims a current indirect cost rate approved by the Department of Health and Human Services, the Defense Contracting Agency, or some other Federal agency, this rate ordinarily will be recognized by OCS and applied to any OCS grant award. However, it is understood that both administrative and indirect costs are part of, and not in addition to, the amount of funds awarded in the subject grant. In most cases, the approved indirect cost rate will include not only administrative costs but also other allowable costs that were negotiated under the applicant's approved indirect cost rate. Therefore, applicants with an applicable indirect cost rate exceeding 10% of the OCS grant may not propose any administrative funds in excess of that rate. Thus, although the approved indirect cost rate may exceed the normal 10% administrative cost restriction which otherwise applies to all OCS discretionary grants, the entire approved indirect cost rate will be accepted.

7. Program Beneficiaries

Projects proposed for funding under this announcement must result in direct benefits targeted toward low-income people as defined in the most recent Annual Revision of Proverty Income Guidelines published by DHHS.

Attachment A to this announcement is an excerpt from the guidelines currently in effect (1988). Annual revisions of these guidelines are normally published in February or early March of each year and are applicable to projects being implemented at the time of publication. (These revised guidelines also may be obtained through the U.S. Government Printing Office at the following address: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.)

No other government agency or privately-defined poverty guidelines are applicable for the determination of low-income eligibility for these OCS programs.

8. Number of Projects in Application

An application may contain only one project (although activities undertaken may be in a number of communities or impact areas) and this project must be identified as responding to one of the program priority areas stated in this announcement. Applications which are not in compliance with this requirement will be ineligible for funding.

9. Multiple Submittals

There is no limit to the number of applications that can be submitted under a specific program priority area as long as each application contains a proposal for a different project.

10. Sub-Contracting or Delegating Projects

OCS does not anticipate funding any project where the role of the eligible applicant is *primarily* to serve as a conduit for funds to organizations other than the applicant.

Part D—Application Procedures

1. Availability of Forms

Applications for awards under these OCS programs must be submitted on Standard Form (SF) 424 provided for that purpose. Part F and Appendix B to this Program Announcement contain all the instructions and forms required for submittal of applications. The forms may be reproduced for use in submitting applications. Copies of this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources they may be obtained by writing or telephoning the office listed under the section entitled "**FOR FURTHER INFORMATION**" at the beginning of this Announcement.

2. Application Submission

The date by which applications must be received varies according to the Priority Area under which funding is being requested. Refer to the section entitled "CLOSING DATES" at the beginning of this document for specific dates.

An application will be considered to be received on time under either one of the following two circumstances:

a. The application was sent via the U.S. Postal Service or by private commercial carrier and postmarked or dated by the carrier not later than midnight of the closing date unless it arrives too late to be considered by the reviewers. (Applicants are responsible for assuring that the U.S. Postal Service or private commercial carrier dates the application package. Applicants should be aware that not all post offices or private commercial carriers provide a dated postmark unless specifically instructed to do so.)

b. The application is hand delivered on or before the closing date to the Office of Grants Management, FSA, at the address indicated below. Hand delivered applications will be accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday (excluding Federal legal holidays), up through the closing date. In establishing the date of receipt of hand-delivered applications, reliance will be placed on documentary evidence of receipt maintained by FSA.

Late applications will be returned to the senders without consideration in the competition.

Applications once submitted are considered final and no additional materials will be accepted by OCS.

An application with an original signature and four copies is required. Applications, *if mailed,* should be addressed to: Family Support Administration, Office of Grants Management, 370 L'Enfant Promenade, SW., 6th Floor, Mail Management Operations, Washington, DC 20447, Attn: OCS–89–1.

Applications if *hand delivered* should be taken to: Family Support Administration, Office of Grants Management, 901 D Street, SW., Washington, DC, Attn: OCS 89–1.

The first page of the SF–424 must contain *in the lower right hand corner* a designation indicating under which program priority area funds are being requested. The following Program Priority Area designations must be used:

UR—for Priority Area 1.0, Urban and Rural Community Economic Development (General)
ED—for Priority Area 1.0, Urban and Rural Community Economic Development ($2.5 million set aside)
RH—for Priority Area 2.1, Rural Housing Repairs and Rehabilitation
RF—for Priority Area 2.2, Rural Community Facilities Development
MS—for Priority Area 3.0, Migrants and Seasonal Farmworkers

3. Intergovernmental Review

The OCS Discretionary Grants Program is covered by Executive Order 12372 which provides for review of proposed Federal assistance by State and local governments.

Therefore, applicants for funds under this announcement are subject to the clearance procedures and requirements established by the State(s) in which their projects will be conducted. Consequently, applicants are reminded that clearance action through appropriate State clearinghouses must be initiated by them prior to, or simultaneous with, submittal of applications to OCS. These initial actions must be reported on the SF 424, Page 1, which is submitted to OCS. Clearance action by States need not be completed before applications are submitted to OCS. When comments become available they should be forwarded to the Family Support Administration office to which applications are submitted. (See address in item 2. above.)

4. Application Consideration

Applications which meet the screening requirements in sections 5.a. and b. below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program priority area guidelines and evaluation criteria published in this announcement.

Applications submitted under all priority areas will be reviewed by persons outside of the OCS unit which would be directly responsible for programmatic management of the grant.

The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the Director may also consider other factors deemed relevant including, but not limited to, comments of reviewers and government officials; staff evaluation and imput; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

5. Criteria for Screening Applications

a. Initial Screening

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a Standard Form (SF) 424 with Parts I, II, III, and IV completed according to instructions published in Part F of this Program Announcement.

(2) The SF–424 must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

(3) There must be an original and four copies of each application.

(4) The application is submitted for consideration under only one Priority Area.

b. Pre-rating Review

Applications which pass the initial screening will be forwarded to reviewers for analytical comment and scoring based on the criteria detailed in Section c. below and the specific requirements contained under each priority area description in Part B. Prior to the programmatic review, these reviewers and/or OCS staff will verify that the applications comply with this Program Announcement in the following areas:

(1) *Eligibility:* Applicant meets the eligibility requirements for the Priority Area under which funds are being requested.

(2) *Number of Projects:* The application contains only one project which responds to one of the priority areas in this announcement.

(3) *Target Populations:* The application clearly targets the specific outcomes and benefits of the project to low-income participants and beneficiaries.

(4) *Matching Funds:* The minimum prescribed amounts of private and/or public sector funds have been firmly committed.

(5) *Grant Amount:* The amount of funds requested does not exceed the limits indicated in Part C., Section 2. for the appropriate priority area.

(6) *Program Focus:* The application addresses the purposes described under the relevant program priority area description in Part B of this announcement.

Reviewers and/or OCS staff may recommend that an application be disqualified from the competition and returned to the applicant if it does not conform to one or more of the above requirements.

c. Evaluation Criteria

Acceptable applications will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in the announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained under each program priority area as described in Part B.

(Note: The following review criteria reiterate collection of information requirements contained in Part F of this announcement. These requirements are approved under OMB Control Number 0920–0062.)

Criteria for Review and Evaluation of Applications Submitted Under Priority Areas 1.0 (Including the Set Aside), 2.1, 2.2, and 3.0

(a) *Criterion I: Organizational Capability and Capacity (Maximum: 20 points)*

(i) *Organization Experience in Program Area (sub-rating: 0–5 points)*

Documentation provided indicates that projects previously undertaken have been relevant and effective and have provided permanent benefits to the low-income population.

Organizations which propose providing training and technical assistance have detailed competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants also addresses related achievements and competence of each cooperating or sponsoring organization. The applicant has provided information concerning the relevant experiences and

achievements of key personnel including board members, executive staff and project management staff of these organizations.

Applicable to Priority Area 1.0 Only

The applicant has demonstrated:

—The ability to implement major activities in such areas as business development, commercial development, physical development, or financial services;

—The ability to mobilize dollars from sources such as the private sector (corporations, banks, etc.), foundations, the public sector, including State and local governments, or individuals;

—That it has a sound organizational structure and proven organizational capability; and

—An ability to develop and maintain a stable program in terms of business, physical or community development activities that will provide needed permanent jobs, services, business development opportunities, and other benefits to community residents.

(ii) *Management History (sub-rating: 0–5 points)*

Applicant has a history of sound and effective management practices and where it has been a recipient of other Federal or other governmental grants, it has also detailed that it has consistently complied with financial and program progress reporting and audit requirements. The applicant's financial management system has been certified by a Certified or Licensed Public Accountant to be sufficient to protect adequately any Federal funds awarded under the application submitted.

(iii) *Staffing and Resources (sub-rating: 0–5 points)*

The application fully describes (e.g. resume) the experience and skills of the project director who is not only well qualified but his/her professional capabilities are relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description which indicates that the responsibilities to be assigned to the project director are relevant to the successful implementation of the project. The applicant has adequate facilities and physical resources to carry out successfully the work plan specified.

(iv) *Staff Responsibilities (sub-rating: 0–5 points)*

The assigned responsibilities of the staff are appropriate to the tasks identified for the project and sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

(b) Criterion II: *Significant and Beneficial Impact (Maximum: 30 points)*

The application contains a full and accurate description of the proposed use of the requested financial assistance. The proposed project will produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted. Results are quantifiable in terms of program area expectations, e.g., business or physical development accomplished, number of jobs saved/created, number of units of housing rehabilitated, etc. The OCS grant funds, in combination with private and/or other public resources, are targeted into low-income communities, distressed communities, and/or designated enterprise zones.

(c) Criterion III: *Project Implementation and Evaluation (Maximum: 30 points)*

(i) *Project Implementation Component (sub-rating: 0–25 points)*

The work plan is both sound and feasible. The project is responsive to the needs identified in the Analysis of Need. It sets forth realistic quarterly time targets by which the various work tasks will be completed. Critical issues or potential problems that might impact negatively on the project are defined and the project objectives can be attained notwithstanding any such potential problems.

For proposals submitted under Priority Area 1.0: In those cases where it is appropriate to the project/venture, there is a valid Business Plan that is complete and feasible.

(ii) *Evaluation Component (sub-rating: 0–5 points)*

The application includes a self-evaluation component. The evaluation data collection and analysis procedures are specifically oriented to assess the degree to which the stated goals and objectives are achieved. Qualitative and quantitative measures reflective of the scheduling and task delineation are used to the maximum extent possible. This component indicates the ways in which the applicant would intergrate qualitative and quantitative measures of accomplishment and specific data into its program progress reports required by OCS from all grantees.

(d) Criterion IV: *Public—Private Partnerships (Maximum: 15 points)*

In addition to the required matching funds, the application documents that the applicant will mobilize from public or private sources additional project support and assistance which will directly benefit the project.

(e) Criterion V: *Budget Appropriateness and Reasonableness (Maximum: 5 points)*

Funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project. The application includes a detailed budget breakout for each of the budget categories in Part III, Section B of the SF 424. The estimated cost to the government of the project also is reasonable in relation to the value of the anticipated results.

Part E—Contents of Application Package and Application

(Approved by the Office of Management and Budget under Control Number 0920–0062.)

1. Application Package

Each application submission must include:

a. *A signed original and four additional copies of the application.*

—Page limitations:

• *10* pages—This limitation covers the following items to be submitted under Part IV of the SF–424; Eligibility Confirmation, Analysis of Need, Project Design, Evaluation Component, Organizational Experience in Program Area, Management History, Staffing and Resources, and Staff Responsibilities.

• *20* pages—This limitation covers the Business Plan, where required.

• *20* pages—This limitation covers the SF–424, Parts I, II, and III (including attachments) and all other materials such as *relevant* portions of the Articles of Incorporation, Bylaws, resumes or position descriptions, CPA Certifications, clearinghouse comments, etc.

—The original must bear original signatures of the certifying representative of the applicant organization.

—Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on 8½ x 11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included.

—Applications should be submitted in ringbinders that will allow for easy separation and reassembly.

—While applications must be comprehensive, OCS encourages conciseness and brevity in the presentation of materials and cautions the applicant to avoid unnecessary duplication of information.

Failure to comply with the above formatting requirements may result in disqualification and return of an application.

b. *A self-addressed, stamped postcard so that acknowledgment of receipt can be returned.*

(This requirement applies even if the application is accompanied by a "return receipt requested card".) Please note the following:

—All applications will be assigned an identification number which will be noted on the acknowledgment. This number and the program priority area must be referred to in all subsequent communication with OCS concerning the application. If an acknowledgment is not received within three weeks after the deadline date, please notify FSA by telephone (202) 252–4583.

2. Contents of Applications

Eacy copy of the application must contain in the order listed each of the following:

a. A Table of Contents with page numbers noted for each major section and subsection of the proposal and each section of the appendices. Each page in the application, including those in all appendices, must be numbered consecutively.

b. A Standard Form 424 (see Attachment B.) The SF–424 should be completed in accordance with instructions found in Part F of this announcement. As completed, the SF–424 should include: Part I, Federal Assistance including justification for indicating a grant period exceeding 12 months; Part II, Project Approval Information; Part III, Budget Information—Sections A through F with attachments including a detailed budget breakdown for Section B and documentation of required matching funds (if applicable); and Part IV, Project Narrative and, for applications submitted under Priority Area 1.0, a complete Business Plan. (See Part F, Section 4.c, for detailed instructions on completing the Business Plan.)

c. Form HHS 441, Assurance of Compliance with the Department of Health and Human Services Regulation Under Title VI of the Civil Rights Act of 1964. (See Attachment C.)

d. Form HHS 641, Department of Health and Human Services Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as amended. (See Attachment D.)

Part F—Instructions for Completing Applications

(Approved by the Office of Management and Budget under Control Number 0970–0062)

The forms attached to this announcement shall be used to apply for funds for all priority areas described in this announcement.

It is suggested that you reproduce the SF 424 and type your application on the copy. If an item on the SF–424 cannot be answered or does not appear to be related or relevant to the assistance requested, write "NA" for "not applicable." Prepare your application in accordance with the following instructions.

1. *SF–424, PART I.*

Section I of Part I, SF–424

Applicants shall complete all items in Section I. If additional space is needed, insert an asterisk (*) and use the remarks section (Part I, Section IV).

Item

1. Mark "Application" when used as a grant application. (The applicant, unless otherwise advised by the State or area-wide clearinghouse shall use a copy of the SF–424 Part I as a notification of intent to apply for Federal Assistance in accordance with procedures established by these clearinghouses and Executive Order 12372. When used for this purpose, mark "Notice of Intent".)

2a. Applicant's own control number, if desired.

2b. Date Section I is prepared.

3a. All applicants shall enter the number assigned by State clearinghouses or, if delegated by State, by area-wide clearinghouse(s). Applications submitted to OCS must contain this identifier if provided by the applicable State/area-wide clearinghouse(s). If in doubt, consult your clearinghouse(s).

3b. Date applicant notified of clearinghouse(s) identifier code(s).

4a/4h. Enter legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, name and telephone number of person who can provide further information about this request.

IF THE PAYEE WILL BE OTHER THAN THE APPLICANT, ENTER IN THE REMARKS SECTION (SECTION IV OF PART I), UNDER THE HEADING "PAYEE", THE PAYEE'S NAME, DEPARTMENT OR DIVISION, COMPLETE ADDRESS AND EMPLOYER IDENTIFICATION NUMBER, AS ASSIGNED BY THE INTERNAL REVENUE SERVICE, OR THE DHHS ENTITY NUMBER, IF KNOWN.

If an individual's name and/or title is desired on the payment instrument, the name and/or title of the designated individual must be specified.

5. Enter Employer Identification Number of applicant as assigned by Internal Revenue Service. If the applicant organization has been assigned a DHHS entity number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full entity number. If applicant has other grants with DHHS and has been assigned a Payee Identification Number (PIN), enter this PIN in parenthesis ( ) beside employer identification number.

6a. Enter the Catalog of Federal Domestic Assistance number assigned to the program under which assistance is requested. The Catalog of Federal Domestic Assistance numbers for the programs under this Program Announcement is 13,793.

6b. Enter the program title from Catalog of Federal Domestic Assistance. Abbreviate, if necessary.

7. Enter a title and appropriate description of project.

8. Enter appropriate letter to designate grantee type—"City" includes town, township or other municipality. If the grantee is other than that listed, specify type on "Other" line e.g., Council of Governments. Note: Non-profit organizations must submit proof of non-profit status.

9. Enter Governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as state, county, or city. If an entire unit is affected, list it rather than sub-units.

10. Identify estimated number of persons directly benefiting from project, as described in the program narrative (SF–424, Part IV).

11. All applicants for grant funds under this Program Announcement should enter the letter "A".

12. Enter amount requested or to be contributed during the funding/budget period by each contributor. Item 12 must include all funding for the proposed project including all non-OCS funds which the applicant plans to mobilize.

NOTE: WHEN COMPLETING Item 12a, "FEDERAL" FUNDING IS TO BE TAKEN TO REFER TO THE REQUESTED OCS FUNDING ONLY. ALL OTHER FEDERAL FUNDS ARE TO BE INCLUDED IN ITEM 12e "OTHER."

Section IV of Part I (reverse side of page 1) must include a further two columns detailing item 12 (b through e) in which public funds are distinguished from private funds, and in which total mobilized funds (including 12b, 12c, 12d and 12e) are divided into separate public and private funds components by source. Where allowable the value of in-kind contributions will be included. Item definitions: 12a, amount requested from OCS; 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 INCLUDING NON-OCS FEDERAL FUNDS.

13a. The Congressional District identified by its State and number should correspond with the applicant's address under item 4 above.

13b. Enter the number of the Congressional District(s) and State(s) where most of the actual work of the project will be accomplished. If city-wide or State-wide covering several Districts, write "City-wide" or "State-wide".

14. Enter appropriate letter. Definitions are:

a. *New:* A submittal for the first time for a new project or project period.

b. *Renewal:* Not applicable to these OCS programs.

c. *Revision:* Not applicable at this time.

d. *Continuation:* Not applicable to these OCS programs.

e. *Augmentation:* Not applicable to these OCS programs.

15. Enter approximate date project is expected to begin. (Most budget periods will be for 12 months but may be as long as 24 months.)

16. Enter estimated number of months to complete project after Federal funds are available. If budget period is other than 12 months, check item 21 and provide justification for such. If the project is intended to continue beyond the OCS grant expiration date, the applicant must demonstrate in Part IV of the SF–424 that it will be able to continue project operations with other sources of funding.

17. Not applicable at this time.

18. Estimated date application will be submitted to Federal agency.

19. Indicate Federal agency to which this request is addressed, i.e. HHS/FSA, Washington, D.C., 20201.

20. Write "NA".

21. Check appropriate box as to whether Part I, Section IV of SF–424 contains remarks and/or additional "remarks" sheets are attached.

Section II of Part I SF–424

Applicants shall always complete items 22a or 22b as well as 23a and 23b. An explanation follows for each item.

22a and b. Self explanatory.

23a. Enter name and title of authorized representative of legal applicant.

23b. Self explanatory. Note: Authorized representative must personally execute this document.

Note: APPLICANT COMPLETES ONLY SECTIONS I AND II OF PART I. SECTION III IS COMPLETED BY THE FEDERAL AGENCY TO WHOM APPLICATION IS BEING MADE.

2. SF–424, PART II

Negative answers will not require an explanation unless the responsible program office requests more information at a later date. All "Yes" answers must be explained on a separate page in accordance with these instructions.

Item 1—Provide the name of the governing body establishing the priority system and the priority rating assigned to this project. If the priority rating is not available, give the approximate date that it will be obtained.

Item 2—Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval. If the clearance is not available, give the approximate date that it will be obtained.

Item 3—Furnish the name of the approving agency and the approval date. If the approval has not been received, state approximately when it will be obtained.

Item 4—Show whether the approved comprehensive plan is State, local or regional; or, if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination, and state whether this project is in conformance with the plan. If the plan is not available, explain why.

Item 5—Show the population residing or working on the Federal installation who will benefit from this project. (Federally recognized Indian reservations are not "Federal Installations".)

Item 6—Show the percentage of the project work that will be conducted on Federally-owned land or leased land. Give the name of the Federal installation and its location.

Item 7—Briefly describe the possible beneficial and/or harmful effect on the environment because of the proposed project. If an adverse environmental effect is anticipated, explain what action will be taken to minimize it.

Item 8—State the number of individuals, families, businesses, or farms this project will displace, if any.

Item 9—Show the Catalog of Federal Domestic Assistance number (13.793), the program number, the type of assistance, the status, the amount of each project where there is related previous, pending or anticipated assistance from another funding source.

Item 9 will generally be answered in the affirmative, particularly for community economic development applications. Whenever it is answered in the affirmative (i.e. whenever items 12c, 12d, or 12e of Part I have non-zero entries), Part II must be accompanied by additional documentation which identifies the source of all of the State, local and other funds listed in item 12 of Part I of the SF 424. This documentation must include assurances of the availability of these funds. Funds previously awarded for this project but yet to be expended must be evidenced by copies of applications to, and award documents or letters of commitment from, the expected source of these funds. OCS reserves the right to contact these sources regarding anticipated funding or previous assistance.

3. SF–424, PART III

IN COMPLETING THESE SECTIONS THE "FEDERAL" FUND/BUDGET ENTRIES WILL RELATE TO THE REQUESTED OCS DISCRETIONARY FUNDS ONLY, AND "NON-FEDERAL" WILL INCLUDE MOBILIZED FUNDS FROM ALL OTHER SOURCES—APPLICANT, STATE, LOCAL AND OTHER. FEDERAL FUNDS OTHER THAN REQUESTED OCS DISCRETIONARY FUNDING SHOULD BE INCLUDED IN "NON-FEDERAL" ENTRIES.

The budget forms in Part III of SF 424 are only to be used to present grant administrative costs and major budget categories. Financial data that is generated as part of a project Business Plan or other internal project cost data must be separate and should appear as part of the project Business Plan or other project implementation data.

Sections A and D of Part III must contain entries for both Federal (OCS) and non-Federal (mobilized) funds. Section B contains entries for Federal (OCS) funds only. Section C contains entries for non-Federal (mobilized) funds only. Clearly identified continuation sheets in SF–424, Part III format should be used as necessary.

Section A—Budget Summary

Lines 1–4

Col. (a): Enter on Line 1 under Column (a) "Administrative, applicant"; enter on Line 2 under Column (a) "Administrative, project"; enter on Line 3 under Column (3) "Working Capital"; enter on Line 4 under Column (a) "Fixed Assets".

Col. (b): Enter on Line 1 under Column (b) the Program Announcement Number OCS–89–1. Enter on Line 2 under Column (b) the appropriate Catalog of Federal Domestic Assistance number (13.793).

Col. (c)–(g): For new applications, leave Columns (c) and (d) blank. For each line entry, enter in Columns (e), (f), and (g) the appropriate amounts needed to support the project for the budget period.

Line 5

Enter the totals for all columns completed, (c) through (g).

Section B—Budget Categories

Columns (1)–(5): In OCS applications, it is only necessary to complete Columns (1) and (5). For the project entered in Column 1, enter the total requirements for OCS Federal funds by the Object Class Categories of this section.

Allowability of costs are governed by applicable cost principles set forth in Sub-part Q of 45 CFR Part 74.

Personnel—Line 6a: Enter the total costs of salaries and wages of applicant/grantee staff only. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits—Line 6b: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on Line 6.j. Provide a breakdown of amounts and percentages that comprise fringe benefit costs.

Travel—Line 6c: Enter total costs of out-of-town travel by employees of the project. Do not enter costs for consultant's travel or local transportation. Provide justification for requested travel costs. (See Line 6h and Section F, Line 21, for additional instructions).

Equipment—Line 6d: Enter the total costs of all non-expendable personal property to be acquired by the project. "Non-expendable personal property" means tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit. An applicant may use its own definition of non-expendable personal property, provided that such a definition would at least include all tangible personal property as defined in the preceding sentence. (See Section F, Line 21 for additional requirements).

Supplies—Line 6e: Enter the total costs of all tangible personal property (supplies) other than that included on line 6d.

Contractual—Line 6f: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and, (2) contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individual service contractors on this line. If available at the time of application, attach a list of contractors indicating the name of the organization, the purpose of the contract and the estimated dollar amount of the award. If the Name of Contractor, Scope of Work, Estimated Total are not available or have not been negotiated, include in Line h, "Other".

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must submit Sections A and B of Part III, Budget Section, completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total costs of all such agencies will be part of the amount shown on Line 6(f). Provide back-up documentation identifying name of contractor, purpose of contract and major cost elements.

Construction—Line 6g: Enter the costs of renovation or repair. Provide narrative justification and break-down of costs.

Other—Line 6h: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use, training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total Direct Charges—Line 6i: Show the total of Lines 6a through 6h.

Indirect Charges—Line 6j: Enter the total amount of indirect costs. If no indirect costs under a currently approved agreement are requested enter "none". This line should be used only when the applicant (except local governments) currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agencies. Please enclose a copy of current rate agreement. Local governments shall enter the amount of the indirect costs determined in accordance with the Federal agency's requirements. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Total—Line 6k: Enter the total amounts of Lines 6i and 6j. For all new applications the total amount shown in Column (5), Line 6k, should be the same as the amount shown in Section A, Column (e), Line 5.

Program Income—Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and that generated from matching funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement in Part IV of the SF–424.

Section C—Non-Federal Resources

Line 8–11: Enter amounts of "non-Federal" resources that will be used to support the project. ("Non-Federal" resources mean other than those OCS funds for which the applicant is applying. Therefore, matching funds from other Federal programs, such as the Job Training Partnership Act program, should be entered on these lines.) Provide a brief explanation, on a separate sheet, showing the type of contribution and whether it is in cash or in-kind. The firm commitment of these required funds must be documented and submitted with the application. Also if the applicant is proposing to use any block grant funds other than those provided under the Job Training Partnership Act or the Social Services Block Grant Program, the legality of such use must be documented and a statement made explaining how these funds can be diverted to this project while maintaining previous anti-poverty efforts. Failure to provide the required documentation may make the application ineligible for funding. *Except in unusual situations, this documentation must be in the form of letters of commitment from the organization(s)/individuals from which funds will be received.*

When the contribution is in the form of in-kind, show the basis for computation including:

(1) Numbers and types of volunteers and rates at which their services are valued;

(2) Valuation of donated space to be used in the project, including the number of square feet and the annual rental value assigned per square foot.

(3) Determination of use allowance for grantee-owned space. (Include statement whether space was purchased or constructed, totally or in part, with federal funds for items (2) and (3));

(4) Type and value of other in-kind contributions expected.

NOTE: SPECULATIVE MATCH, OR MATCH BASED ON INDEPENDENT CONTINGENCIES (SUCH AS RECEIPT OF ANOTHER GRANT) WILL NOT BE COUNTED TOWARDS THE MATCHING REQUIREMENT.

Column (a): Enter the project title.

Column (b): Enter the amount of cash and in-kind contributions to be made by the applicant.

Column (c): Enter the State contribution. If the applicant is a State agency, enter the non-Federal funds to be contributed by the State other than the applicant State agency.

Column (d): Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e): Enter the total of Columns (b), (c), and (d).

Line 12—Enter the total of each Columns (b) through (e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the budget period.

Line 15—Enter the total of amounts on Lines 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Project(s)

No entries are required for OCS grants.

Section F—Other Budget Information

Line 21—Use this space and continuation sheets as necessary to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the Federal agency. Budget items which require identification and justification shall include, but not be limited to, the following:

A. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative;

B. Any foreign travel;

C. A list of all equipment and estimated cost of each item to be purchased wholly or in part with grant funds which meet the definition of nonexpendable personal property provided on Line 6d, Section B. Need for equipment must be supported in program narrative;

D. Contractual: Major items or groups of smaller items; and

E. Other: group into major categories, all costs for consultants, local transportation, space, rental, training allowances, staff training, computer equipment, etc. Provide a complete breakdown of all costs that make up this category.

Matching funds should also be broken out in the same manner as required for Federal funds in A through E above.

Line 22—Enter the type of HHS or other Federal agency approved indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of rate agreement.

Line 23—Provide any other explanations and continuation sheets required or deemed necessary to justify or explain any SF–424, Part III entries.

4. SF–424, PART IV

Each narrative should include the following major sections:

a. Eligibility Confirmation
b. Analysis of Need
c. Project Design (Work Program)
d. Evaluation Component
e. Organizational Experience in Program Area
f. Management History
g. Staffing and Resources
h. Staff Responsibilities

Part IV of the SF–424 (Program Narrative) must address the specific concerns mentioned under the relevant priority area description in Part B. The narrative should provide information on how the application meets the evaluation criteria in Part D, Section 5.c., of this Program Announcement and should follow the format below:

a. *Eligibility Confirmation.* This section must explain how the applicant has complied with each of the basic requirements listed in Part D, 5.b. (1)–(6), i.e.: (1) That the applicant meets the eligibility requirements for the Priority Area under which funds are being requested; (2) the application contains only one project which responds to one of the priority areas in the announcement; (3) the application clearly targets the specific outcomes and benefits of the project to low-income participants and beneficiaries; (4) the minimum prescribed amounts of private and/or public sector funds have been firmly committed when such match is required; (5) the amount of funds requested does not exceed the limits indicated in Part C., Section 2. for the appropriate priority area; and (6) the application addresses the purposes described in Part B. of the announcement.

b. *Analysis of Need.* The application should include a description of the target area and population to be served as well as a discussion of the nature and extent of the problem to be solved.

c. *Project Design (Work Program).* The application must contain a detailed and specific work program that is both sound and feasible. It must set forth realistic quarterly time targets by which the various work tasks will be completed. (Because quarterly time schedules are used by OCS as a key instrument to monitor progress, failure to include these time targets may seriously reduce an applicant's point score in this criterion.) It must identify critical issues or potential problems that might impact negatively on the project and it must indicate how the project objectives will be attained notwithstanding any such potential problems.

Projects funded under this announcement must produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted. The OCS grant funds, in combination with private and/or other public resources, must be targeted into low-income communities, distressed communities, and/or designated enterprise zones. Projects must be designed to achieve the specific program priority area objectives defined in this Program Announcement.

If an applicant is proposing a project which will affect a property listed in or eligible for inclusion in the National Register of Historic Places it must identify this property in the narrative and explain how it has complied with the provisions of Section 106 of the National Historic Preservation Act of 1966 as amended. If there is any question as to whether the property is listed in or eligible for inclusion in the

National Register of Historic Places, applicant should consult with the State Historic Preservation Officer. (See Attachment E, item 12 for additional guidance.) The applicant should contact OCS early in the development of its application to OCS for instructions regarding compliance with the Act and data required to be submitted to the Department of Health and Human Services. Failure to comply with the cited Act may result in the application being ineligible for consideration for funding.

The following are specific items to be addressed for each of the priority areas:

Priority Area 1.0: Urban and Rural Community Economic Development

Following are examples of specific impact measures for this priority area: The number of new permanent direct jobs or ownership opportunities to be created for low-income residents, especially those individuals being served by public assistance programs of the area that the project is intended to serve; the number of such jobs maintained; increase in taxes paid; new technical skills development and associated career opportunities for low-income community residents; development of the community's economic and physical assets; the amount of non-Discretionary Program dollars to be mobilized and the degree of involvement by private sector individuals, corporations, and foundations in the implementation of the project.

Each application submitted under Priority Area 1.0 also must include a complete Business Plan as part of its project work plan where such a Business Plan is appropriate to the project/venture. An application that does not include a Business Plan where one is appropriate may be found to be non-responsive and the application may be disqualified and returned to the applicant.

The Business Plan is one of the major components that will be evaluated by OCS to determine the feasibility of an economic development project. Therefore, the Business Plan must be well prepared and address all the major issues noted herein.

The following guidelines show the necessary sections of a Business Plan, and what should be included in each section.

Use of these guidelines should result in a complete and professional Business Plan of not more than 20 pages which makes an orderly presentation of the facts necessary to be judged responsive to the program announcement.

Because the guidelines were written to cover a variety of possibilities, rigid adherence to them is not possible nor even desirable for all projects. For example, a plan for a service business would not require a discussion of manufacturing nor product design.

Summary Business Plan: A 1–2 page summary of the Business Plan should be a brief and accurate presentation of the highlights of the project and its opportunities and should include the following:

- *The Project:* Indicate when the company was founded, what is special or unique about it and what it intends to accomplish in this project for which funds are being requested. Also indicate what in the background of the management team makes its members particularly qualified (e.g. unique know-how) to pursue the business opportunity.
- *Market Opportunity:* Identify and briefly explain the market opportunity. This explanation should include information on the size and growth rate of the market for the business' product or service, and a statement indicating the percentage of that market that will be captured. A brief statement about industrywide trends is also useful and any indication of plans for the expansion of the initial product line should be included.
- *Financial Data:* State sales and profit goals for the three years following an OCS award. State clearly the size of the OCS grant request for investment purposes and all other funds already obtained or committed.

The format for the complete Business Plan is as follows:

1. *The Business and its industry:* This section should describe the nature and history of the business and provide some background on its industry.

A. *The Business:* (legal entity, general business category);

B. *Description and Discussion of Industry:* (Current status and prospects for the industry);

2. *Products and Services:* This section deals with the following:

A. *Description:* Describe in detail the products or services to be sold.

B. *Proprietary Position:* Describe proprietary features if any of product (patents, trade secrets).

C. *Potential:* Features of the product or service that may give it an advantage over the competition.

3. *Market Research and Evaluation:* (The purpose of this section is to present sufficient information to show that the product or service has a substantial market and can achieve sales in the face of competition.)

A. *Customers:* Who are the actual and potential purchasers for the product or service by market segment?

B. *Market Size and Trends:* What is the size of the current total market for the product or service offered?

C. *Competition:* An assessment of the strengths and weaknesses of competitive products and services.

D. *Estimated Market Share and Sales:* What it is about the product or services that will make it saleable in the face of current and potential competition.

4. *Marketing Plan:* The marketing plan should detail the product, pricing, distribution, and promotion strategies that will be used to achieve the estimated market share and sales projections. The marketing plan must describe what is to be done, how it will be done and who will do it. The plan should address the following topics—Overall Marketing Strategy, Packaging, Service and Warranty, Pricing, Distribution and Promotion.

5. *Design and Development Plans:* If the product, process or service of the proposed venture requires any design and development before it is ready to be placed on the market, the nature and extent and cost of this work should be fully discussed. The section should cover items such as Development Status and Tasks, Difficulties and Risks, Product Improvement and New Products, and Costs.

6. *Manufacturing and Operations Plan:* A manufacturing and operations plan should describe the kind of facilities, plant location, space, capital equipment and labor force (part and/or full time and wage structure) that are required to provide the company's product or service.

7. *Management Team:* (The management team is the key in starting and operating a successful business. The management team should be committed with a proper balance of technical, managerial and business skills and experience in doing what is proposed.) This section must include a description of: The key management personnel and their primary duties; compensation and/or ownership; the organizational structure, Board of Directors; management assistance and training needs; and supporting professional services.

8. *Overall Schedule:* A schedule that shows the timing and interrelationships of the major events necessary to launch the venture and realize its objectives. Prepare, as part of this section, a month-by-month schedule that shows the timing of such activities as product development, market planning, sales programs, production and operations.

Sufficient detail should be included to show the timing of the primary tasks required to accomplish an activity.

9. *Critical Risks and Assumptions:* The development of a business has risks and problems and the Business Plan should contain some explicit assumptions about them. Accordingly, identify and discuss the critical assumptions in the Business Plan and the major problems that will have to be solved to develop the venture. This should include a description of the risks and critical assumptions relating to the industry, the venture, its personnel, the product's market appeal, and the timing and financing of the venture.

10. *Community Benefits:* The proposed project must contribute to economic, community and human development within the project's target area. A section that describes and discusses the potential economic and non-economic benefits to low-income members of the community must be included as well as a description of the strategy that will be used to identify and hire individuals being served by public assistance programs.

Among the benefits that merit discussion are:

• *Economic*

—number of permanent jobs that will be generated or maintained in each of the first three years of the project;
—number and type of new permanent employment opportunities for previously unemployed or underemployed individuals;
—number of skilled jobs and the number of other higher paying permanent jobs;
—number of these jobs that will be filled by poverty-level project area residents;
—number of jobs that will be filled by individuals on public assistance;
—ownership opportunities created for poverty-level project area residents;
—purchase of goods and services from local suppliers; increases in personal, property and/or business taxes paid.

• *Human Development*

—new technical skills development and associated career opportunities for community residents;
—management development and training.

• *Community Development*

—development of community's physical assets;
—provision of needed, but currently unsupplied, services or products to community;
—improvement in the living environment.

11. *The Financial Plan:* The Financial Plan is basic to the development of a Business Plan. Its purpose is to indicate the project's potential and the timetable for financial self-sufficiency. In developing the Financial Plan, the following exhibits must be prepared for the grant year and for each of the next two years following an OCS grant period:

—a. Profit and Loss Forecasts—Quarterly for each year;
—b. Cash Flow Projections—Quarterly for each year;
—c. Pro Forma Balance Sheets—Quarterly for each year;
—d. Initial Sources of Project Funds; and
—e. Initial Uses of Project Funds; and
—e. Any Future Capital Requirements and Sources.

Priority Area, 2.1, Assistance in Rural Housing Repairs and Rehabilitation

Each applicant must include a full discussion of the project including the following information:

—*Basic Housing Data for Targeted Area.* Information on the status of housing in the targeted area, including but not limited to vacancy rates, housing deficiencies, characteristics of housing units to be repaired, new construction inventory, property values, rents and mortgage rates. (While specific census data may be included, this information must be project specific.)
—*Priorities.* Provide a rationale for the strategies and priorities for which OCS support is requested.
—*Participant Application Process.* A description of the participant application process including: (a) verification of participant need and income eligibility, (b) proposed diagnostic repair forms and contract bid procedures (where applicable), and (c) completion verification and quality workmanship assurance procedures.
—*Types of Work to be Performed.* The quantitative and qualitative measures in the work plan should reflect the types of work to be performed, e.g. (a) technical assistance and training for each proposed organization/community; and/or (b) repairs or rehabilitation or construction work, noting which types of work will be done in order to bring properties up to minimum housing standards, inspection procedures and construction schedules. Applications proposing to repair or rehabilitate low-income rental housing (see Part B., Priority Area 2.1, regarding restrictions) must state the current rents for the units in question as well as what rents will be charged for the rehabilitated units.
—*Job Creation.* Data regarding the number of direct jobs that will be created in the proposed project, noting the number of low-income residents that will be trained and/or placed in these jobs.
—*Public-Private Partnership.* A description of the degree of involvement by private sector individuals, corporations, and foundations in the implementation of the project and the amount of dollars which will be mobilized. (These data should cover only those personal and dollar resources which are mobilized *in addition* to those required to meet the match.

Following are examples of specific impact measures for this priority area: The types of training and technical assistance proposed including specific outcomes of such assistance, e.g. number of organizations and individuals trained, the proposed number of on-site days or training days provided, sample curricula; the number of sub-standard housing units to be repaired and/or rehabilitated, noting by number those which will be occupied by a low-income owner and/or those which will be rental units; the number of low-income residents who will be helped to purchase or acquire adequate housing; the number of low-income people to be employed in such projects; the number of units to be converted or newly constructed; total non-Discretionary Program dollars mobilized; justifications for selecting target communities that are based on the housing needs of low-income local residents and which show the types and amounts of assistance that have been provided in the communities in previous years; documentation, in cases of new construction, that there is insufficient existing housing stock that can be economically rehabilitated; and evidence that rehabilitation projects are not duplicative of programs which can be funded through other existing Federal programs.

Priority Area 2.2, Rural Community Facilities Development (Water and Waste Water Treatment Systems Development)

Each applicant must include a full discussion of how the proposed use of funds will result in preservation of the quality of water and waste water treatment systems for the rural poor and tangible improvements and other benefits such as:

—dissemination of information on water and waste water programs serving rural communities;

—increased local expertise and capability in water and waste water development and engineering services;
—assistance to rural communities in developing the capability to operate and manage water and waste water facilities; and
—better coordination of Federal, State and local water and waste water program financing and development to assure improved service to rural communities.

Following are examples of specific impact measures for this priority area: The number of rural communitites to be provided with technical and advisory services; the number of rural poor individuals who are expected to be directly served by applicant-supported improved water and waste water systems; the decrease in the number of inadequate water systems related to applicant activity; the number of newly-established and applicant-supported treatment systems (all of the above may be expressed in terms of equivalent connections); the increase in local capacity in engineering and other areas of expertise; and the amount of non-Discretionary Program dollars expected to be mobilized which are *in addition* to those mobilized for match purposes.

Applicants who define measurable benefits in terms of equivalent connection units (ECUs) should indicate the number of connection units to be completed during the grant program year.

Priority Area 3.0 Assistance to Migrants and Seasonal Farmworkers

Each applicant must include a full discussion of the proposed project and how it will address one or more farmworker needs as described in Part B.

Following are examples of specific impact measures for this priority area: The number of farmworkers who are expected to improve their agricultural skills and thus improve their agricultural employment situation; the number of farmworkers/families who will receive crisis nutritional relief, emergency health and social services referrals and assistance, and assistance in the development of self-help systems of food production; the number of farmworkers who are expected to gain longer term or permanent private sector employment in areas outside agriculture; the number of farmworkers who will receive help in the areas of housing; the number of housing units to be repaired or rehabilitated; the degree and kind of such help; the amount of non-Discretionary Program dollars expected to be mobilized which are *in addition* to those mobilized to meet the match requirement; and the degree of private sector involvement that will be utilized in developing and carrying out projects funded under this announcement.

d. Evaluation Component

All proposals should include a self-evaluation component. The evaluation data collection and analysis procedures should be specifically oriented to assess the degree to which the stated goals and objectives are achieved. Qualitative and quantitative measures reflective of the scheduling and task delineation should be used to the maximum extent possible. This component should indicate the ways in which the potential grantee would integrate qualitative and quantitative measures of accomplishment and specific data into its program progress reports that are required by OCS from all grantees.

e. Organizational Experience in Program Area

Each applicant must document competence in the specific program priority area under which an application is submitted.

Documentation must be provided which addresses the relevance and effectiveness of projects previously undertaken in the specific priority area for which funds are being requested and especially their cost effectiveness, the relevance and effectiveness of any services provided, and the permanent benefits provided to the low-income population. Applicants with a history of less than two years of prior achievement in the program area should so identify themselves. They must also indicate those activities that they have carried out in the area in question and the reasons why they feel that they can successfully implement the project for which they are requesting funding. Organizations which propose providing training and technical assistance must detail their competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants must also address related achievements and competence of each cooperating or sponsoring organization. Applicants should also provide information concerning the relevant experiences and achievements of key personnel including board members, executive staff and project management staff of such organizations.

Applicable to Priority Area 1.0 only

Applicants for funds under Priority Area 1.0 must *also* follow the special instructions below:

Any applicant applying under this priority area must document previous involvement in substantial economic development activities and a record of successful project implementation which justifies a high degree of confidence that the proposed project will succeed. Therefore, applicants in this priority area must document a firmly established and quantifiable performance record that shows the following:

—the ability to implement major activities such as business development, commercial development, physical development, or financial services;
—the ability to mobilize dollars from sources such as the private sector (corporations, banks, etc.), foundations, the public sector, including State and local governments, or individuals;
—successful working relationships within the community including public officials, financial institutions, corporations, other community organizations and residents;
—a sound asset base and organizations structure in terms of (a) net worth, (b) management stability, and (c) organizational capability;
—an ability to develop and maintain a stable program in terms of business, physical or community development activities that will provide needed permanent jobs, services, business development opportunities, and other benefits to community residents, and impact on community-wide economic problems and needs;
—sound administrative and fiscal systems and controls; and the ability to establish and maintain partnerships with the private sector in such forms as financial support, volunteerism, or executives on loan.

f. *Management History*

Applicants must detail a history of sound and effective management practices and if they have been recipients of other Federal or other governmental grants, they must also detail that they have consistently complied with financial and program progress reporting and audit requirements. Articles of Incorporation, By-Laws, a description of the Governing Board and representational structure (where applicable) are to be included along with a certification by a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted.

g. *Staffing and resources.* The application must fully describe (e.g. a

resume or position description) the experience and skills of the proposed project director showing that the individual is not only well qualified but that his/her professional capabilities are relevant to the successful implementation of the project.

h. *Staff responsibilities.* The application must include statements regarding who will have the responsibilities of the chief executive officer, who will be responsible for grant coordination with OCS, and how the assigned responsibilities of the staff are appropriate to the tasks identified for the project. It must show clearly that sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

Part G—Post-Award Requirements

The official award document is the Notice of Grant Award which sets forth in writing to the recipient the amount of funds awarded, the purpose of the award, other terms and conditions of the award, the effective date of the award, the budget period for which support is given, the total project period for which support is contemplated and the total recipient financial participation required.

In addition to the General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, grantees will be subject to the provisions of Office of Management and Budget Circulars A–102 or A–110 and A–122 the last of which, amongst other provisions, prohibits the use of grant funds for (a) electioneering activities at the Federal, State or local level and (b) attempts to influence Federal or State legislation through either grassroots lobbying or direct contacts with Federal or State legislators or their staffs.

Grantees will be required to submit semi-annual progress and financial reports as well as an audit of the project costs. (Costs associated with the completion and submission of the required grant audit may be chargeable to the grant and will not be considered as part of the up to 10% of the grant that is allowable for administrative costs.)

Grantees who will be charging administrative costs to the OCS grant will have to assure that such costs are identifiable in their records in order that auditors and OCS personnel can verify that the 10% administrative cost limitation is not exceeded.

Mary M. Evert,

Director, Office of Community Services.

July 1, 1988.

Attachment A—*1988* Poverty Income Guidelines

Attachment B—SF–424, Federal Assistance

Attachment C—Assurance of Compliance with DHHS Regulation under Title VI of the Civil Rights Act of 1964

Attachment D—Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as amended

Attachment E—Assurances (General)

BILLING CODE 4150-04-M

ATTACHMENT A

1988 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of Family Unit	Poverty Guideline
1	$5,770
2	7,730
3	9,690
4	11,650
5	13,610
6	15,570
7	17,530
8	19,490

For family units with more than 8 members, add $1,960 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of Family Unit	Poverty Guideline
1	$7,210
2	9,660
3	12,110
4	14,560
5	17,010
6	19,460
7	21,910
8	24,360

For family units with more than 8 members, add $2,450 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of Family Unit	Poverty Guideline
1	$6,650
2	8,900
3	11,150
4	13,400
5	15,650
6	17,900
7	20,150
8	22,400

For family units with more than 8 members, add $2,250 for each additional member.

ATTACHMENT B

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

NSN 7540-01-008-8162
PREVIOUS EDITION IS NOT USABLE

424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

SECTION IV–REMARKS *(Please reference the proper item number from Sections I, II or III, if applicable)*

OMB NO. 0348-0006

PART II
PROJECT APPROVAL INFORMATION

Item 1
Does this assistance request require State, local regional, or other priority rating?
_____ Yes _____ No
Name of Governing Body _____
Priority Rating _____

Item 2
Does this assistance request require State, or local advisory, educational or health clearances?
_____ Yes _____ No
Name of Agency or Board _____
(Attach Documentation)

Item 3
Does this assistance request require State, local, regional or other planning approval?
_____ Yes _____ No
Name of Approving Agency _____
Date _____

Item 4
Is the proposed project covered by an approved comprehensive plan?
_____ Yes _____ No
Check one State ☐ Local ☐ Regional ☐
Location of Plan _____

Item 5
Will the assistance requested serve a Federal installation?
_____ Yes _____ No
Name of Federal Installation _____
Federal Population benefiting from Project _____

Item 6
Will the assistance requested be on Federal land or installation?
_____ Yes _____ No
Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 7
Will the assistance requested have an impact or effect on the environment
_____ Yes _____ No
See instructions for additional information to be provided.

Item 8
Will the assistance requested cause the displacement of individuals, families, businesses, or farms?
_____ Yes _____ No
Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 9
Is there other related assistance on this project previous, pending, or anticipated
_____ Yes _____ No
See instructions for additional information to be provided.

OMB NO. 0348-0006

PART III - BUDGET INFORMATION

SECTION A - BUDGET SUMMARY

Grant Program, Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	- Grant Program, Function or Activity				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges					
j. Indirect Charges					
k. TOTALS	$	$	$	$	$
7. Program Income	$	$	$	$	$

OMB NO 0348-0006

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) APPLICANT	(c) STATE	(d) OTHER SOURCES	(e) TOTALS
8.	$	$	$	$
9				
10				
11				
12 TOTALS	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13 Federal	$	$	$	$	$
14 Non-Federal					
15 TOTAL	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (YEARS)			
	(b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16	$	$	$	$
17				
18				
19				
20 TOTALS	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach Additional Sheets if Necessary)

21 Direct Charges

22 Indirect Charges

23 Remarks

PART IV PROGRAM NARRATIVE (Attach per instruction)

ATTACHMENT C

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES REGULATION UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

_____ (hereinafter called the "Applicant")
Name of Applicant (type or print)

HEREBY AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 80) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, 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 program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this Assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this Assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this Assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance, and that the United States shall have the right to seek judicial enforcement of this Assurance. This Assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the Applicant.

Date _____ _____
Applicant (type or print)

By _____
Signature and Title of Authorized Official

_____

_____
Applicant's mailing address

NOTE: If this form is not returned with the application for financial assistance, return it to DHHS, Office for Civil Rights, 330 Independence Ave., S.W., Washington, D.C. 20201

ATTACHMENT D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

The undersigned (hereinafter called the "recipient") HEREBY AGREES THAT it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto.

Pursuant to §84.5(a) of the regulation [45 C.F.R. 84.5(a)], the recipient gives this Assurance in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (except procurement contracts and contracts of insurance or guaranty), property, discounts, or other Federal financial assistance extended by the Department of Health and Human Services after the date of this Assurance, including payments or other assistance made after such date on applications for Federal financial assistance that were approved before such date. The recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance and that the United States will have the right to enforce this Assurance through lawful means. This Assurance is binding on the recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the recipient.

This Assurance obligates the recipient for the period during which Federal financial assistance is extended to it by the Department of Health and Human Services or, where the assistance is in the form of real or personal property, for the period provided for in §84.5(b) of the regulation [45 C.F.R. 84.5(b)].

The recipient: [Check (a) or (b)]

a. ( ) employs fewer than fifteen persons;

b. ( ) employs fifteen or more persons and, pursuant to §84.7(a) of the regulation [45 C.F.R. 84.7(a)], has designated the following person(s) to coordinate its efforts to comply with the HHS regulations:

_____
Name of Designee(s) (Type or Print)

_____ _____
Name of Recipient (Type or Print) Street Address or P.O. Box

_____ _____
(IRS) Employer Identification Number City

_____
State Zip

I certify that the above information is complete and correct to the best of my knowledge.

_____ _____
Date Signature and Title of Authorized Official

If there has been a change in name or ownership within the last year, please PRINT the former name below:

NOTE: If this form is not returned with the application for financial assistance, return it to DHHS, Office for Civil Rights, 330 Independence Avenue, S.W., Washington, D.C. 20201.

ATTACHMENT E

PART V

ASSURANCES

The Applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements, including 45 CFR Part 74 and OMB Circulars No. A-102, A-110 and applicable cost principles, (Circulars: A-21, "Educational Institutions"; A-87, "Cost Principles for State and Local Governments"; and A-122, "Nonprofit Organizations"), as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the applicant 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 program 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 requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P L 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.

5 It will comply with the provisions of the Hatch Act which limit the political activity of State and local government employees.

6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201) as they apply to employees of institutions of higher education, hospitals, other nonprofit organizations, and to employees of State and local governments who are not employed in integral operations in areas of traditional governmental functions.

   Head Start, Certification of Minimum Wage: It certifies that it has reviewed the salary structures and wages for all positions and certifies that persons employed in carrying out this program shall not receive compensation at a rate which is (a) in excess of the average rate of compensation paid in the area to persons providing substantially comparable services; or (b) less than the minimum wage rate prescribed in section 6(a) of the Fair Labor Standards Act of 1938. Documentation of the methods by which it established wage scales is available in their files for review by audit and HDS personnel.

7. 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.

8. It will give the sponsoring 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, including the records of contractors and subcontractors performing under the grant.

9. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

10. 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.

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

11. 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, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use 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.

12. 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 800.8) by the grantee's 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.

13. Applicants for the Administration for Native Americans Programs, hereby certify in accordance with 45 CFR 1336.53, that the financial assistance provided by the Office of Human Development Services for the specified activities to be performed under this program, will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

14. It will comply with the Age Discrimination Act of 1975 enacted as an amendment to the Older Americans Act (Pub. L. 94-135), which provides that: No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity for which the applicant receives Federal financial assistance.

15. It will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance.

16. It will comply with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.) which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by an educational institution).

17. It will comply with Pub. L. 93-348 as implemented by Part 46 of Title 45 (45 CFR 46, 42 U.S.C. 2891) regarding the protection of human subjects involved in research, development, and related activities supported by the grant.

18. It will comply with the equal opportunity clause prescribed by Executive Order 11246, as amended, and will require that its subrecipients include the clause in all construction contracts and subcontracts which have or are expected to have an aggregate value within a 12-month period exceeding $10,000, in accordance with Department of Labor regulations at 41 CFR Part 60.

19. It will include, and will require that its subrecipients include, the provision set forth in 29 CFR 5.5(c) pertaining to overtime and unpaid wages in any nonexempt nonconstruction contract which involves the employment of mechanics and laborers (including watchmen, guards, apprentices, and trainees) if the contract exceeds $2,500.

[FR Doc. 88-15221 Filed 7-7-88; 8:45 am]
BILLING CODE 4150-04-C

Federal Register

Friday
July 8, 1988

Part IV

Department of Health and Human Services

Office of Community Services, Family Support Administration

Request for Applications Under the Office of Community Services' Fiscal Year 1989 Community Food and Nutrition Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Program Announcement No. OCS-89-2]

Request for Applications Under the Office of Community Services' Fiscal Year 1989 Community Food and Nutrition Program

AGENCY: Office of Community Services, Family Support Administration, Department of Health and Human Services.

ACTION: Request for applications under the Office of Community Services' Community Food and Nutrition Program.

SUMMARY: The Office of Community Services (OCS) announces that, based on the availability of funds, competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under Section 681A of the Community Services Block Grant Act of 1981. This Program Announcement consists of seven parts. Part A covers information on the legislative authority and defines terms used in the Program Announcement. Part B describes the types of activities that will be considered for funding and who is eligible to apply. Part C provides details on application prerequisites such as administrative costs and program beneficiaries. Part D provides information on application procedures including the availability of forms, where to submit an application, criteria for initial screening of applications, and project evaluation criteria. Part E provides guidance on the content of an application package and the application itself. Part F provides instructions for completing an application. Part G details post-award requirements.

Closing Dates: The closing date for submission of applications is August 29, 1988.

FOR FURTHER INFORMATION CONTACT:

Prior to July 28, 1988 contact: Office of Community Services, Office of State and Project Assistance, 330 C Street SW., Room 2054, Washington, DC 20201. You may also call (202) 475–0342.

After July 28, 1988 contact: Office of Community Services, Office of State and Project Assistance, 370 L'Enfant Promenade SW., Washington, DC 20447. You may also call (202) 252–5252.

Part A—Preamble

1. Legislative Authority

The Community Services Block Grant Act as amended authorizes the Secretary of Health and Human Services to make funds available under several programs to support program activities which will result in direct benefits targeted to low-income people. This Program Announcement covers the grant authority found at Section 681A, Community Food and Nutrition, which authorizes the Secretary to make funds available for grants to be awarded on a competitive basis to eligible entities for local and statewide programs (1) to coordinate existing private and public food assistance resources, whenever such coordination is determined to be inadequate, to better serve low-income populations; (2) to assist low-income communities to identify potential sponsors of child nutrition programs and to initiate new programs in underserved or unserved areas; and (3) to develop innovative approaches at the State and local levels to meet the nutrition needs of low-income people.

2. Definitions of Terms

For purposes of this Program Announcement the following definitions apply:

—*Displaced worker:* An individual who is in the labor market but has been unemployed for six months or longer.

—*Distressed community:* A geographic urban neighborhood or rural community of high unemployment and pervasive poverty.

—*Indian tribe:* A tribe, band, or other organized group of Indians recognized in the State in which it resides or considered by the Secretary of the Interior to be an Indian tribe or an Indian organization for any purpose.

—*Innovative project:* One that departs from or significantly modifies past program practices and tests a new approach.

—*Migrant farmworker:* An individual who works in agricultural employment of a seasonal or other temporary nature who is required to be absent from his/her place of permanent residence in order to secure such employment.

—*Seasonal farmworker:* Any individual employed in agricultural work of a seasonal or other temporary nature who is able to remain at his/her place of permanent residence while employed.

—*Underserved area* (as it pertains to child nutrition programs): A locality in which less than one-half of the low-income children eligible for assistance participate in any child nutrition program.

Part B—Purpose

All projects proposed under this program must meet the following basic criteria:

(a) They are designed and intended to provide nutrition benefits, including those which incorporate the benefits of disease prevention, to a targeted low-income group of people;

(b) they provide outreach or public education designed to inform low-income individuals and displaced workers of the services available to them under the various Federally-assisted nutrition programs; and

(c) they focus on one or more of the legislatively-mandated program activities, i.e. (1) coordination of existing private and public food assistance resources, whenever such coordination is determined to be inadequate, to better serve low-income populations; (2) assistance to low-income communities in identifying potential sponsors of child nutrition programs and initiating new programs in underserved (see Part A, Definition of Terms) or unserved areas; and (3) developing innovative approaches at the State and local levels to meet the nutrition needs of low-income people.

OCS also is interested in, and encourages, innovative projects which meet the nutritional needs of the elderly.

Rating preference will be accorded to applicants whose proposals build on existing outreach activity and mobilize or leverage additional resources which increase the potential impact of the program. In addition, preference will be given to projects addressing problems that can be met by one-time OCS funding or which can be continued without future Federal funding.

Any proposal submitted by an applicant requesting funding for the continuation of a project for which it received OCS funds in FY 1988, or for implementation of a project similar to one for which it received OCS funds in FY 1988, will not be eligible for funding in FY 1989.

Submissions which propose the use of grant funds for the development of any printed or visual materials must contain convincing evidence that these materials are not available from other sources. OCS will not provide funding for such items if justification is not sufficient. Any films or visual presentations approved for development under the grant must be submitted to the Office of Community Services for clearance by the Department of Health and Human Services prior to dissemination.

In recognition of the special needs of Indian tribes and migrants and seasonal farmworkers, a $150,000 set-aside will be established to afford priority consideration to proposals submitted by such entities. Applications which are not funded within this limited set-aside will also be considered competitively within the larger pool of eligible applicants.

See Part F, Section 4, for special instructions on developing a work program.

Eligible applicants are States and local public and private non-profit agencies/organizations with a demonstrated ability to successfully develop and implement programs and activities similar to those enumerated above. In addition, applicants for the $150,000 set-aside must be Indian tribes or migrant and seasonal farmworker organizations.

Part C—Application Prerequisites

1. Eligible Applicants

Eligible applicants are identified in Part B., above.

2. Available Funds

a. *FY 89 Funding*

OCS is spreading its administrative review process more evenly across the fiscal year. In order to accomplish this, OCS is publishing this Program Announcement prior to the Congress completing its deliberations on appropriations for this program for FY 89. Grants will only be made based on the availability of funds. The amount of funds available and the expected number of grants that will be made when, and if, such funds become available is not known at the present time.

b. *Grant Amounts*

No individual grant request will be considered for an amount which is in excess of $50,000 in OCS funds.

c. *Matching Funds*

An applicant is required to obtain commitment of at least one public or private sector dollar for each OCS dollar awarded. This commitment will serve as one of the examples that the project has the potential to survive upon completion of the OCS grant.

Matching funds must be definitely committed or contingent only on receipt of the OCS grant. Speculative match, or match based on independent contingencies (such as receipt of another grant or lines of credit at the current market rate set aside by banks for program participants), will not be counted towards the matching requirement.

Matching funds may be in the form of cash or in-kind fairly converted into their dollar equivalent. Some examples are grants from States, counties, municipalities; contributions from private individuals or organizations; correlated training programs; foundation support; and/or private and charitable contributions. OCS will accept as a match Federal monies from State administered block grants with compatible purposes when those programs do not prohibit their use as matching funds. Examples of block grant programs which do not have such a prohibition include the Job Training Partnership Act and the Social Services Block Grant.

Funds that are eligible to be counted as "matching" funds must be committed for specific project activities within the OCS-approved project and used only for project purposes during the duration of the OCS grant.

A grantee may not claim as matching funds wages earned as a result of training or skill improvements funded by the OCS grant.

Funds expended or obligated prior to the approved OCS starting date for a grant cannot be considered as matching funds although currently-owned assets which will be used in the OCS project may be applied against the matching requirement.

While the matching requirement outlined in this section must be met for an application to be eligible for consideration, applicants generating support either greater than that required and/or from private sector sources, may be eligible for additional points to be awarded by the reviewers. Except in unusual circumstances, documentation of any commitment of matching funds must be in the form of letters of commitment from the organizations/individuals from which funds will be received and the commitment must be valid at least through the grant period.

3. Grant Duration

For most projects OCS will grant funds for one year. However, depending on the characteristics of any individual project and the justification presented by the applicant in its proposal, a grant may be made for a longer period of time, i.e. up to two years.

4. Maintenance of Effort

The activities funded under this Program Announcement must be in addition to, and not in substitution for, activities previously carried on without Federal assistance.

5. Administrative Costs/Indirect Costs

There is no administrative cost limitation for projects funded under this program. However, applicants who do not propose to charge any administrative costs to the OCS grant will receive rating preference.

Administrative costs are defined as costs that are necessary to protect, monitor, properly account for, and apply to the approved project those Federal funds awarded. Costs associated with the internal operational management of the approved project are not considered to be administrative costs nor are costs for conducting the final audit.

In all cases where an applicant has negotiated and claims a current indirect cost rate approved by the Department of Health and Human Services, the Defense Contracting Agency, or some other Federal agency, this rate ordinarily will be recognized by OCS and applied to any OCS grant award. However, it is understood that both administrative and indirect costs are part of, and not in addition to, the amount of funds awarded in the subject grant.

6. Program Beneficiaries

Projects proposed for funding under this announcement must result in direct benefits targeted toward low-income people as defined in the most recent Annual Update of Poverty Income Guidelines published by DHHS.

Attachment A to this announcement is an excerpt from the most recently-published guidelines. Annual revisions of these guidelines are normally published in February or early March of each year and are applicable to projects being implemented at the time of publication. (These revised guidelines may be obtained through the U.S. Government Printing Office at the following address: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.)

No other government agency or privately defined poverty guidelines are applicable for the determination of low-income eligibility for these OCS programs with the following exception: In the case of projects proposed for funding which mobilize or improve the coordination of existing public and private food assistance resources, the guidelines governing those resources apply. However, in the case of projects providing direct assistance to beneficiaries through grants funded under this Program, beneficiaries must fall within the official DHHS poverty income guidelines.

7. Number of Projects in Application

An application may contain only one project and this project must address the basic criteria found in Part B. Applications which are not in compliance with these requirements will be ineligible for funding.

8. Multiple Submittals

There is no limit to the number of applications that can be submitted under a specific program priority area as

long as each application contains a proposal for a different project.

9. Sub-Contracting or Delegating Projects

OCS does not anticipate funding any project where the role of the eligible applicant is *primarily* to serve as a conduit for funds to organizations other than the applicant.

Part D—Application Procedures

1. Availability of Forms

Applications for awards under this OCS program must be submitted on Standard Form (SF) 424, Part F and Appendix B to this Program Announcement contain all the instructions and forms required for submittal of applications. The forms may be reproduced for use in submitting applications. Copies of this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources they may be obtained by writing or telephoning the office listed in the section entitled "For Further Information" at the beginning of this Announcement.

2. Application Submission

The date by which applications must be received is August 29, 1988.

An application will be considered to be received on time under either one of the following two circumstances:

a. The application was sent via the U.S. Postal Service or by private commercial carrier and postmarked or dated by the carrier not later than midnight of the closing date unless it arrives too late to be considered by the reviewers. (Applicants are responsible for assuring that the U.S. Postal Service or private commercial carrier dates the application package. Applicants should be aware that not all post offices or private commercial carriers provide a dated postmark unless specifically instructed to do so.)

b. The application is hand delivered on or before the closing date to the Office of Grants Management, FSA, at the address indicated below. Hand delivered applications will be accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, (excluding Federal legal holidays) up through the closing date. In establishing the date of receipt of hand-delivered applications, reliance will be placed on documentary evidence of receipt maintained by FSA.

Late applications will be returned to the senders without consideration in the competition.

Applications once submitted are considered final and no additional materials will be accepted by OCS.

An application with an original signature and four copies is required. Applications, if *mailed*, should be addressed to: Family Support Administration, Office of Grants Management, 6th Floor Mail Management Operations, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OCS–89–2.

Applications, if *hand delivered*, should be taken to: Family Support Administration, Office of Grants Management, 901 D Street, SW., Washington, DC, Attn: OCS 89–2.

The first page of the SF–424 must contain *in the lower right hand corner* one of the following designations:

CFN—for general grants.

SA—for projects where migrant and seasonal farmworker organizations and Indian tribes are applying specifically for *set-aside* funds described in Part B.

3. Intergovernmental Review

This Program is covered by Executive Order 12372 which provides for review of proposed Federal assistance by State and local governments.

Therefore, applicants for funds under this announcement are subject to the clearance procedures and requirements established by the State(s) in which their projects will be conducted. Consequently, applicants are reminded that clearance action through appropriate State clearinghouses must be initiated by them prior to, or simultaneous with, submittal of applications to OCS. These initial actions must be reported on the SF 424, Page 1, which is submitted to OCS. Clearance action by States need not be completed before applications are submitted to OCS. When comments become available they should be forwarded to the Family Support Administration office to which applications are submitted. (See address in item 2. above.)

4. Application Consideration

Applications which meet the screening requirements in Section 5.a. below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program guidelines and evaluation criteria published in this announcement.

Applications will be reviewed by persons outside of the OCS unit which would be directly responsible for programmatic management of the grant.

The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will generally be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the Director may also consider other factors deemed relevant including, but not limited to, comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

5. Criteria for Screening Applications

a. *Initial Screening*

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirement will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a Standard Form (SF) 424 with Parts I, II, III, and IV completed according to instructions published in Part F of this Program Announcement.

(2) The SF–424 must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

(3) There must be an original and four copies of each application.

b. *Pre-rating Review*

Applications which pass the initial screening will be forwarded to reviewers for analytical comment and scoring based on the criteria detailed in Section c. below and the specific requirements contained in Part B. Prior to the programmatic review, these reviewers and/or OCS staff will verify that the applications comply with this Program Announcement in the following areas:

(1) *Eligibility:* Applicant meets the eligibility requirements found in Part B.

(2) *Number of Projects:* The application contains only one project.

(3) *Target Populations:* The application clearly targets the specific outcomes and benefits of the project to low-income participants and beneficiaries.

(4) *Grant Amount:* The amount of funds requested does not exceed $50,000 in OCS funds.

(5) *Program Focus:* The application addresses the purposes described in Part B of this announcement.

(6) *Continuation or Duplication of Projects:* The applicant does not propose the continuation of a project funded by OCS in FY 1988 nor does the applicant propose undertaking a project similar to one for which it received funds in FY 1988.

(7) *Matching Funds:* The minimum prescribed amounts of private and/or public sector funds have been firmly committed.

Reviewers and/or OCS staff may recommend that an application be disqualified from the competition and returned to the applicant if it does not conform to one or more of the above requirements.

c. *Evaluation Criteria*

Acceptable applications will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in this announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained in Part B.

(Note: The following review criteria reiterate collection of information requirements contained in Part F of this announcement. These requirements are approved under OMB Control Number 0970–0062.)

CRITERIA FOR REVIEW AND EVALUATION OF APPLICATIONS SUBMITTED UNDER THIS PROGRAM ANNOUNCEMENT

(1) *Criterion I: Analysis of Needs/ Priorities (Maximum: 20 points).*

(a) Target area and population to be served are adequately described (0–5 points).

(b) Nature and extent of problem are adequately described and documented (0–15 points).

(2) *Criterion II: Adequacy of Work Program (Maximum: 20 points).*

(a) Goals are appropriately related to needs and are specific and measurable (0–10 points).

(b) Activities are adequately described and appropriately related to goals (0–10 points).

(3) *Criterion III: Significant and Beneficial Impact (Maximum: 25 points).*

(a) Applicant proposes to significantly improve or increase nutrition services to low-income people (0–8 points).

(b) Project incorporates disease prevention activities along with nutritional services (0–2 points).

(c) Project will significantly leverage or mobilize other community resources (0–5 points).

(d) Project builds on an existing outreach activity (0–5 points).

(e) Proposal addresses a problem which can be resolved by one-time OCS funding or demonstrates that non-Federal funding is available to continue the project without Federal support (0–5 points).

(4) *Criterion IV: Coordination (Maximum 10 points)*

Other appropriate organizations will be involved in project implementation so as to avoid duplication and to achieve an improved delivery system (0–10 points).

(5) *Criterion V: Ability of Applicant to Perform (Maximum: 18 points)*

(a) A written self-assessment or third party evaluation of past nutrition-related activities undertaken by applicant indicates good ability to operate proposed project (0–10 points).

(b) Quality of staff is such that applicant will be able to operate the project effectively and efficiently (0–8 points).

(6) *Criterion VI: Adequacy of Budget (Maximum: 7 points)*

(a) Budget is adequate and administrative costs are appropriate in relation to the services proposed (0–3 points).

(b) Administrative costs are fully assumed by applicant (0–4 points).

Part E—Contents of Application Package and Application

(Approved by the Office of Management and Budget under Control Number 0920–0062.)

1. Application Package

Each application submission must include:

a. *A signed original and four additional copies of the application.*

Please note the following:

—*Page limitations:*

• *10* pages—This limitation covers the following items to be submitted under Part IV of the SF–424: Eligibility Confirmation, Analysis of Need, Project Design, Evaluation Component, Organizational Experience in Program Area, Management History, Staffing and Resources, and Staff Responsibilities.

• *20* pages—This limitation covers the SF–424, Parts I, II, and III (including attachments) and all other materials such as *relevant* portions of the Articles of Incorporation, Bylaws, resumes or position descriptions, CPA Certifications, clearinghouse comments, etc.

—The original must bear original signatures of the certifying representative of the applicant organization.

—Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on 8½×11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included.

—Applications should be submitted in ringbinders that will allow for easy separation and reassembly.

—While applications must be comprehensive, OCS encourages conciseness and brevity in the presentation of materials and cautions the applicant to avoid unnecessary duplication of information.

Failure to comply with the above formatting requirements may result in disqualification and return of an application.

b. *A self-addressed, stamped postcard so that acknowledgment of receipt can be returned.* (This requirement applies even if the application is accompanied by a "return receipt requested card".) Please note the following:

—All applications will be assigned an identification number which will be noted on the acknowledgment. This number and the program priority area must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgment is not received within three weeks after the deadline date, please notify FSA by telephone (202) 252–4583.

2. *Contents of Applications*

Each copy of the application must contain in the order listed each of the following:

a. A Table of Contents with page numbers noted for each major section and subsection of the proposal and each section of the appendices. Each page in the application, including those in all

appendices, must be numbered consecutively.

b. An Executive Summary.

c. A Standard Form 424. (See Attachment B.) The SF–424 should be completed in accordance with instructions found in Part F of this announcement. As completed, the SF–424 should include: Part I, Federal Assistance including justification for indicating a grant period exceeding 12 months; Part II, Project Approval Information; Part III, Budget Information—Sections A through F with attachments including a detailed budget breakdown for Section B; and Part IV, Project Narrative.

d. Form HHS 441, Assurance of Compliance with the Department of Health and Human Services Regulation Under Title VI of the Civil Rights Act of 1964. (See Attachment C.)

e. Form HHS 641, Department of Health and Human Service Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as amended. (See Attachment D.)

Part F—Instructions for Completing Applications

(Approved by the Office of Management and Budget under Control Number 0970–0062.)

The forms attached to this announcement shall be used to apply for funds under this announcement.

It is suggested that you reproduce the SF–424 and type your application on the copy. If an item on the SF–424 cannot be answered or does not appear to be related or relevant to the assistance requested, write "NA" for "not applicable." Prepare your application in accordance with the following instructions.

1. *SF–424, PART I.*

Section I of Part I, SF–424

Applicants shall complete all items in Section I. If additional space is needed, insert an asterisk (*) and use the remarks section (Part I, Section IV).

Item

1. Mark "Application" when used as a grant application. (The applicant, unless otherwise advised by the State or area-wide clearinghouse shall use a copy of the SF–424 Part I as a notification of intent to apply for Federal Assistance in accodance with procedures established by these clearinghouses and Executive Order 12373. When used for this purpose, mark "Notice of intent".)

2a. Applicant's own control number, if desired.

2b. Date Section I is prepared.

3a. All applicants shall enter the number assigned by State clearinghouses or, if delegated by State, by area-wide clearinghouse(s). Applications submitted to OCS must contain this identifier if provided by the applicable State/area-wide clearinghouse(s). If in doubt, consult your clearinghouse(s).

3b. Date applicant notified of clearinghouse(s) identifier code(s).

4a/4h. Enter legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, name and telephone number of person who can provide further information about this request.

IF THE PAYEE WILL BE OTHER THAN THE APPLICANT, ENTER IN THE REMARKS SECTION (SECTION IV OF PART I), UNDER THE HEADING "PAYEE", THE PAYEE'S NAME, DEPARTMENT OR DIVISION, COMPLETE ADDRESS AND EMPLOYER IDENTIFICATION NUMBER, AS ASSIGNED BY THE INTERNAL REVENUE SERVICE, OR THE DHHS ENTITY NUMBER, IF KNOWN.

If an individual's name and/or title is desired on the payment instrument, the name and/or title of the designated individual must be specified.

5. Enter Employer Identification Number of applicant as assigned by Internal Revenue Service. If the applicant organization has been assigned a DHHS entity number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full entity number. If applicant has other grants with DHHS and has been assigned a Payee Identification Number (PIN), enter this PIN in parenthesis ( ) beside employer identification number.

6a. Enter the Catalog of Federal Domestic Assistance number assigned to the program under which assistance is requested. The Catalog of Federal Domestic Assistance number for this program is 13.795.

6b. Enter the program title from Catalog of Federal Domestic Assistance. Abbreviate, if necessary.

7. Enter a title and appropriate description of project.

8. Enter appropriate letter to designate grantee type—"City" includes town, township or other municipality. If the grantee is other than that listed, specify type on "Other" line e.g., Council of Governments.

Note: Non-profit organizations must submit proof of non-profit status.

9. Enter Governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as state, county, or city. If an entire unit is affected, list it rather than sub-units.

10 Identify estimated number of persons directly benefiting from project, as described in the program narrative (SF–424), Part IV).

11. All applicants for grant funds under this Program Announcement should enter the letter "A".

12. Enter amount requested or to be contributed during the funding/budget period by each contributor. Item 12 must include all funding for the proposed project including all non-OCS funds which the applicant plans to mobilize.

Note: WHEN COMPLETING Item 12a, "FEDERAL" FUNDING IS TO BE TAKEN TO REFER TO THE REQUESTED OCS FUNDING ONLY. ALL OTHER FEDERAL FUNDS ARE TO BE INCLUDED IN ITEM 12e "OTHER".

Item definitions:

12a, amount requested from OCS. If any other funds will be mobilized insert as follows: 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 INCLUDING NON-OCS FEDERAL FUNDS.

13a. The Congressional District identified by its State and number should correspond with the applicant's address under item 4 above.

13b. Enter the number of the Congressional District(s) and State(s) where most of the actual work of the project will be accomplished. If city-wide or State-wide covering several Districts, write "City-wide" or "State-wide".

14. Enter appropriate letter. Definitions are:

a. *New:* A submittal for the first time for a new project or project period.

b. *Renewal:* Not applicable to this OCS program.

c. *Revision:* Not applicable at this time.

d. *Continuation:* Not applicable to this OCS program.

e. *Augmentation:* Not applicable to this OCS program.

15. Enter approximate date project is expected to begin. (Most budget periods will be for 12 months but may be as long as 24 months.)

16. Enter estimated number of months to complete project after Federal funds are available. If budget period is other than 12 months, check item 21 and provide justification for such. If the project is intented to continue beyond the OCS grant expiration date, the applicant must demonstrate in Part IV of

the SF–424 that it will be able to continue project operations with other sources of funding.

17. Not applicable at this time.

18. Estimated date application will be submitted to Federal agency.

19. Indicate Federal agency to which this request is addressed—HHS/FSA, Washington, D.C., 20201.

20. Write "NA".

21. Check appropriate box as to whether Part I, Section IV of SF–424 contains remarks and/or additional "remarks" sheets are attached.

Section II of Part I SF–424

Applicants shall always complete items 22a or 22b as well as 23a and 23b. An explanation follows for each item.

22a and b. Self explanatory.

23a. Enter name and title of authorized representative of legal applicant.

23b. Self explanatory. Note: Authorized representative must personally execute this document.

Note: APPLICANT COMPLETES ONLY SECTIONS I AND II OF PART I. SECTION III IS COMPLETED BY THE FEDERAL AGENCY TO WHOM APPLICATION IS BEING MADE.

2. *SF–424, PART II*

Negative answers will not require an explanation unless the responsible program office requests more information at a later date. All "Yes" answers must be explained on a separate page in accordance with these instructions.

Item 1—Provide the name of the governing body establishing the priority system and the priority rating assigned to this project. If the priority rating is not available, give the approximate date that will be obtained.

Item 2—Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval. If the clearance is not available, give the approximate date that it will be obtained.

Item 3—Furnish the name of the approving agency and the approval date. If the approval has not been received, state approximately when it will be obtained.

Item 4—Show whether the approval comprehensive plan is State, local or regional; or, if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination, and state whether this project is in conformance with the plan. If the plan is not available, explain why.

Item 5—Show the population residing or working on the Federal installation who will benefit from this project. (Federally recognized Indian reservations are not "Federal Installations".)

Item 6—Show the percentage of the project work that will be conducted on Federally-owned land or leased land. Give the name of the Federal installation and its location.

Item 7—Briefly describe the possible beneficial and/or harmful effect on the environment because of the proposed project. If an adverse environmental effect is anticipated, explain what action will be taken to minimize it.

Item 8—State the number of individuals, families, businesses, or farms this project will displace, if any.

Item 9—Show the Catalog of Federal Domestic Assistance number, the program number, the type of assistance, the status, the amount of each project where there is related previous, pending or anticipated assistance from another funding source.

3. *SF–424, PART III*

IN COMPLETING THESE SECTIONS THE "FEDERAL" FUND/BUDGET ENTRIES WILL RELATE TO THE REQUESTED COMMUNITY FOOD AND NUTRITION PROGRAM FUNDS ONLY, AND "NON–FEDERAL" WILL INCLUDE MOBILIZED FUNDS FROM ALL OTHER SOURCES—APPLICANT, STATE, LOCAL AND OTHER. FEDERAL FUNDS OTHER THAN REQUESTED COMMUNITY FOOD AND NUTRITION PROGRAM FUNDING SHOULD BE INCLUDED IN "NON–FEDERAL" ENTRIES.

The budget forms in Part III of SF–424 are only to be used to present grant administrative costs and major budget categories.

Sections A and D of Part III must contain entries for Federal (OCS) and for non-Federal funds if any are mobilized. Section B contains entries for Federal (OCS) funds only. Section C contains entries for non-Federal funds if any will be mobilized. Clearly identified continuation sheets in SF–424, Part III format should be used as necessary.

Section A—Budget Summary

Lines 1–4

Col. (a): Enter on Line 1 under Column (a) "Administrative, applicant"; enter on Line 2 under Column (a) "Administrative, project".

Col. (b): Enter on Line 1 under Column (b) the Program Announcement Number OCS–89–2. Enter on Line 2 under Column (b) the Catalog of Federal Domestic Assistance number (13.795).

Col. (c)-(g): Leave Columns (c) and (d) blank. For each line entry, enter in Columns (e), (f) (if appropriate), and (g) the amounts needed to support the project for the budget period.

Line 5

Enter the totals for all columns completed, (e) through (g).

Section B—Budget Categories

Columns (1)—(5)

In OCS applications, it is only necessary to complete Columns (1) *and* (5). For the project entered in Column 1, enter the total requirements for OCS Federal funds by the Object Class Categories of this section.

Allowability of costs are governed by applicable cost principles set forth in Subpart Q of 45 CFR Part 74.

Personnel—Line 6a: Enter the total costs of salaries and wages of applicant/grantee staff only. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits—Line 6b: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on Line 6.j. Provide a breakdown of amounts and percentages that comprise fringe benefit costs.

Travel—Line 6c: Enter total costs of out-of-town travel by employees of the project. Do not enter costs for consultants' travel or local transportation. Provide justification for requested travel costs. (See Line 6h and Section F, Line 21, for additional instructions.)

Equipment—Line 6d: Enter the total costs of all non-expendable personal property to be acquired by the project. "Non-expendable personal property" means tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit. An applicant may use its own definition of non-expendable personal property, provided that such a definition would at least include all tangible personal property as defined in the preceding sentence. (See Section F, Line 21 for additional requirements.)

Supplies—Line 6e: Enter the total costs of all tangible personal property (supplies) other than that included on Line 6d.

Contractual-Line 6f: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and, (2) contracts with secondary recipient organizations including delegate agencies. Also include any contracts with organizations for the provision of

technical assistance. Do not include payments to individual service contractors on this line. If available at the time of application, attach a list of contractors indicating the name of the organization, the purpose of the contract and the estimated dollar amount of the award. If the Name of Contractor, Scope of Work, Estimated Total are not available or have not been negotiated, include in Line h, "Other".

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must submit Sections A and B of Part III, Budget Section, completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total costs of all such agencies will be part of the amount shown on Line 6(f). Provide back-up documentation identifying name of contractor, purpose of contract and major cost elements.

Construction—line 6g: Enter the costs of renovation or repair. Provide narrative justification and breakdown of costs.

Other—Line 6h: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (non-contractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use, training costs including tutition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total Direct Charges—Line 6i: Show the total of Lines 6a through 6h.

Indirect Charges—Line 6j: Enter the total amount of indirect costs. If no indirect costs under a currently approved agreement are requested enter "none". This line should be used only when the applicant (except local governments) currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agencies. Please enclose a copy of current rate agreement. Local governments shall enter the amount of the indirect costs determined in accordance with the Federal agency's requirements. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Total—Line 6k: Enter the total amounts of Lines 6i and 6j. The total amount shown in Column (5), Line 6k, should be the same as the amount shown in Section A, Column (e), Line 5.

Program Income—Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement in Part IV of the SF–424.

Section C—Non-Federal Resources (if applicable)

Lines 8–11: Enter amounts of "non-Federal" resources that will be used to support the project. ("Non-Federal" resources mean other than those OCS funds for which the applicant is applying. Therefore, funds from other Federal programs, such as the Job Training Partnership Act Program, should be entered on these lines.) Provide a brief explanation, on a separate sheet, showing the type of contribution and whether it is in cash or in-kind. The firm commitment of these required funds must be documented and submitted with the application. Also if the applicant is proposing to use any block grant funds other than those provided under the Job Training Partnership Act of the Social Services Block Grant Program, the legality of such use must be documented and a statement made explaining how these funds can be diverted to this project while maintaining previous anti-poverty efforts.

Column (a): Enter the project title.

Column (b): Enter the amount of cash and in-kind contributions to be made by the applicant.

Column (c): Enter the State contribution. If the applicant is a State ageny, enter the non-Federal funds to be contributed by the State other than the applicant State agency.

Column (d): Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e): Enter the total of Columns (b), (c), and (d).

Line 12—Enter total of Columns (b) through (e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the budget period.

Line 14—If applicable, enter the amount of cash from all other sources needed by quarter during the budget period.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Project(s)

No entries are required for OCS grants.

Section F—Other Budget Information

Line 21—Use this space and continuation sheets as necessary to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the Federal agency. Budget items which require identification and justification shall include, but not be limited to, the following:

A. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative;

B. Any foreign travel;

C. A list of all equipment and estimated cost of each item to be purchased wholly or in part with grant funds which meet the definition of nonexpendable personal property provided on Line 6d, Section B. Need for equipment must be supported in program narrative;

D. Contractual: Major items or groups of smaller items; and

E. Other: group into major categories, all costs for consultants, local transportation, space, rental, training allowances, staff training, computer equipment, etc. Provide a complete breakdown of all costs that make up this category.

Line 22—Enter the type of HHS or other Federal agency approved indirect gate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of rate agreement.

Line 23—Provide any other explanations and continuation sheets required or deemed necessary to justify or explain any SF–424, Part III entries.

4. *SF–424, PART IV*

Each narrative should include the following major sections:

a. Executive Summary.

b. Analysis of Need.

c. Project Design (Work Program).

d. Evaluation Component.

e. Organizational Experience in Program Area.

f. Management History.

g. Staffing and Resources.
h. Staff Responsibilities.

Part IV of the SF–424 (Program Narrative) must address the specific purposes mentioned in Part B of this Program Announcement. The narrative should provide information on how the application meets the evaluation criteria in Part D, Section 5.c., of this Program Announcement and should follow the format below:

a. *Executive Summary.* A narrative summary of the project must be included in each application immediately following the table of contents. This summary must directly address the program specifics within this announcement and the evaluation criteria contained in Part D, Section 5.c. This summary must also explain how the applicant has complied with each of the basic requirements listed in Part D, 5.b. (1)–(7), i.e.: (1) That the applicant meets the eligibility requirements found in Part B; (2) the application contains only one project; (3) the application clearly targets the specific outcomes and benefits of the project to low-income participants and beneficiaries; (4) the amount of funds requested does not exceed $50,000; (5) the application addresses the purposes described in Part B of the announcement; and (6) the applicant does not propose the continuation of a project funded by OCS in FY 1988 nor does the applicant propose undertaking a project similar to one for which it received OCS funding in FY 88. (Applicants are cautioned that OCS will not accept an executive summary as the complete application or as a substitute for a properly detailed Part IV, Program Narrative of the SF–424.)

b. *Analysis of Need.* The application should include a description of the target area and population to be served as well as a discussion of the nature and extent of the problem to be solved.

c. *Project Design (Work Program).* The application must contain a detailed and specific work program that is both sound and feasible. It must set forth realistic quarterly time targets by which the various work tasks will be completed. (Because quarterly time schedules are used by OCS as a key instrument to monitor progress, failure to include these time targets may seriously reduce an applicant's point score in this criterion.) It must identify critical issues or potential problems that might impact negatively on the project and it must indicate how the project objectives will be attained notwithstanding any such potential problems.

Projects funded under this announcement must produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted. The OCS grant funds, in combination with private and/or other public resources, must be targeted into low-income communities, distressed communities, and/or designated enterprise zones. Projects must be designed to achieve the specific program objectives defined in this Program Announcement.

If an applicant is proposing a project which will affect a property listed in or eligible for inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the provisions of Section 106 of the National Historic Preservation Act of 1966 as amended. If there is any question as to whether the property is listed in or eligible for inclusion in the National Register of Historic Places, applicant should consult with the State Historic Preservation Officer. (See Attachment E, item 12 for additional guidance.) The applicant should contact OCS early in the development of its application to OCS for instructions regarding compliance with the Act and data required to be submitted to the Department of Health and Human Services. Failure to comply with the cited Act may result in the application being ineligible for consideration for funding.

Each applicant must address the following as they relate to the proposed project. The proposed project must be designed to address the basic criteria and legislatively-mandated activities found in Part B and should include:

(1) Project priorities and rationale for selecting them;
(2) goals and objectives; and
(3) project activities.

Each applicant also must indicate how the project will have a significant and beneficial impact by providing the following information:

(1) A description of how the project will significantly improve or increase nutrition services, including nutrition services related to disease prevention, for low-income people;

(2) a statement as to how the project will significantly leverage or mobilize other resources; and

(3) a description of project outreach and/or public education activity.

Also to be included is a discussion on how the applicant will involve other appropriate organizations in order to avoid duplication of effort and to achieve an improved delivery system. These organizations should be identified.

In addition, if applicant is receiving funds from the State for community food and nutrition activities, address how the funds are being utilized and, if they will be used in the project for which OCS funds are being requested, specifically describe their usage.

Applicant should indicate whether or not the proposed project is a continuation of a project funded by OCS in FY 1988 or a project similar to that for which the applicant received OCS funding in FY 1988.

d. *Evaluation Component.*

All proposals should include a self-evaluation component. The evaluation data collection and analysis procedures should be specifically oriented to assess the degree to which the stated goals and objectives are achieved. Qualitative and quantitative measures reflective of the scheduling and task delineation should be used to the maximum extent possible. This component should indicate the ways in which the potential grantee would integrate qualitative and quantitative measures of accomplishment and specific data into its program progress reports that are required by OCS from all grantees.

e. *Organizational Experience in Program Area*

Each applicant must document competence in the area in which it is proposing to undertake activities.

Documentation must be provided which addresses the relevance and effectiveness of projects previously undertaken in the area for which funds are being requested and especially their cost effectiveness, the relevance and effectiveness of any services provided, and the permanent benefits provided to the low-income population. Applicants with a history of less than two years of prior achievement in the program area should so identify themselves. They must also indicate those activities that they have carried out in the area in question and the reasons why they feel that they can successfully implement the project for which they are requesting funding. Organizations which propose providing training and technical assistance must detail their competence in the specific program area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants must also address related achievements and competence of each cooperating or sponsoring organization. Applicants should also provide information concerning the relevant experiences and achievements of key personnel including board members, executive staff and project management staff of such organizations.

The applicant *also* must include a written self-assessment or third party evaluation of past nutrition-related activities undertaken by applicant.

f. *Management History*

Applicants must detail a history of sound and effective management practices and if they have been recipients of other Federal or other governmental grants, they must also detail that they have consistently complied with financial and program progress reporting and audit requirements. Articles of Incorporation, By-Laws, a description of the Governing Board and representational structure (where applicable) are to be included along with a certification by a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted.

g. *Staffing and resources.* The application must fully describe (e.g. a résumé) the experience and skills of the proposed project director showing that the individual is not only well qualified but that his/her professional capabilities are relevant to the successful implementation of the project.

h. *Staff responsibilities.* The application must include statements regarding who will have the responsibilities of the chief executive officer, who will be responsible for grant coordination with OCS, and how the assigned responsibilities of the staff are appropriate to the tasks identified for the project. It must show clearly that sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

Part G—Post-Award Requirements

The official award document is the Notice of Grant Award which sets forth in writing to the recipient the amount of funds awarded, the purpose of the award, other terms and conditions of the award, the effective date of the award, the budget period for which support is given, the total project period for which support is contemplated and the total recipient financial participation required.

In addition to the General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, grantees will be subject to the provisions of Office of Management and Budget Circulars A–102 or A–110 and A–122 the last of which, amongst other provisions, prohibits the use of grant funds for (a) electioneering activities at the Federal, State or local level and (b) attempts to influence Federal or State legislation through either grassroots lobbying or direct contacts with Federal or State legislators or their staffs.

Grantees will be required to submit semi-annual financial and progress reports as well as an audit of the project costs. (Costs associated with the completion and submission of the required grant audit may be charged to the grant.)

Any visual or written materials produced under this grant must be furnished to OCS for recordation and possible dissemination to interested parties.

Mary M. Evert,

Director, Office of Community Services.

Attachment A—Annual Update of Poverty Income Guidelines

Attachment B—SF–424, Federal Assistance

Attachment C—Assurance of Compliance with DHHS Regulation under Title VI of the Civil Rights Act of 1964

Attachment D—Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as amended

Attachment E—Assurances (General)

BILLING CODE 4150-04-M

ATTACHMENT A

1988 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of Family Unit	Poverty Guideline
1	$5,770
2	7,730
3	9,690
4	11,650
5	13,610
6	15,570
7	17,530
8	19,490

For family units with more than 8 members, add $1,960 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of Family Unit	Poverty Guideline
1	$7,210
2	9,660
3	12,110
4	14,560
5	17,010
6	19,460
7	21,910
8	24,360

For family units with more than 8 members, add $2,450 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of Family Unit	Poverty Guideline
1	$6,650
2	8,900
3	11,150
4	13,400
5	15,650
6	17,900
7	20,150
8	22,400

For family units with more than 8 members, add $2,250 for each additional member.

ATTACHMENT B

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

SECTION I—APPLICANT/RECIPIENT DATA

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

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

SECTION IV–REMARKS *(Please reference the proper item number from Sections I, II or III, if applicable)*

OMB NO 0348-0006

PART II
PROJECT APPROVAL INFORMATION

Item 1.
Does this assistance request require State, local regional, or other priority rating?
_____ Yes _____ No

Name of Governing Body _____
Priority Rating _____

Item 2.
Does this assistance request require State, or local advisory, educational or health clearances?
_____ Yes _____ No

Name of Agency or Board _____
(Attach Documentation)

Item 3.
Does this assistance request require State, local, regional or other planning approval?
_____ Yes _____ No

Name of Approving Agency _____
Date _____

Item 4.
Is the proposed project covered by an approved comprehensive plan?
_____ Yes _____ No

Check one: State ☐
Local ☐
Regional ☐
Location of Plan _____

Item 5.
Will the assistance requested serve a Federal installation?
_____ Yes _____ No

Name of Federal Installation _____
Federal Population benefiting from Project _____

Item 6.
Will the assistance requested be on Federal land or installation?
_____ Yes _____ No

Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 7.
Will the assistance requested have an impact or effect on the environment
_____Yes _____ No

See instructions for additional information to be provided.

Item 8.
Will the assistance requested cause the displacement of individuals, families, businesses, or farms?
_____ Yes _____ No

Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 9.
Is there other related assistance on this project previous, pending, or anticipated
_____Yes _____ No

See instructions for additional information to be provided.

OMB NO 0348-0006

PART III - BUDGET INFORMATION

SECTION A - BUDGET SUMMARY

Grant Program, Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	- Grant Program, Function or Activity				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges					
j. Indirect Charges					
k. TOTALS	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) APPLICANT	(c) STATE	(d) OTHER SOURCES	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (YEARS)			
	(b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach Additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

PART IV PROGRAM NARRATIVE (Attach per instruction)

ATTACHMENT C

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES REGULATION UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

_____ (hereinafter called the "Applicant")
Name of Applicant (type or print)

HEREBY AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 80) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, 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 program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this Assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this Assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this Assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance, and that the United States shall have the right to seek judicial enforcement of this Assurance. This Assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the Applicant.

Date _____

_____
Applicant (type or print)

By _____
Signature and Title of Authorized Official

_____

_____
Applicant's mailing address

NOTE: If this form is not returned with the application for financial assistance, return it to DHHS, Office for Civil Rights, 330 Independence Ave., S.W., Washington, D.C. 20201

ATTACHMENT D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

The undersigned (hereinafter called the "recipient") HEREBY AGREES THAT it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto.

Pursuant to §84.5(a) of the regulation [45 C.F.R. 84.5(a)], the recipient gives this Assurance in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (except procurement contracts and contracts of insurance or guaranty), property, discounts, or other Federal financial assistance extended by the Department of Health and Human Services after the date of this Assurance, including payments or other assistance made after such date on applications for Federal financial assistance that were approved before such date. The recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance and that the United States will have the right to enforce this Assurance through lawful means. This Assurance is binding on the recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the recipient.

This Assurance obligates the recipient for the period during which Federal financial assistance is extended to it by the Department of Health and Human Services or, where the assistance is in the form of real or personal property, for the period provided for in §84.5(b) of the regulation [45 C.F.R. 84.5(b)].

The recipient: [Check (a) or (b)]

a. ( ) employs fewer than fifteen persons;

b. ( ) employs fifteen or more persons and, pursuant to §84.7(a) of the regulation [45 C.F.R. 84.7(a)], has designated the following person(s) to coordinate its efforts to comply with the HHS regulations:

_____
Name of Designee(s) (Type or Print)

_____ _____
Name of Recipient (Type or Print) Street Address or P.O. Box

_____ _____
(IRS) Employer Identification Number City

_____
State Zip

I certify that the above information is complete and correct to the best of my knowledge.

_____ _____
Date Signature and Title of Authorized Official

If there has been a change in name or ownership within the last year, please PRINT the former name below:

NOTE: If this form is not returned with the application for financial assistance, return it to DHHS, Office for Civil Rights, 330 Independence Avenue, S.W., Washington, D.C. 20201.

HHS-641 (Rev. 12-82)

PART V

ASSURANCES

The Applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements, including 45 CFR Part 74 and OMB Circulars No A-102, A-110 and applicable cost principles, (Circulars: A-21, "Educational Institutions", A-87, "Cost Principles for State and Local Governments"; and A-122, "Nonprofit Organizations"), as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the applicant 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 program 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 requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P L 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.

5. It will comply with the provisions of the Hatch Act which limit the political activity of State and local government employees

6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201) as they apply to employees of institutions of higher education, hospitals, other nonprofit organizations, and to employees of State and local governments who are not employed in integral operations in areas of traditional governmental functions.

   Head Start, Certification of Minimum Wage: It certifies that it has reviewed the salary structures and wages for all positions and certifies that persons employed in carrying out this program shall not receive compensation at a rate which is (a) in excess of the average rate of compensation paid in the area to persons providing substantially comparable services; or (b) less than the minimum wage rate prescribed in section 6(a) of the Fair Labor Standards Act of 1938. Documentation of the methods by which it established wage scales is available in their files for review by audit and HDS personnel.

7. 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.

8. It will give the sponsoring 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, including the records of contractors and subcontractors performing under the grant.

9. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements

10. 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.

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance

11 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, 87 Stat 975, approved December 31, 1976 Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use 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

12 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 8) by the grantee's 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

13 Applicants for the Administration for Native Americans Programs, hereby certify in accordance with 45 CFR 1336 53, that the financial assistance provided by the Office of Human Development Services for the specified activities to be performed under this program, will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

14. It will comply with the Age Discrimination Act of 1975 enacted as an amendment to the Older Americans Act (Pub. L. 94-135), which provides that: No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity for which the applicant receives Federal financial assistance.

15. It will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance.

16 It will comply with Title IX of the Education Amendments of 1972 (20 U.S.C 1681, et seq.) which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by an educational institution).

17 It will comply with Pub L 93-348 as implemented by Part 46 of Title 45 (45 CFR 46, 42 U S C 2891) regarding the protection of human subjects involved in research, development, and related activities supported by the grant

18 It will comply with the equal opportunity clause prescribed by Executive Order 11246, as amended, and will require that its subrecipients include the clause in all construction contracts and subcontracts which have or are expected to have an aggregate value within a 12-month period exceeding $10,000, in accordance with Department of Labor regulations at 41 CFR Part 60

19 It will include, and will require that its subrecipients include, the provision set forth in 29 CFR 5.5(c) pertaining to overtime and unpaid wages in any nonexempt nonconstruction contract which involves the employment of mechanics and laborers (including watchmen, guards, apprentices, and trainees) if the contract exceeds $2,500.

[FR Doc. 88-15222 Filed 7-7-88; 8:45 am]
BILLING CODE 4150-04-C

federal register

Friday
July 8, 1988

Part V

Department of Health and Human Services

Office of Community Services, Family Support Administration

Availability of Funds and Request for Applications Under the Office of Community Services' Fiscal Year 1989 Demonstration Partnership Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Program Announcement No. OCS-89-3]

Availability of Funds and Request for Applications Under the Office of Community Services' Fiscal Year 1989 Demonstration Partnership Program

AGENCY: Office of Community Services, Family Support Administration, Department of Health and Human Services.

ACTION: Announcement of availability of funds and request for applications under the Office of Community Services' Demonstration Partnership Program (DPP).

SUMMARY: The Office of Community Services (OCS) announces that, based on availability of funds, applications will be accepted for new grants pursuant to the Secretary's authority under section 408(a)(1) of the Human Services Reauthorization Act of 1986. This program announcement consists of seven parts. Part A covers information on the legislative authority and defines terms used in the program announcement. Part B describes the purposes of this program, the types of projects that will be considered for funding and who is eligible to apply.

Part C provides details on application prerequisites such as the amount of matching funds applicants are required to commit, limitations on administrative costs, and program beneficiaries. Part D provides information on application procedures including the availability of forms, where to submit an application, criteria for initial screening of applications, and project evaluation criteria. Part E provides guidance on the content of an application package and the application itself. Part F provides instructions for completing an application. Part G details post-award requirements.

Closing dates: The closing date for submission of applications is August 29, 1988.

FOR FURTHER INFORMATION CONTACT: Prior to July 28, 1988, contact: Office of Community Services, Attn: Demonstration Partnership Program, 330 C Street, SW., Room 2033, Washington, DC 20201. You may also call (202) 475–0339. After July 28, 1988, contact: Office of Community Services, Attn: Demonstration Partnership Program, 370 L'Enfant Promenade, SW., Washington, DC 20447.

You may also call (202) 252–5251.

Part A—Preamble

1. Legislative Authority

Section 408(a)(1) of the Human Services Reauthorization Act of 1986 (Demonstration Partnership Agreements Addressing the Needs of the Poor) authorizes the Secretary to make grants for the development and implementation of new and innovative approaches to deal with particularly critical needs or problems of the poor which are common to a number of communities.

2. Definitions of Terms

For purposes of this program announcement, the following definitions apply:

Eligible entity: Any organization which (1) was officially designated as a community action agency or a community action program under the provisions of section 210 of the Economic Opportunity Act of 1964 for fiscal year 1981 and did not lose its designation; or (2) was a limited purpose agency designated under Title II of the Economic Opportunity Act of 1964 for fiscal year 1981 which served the general purposes of a community action agency under Title II of such Act and did not lose its designation; or (3) received financial assistance under section 222(a)(4) of the Economic Opportunity Act of 1964 in fiscal year 1981; or (4) received a grant in fiscal year 1984 under the waiver provision of Pub. L. 98–139; or (5) was created under section 673(1)(C) of the Community Services Block Grant Act to serve a geographic area not previously served; or (6) came into existence during fiscal year 1982 as a direct successor in interest to a community action agency or community action program and meets all the requirements under section 675(c)(3) of the Community Services Block Grant Act. All "eligible entities" are current recipients of Community Services Block Grant funds. The majority of "eligible entities" are community action agencies. In those cases where "eligible entity" status is unclear, final determination will be made by FSA.

Hypothesis: A tentative assumption made in order to draw out and test its consequences, e.g., completing a vocational training program by prisoners leads to a reduction in recidivism.

Innovative project: One that departs from or significantly modifies past program practices and tests a new approach.

Intervention: Any activity within a project that is intended to produce changes in the target population or the environment, and can be formally evaluated during the project. An example of an intervention is the conduct of vocational training in prison to prepare prisoners for employment following release from prison.

Partnership: A formal negotiated arrangement between an eligible entity and another organization (or organizations) that provides for substantive policy and management roles for each of the partners in the conduct of the project. An arrangement where the applicant serves only as a conduit for the funds is *not* a partnership.

Self-sufficiency: In the ideal sense, a condition where an individual or family, by reason of employment, does not need and is not eligible for, public assistance. Individuals and families may be more or less self sufficient, or intermittently self-sufficient, with some income from employment but not enough over the long term to become totally independent of public assistance.

Part B—Purpose

The purposes of this program are (1) to stimulate eligible entities to develop new approaches to provide for greater self-sufficiency of the poor; (2) to test and evaluate the new approaches; (3) to disseminate project results and evaluation findings so that the new approaches can be replicated; and (4) to strengthen the ability of eligible entities to integrate, coordinate, and redirect activities to promote maximum self-sufficiency among the poor.

Projects must:

(a) Involve activities which can be incorporated into, or be closely coordinated with, eligible entities' ongoing programs;

(b) Involve significant new combinations of resources or new and innovative approaches involving partnership agreements;

(c) Be structured in a way that will, within the limits of the type of assistance or activities contemplated, most fully and effectively promote the purposes of the Community Services Block Grant Act as amended.

Partnership(s) between the applicant and one or more other organizations is a requirement for funding. Projects must have a measurable and potentially major impact on the causes of poverty, should be applicable to other localities with similar problems, and should have the potential for widespread replication by eligible entities.

OCS intends that projects funded under this announcement will be conducted on a scale broad enough to permit a valid evaluation.

Although all proposals must focus on developing new ways of promoting individual and family self-sufficiency, OCS will not prescribe specific hypotheses to be tested nor specific population groups or geographic areas to be targeted. However, among the many problems relating to poverty and dependency, there are a number which merit special attention and which OCS encourages applicants to address.

With respect to families, it is clear that families now dependent on such programs as Aid to Families with Dependent Children (AFDC), Low Income Home Energy Assistance, and Food Stamps will be unable to achieve self-sufficiency without stable, sustained and adequate employment income. It is also clear that programs that have focused exclusively on jobs or job training have not always led to self-sufficiency. The challenge to applicants for funds under this program is to test new approaches to a range of problems family members encounter in trying to obtain permanent jobs.

One such major problem is the scarcity of support systems that offer integrated family services covering the whole time period needed to achieve self-sufficiency. OCS welcomes the submission of proposals that test various ways of applying the integration of services concept, including a job training/job creation component, to families who depend on public assistance on a continuing or intermittent basis.

Another pervasive problem is that of teenage pregnancy. Many teenage mothers are on public assistance and fully half of the welfare budget supports families in which the mother had her first child as a teenager. OCS encourages the submission of proposals to test new ways in which the resources of the community can be mobilized to prevent premature family formation. Another serious problem is that of unemployed young men. Many anti poverty programs have concentrated on serving female-headed households as a way of reducing public assistance dependency while too few programs have addressed the needs of young men in the most impoverished urban and rural areas. These programs, if they exist at all, have generally failed to qualify these young men for the jobs that remain in the inner cities and impoverished rural areas. OCS would be interested in testing whether providing these men with the specific skill(s) training and related services necessary to be hired for these jobs will stimulate family reunification and promote economic self-sufficiency.

The problems caused by the lack of integrated support systems for heads of households who are seeking work, unemployed young men and at-risk teenagers do not, of course, exhaust the range of major problems confronting the poor. Applications proposing new approaches to other problems are welcome so long as such problems affect large numbers of urban and/or rural poor and are serious obstacles to the achievement of self-sufficiency.

Whatever problem or problems the applicant chooses to address, the applicant will be expected to propose solutions that depart from or modify conventional approaches and that show promise of being highly effective.

Frequently, efforts by low-income families to achieve self-sufficiency, as well as efforts by service providers to help such families become self-sufficient, are impeded by legislative, administrative, and regulatory requirements at the Federal, State, and local levels. Applicants are encouraged to identify and address these impediments where feasible and appropriate.

The use of funds for the purchase, construction or improvement of real property is prohibited. This prohibition includes expenditures for weatherization and home repairs.

Eligible applicants are those "eligible entities" defined in Part A, Section 2., Definitions of Terms, of this announcement and whose eligibility status and capability have been certified by the State Director of the Community Services Block Grant program. (See Part F, Section 5c for certification requirements.)

Part C—Application Prerequisites

1. Availability of Funds

a. OCS is spreading its administrative review process more evenly across the fiscal year. In order to accomplish this, OCS is publishing this Program Announcement prior to the Congress completing its deliberations on appropriations for this program for FY 1989. Grants will only be made based on the availability of funds. The amount of funds available and the expected number of grants that will be made when, and if, such funds become available is not known at the present time.

b. Grant requests will be considered for an amount up to $250,000 in OCS funds.

2. Grant Duration

The period of the grant award will be determined by the nature of the individual project and the justification presented in the application. However, no grant period shall exceed 24 months.

3. Matching Funds

An applicant is required to obtain commitment of at least one private or public sector dollar for each dollar of OCS funds awarded. Thus, if an applicant is requesting $175,000 in OCS funds, at least $175,000 in additional funds must be committed to the project from private or public sector sources. Public sector resources that can be counted toward the minimum match include funds from State and local governments, and funds from various block grants allocated to the States by the Federal Government providing the authorizing legislation for these grants does not prohibit such use. Federal funds other than block grant funds may not be used to satisfy the minimum match requirement, although such funds may be applied to the project, if permitted by the Federal statutes governing the use of these funds. There is an exception to the use of block grant funds for a demonstration project under this program. The ninety percent Community Services Block Grant (CSBG) funds that by statute are designated for use by eligible entities may not be used for the minimum match. However, OCS will accept any of the remaining ten percent (CSBG funds) as match, as well as other block grant funds transferred into the Community Services Block Grant.

Funds identified by the applicant as those which will be counted toward the minimum match requirement may be in the form of cash or in-kind fairly converted into its dollar equivalent. Such funds must be definitely committed or contingent only on receipt of an OCS grant, and must be applied to specific project activities within the OCS-approved project and used only for project purposes for the duration of the OCS grant.

Funds expended or obligated prior to the approved OCS starting date for a grant cannot be considered as matching funds. Documentation of matching funds must be in the form of letters of commitment from the donors.

4. Maintenance of Effort

The activities funded under this program announcement must be in addition to, and not in substitution for, activities previously carried on without Federal assistance. Also, funds or other resources currently devoted to activities designed to meet the needs of the poor within a community, area, or State must not be reduced in order to provide the required matching contributions.

This provision will generally allow the use of block grant funds as matching funds for the demonstration project when the applicant shows that it has received a real increase in its block grant allotment or demonstrates that other anti-poverty programs will not be scaled back to provide the match.

5. Administrative and Indirect Costs

OCS will accept applications that include administrative costs. However, no more than 10% of the OCS funds may be used for administrative purposes. Administrative costs are defined as costs that are necessary to protect, monitor and properly account for Federal funds awarded. Costs associated with the internal operational management of the approved project are not considered to be administrative costs nor are costs for conducting the final audit or the third-party evaluations.

Grant funds may also be used for indirect costs. In all cases where an applicant has negotiated and claims a current indirect cost rate approved by the Department of Health and Human Services (DHHS), the Defense Contracting Agency, or some other Federal agency, this rate ordinarily will be recognized by OCS and applied to any OCS grant award. However, it is understood that both administrative and indirect costs are part of, and not in addition to, the amount of funds awarded in the subject grant. In most cases, the indirect cost rate approved will include not only administrative costs but also other allowable costs that were negotiated under the applicant's approved indirect cost rate.

Therefore, applicants with an applicable indirect cost rate exceeding 10% of the OCS grant may not propose any administrative funds in excess of that rate. Thus, although the approved indirect cost rate may exceed the normal 10% administrative cost restriction, the entire approved indirect cost rate will be accepted.

6. Program Beneficiaries

Projects proposed for funding under this announcement must result in direct benefits for low-income persons whose incomes are up to 125% of the DHHS poverty income guidelines as defined in the most recent Annual Revision of Poverty Income Guidelines published by DHHS.

Attachment A to this announcement is an excerpt from the most recently published guidelines. Annual revisions of these guidelines are normally published in February or early March of each year and are applicable to projects being implemented at the time of publication. (These revised guidelines may be obtained through the U.S. Government Printing Office at the following address: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.)

No other government agency or privately defined poverty guidelines are applicable for the determination of low-income eligibility for this OCS program.

7. Multiple Submittals

No applications will be considered for funding which are being submitted under other OCS program announcements.

8. Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the eligible applicant is *primarily* to serve as a conduit for funds to organizations other than the applicant. This prohibition does not bar subcontracting for specific services needed to conduct the project.

Part D—Application Procedures

1. Availability of Forms

Applications for awards under this program announcement must be submitted on Standard Form (SF) 424 provided for that purpose. Part F contains all the instructions and forms required for submittal of applications. The forms may be reproduced for use in submitting applications. Copies of this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the contact office listed in the section entitled "For Further Information Contact" at the beginning of this Announcement.

2. Application Submission

Applications must be submitted by August 29, 1988. An application will be considered to be received on time under either one of the following two circumstances:

a. The application was sent via the U.S. Postal Service or by private commercial carrier and postmarked or dated by the carrier not later than midnight of the closing date unless it arrives too late to be considered by the reviewers. (Applicants are responsible for assuring that the U.S. Postal Service or private commercial carrier dates the application package. Applicants should be aware that not all post offices or private commercial carriers provide a dated postmark unless specifically instructed to do so.)

b. The application is hand delivered on or before the closing date to the Office of Grants Management, FSA, at the address indicated below. Hand delivered applications will be accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday (excluding Federal legal holidays) up through the closing date. In establishing the date of receipt of hand-delivered applications, reliance will be placed on documentary evidence of receipt maintained by FSA.

Late applications will be returned to the senders without consideration in the competition.

Applications once submitted are considered final and no additional materials will be accepted by OCS.

An application with an original signature and four copies is required. Applications if mailed, should be addressed to: Family Support Administration, Office of Grants Management, 370 L'Enfant Promenade, SW., 6th Floor, Mail Management Operations, Washington, DC 20447.

Applications if hand delivered, should be taken to: Family Support Administration, Office of Grants Management, 901 D Street, SW., Washington, DC.

The first page of the SF–424 must contain *in the lower right hand corner* the following designation: "DP".

3. Intergovernmental Review

The OCS Demonstration Partnership Program is covered by Executive Order 12372 which provides for review of proposed Federal assistance by State and local governments. Therefore, applicants for funds under this announcement are subject to the clearance procedures and requirements established by the State(s) in which their projects will be conducted. Consequently, applicants are reminded that clearance action through appropriate State clearinghouses must be initiated by them prior to, or simultaneous with, submittal of applications to OCS. These initial actions must be reported on the SF 424, Page 1, which is submitted to OCS. Clearance action by States need not be completed before applications are submitted to OCS. When comments become available they should be forwarded to the Family Support Administration office to which applications are submitted. (See address in item 2. above.)

4. Application Consideration

Applications which meet the screening requirements in section 5 below will be reviewed competitively.

Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to the purposes outlined in Part B, the guidelines in Part F, and rating criteria published in this announcement.

Applications will be reviewed and rated by persons outside of the OCS unit which will be directly responsible for management of the grant.

The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will generally be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the Director may also consider other relevant factors including, but not limited to, comments of reviewers and other government officials; program staff quality review; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; findings in audit and investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to determine the applicant's performance record.

5. Criteria for Screening Applications

a. Initial Screening

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a Standard Form (SF) 424 with Parts I, II, III, IV and V completed according to instructions published in Part F of this program announcement.

(2) The SF–424 must be signed by an official of the "eligible entity" who has authority to obligate the organization legally.

(3) The applicant must submit an original and four copies of the application.

(4) The application narrative (Part IV of SF–424) must not exceed 10 pages. The entire application package, including Parts I through V of the SF–424 and all attachments must not exceed 30 pages.

(5) The application must contain a letter, signed by the State Director of the Community Services Block Grant program, certifying that the applicant is an "eligible entity" as defined by this program announcement and that it has the capacity to operate the proposed project.

(6) A signed Assurances Affidavit (See Part F, Section 5, Item d).

b. Pre-Rating Review

Applications which pass the initial screening will be forwarded to reviewers for analytical comment and scoring based on the criteria detailed in Section c. below and the specific requirements contained in Part B. Prior to the programmatic review, OCS staff will verify that the applications comply with this program announcement in the following areas:

(1) *Eligibility:* Applicant meets the eligibility requirements found in Part B.

(2) *Target Populations:* The application clearly serves low-income participants and beneficiaries as defined in Part C.

(3) *Matching Funds:* The required private and/or public sector match, in the required amount, has been firmly committed and maintenance of effort demonstrated.

(4) *Grant Amount:* The amount of funds requested does not exceed $250,000 in OCS funds.

(5) *Research:* A bibliography reflecting research examining previous and current approaches to the problem being addressed is included.

(6) *Project Evaluation:* The evaluation plan must include all of the required elements found in the evaluation component section in Part F, Section 5.

Applications which fail to meet *all* of the above requirements may be returned to the applicant without further consideration.

c. Review Criteria

Acceptable applications will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in this program announcement.

The review process will use the following criteria coupled with the specific requirements contained in Part B.

(Note.—The following criteria for use by reviewers parallel the requirements for applicants contained in Part F of this announcement. These requirements are approved under OMB Control Number 0920–0062).

Criteria for Review and Evaluation of Applications

1. Criterion I: Organizational History and Management Capability (Maximum: 8 points)

(i) Organizational History (0–3 points)

—The applicant has experience in developing and operating innovative projects that utilize a variety of resources;
—The applicant has recent experience in collaborative planning, programming and operations with the proposed partners; and
—The applicant has experience in designing and/or managing staff-conducted or third party (i.e. independent) evaluations.

(ii) Management Capability (0–5 points)

—The applicant's proposed project director, as well as the proposed primary person responsible for conducting the third-party evaluation, are well qualified and their professional experiences are relevant to the successful implementation of this project;
—The position description(s) are relevant to the effective implementation of the project;
—The applicant describes and logically shows that sufficient time of senior staff, including the CAA director, has been budgeted to assure timely implementation and cost effective management of the project; and
—The applicant includes information that shows the ways in which it will incorporate the project into its organizational structure and shows how the new activities will result in changes, if any, to current projects.

2. Criterion II: Problem Definition and Needs Assessment (Maximum: 18 points)

(i) The poverty problem (0–6 points)

The application clearly describes the poverty problem, identifies the factors that contribute to the perpetuation of the poverty problem, documents the extent to which the problem exists in the local community, discusses known examples of this problem in other localities and regions, and analyzes the impact of the problem nationwide.

(ii) The research problem (0–12 points)

The applicant provides a thorough summary of the results of its research conducted in order to identify previous and current attempts to address the

problem, describes the limitations of these attempts, and explains convincingly how the proposed approach constitutes an innovative departure or significant modification of previous and current approaches.

3. Criterion III: Project Design and Methodology (Maximum: 53 points)

(i) The Project Design (0–20 points)

—The hypothesis is significant, relevant, and can be tested to determine validity;
—The application includes demographic characteristics such as income, age, race, ethnic origin, sex and marital status of the target population and shows that the choice of target groups is relevant to the hypothesis;
—The application clearly demonstrates the extent to which the intervention(s) is innovative and appropriate to the hypothesis and to the target population; and
—The applicant describes specific plans for conducting measurable activities and proposes realistic time frames.

(ii) Expected Outcomes (0–14 points)

—The proposed project will have a measurable and potentially major impact upon the causes of poverty and will result in a substantial increase in the self-sufficiency of the poor; and
—The anticipated results are specified and the expected benefits for the target group(s) are delineated.

(iii) The Evaluation Component (0–19 points)

The Evaluation Plan

—Clearly identifies the hypothesis to be tested, the changes to be produced (outcome objectives), the activities (interventions) that will produce the changes, and the methods for measuring the performance (these methods must assure both internal and external validity);
—Addresses in a complete, clear, concise, and logical manner:

(a) Applicable accuracy standards such as context analysis, defensible information sources, valid and reliable measurement, systematic data control, and analysis of quantitative and qualitative information;

(b) Applicable utility standards such as audience identification, evaluator credibility, report dissemination, report timeliness, and report impact;

(c) Applicable feasibility standards such as cost effectiveness; and

(d) Applicable propriety standards such as conflict of interest and balanced reporting.

—Includes procedures that will be used to compare information about participants and non-participants and, also, isolates and systematically assesses competing explanations for the observed outcomes;
—Includes a realistic plan for disseminating the project findings to other eligible entities and to States upon request;
—Includes provisions for both summative and process evaluations; and
—Includes a specific working definition (consistent with the broad definition contained in Part A) of "self-sufficiency" for this project that permits the measurement of incremental movement of individuals and families from dependency toward self-sufficiency.

4. Criterion IV: Partnerships and Budget (Maximum: 16 points)

—The application demonstrates that the resources requested for the project are reasonable and adequate;
—The match resources are necessary and logical for the proposed project;
—The partnership arrangements are fully described and clearly relate to the objectives of the proposed project; and
—The total cost is reasonable and consistent with the anticipated results.

5. Criterion V: Federal Budget Impact (Maximum: 5 points)

(i) The project, if successful, will result in either or both of the following:

—Continued provision of services, after completion of the demonstration project, without additional OCS or other Federal funds; and/or
—More efficient use of existing anti-poverty resources.

Part E—Contents of Application Package and Application

(Approved by the Office of Management and Budget under Control Number 0920–0062)

1. Application Package

Each application submission must include:

a. *A signed original and four additional copies of the application.* Please note the following:

—The application narrative (Part IV, SF–424) must not exceed 10 pages and the entire application including attachments must not exceed 30 pages.
—The original must bear an original signature of the certifying representative of the applicant organization.
—Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on 8½ x 11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included.
—While applications must be responsive and complete, applicants should be concise and brief in their presentation of materials and should avoid unnecessary duplication of information.

Failure to comply with the above formatting requirements may result in disqualification and return of an application.

b. *A self-addressed, stamped postcard so that acknowledgement of receipt can be returned.* (This requirement applies even if the application is accompanied by a "return receipt requested card".) Please note the following:

All applications will be assigned an identification number which will be noted on the acknowledgement. This number must be referred to in all subsequent communication with OCS concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify Pera Daniels at (202) 252–4583.

2. Contents of Applications

Each copy of the application must contain, in the order listed, each of the following:

a. A Table of Contents with page numbers noted for each major section and subsection of the proposal and each section of the attachments. Each page in the application, including those in all attachments, must be numbered consecutively.

b. A Standard Form 424 (see Attachment B). The SF–424 should be completed in accordance with instructions found in Part F of this announcement. As completed, the SF–424 should include: Part I, Federal Assistance; Part II, Project Approval Information; Part III, Budget Information—Sections A through F with attachments including a detailed budget breakdown for Section B and documentation of required matching funds; Part IV, Project Narrative; and Part V, Assurances.

c. Attachments (See Part F, Section 5).

Part F—Instructions for Completing Applications

(Approved by the Office of Management and Budget under Control Number 0920–0062).

The forms attached to this announcement shall be used to apply for funds under this announcement

It is suggested that you reproduce the SF–424 and type your application on the copy. If an item on the SF–424 cannot be answered or does not appear to be related or relevant to the assistance requested, write "NA" for "not applicable." Prepare your application in accordance with the following instructions.

1. SF–424, PART I.

Section I of Part I, SF–424

Applicants shall complete all items in Section I. If additional space is needed, insert an asterisk (*) and use the remarks section (Part I, Section IV).

Item

1. Mark "Application" when used as a grant application. (The applicant, unless otherwise advised by the State or area-wide clearinghouse shall use a copy of the SF–424 Part I as a notification of intent to apply for Federal Assistance in accordance with procedures established by these clearinghouses and Executive Order 12372. When used for this purpose, mark "Notice of Intent".)

2a. Applicant's own control number, if desired.

2b. Date Section I is prepared.

3a. All applicants shall enter the number assigned by State clearinghouses or, if delegated by State, by area-wide clearinghouse(s). Applications submitted to OCS must contain this identifier if provided by the applicable State/area-wide clearinghouse(s). If in doubt, consult your clearinghouse(s).

3b. Date applicant notified of clearinghouse(s) identifier code(s).

4a–4h. Enter legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, name and telephone number of person who can provide further information about this request.

IF THE PAYEE WILL BE OTHER THAN THE APPLICANT, ENTER IN THE REMARKS SECTION (SECTION IV OF PART I), UNDER THE HEADING "PAYEE", THE PAYEE'S NAME, DEPARTMENT OR DIVISION, COMPLETE ADDRESS AND EMPLOYER IDENTIFICATION NUMBER, AS ASSIGNED BY THE INTERNAL REVENUE SERVICE, OR THE DHHS ENTITY NUMBER, IF KNOWN.

If an individual's name and/or title is desired on the payment instrument, the name and/or title of the designated individual must be specified.

5. Enter Employer Identification Number of applicant as assigned by Internal Revenue Service. If the applicant organization has been assigned a DHHS entity number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full entity number. If applicant has other grants with DHHS and has been assigned a Payee Identification Number (PIN), enter this PIN in parenthesis ( ) beside Employer Identification Number.

6a. Enter the Catalog of Federal Domestic Assistance number assigned to this program (13.797).

6b. Enter the program title from Catalog of Federal Domestic Assistance. The title is: Community Services Block Grant Discretionary Awards—Demonstration Partnership Program.

7. Enter a title and appropriate description of project.

8. Enter appropriate letter to designate grantee type—"City" includes town, township or other municipality. If the grantee is other than that listed, specify type on "Other" line e.g., Council of Governments. Note: Non-profit organizations must submit proof of non-profit status.

9. Enter governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than sub-units.

10. Identify estimated number of persons directly benefiting from project, as described in the program narrative (SF–424, Part IV).

11. All applicants for grant funds under this program announcement should enter the letter "A".

12. Enter amount requested or to be contributed during the funding/budget period by each contributor. Item 12 must include all funding for the proposed project including all non-OCS funds which the applicant plans to mobilize.

NOTE: WHEN COMPLETING Item 12a, "FEDERAL" FUNDING REFERS TO ANY FEDERAL FUNDS EXCEPT THOSE FROM STATE-ADMINISTERED BLOCK GRANT FUNDS BEING PROPOSED AS MATCHING FUNDS. EACH SOURCE OF FEDERAL FUNDS SHOULD BE IDENTIFIED SEPARATELY. ALL OTHER FUNDS ARE TO BE INCLUDED IN Item 12e, "OTHER". Section IV of Part I (REMARKS) must include two additional columns detailing item 12 (b through e) in which public funds are distinguished from private funds, and in which total mobilized funds (including 12b, 12c, 12d and 12e) are divided into separate public and private funds components by source. This information will be used in both the initial screening and subsequent review of applications. Where allowable, the value of in-kind contributions will be included.

Item definitions: 12a, amount requested from OCS and amounts deriving from other Federal sources (show separately); 12b, amount applicant will contribute; 12c, amount from State (include Block Grant funds); 12d, amount from local government, if applicant is not a local government; 12e, amount from any other sources; any overlap in fund amounts should be avoided, or if this is not possible, explained.

13a. The Congressional District identified by its State and number should correspond with the applicant's address under item 4 above.

13b. Enter the number of the Congressional District(s) and State(s) where most of the actual work of the project will be accomplished. If city-wide or State-wide covering several Districts, write "city-wide" or "State-wide".

14. Enter appropriate letter. Definitions are:

a. *New:* A submittal for the first time for a new project or project period.

b. *Renewal:* Not applicable to this OCS program.

c. *Revision:* Not applicable at this time.

d. *Continuation:* Not applicable to this OCS program.

e. *Augmentation:* Not applicable to this OCS program.

15. Enter approximate date project is expected to begin.

16. Enter estimated number of months to complete project after Federal funds are available. If the project is intended to continue beyond the OCS grant expiration date, the applicant must demonstrate in Part IV of the SF–424 that it will be able to continue project operations with other sources of funding.

17. Not applicable at this time.

18. Estimated date application will be submitted to Federal agency.

19. Indicate Federal agency to which this request is addressed—HHS/FSA, Washington, DC 20447.

20. Write "NA".

21. Check appropriate box as to whether Part I, Section IV of SF–424 contains remarks and/or additional "remarks" sheets are attached.

Section II of Part I SF–424

Applicants shall always complete items 22a or 22b as well as 23a and 23b. An explanation follows for each item.

22a and 22b. Self explanatory.

23a. Enter name and title of authorized representative of legal applicant.

23b. Self explanatory. Note: Authorized representative must personally execute this document.

Note: APPLICANT COMPLETES ONLY SECTIONS I AND II OF PART I. SECTION III IS COMPLETED BY THE FEDERAL AGENCY TO WHOM APPLICATION IS BEING MADE.

2. SF–424, PART II

Negative answers will not require an explanation unless the responsible program office requests more information at a later date. All "Yes" answers must be explained on a separate page in accordance with these instructions.

Item 1—Provide the name of the governing body establishing the priority system and the priority rating assigned to this project. If the prority rating is not available, give the approximate date that it will be obtained.

Item 2—Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval. If the clearance is not available, give the approximate date that it will be obtained.

Item 3—Furnish the name of the approving agency and the approval date. If the approval has not been received, state approximately when it will be obtained.

Item 3—Show whether the approved comprehensive plan is State, local or regional; or, if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination, and state whether this project is in conformance with the plan. If the plan is not available, explain why.

Item 5—Show the population residing or working on the Federal Installation who will benefit from this project. (Federally recognized Indian reservations are not "Federal Installations".)

Item 6—Show the percentage of the project work that will be conducted on Federally-owned land or leased land. Give the name of the Federal Installation and its location.

Item 7—Briefly describe the possible beneficial and/or harmful effect on the environment because of the proposed project. If an adverse environmental impact is anticipated, explain what action will be taken to minimize the impact.

Item 8—State the number of individuals, families, businesses, or farms this project will displace, if any.

Item 9—Show the Catalog of Federal Domestic Assistance number, the program number, the type of assistance, the status, the amount of each project where there is related previous, pending or anticipated assistance from another funding source. Whenever this item is answered in the affirmative (i.e. whenever items 12c, 12d, or 12e of Part I have non-zero entries), Part II must be accompanied by additional documentation which identifies the source of all of the State, local and other funds listed in item 12 of Part I of the SF–424. This documentation must include assurances of the availability of these funds. Funds already mobilized for this project must be evidenced by copies of applications to, and award documents or letters of commitment from, the expected source of these funds. OCS reserves the right to contact these sources regarding anticipated funding or previous assistance.

3. SF–424, PART III

IN COMPLETING THESE SECTIONS, THE "FEDERAL" FUND/BUDGET ENTRIES WILL RELATE TO ANY FEDERAL FUNDS EXCEPT THOSE FROM STATE ADMINISTERED BLOCK GRANTS BEING PROPOSED AS MATCHING FUNDS. EACH SOURCE OF FEDERAL FUNDS SHOULD BE IDENTIFIED SEPARATELY.

Sections A and D of Part III must contain entries for both Federal and non-Federal (mobilized) funds. Section B contains entries for OCS funds only. Section C contains entries for non-Federal (mobilized) funds only. Clearly identified continuation sheets in SF–424, Part III format should be used as necessary.

Section A—Budget Summary.

Lines 1–4

Col. (a): Enter on Line 1 under Column (a) "Administrative, applicant"; and enter on Line 2 under Column (a) "Administrative, project."

Col. (b): Enter on Line 1 under Column (b) the program announcement Number OCS–88–2. Enter on Line 2 under Column (b) the appropriate Catalog of Federal Domestic Assistance number, 13.797.

Col. (c)–(g): Leave Columns (c) and (d) blank. For each line entry, enter in Columns (e), (f), and (g) the appropriate amounts needed to support the project for the budget period.

Line 5

Enter the totals for all columns completed, (c) through (g).

Section B—Budget Categories

Columns (1)–(5)

In OCS applications, it is only necessary to complete Columns (1) *and* (5). For the project entered in Column 1, enter the total requirements for OCS Federal funds.

Allowability of costs are governed by applicable cost principles set forth in Sub-part Q of 45 CFR Part 74.

Personnel—Line 6a: Enter the total costs of salaries and wages of applicant/grantee staff only. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits—Line 6b: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on Line 6.j. Provide a breakdown of amounts and percentages that comprise fringe benefit costs.

Travel—Line 6c: Enter total costs of out-of-town travel by employees of the project. Do not enter costs for consultant's travel or local transportation. Provide justification for requested travel costs. (See Line 6h and Section F, Line 21, for additional instructions).

Equipment—Line 6d: Enter the total costs of all non-expendable personal property to be acquired by the project. "Non-expendable personal property" means tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit. An applicant may use its own definition of non-expendable personal property, provided that such a definition would at least include all tangible personal property as defined in the preceding sentence. (See Section F, Line 21 for additional requirements).

Supplies—Line 6e: Enter the total costs of all tangible personal property (supplies) other than that included on line 6d.

Contractual—Line 6f: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and, (2) contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individual service contractors on this line.

If available at the time of application, attach a list of contractors indicating the name of the organization, the purpose of the contract and the estimated dollar amount of the award. If the Name of Contractor, Scope of Work, Estimated Total are not available or have not been negotiated, include in Line h, "Other".

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must submit Sections A and B of Part III, Budget Section, completed for each delegate agency by agency title, along with the requried supporting information referenced in the applicable instructions. The total costs of all such agencies will be part of the amount shown on Line 6(f). Provide back-up documentation identifying name of contractor, purpose of contract and major cost elements.

Construction—Line 6g: Not Applicable.

Other—Line 6h: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use, training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total Direct Charges—Line 6i: Show the total of Lines 6a through 6h.

Indirect Charges—Line 6j: Enter the total amount of indirect costs. If no indirect costs under a currently approved agreement are requested enter "none". This line should be used only when the applicant (except local governments) currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agencies. Enclose a copy of the current rate agreement with the application. Local governments shall enter the amount of the indirect costs determined in accordance with the Federal agency's requirements. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Total—Line 6k: Enter the total amounts of Lines 6i and 6j. For all new applications the total amount shown in Column (5), Line 6k, should be the same as the amount shown in Section A, Column (e), Line 5.

Program Income—Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and that generated from matching funds. Do not add or subtract this amount from the budget total. Shown the nature and source of income in the program narrative statement in Part IV of the SF–424.

Section C—Non-Federal Resources

Lines 8–11: Enter amounts of "non-Federal" resources that will be used to support the project. Also enter here funds from State-administered federal block grants which are being proposed as matching funds. Provide a brief explanation, on a separate sheet, showing the type of contribution and whether it is in cash or in-kind. The firm commitment of these required funds must be documented and submitted with the application. Also if the applicant is proposing to use any block grant funds other than those provided under the Job Training Partnership Act, Social Services Block Grant Program, Community Development Block Grant Program, or the Low Income Home Energy Program, the legality of such use must be documented and a statement made explaining how these funds can be diverted to this project while maintaining previous anti-poverty efforts. Applicants are reminded that Community Services Block Grant funds (90%) designated for use by eligible entities may not be used as match. Failure to provide the required documentation for match will make the application ineligible for funding. *Except in unusual situations, this documentation must be in the form of letters of commitment from the organization(s)/individuals from which funds will be received.*

All material related to the match should be appended to the SF–424. When the contribution is in the form of in-kind, show the basis for computation including:

(1) Numbers and types of volunteers and rates at which their services are valued;

(2) Valuation of donated space to be used in the project, including the number of square feet and the annual rental value assigned per square foot;

(3) Determination of use allowance for grantee-owned space. (Include statement whether space was purchased or constructed, totally or in part, with federal funds for items (2) and (3));

(4) Type and value of other in-kind contributions expected. NOTE: SPECULATIVE MATCH, OR MATCH BASED ON INDEPENDENT CONTINGENCIES (SUCH AS RECEIPT OF ANOTHER GRANT) WILL NOT BE COUNTED TOWARDS THE MATCHING REQUIREMENT.

Column (a): Enter the project title.

Column (b): Enter the amount of cash and in-kind contributions to be made by the applicant.

Column (c): Enter the State contribution.

Column (d): Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e): Enter the total of Columns (b), (c), and (d).

Line 12—Enter total of each Columns (b) through (e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the budget period.

Line 15—Enter the totals of amounts on Line 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Project(s)

No entries are required for OCS grants.

Section F—Other Budget Information

Line 21—Use this space and continuation sheets as necessary to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the Federal agency. Budget items which require identification and justification shall include, but not be limited to, the following:

A. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative;

B. Any foreign travel;

C. A list of all equipment and estimated cost of each item to be purchased wholly or in part with grant funds which meet the definition of nonexpendable personal property provided on Line 6d, Section B. Need for equipment must be supported in the program narrative;

D. Contractual: Major items or groups of smaller items; and

E. Other: Group into major categories all costs for consultants, local transportation, space, rental, training allowances, staff training, computer equipment, travel, etc. Provide a complete breakdown of all costs that make up this category. Matching funds should also be broken out in the same manner as required for Federal funds in A through E above.

Line 22—Enter the type of HHS or other Federal agency approved indirect

rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Include a copy of the rate agreement with the application.

Line 23—Provide any other explanations and continuation sheets required or deemed necessary to justify or explain any SF–424, Part III entries.

4. SF–424, PART IV, Program Narrative

The narrative should not exceed 10 pages and should include two components: (a) the Analysis of Need and (b) the Project Design.

a. *Analysis of Need.* The application should include a description of the target area and population to be served as well as a discussion of the nature and extent of the poverty problem.

The applicant should also discuss known examples of this problem in other localities and regions and provide an analysis of the impact of the problem nationwide. In addition, applicants should provide a thorough summary of the results of its research conducted in order to identify previous and current attempts to address the poverty problem and describe the limitations of these attempts. A bibliography of all the sources used in its research must be included as an attachment.

b. *Project Design.* Each applicant must include the following in its project design:

(1) A testable hypothesis that permits measurement of the extent to which the target population has achieved greater self-sufficiency;

(2) The rationale for the approach being proposed to overcome this problem, an explanation showing how the approach proposed by the applicant is a departure from or a significant modification of previous and current approaches, and why the applicant believes that testing this approach will lead to positive outcomes;

(3) A description of the target group(s) including the number of participants and beneficiaries and their major characteristics that are relevant to the hypothesis;

(4) A thorough description of the intervention(s) that will be carried out to test the hypothesis with inclusion of target dates, in chronological order, by which the major events will occur;

(5) Inclusion of measurable objectives, intended project outcomes, and intended impact on the problem(s) that are being addressed;

(6) A concise description of all partnership agreements that involve significant combinations of resources, and/or organizations, and includes the respective responsibilities of the partners and the specific working relationships each will have with the other.

(7) Resources needed to continue project if the demonstration is successful. Explain why one or both of the following applies: (a) This demonstration, if successful, will show how to use existing anti-poverty resources more efficiently, and/or (b) services or activities conducted under this demonstration, if successful, could be continued after completion of the demonstration project with non-Federal funds; and

(8) If appropriate, a plan for identifying impediments to achieving self-sufficiency that are caused by legislative, administrative, and regulatory requirements at the Federal, State, and local levels.

5. Attachments

The entire application package including attachments may not exceed 30 pages. All the attachments described below must be included in the order listed.

a. *Bibliography* (See 4a above.)

b. *Evaluation Component.* A plan for a methodologically sound third-party (i.e. independent) evaluation of the demonstration project must be attached and must:

(1) Clearly identify the hypothesis to be tested, the changes (outcome objectives) to be produced, the activities (interventions) that will produce the changes, and the methods (performance measures) for measuring the performance that will assure both internal and external validity.

(2) Address in a complete, clear, concise, and logical manner:

(a) Applicable accuracy standards such as context analysis, defensible information sources, valid and reliable measurement, systematic data control, and analysis of quantitative and qualitative information;

(b) Applicable utility standards such as audience identification, evaluator credibility, report dissemination, report timeliness and report impact;

(c) Applicable feasibility standards such as cost effectiveness; and

(d) Applicable propriety standards such as conflict of interest and balanced reporting.

(3) Include procedures that will be used to (a) compare information about participants and non-participants—the comparison groups—and, (b) isolate and systematically assess competing explanations for the observed outcomes. Where the use of comparison groups is not practicable, the applicant must propose an alternative method to validate the hypothesis;

(4) Include a realistic plan for disseminating the project findings, once they have been approved by OCS, to other eligible entities and to States upon request.

(5) Include provisions for both a summative and process evaluation;

(6) Include a specific working definition (consistent with the broad definition found in Part A) of "self-sufficiency" for this project that permits the measurement of incremental movement of individuals and families from dependency toward self sufficiency. The applicant must include an assurance that the evaluation will be conducted by an independent entity, i.e., an entity organizationally distinct from, and not under the control of, the applicant.

c. Statement on Organizational History and Management Capability.

Each applicant must document its past efforts and current capability to address both the poverty problem and the research problem specified in the application. The applicant should demonstrate that it has (1) experience in developing and operating innovative projects that utilize a variety of resources in a cooperative and problem solving arrangement with other agencies, and (2) experience specifically related to the problem(s) and activities proposed in the application. In addition, the applicant should describe its organizational structure, summarize relevant portions, if any, or its corporate mission, strategy, and multi-year plan, summarize any examples of recent evaluation research it has conducted, and provide a current listing of all sources of funds and projects operated in the applicant's current funding year. The applicant should demonstrate and document that it has experience in designing and/or managing staff-conducted or third party (i.e. independent) evaluations.

The application must fully describe the experience and skills of the proposed project director showing that the individual is not only well qualified but that his/her professional capabilities are relevant to the successful implementation of the project. It must show clearly that sufficient time of the Executive Director and other senior staff will be budgeted to assure timely implementation and oversight of the project. Applications must also fully describe the experience and skills of the primary person responsible for conducting the third-party evaluation. If the project director and/or the person

responsible for conducting the evaluation have not yet been identified, include a position description for each of these persons.

The applicant should submit for each of the partners, any of the above information which is relevant. The applicant must attach a certification from the State Director of the CSBG program stating that the applicant is (1) an eligible entity as defined in Part A and (2) that the applicant has the administrative and programmatic capability to conduct the proposed project.

The applicant should include information that shows how it will incorporate the project into its existing organizational structure and shows how the new activities will result in changes, if any, to current projects.

d. Documentation for Matching Funds

e. Assurances Affidavit

Each applicant must submit an Assurances Affidavit in the form and language presented below (NOTE: Due to the 30-page limitation on the number of pages that can be submitted by an applicant, DHHS Forms 441 and 641 need not be included among the attachments):

Assurances Affidavit

The Applicant (undersigned) hereby assures and certifies that, if selected for a grant award under the Demonstration Partnership Program, it will comply with (1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–3521) and with all the requirements imposed by the Department of Health and Human Services (DHHS) regulations issued pursuant to this Title and referenced in Attachment C to this program announcement; (2) section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794) and with all requirements imposed by the applicable DHHS regulation (45 CFR 84) referenced in Attachment D to this program announcement, and (3) all the regulations, policies, guidelines and requirements including 45 CFR 74 and OMB Circulars No. A–102, A–110 and applicable cost principles (Circulars A–21, A–87 and A–122) as they relate to the application, acceptance and use of Federal funds for this Federally assisted project.

The applicant further agrees that if it is selected for a grant award under the Demonstration Partnership Program, it will submit to OCS DHHS Forms 441 and 641 described in Attachments C and D to this program announcement.

DATE

APPLICANT (TYPE OR PRINT)

SIGNATURE AND TITLE OF AUTHORIZED OFFICIAL

Part G—Post Award Requirements

The official award document is the Notice of Grant Award which sets forth in writing to the recipient the amount of funds awarded, the purpose of the award, other terms and conditions of the award, the effective date of the award, the budget period for which support is given, the total project period for which support is contemplated and the total recipient financial participation required.

In addition to the General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, grantees will be subject to the provisions of appropriate Office of Management and Budget Circulars, for example, A–102 or A–110 and A–122, the last of which, among other provisions, prohibits the use of grant funds for (a) electioneering activities at the Federal, State or local level and (b) attempts to influence Federal or State legislation through either grassroots lobbying or direct contacts with Federal or State legislators or their staffs.

Grantees will be required to submit semi-annual progress and financial reports and a final audit of the project costs. (Costs associated with the completion and submission of the required grant audit may be chargeable to the grant and will not be considered as part of the up to 10% of the grant that is allowable for administrative costs.)

Grantees who will be charging administrative costs to the OCS grant will have to assure that such costs are identifiable in their records in order that auditors and OCS personnel can verify that the 10% administrative cost limitation is not exceeded where such limitation is applicable.

In addition grantees will be required to submit within sixty days of the termination of the project a final summative evaluation report and a process evaluation report. These reports will be submitted in accordance with instructions to be provided by OCS, and will be the basis for the dissemination effort to be conducted by the Office of Community Services.

Mary M. Evert,

Director, OCS.

Attachment A—Annual Revision of Poverty Income Guidelines.

Attachment B—SF–424, Federal Assistance, Parts I through V.

Attachment C—Assurance of Compliance with DHHS Regulation under Title VI of the Civil Rights Act of 1964.

Attachment D—Assurance of Compliance with section 504 of the Rehabilitation Act of 1973, as amended.

BILLING CODE 4150-04-M

ATTACHMENT A

1988 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of Family Unit	Poverty Guideline
1	$5,770
2	7,730
3	9,690
4	11,650
5	13,610
6	15,570
7	17,530
8	19,490

For family units with more than 8 members, add $1,960 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of Family Unit	Poverty Guideline
1	$7,210
2	9,660
3	12,110
4	14,560
5	17,010
6	19,460
7	21,910
8	24,360

For family units with more than 8 members, add $2,450 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of Family Unit	Poverty Guideline
1	$6,650
2	8,900
3	11,150
4	13,400
5	15,650
6	17,900
7	20,150
8	22,400

For family units with more than 8 members, add $2,250 for each additional member.

Attachment B

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

NSN 7540-01-008-8162
PREVIOUS EDITION IS NOT USABLE

424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

SECTION IV–REMARKS *(Please reference the proper item number from Sections I, II or III, if applicable)*

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PART II
PROJECT APPROVAL INFORMATION

Item 1
Does this assistance request require State, local regional, or other priority rating?
_____ Yes _____ No
Name of Governing Body _____
Priority Rating _____

Item 2
Does this assistance request require State, or local advisory, educational or health clearances?
_____ Yes _____ No
Name of Agency or Board _____
(Attach Documentation)

Item 3
Does this assistance request require State, local, regional or other planning approval?
_____ Yes _____ No
Name of Approving Agency _____
Date _____

Item 4
Is the proposed project covered by an approved comprehensive plan?
_____ Yes _____ No
Check one: State ☐ Local ☐ Regional ☐
Location of Plan _____

Item 5
Will the assistance requested serve a Federal installation?
_____ Yes _____ No
Name of Federal Installation _____
Federal Population benefiting from Project _____

Item 6
Will the assistance requested be on Federal land or installation?
_____ Yes _____ No
Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 7
Will the assistance requested have an impact or effect on the environment
_____ Yes _____ No
See instructions for additional information to be provided.

Item 8
Will the assistance requested cause the displacement of individuals, families, businesses, or farms?
_____ Yes _____ No
Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 9
Is there other related assistance on this project previous, pending, or anticipated
_____ Yes _____ No
See instructions for additional information to be provided

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PART III - BUDGET INFORMATION

SECTION A - BUDGET SUMMARY

Grant Program, Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5 TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	- Grant Program, Function or Activity				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges					
j. Indirect Charges					
k. TOTALS	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) APPLICANT	(c) STATE	(d) OTHER SOURCES	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (YEARS)			
	(b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach Additional Sheets If Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

PART IV PROGRAM NARRATIVE (Attach per instruction)

PART V

ASSURANCES

The Applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements, including 45 CFR Part 74 and OMB Circulars No. A-102, A-110 and applicable cost principles, (Circulars: A-21, "Educational Institutions"; A-87, "Cost Principles for State and Local Governments"; and A-122, "Nonprofit Organizations"), as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the applicant 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 program 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 requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.

5. It will comply with the provisions of the Hatch Act which limit the political activity of State and local government employees.

6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201) as they apply to employees of institutions of higher education, hospitals, other nonprofit organizations, and to employees of State and local governments who are not employed in integral operations in areas of traditional governmental functions.

   Head Start, Certification of Minimum Wage: It certifies that it has reviewed the salary structures and wages for all positions and certifies that persons employed in carrying out this program shall not receive compensation at a rate which is (a) in excess of the average rate of compensation paid in the area to persons providing substantially comparable services; or (b) less than the minimum wage rate prescribed in section 6(a) of the Fair Labor Standards Act of 1938. Documentation of the methods by which it established wage scales is available in their files for review by audit and HDS personnel.

7. 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.

8. It will give the sponsoring 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, including the records of contractors and subcontractors performing under the grant.

9. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

10. 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.

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

11. 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, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use 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.

12. 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 800.8) by the grantee's 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.

13. Applicants for the Administration for Native Americans Programs, hereby certify in accordance with 45 CFR 1336.53, that the financial assistance provided by the Office of Human Development Services for the specified activities to be performed under this program, will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

14. It will comply with the Age Discrimination Act of 1975 enacted as an amendment to the Older Americans Act (Pub. L. 94-135), which provides that: No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity for which the applicant receives Federal financial assistance.

15. It will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance.

16. It will comply with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.) which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by an educational institution).

17. It will comply with Pub. L. 93-348 as implemented by Part 46 of Title 45 (45 CFR 46, 42 U.S.C. 2891) regarding the protection of human subjects involved in research, development, and related activities supported by the grant.

18. It will comply with the equal opportunity clause prescribed by Executive Order 11246, as amended, and will require that its subrecipients include the clause in all construction contracts and subcontracts which have or are expected to have an aggregate value within a 12-month period exceeding $10,000, in accordance with Department of Labor regulations at 41 CFR Part 60.

19. It will include, and will require that its subrecipients include, the provision set forth in 29 CFR 5.5(c) pertaining to overtime and unpaid wages in any nonexempt nonconstruction contract which involves the employment of mechanics and laborers (including watchmen, guards, apprentices, and trainees) if the contract exceeds $2,500.

ATTACHMENT C

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES REGULATION UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

_____ (hereinafter called the "Applicant")
Name of Applicant (type or print)

HEREBY AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 80) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, 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 program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this Assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this Assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this Assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance, and that the United States shall have the right to seek judicial enforcement of this Assurance. This Assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the Applicant.

Date _____ _____
Applicant (type or print)

By _____
Signature and Title of Authorized Official

_____

_____
Applicant's mailing address

NOTE: If this form is not returned with the application for financial assistance, return it to DHHS, Office for Civil Rights, 330 Independence Ave., S.W., Washington, D.C. 20201

ATTACHMENT D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

The undersigned (hereinafter called the "recipient") HEREBY AGREES THAT it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto.

Pursuant to §84.5(a) of the regulation [45 C.F.R. 84.5(a)], the recipient gives this Assurance in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (except procurement contracts and contracts of insurance or guaranty), property, discounts, or other Federal financial assistance extended by the Department of Health and Human Services after the date of this Assurance, including payments or other assistance made after such date on applications for Federal financial assistance that were approved before such date. The recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance and that the United States will have the right to enforce this Assurance through lawful means. This Assurance is binding on the recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the recipient.

This Assurance obligates the recipient for the period during which Federal financial assistance is extended to it by the Department of Health and Human Services or, where the assistance is in the form of real or personal property, for the period provided for in §84.5(b) of the regulation [45 C.F.R. 84.5(b)].

The recipient: [Check (a) or (b)]

a. ( ) employs fewer than fifteen persons;

b. ( ) employs fifteen or more persons and, pursuant to §84.7(a) of the regulation [45 C.F.R. 84.7(a)], has designated the following person(s) to coordinate its efforts to comply with the HHS regulations:

_____

Name of Designee(s) (Type or Print)

_____ _____

Name of Recipient (Type or Print) Street Address or P.O. Box

_____ _____

(IRS) Employer Identification Number City

_____

State Zip

I certify that the above information is complete and correct to the best of my knowledge.

_____ _____

Date Signature and Title of Authorized Official

If there has been a change in name or ownership within the last year, please PRINT the former name below:

NOTE: If this form is not returned with the application for financial assistance, return it to DHHS, Office for Civil Rights, 330 Independence Avenue, S.W., Washington, D.C. 20201.

HHS-641 (Rev. 12/82)

[FR Doc. 88–15223 Filed 7–7–88; 8:45 am]
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federal register

Friday
July 8, 1988

Part VI

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs; Final Rule

Executive Office of the President
Office of Administration
3 CFR Part 102
Office of Personnel Management
5 CFR Part 723
Merit Systems Protection Board
5 CFR Part 1207
Office of the Special Counsel
5 CFR Part 1262
Federal Labor Relations Authority
5 CFR Part 2416
National Aeronautics and Space Administration
14 CFR Part 1251
Securities and Exchange Commission
17 CFR Part 200
Overseas Private Investment Corporation
22 CFR Part 711
African Development Foundation
22 CFR Part 1510
National Labor Relations Board
29 CFR Part 100
National Archives and Records Administration
36 CFR Part 1208
Veterans Administration
38 CFR Part 15
Federal Emergency Management Agency
44 CFR Part 16

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Administration

3 CFR PART 102

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 723

MERIT SYSTEMS PROTECTION BOARD

5 CFR PART 1207

Office of the Special Counsel

5 CFR PART 1262

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR PART 2416

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR PART 1251

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 200

OVERSEAS PRIVATE INVESTMENT CORPORATION

22 CFR PART 711

AFRICAN DEVELOPMENT FOUNDATION

22 CFR PART 1510

NATIONAL LABOR RELATIONS BOARD

29 CFR PART 100

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR PART 1208

VETERANS ADMINISTRATION

38 CFR PART 15

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 16

ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY CONDUCTED PROGRAMS

AGENCIES: Executive Office of the President, Office of Personnel Management, Merit Systems Protection Board, Office of the Special Counsel (MSPB), Federal Labor Relations Authority, National Aeronautics and Space Administration, Securities and Exchange Commission, Overseas Private Investment Corporation, African Development Foundation, National Labor Relations Board, National Archives and Records Administration, Veterans Administration, Federal Emergency Management Agency.

ACTION: Final Rule.

SUMMARY: This regulation requires that the agencies listed above operate all of their programs and activities to ensure nondiscrimination against qualified individuals with handicaps. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for individual with handicaps and qualified individual with handicaps, and establishes a complaint mechanism for resolving allegations of discrimination. This regulation is issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs or activities conducted by Federal Executive agencies.

EFFECTIVE DATE: September 6, 1988.

ADDRESSES: See individual agencies below. Copies of this regulation will be made available on tape for persons with impaired vision who request them. They will be provided by the Coordination and Review Section, Civil Rights Division, Department of Justice, Washington, DC 20530, (202) 724–2222 (voice) or (202) 724–7678 (TDD).

FOR FURTHER INFORMATION CONTACT: See individual agencies below.

SUPPLEMENTARY INFORMATION:

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 following agencies (hereinafter "the agencies"): Executive Office of the President, Office of Personnel Management, Merit Systems Protection Board, Office of the Special Counsel (MSPB), Federal Labor Relations Authority, National Aeronautics and Space Administration, Securities and Exchange Commission, Overseas Private Investment Corporation, African Development Foundation, National Labor Relations Board, National Archives and Records Administration, Veterans Administration, Federal Emergency Management 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 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).]

On July 2, 1987, thirteen agencies jointly published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**. 52 FR 25124. Each agency individually analyzed comments it received. On the basis of their analysis, the agencies participating in this publication decided to adopt this final rule. Because the rule selected is identical for all the participating agencies, they are able to publish it jointly, and are doing so in order to minimize costs and expedite its issuance. The rule adopted by each agency will be codified in that agency's portion of the Code of Federal Regulations, as indicated in the information provided for the individual agencies below.

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 Department of Justice, on behalf of the agencies participating in this joint rulemaking, is submitting these regulations to the Senate Committee on Labor and Human Resources and its Subcommittee on the Handicapped and to the House Committee on Education and Labor and its Subcommittee on Select Education. Each regulation will become effective on September 6, 1988.

The substantive nondiscrimination obligations of the agency, as set forth in this rule, are identical, 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. 13901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13897 (remarks of Rep. Brademas); *id.* at 38552 (remarks of Rep. Sarasin).

A commenter objected to language differences between this rule and the Federal Government's section 504 regulations for federally assisted programs. As explained in the preamble to the proposed rule, these changes are based on the Supreme Court's decision 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 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. 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 301 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 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*, by lower courts 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 the agencies believe that there are no significant differences between this 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).

Section-by-Section Analysis and Response to Comments

Section ____.101 Purpose.

Section ____.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.

Section ____.102 Application.

The regulation applies to all programs or activities conducted by the agencies. Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: those involving general public contact as part of ongoing agency operations and those directly administered by the agencies for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the agency's facilities. Activities in the second category include programs that provide Federal services or benefits. 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 ____.103 Definitions.

"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 § ____.160(a)(1), they may also be necessary to meet other requirements of the regulation.

A commenter suggested that the requirement for auxiliary aids in aspects of the agency's program other than those covered by § ____.160(a)(1) should be specifically stated in the regulation. The agency believes that such a statement is unnecessary, because the regulation makes the obligation not to discriminate clear and thus requires the provision of auxiliary aids whenever they are necessary to meet that obligation. A commenter also suggested that "attendant services" should be included in the list of examples of auxiliary aids appearing in the definition. The agency believes that attendant services are generally personal in nature and that they are therefore generally not required.

"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 § ____.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 this 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.

"Historic preservation programs," "Historic properties," and "Substantial impairment." These terms are defined in order to aid in the interpretation of § ____.150 (a)(2) and (b)(2), which relate to accessibility of historic preservation programs.

"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 of "qualified handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) is an adaptation of existing definitions of "qualified handicapped person" for purposes of federally assisted preschool, elementary, and secondary education programs [*see, e.g.*, 45 CFR 84.3(k)(2)]. It provides that an individual with handicaps is qualified for preschool, elementary, or secondary education programs conducted by the agency if he or she is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive these services from the agency. In other words, an individual with handicaps is qualified if, considering all factors other than the handicapping condition, he or she is entitled to receive education services from the agency.

Paragraph (2) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program other than those covered by paragraph (1) 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 *Davis*. 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 so as to enable the 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.

A commenter argued that this definition of "qualified individual with handicaps" was unnecessary, because *Davis* was an interpretation of the definition in paragraph (3), which requires only that the individual meet "the essential eligibility requirements" for participation in the program. The agency believes that *Davis* clarifies the meaning of "essential eligibility requirements" with respect to programs, such as the one at issue in that case, in which an individual "is required to perform services or to achieve a level of accomplishment." In such a program, the Court held in *Davis*, an individual is not qualified if he or she cannot achieve the purpose of the program without modifications that would fundamentally alter its nature. The agency believes that it is appropriate to reflect this clarification in the regulation.

This commenter also recommended that the agency adopt the definitions in the regulation of the Federal Election Commission, which incorporates a requirement for "reasonable accommodation." "Reasonable accommodation," in the context of nondiscrimination on the basis of handicap, is a term of art used to refer to employers' obligations to employees with handicaps. The agency believes that use of that term should be limited to employment. Also, the agency believes that the obligation to make appropriate modifications or adjustments to enable individuals with handicaps to participate in its programs is made sufficiently clear in the substantive provisions of the regulation, so that a reference to it in this definition is unnecessary.

The agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alternation, the agency must follow the procedures established in § ____.150(a) and § ____.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.

For programs or activities that do not fall under either of the first two paragraphs, paragraph (3) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity.

Paragraph (4) explains that "qualified individual with handicaps" means "qualified handicapped person" as that term 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 regulation by § ____.140. Nothing in this regulation 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 ____.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 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.

Section ____.111 Notice.

Section ____.111 requires the agency to disseminate sufficient information to 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.

One commenter suggested that the agency add "effectively" to modify "to apprise" in stating the agency's obligation to inform persons of the requirements of this regulation. The agency considers this modification to be unnecessary and has not adopted the suggestion.

Section ____.130 General prohibitions against discrimination.

Section ____.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 § ____.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 § ____.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 person 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.

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 (§§ ____.149—____.151) and communications (§ ____.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 and activities. The phrase "criteria or methods of administration" refers to official written agency policies and to 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 § ____.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.

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* § ____.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 or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

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), discussed above, provides that the agency must administer programs and 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 ____.140 Employment.

Section ____.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. *Morgan v. United States Postal Service*, 798 F.2d 1162, 1164–65 (8th Cir. 1986); *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, § ____.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, § ____.170(b) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination.

Section ____.149 Program accessibility: Discrimination prohibited.

Section ____.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ ____.150 and ____.151.

Section ____.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, § ____.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 (§ ____.150(a)(1)). However, § ____.150, unlike 28 CFR 41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ ____.150(a)(2), (a)(3)).

Paragraph (a)(2), which establishes a special limitation on the obligation to ensure program accessibility in historic preservation programs, is discussed below in connection with paragraph (b).

Paragraph (a)(3) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § ____.160(d). This provision is based on the Supreme Court's holding in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), 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, e.g, Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis*, (*APTA*), 655 F.2d 1272 (D.C. Cir. 1981).

Paragraphs (a)(3) and § ____.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 handicapped persons. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, 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 handicapped persons "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 a handicapped person 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.

This paragraph, however, 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.

It is our view that compliance with § ____.150(a) 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 § ____.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 procedures established in § ____.170.

One commenter argued that the decision that an action would result in undue burdens should be based on the resources of the agency as a whole. The agency believes that its entire budget is an inappropriate touchstone for making determinations as to undue financial and administrative burdens. Parts of the agency's budget may be earmarked for specific purposes and may simply not be available for use in making the agency's programs accessible to individuals with handicaps.

Paragraph (b)(1) 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. (It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features, such as removal of or alteration to a load-bearing structural member.) The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraph § ____.150(a)(2) provides an additional limitation on the obligation to ensure program accessibility that is applicable only to historic preservation programs. In order to avoid possible conflict between the congressional mandates to preserve historic properties on the one hand and to eliminate discrimination against individuals with handicaps on the other, § ____.150(a)(2) provides that in historic preservation programs the agency is not required to take any action that would result in a substantial impairment of significant historic features of an historic property.

Nevertheless, because the primary benefit of an historic preservation program is uniquely the experience of the historic property itself, § ____.150(b)(2) requires the agency to give priority to methods of providing program accessibility that permit individuals with handicaps to have physical access to the historic property. This priority on physical access may also be viewed as a specific application of the general requirement that the agency administer programs in the most integrated setting appropriate to the needs of qualified individuals with handicaps (§ ____.130(d)). Only when providing physical access would result in a substantial impairment of significant historic features, a fundamental alteration in the nature of the program, or in undue financial and administrative burdens, may the agency adopt alternative methods for providing program accessibility that do not ensure physical access. Examples of some alternative methods are provided in § ____.150(b)(2).

The special limitation on program accessibility set forth in § ____.150(a)(2) is applicable only to programs that have preservation of historic properties as a primary purpose (*see supra* discussion of definition of "historic preservation program," § ____.103). Narrow application of the special limitation is justified because of the inherent flexibility of the program accessibility requirement. Where historic preservation is not a primary purpose of the program the agency is not bound to a particular facility. It can relocate all or part of its program to an accessible facility, make home visits, or use other standard methods of achieving program accessibility without making structural alterations that might impair significant historic features of the historic property.

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 ____.151 Program accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction and alterations under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section ____.151 provides that those building 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 handcaps in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Arcthitectural 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 by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in § ____.150. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § ____.151.

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 ____.160 Communications.

Section ____.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 § ____.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 (§ ____.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 § ____.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 § ____.150(a)(3)). Unless not required by § ____.160(d), the agency shall provide auxiliary aids at no cost to the individual with handicaps.

The discussion of § ____.150(a), Program accessibility: Existing facilities, regarding the determination of undue financial and administrative burdens also applies to this section and should be referred to for a complete understanding of the agency's obligation to comply with § ____.160.

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 inform the public of (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 for provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ ____.160(a)(1)(ii)). For example, the agency need not provide eyeglasses 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.

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.

One commenter recommended that the agency add a paragraph to § ____.160, Communications, requiring the agency to provide handicapped persons with information about their rights under section 504. Such a paragraph is unnecessary because it would duplicate § ____.111, Notice.

Section ____.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).

Paragraph (c) is amended by each individual agency. It designates the official responsible for coordinating implementation of § ____.170 and provides an address to which complaints may be sent.

The agency is required to accept and investigate all complete complaints (§ ____.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 (§ ____.170(e)).

One commenter on the compliance procedures suggested that the agency should be required to refer a complaint to the appropriate agency when it does not have jurisdiction over it. The proposed rule merely required the agency to make reasonable efforts to do so. The agency has not adopted this suggestion because of several possible circumstances in which the agency might not be able to successfully refer a complaint. For example, the agency might receive a complaint that no Federal agency would have jurisdiction over or that did not contain sufficient information to identify the appropriate agency.

A commenter suggested that the regulation should include procedures for handling complaints that are incomplete. The agency believes that it is not necessary to include such detailed procedures in the text of the regulation itself. The agency will, of course, develop methods for handling situations for which procedures are not spelled out in the regulation.

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 to 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 (§ ____.170(g)). One appeal within the agency shall be provided (§ ____.170(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance.

Paragraph (1) 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.

A commenter suggested that the rule should state that the provision of complaint resolution procedures does not preclude judicial relief and that a complainant is not required to exhaust these administrative remedies before bringing an action in court. It is beyond the agency's jurisdiction to specify the availability or scope of judicial review of agency actions. That issue is for the courts to decide.

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Administration

3 CFR Part 102

FOR FURTHER INFORMATION CONTACT: Arnold Intrater, (202) 456–6226 (voice) or (202) 456–6213 (TDD).

ADDITIONAL SUPPLEMENTARY INFORMATION: The Executive Office of the President is a designation which encompasses several different agencies, boards and commissions each of which provides analysis and advice and help in developing policy in certain areas, or carries out specific projects in support of the Presidency. The Office of Administration was established to provide common administrative support and services for units within the Executive Office of the President. Because of the uniqueness of the Executive Office of the President, the proposed rule provided that decisions that need to be made by a head of an agency would be made by a three-person board. No comments were received on this provision in the proposed rule, and it has not been changed.

List of Subjects in 3 CFR Part 102

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 3 of the Code of Federal Regulations is amended as follows:

1. Part 102 is added as set forth at the end of this document.

PART 102—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE EXECUTIVE OFFICE OF THE PRESIDENT

Sec.

102.101 Purpose.
102.102 Application.
102.103 Definitions.
102.104—102.109 [Reserved]
102.110 Self-evaluation.
102.111 Notice.
102.112—102.129 [Reserved]
102.130 General prohibitions against discrimination.
102.131—102.139 [Reserved]
102.140 Employment.
102.141—102.148 [Reserved]
102.149 Program accessibility: Discrimination prohibited.
102.150 Program accessibility: Existing facilities.
102.151 Program accessibility: New construction and alterations.
102.152—102.159 [Reserved]
102.160 Communications.
102.161—102.169 [Reserved]
102.170 Compliance procedures.
102.171—102.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 102 is further amended by adding the following definitions to § 102.103 thereof, placing them in alphabetical order among the existing definitions of that section:

§ 102.103 Definitions.

* * * * *

"Agency" means, for purposes of this regulation only, the following entities in the Executive Office of the President: the White House Office, the Office of the Vice President, the Office of Management and Budget, the Office of Policy Development, the National Security Council, the Office of Science and Technology Policy, the Office of the United States Trade Representative, the Council on Environmental Quality, the Council of Economic Advisers, the Office of Administration, the Office of Federal Procurement Policy, and any committee, board, commission, or similar group established in the Executive Office of the President.

* * * * *

"Agency head" or "head of the agency"; as used in §§ 102.150(a)(3), 102.160(d) and 102.170 (i) and (j), shall be a three-member board which will include the Director, Office of Administration, the head of the Executive Office of the President, agency in which the issue needing resolution or decision arises and one other agency head selected by the two other board members. In the event that an issue needing resolution or decision arises within the Office of Administration, one of the board members shall be the Director of the Office of Management and Budget.

3. Part 102 is further amended by revising paragraph (c) in § 102.170 to read as follows:

§ 102.170 Compliance procedures.

* * * * *

(c) The Director, Facilities Management, Office of Administration, Executive Office of the President, shall be responsible for coordinating implementation of this section. Complaints may be sent to the Director at the following address: Room 486, Old Executive Office Building, 17th and Pennsylvania Ave. NW., Washington, DC 20500.

* * * * *

Gordon Riggle,

Director, Office of Administration, Executive Office of the President.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 723

FOR FURTHER INFORMATION CONTACT: Ms. Sharrel Keeling, (202) 632–6272 (Voice or TDD).

ADDITIONAL SUPPLEMENTARY INFORMATION: The Office of Personnel Management received comments from three organizations representing Government employees. One commenter asked that the application section (§ 723.102) be revised to indicate that Federal employees are excepted from the part unless they are "individuals with handicaps" as that term is defined in the regulation. We believe that the regulation makes clear that the rights established by the regulation apply to individuals who meet that definition, including those who are Federal employees as well as others. Obligations under the regulation, however, are those of the agency and, because the agency necessarily acts through its employees, it would be incorrect to say that the regulation does not apply to Federal employees who do not have handicaps.

This commenter also suggested that the regulation should include the statutory language requiring the agency to promulgate an implementing regulation and submit it to Congress for review prior to its effective date. The agency is carrying out its statutory responsibility to issue a regulation by

participating in this joint publication and, as noted *supra* in the joint preamble, this regulation is being submitted for the required congressional review.

One commenter said that the treatment of employment in the proposed regulation was inadequate and that the EEOC requirements for employment should be included or summarized in this regulation, rather than merely cross-referenced. As explained in the joint preamble, responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, Comp. 1979, p. 206). While this rule could define terms with respect to employment and enumerate what practices are covered and what requirements apply, the agency has adopted EEOC's recommendation that to avoid duplicative, competing, or conflicting standards with respect to Federal employment, reference in these regulations to the Government-wide EEOC rules is sufficient. The class of Federal employees and applicants for employment covered by section 504 is identical to or subsumed within that covered by section 501. To apply different or lesser standards to persons alleging violations of section 504 could lead unnecessarily to confusion in the enforcement of the Rehabilitation Act with respect to Federal employment.

Another commenter suggested that the self-evaluation required by § 723.110 should be repeated on a periodic basis, rather than being a one-time activity. We do not agree. The self-evaluation is intended as an initial examination of the agency's existing policies and practices to identify and correct any problem areas. Of course, the obligation to comply with the regulation is a continuing one, but it can best be met by maintaining a consistent awareness of the rights of individuals with handicaps, and the potential for agency policy to affect them, so that new problems are not created as agency policies and practices change.

This commenter also asked OPM to inform agencies that a labor union at the "local activity level" should be included among the organizations representing individuals with handicaps to be consulted in the development of the self-evaluation and the transition plan required by §§ 723.110 and 723.150(d). The Department of Justice and, with respect to employment, the EEOC, are the agencies with Government-wide authority to coordinate mplementation of section 504. OPM has no authority in this respect over other agencies. Of course, OPM uniformly encourages Federal agencies to maintain good relations with labor organizations representing their employees by consulting such organizations about matters that concern their members.

Finally, this commenter questioned the meaning of § 723.130(b)(2), which provides that the agency may not exclude a qualified individual with handicaps from a program that is not separate or different, even if the agency operates (pursuant to § 723.130(b)(1)(iv)) a separate or different program that is designed to meet the needs of individuals with handicaps. This means that, if the agency has a separate program modified to meet the needs of a particular class of individuals with handicaps, it cannot, on that basis, refuse to allow an individual with handicaps to participate in the program that is not so modified. Thus, if the agency offers several sections of a particular training course, it could provide a sign language interpreter for only one section in order to accommodate individuals with impaired hearing, but it could not refuse to allow an individual with impaired hearing to attend a section of the course for which an interpreter is not provided. In some cases, the provision of a separate program designed for individuals with handicaps may limit the obligation to accommodate individuals with handicaps in the regular program, but in other cases it might not. The provision of a sign language interpreter for one section of a training course, for example, might eliminate the obligation to provide an interpreter for other sections of the course, but it would not affect the agency's obligation to accommodate persons with impaired vision in other sections of the course.

The other comments received by OPM duplicated those received by other agencies and are discussed in the joint preamble.

List of Subjects in 5 CFR Part 723

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 5 of the Code of Federal Regulations is amended as follows:

1. Part 723 is added as set forth at the end of this document.

PART 723—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE OFFICE OF PERSONNEL MANAGEMENT

Sec.

723.101 Purpose.
723.102 Application.
723.103 Definitions.
723.104—723.109 [Reserved]
723.110 Self-evaluation.
723.111 Notice.
723.112—723.129 [Reserved]
723.130 General prohibitions against discrimination.
723.131—723.139 [Reserved]
723.140 Employment.
723.141—723.148 [Reserved]
723.149 Program accessibility: Discrimination prohibited.
723.150 Program accessibility: Existing facilities.
723.151 Program accessibility: New construction and alterations.
723.152—723.159 [Reserved]
723.160 Communications.
723.161—723.169 [Reserved]
723.170 Compliance procedures.
723.171—723.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 723 is further amended by revising paragraph (c) in § 723.170 to read as follows:

§ 723.170 Compliance procedures.

* * * * *

(c) The Assistant Director for Personnel and EEO shall be responsible for coordinating implementation of this section. Complaints may be sent to the Assistant Director for Personnel and EEO, Office of Personnel Management, Room 1479, 1900 E St., NW., Washington, DC 20415.

* * * * *

Constance Horner,

Director.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1207

FOR FURTHER INFORMATION CONTACT: Darrel L. Netherton, (202) 653–5805 (voice) or (202) 653–8896 (TDD).

List of Subjects in 5 CFR Part 1207

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 5 of the Code of Federal Regulations is amended as follows:

1. Part 1207 is added as set forth at the end of this document.

PART 1207—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE MERIT SYSTEMS PROTECTION BOARD

Sec.
1207.101 Purpose.
1207.102 Application.
1207.103 Definitions.
1207.104—1207.109 [Reserved]
1207.110 Self-evaluation.
1207.111 Notice.
1207.112—1207.129 [Reserved]
1207.130 General prohibitions against discrimination.
1207.131—1207.139 [Reserved]
1207.140 Employment.
1207.141—1207.148 [Reserved]
1207.149 Program accessibility: Discrimination prohibited.
1207.150 Program accessibility: Existing facilities.
1207.151 Program accessibility: New construction and alterations.
1207.152—1207.159 [Reserved]
1207.160 Communications.
1207.161—1207.169 [Reserved]
1207.170 Compliance procedures.
1207.171—1207.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1207 is further amended by revising paragraph (c) in § 1207.170 to read as follows:

§ 1207.170 Compliance procedures.

* * * * *

(c) The Equal Employment Officer shall be responsible for coordinating implementation of this section. Complaints may be sent to the Equal Employment Office, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Room 908, Washington, DC 20419.

* * * * *

Daniel R. Levinson,
Chairman of the Board.

OFFICE OF THE SPECIAL COUNSEL

5 CFR Part 1262

FOR FURTHER INFORMATION CONTACT: John Marshall Meisburg, Jr., General Attorney, FTS 653–7307, (202) 653–7307 (voice) or (202) 724–7678 (TTD).

List of Subjects in 5 CFR Part 1262

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 5 of the Code of Federal Regulations is amended as follows:

1. Part 1262 is added as set forth at the end of this document.

PART 1262—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE OFFICE OF THE SPECIAL COUNSEL

Sec.
1262.101 Purpose.
1262.102 Application.
1262.103 Definitions.
1262.104—1262.109 [Reserved]
1262.110 Self-evaluation.
1262.111 Notice.
1262.112—1262.129 [Reserved]
1262.130 General prohibitions against discrimination.
1262.131—1262.139 [Reserved]
1262.140 Employment.
1262.141—1262.148 [Reserved]
1262.149 Program accessibility: Discrimination prohibited.
1262.150 Program accessibility: Existing facilities.
1262.151 Program accessibility: New construction and alterations.
1262.152—1262.159 [Reserved]
1262.160 Communications.
1262.161—1262.169 [Reserved]
1262.170 Compliance procedures.
1262.171—1262.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1262 is further amended by revising paragraph (c) in § 1262.170 to read as follows:

§ 1262.170 Compliance procedures.

* * * * *

(c) The Managing Director for Operations shall be responsible for coordinating implementation of this section. Complaints may be sent to the Managing Director for Operations, Office of the Special Counsel, 1120 Vermont Avenue, Suite 1100, Washington, DC 20005.

* * * * *

Mary F. Wieseman,
Special Counsel.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2416

FOR FURTHER INFORMATION CONTACT: Orinda R. Nelson, (202) 382–0992 (voice) or (202) 724–7678 (TDD).

List of Subjects in 5 CFR Part 2416

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 5 of the Code of Federal Regulations is amended as follows:

1. Part 2416 is added as set forth at the end of this document.

PART 2416—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL LABOR RELATIONS AUTHORITY

Sec.
2416.101 Purpose.
2416.102 Application.
2416.103 Definitions.
2416.104—2416.109 [Reserved]
2416.110 Self-evaluation.
2416.111 Notice.
2416.112—2416.129 [Reserved]
2416.130 General prohibitions against discrimination.
2416.131—2416.139 [Reserved]
2416.140 Employment.
2416.141—2416.148 [Reserved]
2416.149 Program accessibility: Discrimination prohibited.
2416.150 Program accessibility: Existing facilities.
2416.151 Program accessibility: New construction and alterations.
2416.152—2416.159 [Reserved]
2416.160 Communications.
2416.161—2416.169 [Reserved]
2416.170 Compliance procedures.
2416.171—2416.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 2416 is further amended by revising paragraph (c) in § 2416.170 to read as follows:

§ 2416.170 Compliance procedures.

* * * * *

(c) The Deputy for EEO and Affirmative Action shall be responsible for coordinating implementation of this section. Complaints may be sent to the Deputy for EEO and Affirmative Action, Federal Labor Relations Authority, 500 C St. SW., Washington, DC 20424.

* * * * *

Jacqueline R. Bradley,
Executive Director.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1251

FOR FURTHER INFORMATION CONTACT: Ms. Lynda Sampson (202) 453–2177 (voice) or (202) 426–1436 (TDD).

List of Subjects in 14 CFR Part 1251.

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 14 of the Code of Federal Regulations is amended as follows:

PART 1251—NONDISCRIMINATION OF THE BASIS ON HANDICAP

1. The authority citation for part 1251 is revised to read as follows:

Authority: 29 U.S.C. 794.

2. Subpart 1251.5 is added to Part 1251 as set forth at the end of this document.

Subpart 1251.5—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the National Aeronautics and Space Administration

Sec.

1251.501 (_____.101) Purpose.
1251.502 (_____.102) Application.
1251.503 (_____.103) Definitions.
1251.504—1251.509 (_____.104–_____.109) [Reserved]
1251.510 (_____.110) Self-evaluation.
1251.511 (_____.111) Notice.
1251.512—1251.529 (_____.112–_____.129) [Reserved]
1251.530 (_____.130) General prohibitions against discrimination.
1251.531—1251.539 (_____.131–_____.139) [Reserved]
1251.540 (_____.140) Employment.
1251.541—1251.548 (_____.141–_____.148) [Reserved]
1251.549 (_____.149) Program accessibility: Discrimination prohibited.
1251.550 (_____.150) Program accessibility: Existing facilities.
1251.551 (_____.151) Program accessibility: New construction and alterations.
1251.552—1251.559 (_____.152–_____.159) [Reserved]
1251.560 (_____.160) Communications.
1251.561—1251.569 (_____.161–_____.169) [Reserved]
1251.570 (_____.170) Compliance procedures.
1251.571—1251.999 (_____.171–_____.999) [Reserved]

3. Part 1251 is further amended by revising paragraph (c) in § 1251.570 to read as follows:

§ 1251.570 Compliance procedures.

* * * * *

(c) The Assistant Administrator for Equal Opportunity Programs shall be responsible for coordinating implementation of this section. Complaints may be sent to the Office of Equal Opportunity Programs, Room 6119, 400 Maryland Avenue, SW., Washington, DC 20546

* * * * *

Dale D. Myers,

Deputy Administrator.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

FOR FURTHER INFORMATION CONTACT: Nancy A. Wolynetz, Selective Placement Coordinator, 450 Fifth Street NW., Washington, DC, (202) 272–2550 (voice) or (202) 272–2552 (TDD); or Jeanne G. Hartford, Special Counsel, Office of the Executive Director, 450 Fifth Street NW., Washington, DC, (202) 272–3808.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 17 of the Code of Federal Regulations is amended as follows:

PART 200—[AMENDED]

1. The authority citation for Part 200 is revised to read as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, sec. 38, 211, 54 Stat. 841, 855 (15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11), unless otherwise noted. Subpart L is also issued under 29 U.S.C. 794.

2. Subpart L is added to Part 200 as set forth at the end of this document.

Subpart L—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Securities and Exchange Commission

Sec.

200.601 (_____.101) Purpose.
200.602 (_____.102) Application.
200.603 (_____.103) Definitions.
200.604–200.609 (_____.104–_____.109) [Reserved]
200.610 (_____.110) Self-evaluation.
200.611 (_____.111) Notice.
200.612200.629 (_____.112–_____.129) [Reserved]
200.630 (_____.130) General prohibitions against discrimination.
200.631–200–639 (_____.131–_____.139) [Reserved]
200.640 (_____.140) Employment.
200.641–200.648 (_____.141–_____.148) [Reserved]
200.649 (_____.149) Program accessibility: Discrimination prohibited.
200.650 (_____.150) Program accessibility: Existing facilities.
200.651 (_____.151) Program accessibility: New construction and alterations.
200.652–200.659 (_____.152–_____.159) [Reserved]
200.660 (_____.160) Communications.
200.661–200.669 (_____.161–_____.169) [Reserved]
200.670 (_____.170) Compliance procedures.
200.671–200.699 (_____.171–_____.199) [Reserved]

3. Subpart L is further amended by revising paragraph (c) in § 200.670 to read as follows:

§ 200.670 Compliance procedures.

* * * * *

(c) The Equal Employment Opportunity Manager shall be responsible for coordinating implementation of this section. Complaints may be sent to the EEO Manager, 450 Fifth Street NW., Washington, DC 20549.

* * * * *

George G. Kundahl,

Executive Director.

OVERSEAS PRIVATE INVESTMENT CORPORATION

22 CFR Part 711

FOR FURTHER INFORMATION CONTACT: Jane H. Chalmers (202) 457–7200 (voice) or (202) 724–7678 (TDD).

List of Subjects in 22 CFR Part 711

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 22 of the Code of Federal Regulations is amended as follows:

1. Part 711 is added as set forth at the end of this document.

PART 711—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE OVERSEAS PRIVATE INVESTMENT CORPORATION

Sec.

711.101 Purpose.
711.102 Application.
711.103 Definitions.
711.104—711.109 [Reserved]
711.110 Self-evaluation.
711.111 Notice.
711.112—711.129 [Reserved]
711.130 General prohibitions against discrimination.
711.131—711.139 [Reserved]

Sec.
711.140 Employment.
711.141—711.148 [Reserved]
711.149 Program accessibility: Discrimination prohibited.
711.150 Program accessibility: Existing facilities.
711.151 Program accessibility: New construction and alterations.
711.152—711.159 [Reserved]
711.160 Communciations.
711.161—711.169 [Reserved]
711.170 Compliance procedures.
711.171—711.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 711 is further amended by revising paragraph (c) in § 711.170 to read as follows:

§ 711.170 Compliance procedures.

* * * * *

(c) The Director of Personnel shall be responsible for coordinating implementation of this section. Complaints may be sent to Overseas Private Investment Corporation, 1615 M Street, NW., Washington, DC 20527, Attention: Director of Personnel.

* * * * *

Richard K. Childress,

Vice President for Personnel and Administration.

AFRICAN DEVELOPMENT FOUNDATION

22 CFR Part 1510

FOR FURTHER INFORMATION CONTACT: Paul Magid, General Counsel, 1625 Massachusetts Avenue, NW., Suite 600, Washington, DC, 20036. (202) 673–3916 (voice) or (202) 724–7678 (TDD).

List of Subjects in 22 CFR Part 1510

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 22 of the Code of Federal Regulations is amended as follows:

1. Part 1510 is added as set forth at the end of this document.

PART 1510—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE AFRICAN DEVELOPMENT FOUNDATION

Sec.
1510.101 Purpose.
1510.102 Application.
1510.103 Definitions.
1510.104—1510.109 [Reserved]
1510.110 Self-evaluation.
1510.111 Notice.
1510.112—1510.129 [Reserved]
1510.130 General prohibitions against discrimination.
1510.131—1510.139 [Reserved]
1510.140 Employment.
1510.141—1510.148 [Reserved]
1510.149 Program accessibility: Discrimination prohibited.
1510.150 Program accessibility: Existing facilities.
1510.151 Program accessibility: New construction and alterations.
1510.152—1510.159 [Reserved]
1510.160 Communications.
1510.161—1510.169 [Reserved]
1510.170 Compliance procedures.
1510.171—1510.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1510 is further amended by revising paragraph (c) in § 1510.170 to read as follows:

§ 1510.170 Compliance procedures.

* * * * *

(c) The Personnel Officer, Office of Administration and Finance, shall be responsible for coordinating implementation of this section. Complaints may be sent to Personnel Officer, Office of Administration and Finance, African Development Foundation, 1625 Massachusetts Avenue, NW., Suite 600, Washington, DC, 20036.

* * * * *

Leonard H. Robinson, Jr.,

President, African Development Foundation.

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 100

FOR FURTHER INFORMATION CONTACT: Ernest Russell, Director of Administration, National Labor Relations Board, 1717 Pennsylvania Avenue, NW., Washington, DC (202) 254–9200 or (202) 634–1699 (TDD).

ADDITIONAL SUPPLEMENTARY INFORMATION: The National Labor Relations Board is responsible for conducting hearings and elections pursuant to the National Labor Relations Act, as amended (29 U.S.C. sections 141–169). When determining where hearings and elections will be held, the Agency must consider both the convenience of the parties to a proceeding and the public, and the extent to which delay or expense can be minimized. While many hearings are conducted in the Agency's Regional, Subregional, and Resident Offices, a number of hearings are held in more remote locations where the employer, the union and the employee witnesses are located. Also, in order to maximize participation at Board conducted elections to determine employee desires regarding union representation, these elections are customarily held at the employer's premises.

Hearings held in Agency offices will be subject to the program accessibility and communications requirements of this regulation and will be made accessible in accordance with this regulation. As to hearings held at non-Agency sites, the Agency will attempt to locate accessible local facilities that are both convenient and inexpensive. In these instances, the Agency will include in the notice of hearing served upon the parties a request that the parties provide the Regional, Subregional, or Resident Office with prompt notice in advance of any accessibility features they or their witnesses may require. If the Agency receives, in advance, a request for an accessible hearing site or special accommodation, it will then arrange necessary accommodations for those parties, representatives, witnesses, or members of the public requiring such accommodation. Similarly, with regard to elections, the notice to employees issued in connection with an election will likewise include a request that handicapped persons inform the Agency, in advance, of any auxiliary aids, such as sign language interpreters, that may be necessary in order to facilitate their participation in the election.

Thus, the Agency will, with respect to hearings or elections at non-Agency sites, and subject to the limitations of § 100.650(a)(3) and § 100.660(d) of this regulation, ensure access for any individual with handicaps who gives reasonable advance notice, that the person will attend a hearing as a party, a party's representative, a witness, a member of the public, or will appear as a participant in an election.

List of Subjects in 29 CFR Part 100

Blind, Buildings, Civil rights, Employment, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Part 100 of Title 29 of the Code of Federal Regulations is amended as follows:

PART 100—ADMINISTRATIVE REGULATIONS

1. The part heading is revised to read as set forth above.

2. The authority citation for Part 100 is revised to read as follows:

Authority: Sec. 6 of the National Labor Relations Act, as amended, 29 U.S.C. 141, 146.

Subpart A is also issued under U.S.C. 7301, 18 U.S.C. 201 et seq., E.O. 11222, 5 CFR 735.104.

Subpart B is also issued under 5 U.S.C. 201 et seq., 18 U.S.C. 202.

Subpart C is also issued under 18 U.S.C. 202, E.O. 11222, 5 CFR 735.104.

Subpart F is also issued under 29 U.S.C. 794.

3. Subparts A, B, C, and D headings are removed.

§§ 100.735–1 through 100.735–6 and §§ 100.735–11 through 100.735–22 [Redesignated as §§ 100.101 through 100.106 and §§ 100.111 through 100.122]

4. Sections 100.735–1 through 100.735–6 and §§ 100.735–11 through 100.735–22 are redesignated §§ 100.101 through 100.106 and §§ 100.111 through 100.122 respectively and designated Subpart A. The heading for Subpart A is added to read "Subpart A—Employee Responsibilities and Conduct".

§§ 100.735–31 through 100.735–34 and §§ 100.735–36 through 100.735–39 [Redesignated as §§ 100.201 through 100.204 and §§ 100.206 through 100.209]

5. Sections 100.735–31 through 100.735–34 and §§ 100.735–36 through 100.735–39 are redesignated §§ 100.201 through 100.204 and §§ 100.206 through 100.209 respectively and designated Subpart B. The heading for Subpart B is added to read "Subpart B—Employee Statements of Employment and Financial Interest".

§§ 100.735–41 through 100.735–47 [Redesignated as §§ 100.301 through 100.307]

6. Sections 100.735–41 through 100.735–47 are redesignated §§ 100.301 through 100.307 respectively and designated Subpart C. The heading for Subpart C is added to read "Subpart C—Special Government Employee Conduct and Responsibility".

7. Subparts D and E are added and reserved.

Subpart D—Employee Personal Property Loss Claims [Reserved]

Subpart E—Claims Under the Federal Tort Claims Act [Reserved]

8. Subpart F is added as set forth at the end of this document.

Subpart F—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the National Labor Relations Board

Sec.
100.601 (____.101) Purpose.
100.602 (____.102) Application.
100.603 (____.103) Definitions.
100.604–100.609 (____.104–____.129) [Reserved]
100.610 (____.110) Self-evaluation.
100.611 (____.111) Notice.
100.612–100.629 (____.112–____.129) [Reserved]
100.630 (____.130) General prohibitions against discrimination.
100.631–100.639 (____.131–____.139) [Reserved]
100.640 (____.140) Employment.
100.641–100.648 (____.141–____.148) [Reserved]
100.649 (____.149) Program accessibility: Discrimination prohibited.
100.650 (____.150) Program accessibility: Existing facilities.
100.650 (____.151) Program accessibility: New construction and alterations.
100.652.100.654 (____.152–____.159) [Reserved]
100.660 (____.160) Communications.
100.661–100.669 (____.161–____.169) [Reserved]
100.670 (____.170) Compliance procedures.
100.671–100.699 (____.171–____.999) [Reserved]

9. Part 100 is further amended by revising paragraph (c) in § 100.670 to read as follows:

§ 100.670 Compliance procedures.

* * * * *

(c) The Director of Administration shall be responsible for coordinating implementation of this section. Complaints may be sent to Director of Administration, National Labor Relations Board, 171 Pennsylvania Avenue NW., Washington, DC 20570.

* * * * *

John C. Truesdale,
Executive Secretary.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1208

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas or Nancy Y. Allard, TDD: 202/523–0774, Non–TDD: 202/523–3215, Room 409, National Archives Building, 8th & Pennsylvania Avenue, NW., Washington, DC 20408

List of Subjects in 36 CFR Part 1208.

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 36 of the Code of Federal Regulations is amended as follows:

1. Part 1208 is added as set forth at the end of this document.

PART 1208—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Sec.
1208.101 Purpose.
1208.102 Application.
1208.103 Definitions.
1208.104—1208.109 [Reserved]
1208.110 Self-evaluation.
1208.111 Notice.
1208.112—1208.129 [Reserved]
1208.130 General prohibitions against discrimination.
1208.131—1208.139 [Reserved]
1208.140 Employment.
1208.141—1208.148 [Reserved]
1208.149 Program accessibility: Discrimination prohibited.
1208.150 Program accessibility: Existing facilities.
1208.151 Program accessibility: New construction and alterations.
1208.152—1208.159 [Reserved]
1208.160 Communications.
1208.161—1208.169 [Reserved]
1208.170 Compliance procedures.
1208.171—1208.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1208 is further amended by revising paragraph (c) in § 1208.170 to read as follows:

1208.170 Compliance procedures.

* * * * *

(c) The Assistant Archivist for Management and Administration shall be responsible for coordinating implementation of this section. Compliants may be sent to National Archives and Records Administration (NA), Washington, DC 20408.

* * * * *

Claudine J. Weiher,
Acting Archivist.

VETERANS ADMINISTRATION

38 CFR Part 15

FOR FURTHER INFORMATION CONTACT: Mr. Rodney Cash, Office of Equal Opportunity, (202) 233–2150 or (202) 233–3710 (TDD).

List of Subjects in 38 CFR Part 15

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal

buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 38 of the Code of Federal Regulations is amended as follows:

1. Part 15 is added as set forth at the end of this document.

PART 15—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE VETERANS ADMINISTRATION

Sec.
15.101 Purpose.
15.102 Application.
15.103 Definitions.
15.104—15.109 [Reserved]
15.110 Self-evaluation.
15.111 Notice.
15.112—15.129 [Reserved]
15.130 General prohibitions against discrimination.
15.131—15.139 [Reserved]
15.140 Employment.
15.141—15.148 [Reserved]
15.149 Program accessibility: Discrimination prohibited.
15.150 Program accessibility: Existing facilities.
15.151 Program accessibility: New construction and alterations.
15.152—15.159 [Reserved]
15.160 Communications.
15.161—15.169 [Reserved]
15.170 Compliance procedures.
15.171—15.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 15 is further amended by revising paragraph (c) in § 15.170 to read as follows:

§ 15.170 Compliance procedures.

* * * * *

(c) The Director, Office of Equal Opportunity, shall be responsible for coordinating implementation of this section. Complaints may be sent to the Administrator of Veterans Affairs or the Director, Office of Equal Opportunity, at the following address: Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420.

* * * * *

Thomas K. Turnage,
Administrator of Veterans Affairs.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 16

FOR FURTHER INFORMATION CONTACT: Alan Clive, Equal Employment Manager, Room 815, 500 C Street, SW., Washington, DC (202) 646-3957 (voice) or 646-4117 (TDD).

List of Subjects in 44 CFR Part 16

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped, Historic places, Historic preservation.

Title 44 of the Code of Federal Regulations is amended as follows:

1. Part 16 is added as set forth at the end of this document.

PART 16—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY

Sec.
16.101 Purpose.
16.102 Application.
16.103 Definitions.
16.104—16.109 [Reserved]
16.110 Self-evaluation.
16.111 Notice.
16.112—16.129 [Reserved]
16.130 General prohibitions against discrimination.
16.131—16.139 [Reserved]
16.140 Employment.
16.141—16.148 [Reserved]
16.149 Program accessibility: Discrimination prohibited.
16.150 Program accessibility: Existing facilities.
16.151 Program accessibility: New construction and alterations.
16.152—16.159 [Reserved]
16.160 Communications.
16.161—16.169 [Reserved]
16.170 Compliance procedures.
16.171—16.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 16 is further amended by revising paragraph (c) in § 16.170 to read as follows:

§ 16.170 Compliance procedures.

* * * * *

(c) The Director of Personnel shall be responsible for coordinating implementation of this section. Complaints may be sent to Director of Personnel, Room 810, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

* * * * *

Dated: April 25, 1988.

Julius W. Becton, Jr.,
Director.

Text of the Common Rule

The text of the common rule as adopted by the agencies in this document appears below.

PART ___—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY

Sec.
___.101 Purpose.
___.102 Application.
___.103 Definitions.
___.104—___.109 [Reserved]
___.110 Self-evaluation.
___.111 Notice.
___.112—___.129 [Reserved]
___.130 General prohibitions against discrimination.
___.131—___.139 [Reserved]
___.140 Employment.
___.141—___.148 [Reserved]
___.149 Program accessibility: Discrimination prohibited.
___.150 Program accessibility: Existing facilities.
___.151 Program accessibility: New construction and alterations.
___.152—___.159 [Reserved]
___.160 Communications.
___.161—___.169 [Reserved]
___.170 Compliance procedures.
___.171—___.999 [Reserved]

Authority: 29 U.S.C. 794.

§ ___.101 Purpose.

The purpose of this regulation 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.

§ ___.102 Application.

This regulation (§§ ___.101—___.170) 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.

§ ___.103 Definitions.

For purposes of this regulation, the term—

"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.

"Historic preservation programs" means programs conducted by the agency that have preservation of historic properties as a primary purpose.

"Historic properties" means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

"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 paragraph (1) of this definition but is treated by the agency as having such an impairment.

"Qualified individual with handicaps" means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency;

(2) With respect to any other 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;

(3) 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; and

(4) "Qualified handicapped person" as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this regulation by § ____.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); 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 regulation, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

"Substantial impairment" means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ ____.104—____.109 [Reserved]

§ ____.110 Self-evaluation.

(a) The agency shall, by September 6, 1989, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this regulation and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) 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).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ ____.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ ____.112—____.129 [Reserved]

§ ____.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;

(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 the objectives of a program or activity with respect to 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 programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this regulation.

(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 regulation.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ ___.131—___.139 [Reserved]

§ ___.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subject 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.

§ ___.141—___.148 [Reserved]

§ ___.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § ___.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.

§ ___.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;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) 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 § ___.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 his or her 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*—(1) *General.* 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.

(2) *Historic preservation programs.* In meeting the requirements of § _____.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of § _____.150(a) (2) or (3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by November 7, 1988, except that where structural changes in facilities are undertaken, such changes shall be made by September 6, 1991, 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 6, 1989, 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.

§ _____.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.

§§ _____.152—_____.159 [Reserved]

§ _____.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 individual 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 to communicate with persons with impaired hearing.

(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 § _____.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 his or her 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.

§§ _____.161—_____.169 [Reserved]

§ _____.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 and 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) The head of the agency shall designate an official to be responsible for coordinating implementation of this section.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. 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.

(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 or 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 § _____.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency 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 paragraphs (g) and (j) of this section 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.

§§ _____.171—_____.999 [Reserved]

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July 8, 1988

Part VII

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 192, 193 and 195

Control of Drug Use in Natural Gas, Liquefied Natural Gas and Hazardous Liquid Pipeline Operations; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192, 193 and 195

[RSPA Docket No. PS-102]

Control of Drug Use in Natural Gas, Liquefied Natural Gas and Hazardous Liquid Pipeline Operations

AGENCY: Research and Special Programs Administration (RSPA); DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes rules to require operators of pipeline facilities, other than master meter systems, used for the transportation of natural gas or hazardous liquids, and operators who produce and store liquefied natural gas, to have a drug program for individuals who perform specific sensitive safety and security-related functions. Testing under these proposed rules would be conducted prior to employment after an accident, randomly, or on the basis of reasonable cause. In addition, these proposed rules would require that an operator provide an opportunity for counseling and rehabilitation in specified circumstances under an Employee Assistance Program (EAP) for certain individuals that have a drug problem. However, these proposed rules do not require that the employer run the EAP or pay for it. The proposed rules are intended to prevent the presence of a prohibited drug in an employee's system at any time, thereby ensuring a drug-free pipeline operations environment.

DATES: RSPA is considering holding a public hearing on this proposal at a time and place to be announced shortly in the Federal Register. Any person who wants to make an oral statement at the hearing will be requested to notify the person listed under "For Further Information Contact" at least five working days prior to the date of the hearing by telephone or mail. Written comments must be received on or before September 6, 1988.

ADDRESS: Send comments in duplicate to the Dockets Unit, Room 8417, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in room 8421 between 8:30 a.m. and 5:00 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Cesar DeLeon, Assistant Director for Regulation, Office of Pipeline Safety, (202) 366-1640.

SUPPLEMENTARY INFORMATION:

Introduction: The Drug Problem in American Society

Background

Drug abuse constitutes a major societal problem. Statistics compiled and reported by the National Institute on Drugs and Abuse (NIDA), and media polls, indicate that the use of drugs is widespread across all age groups.

For instance, data from the 1985 NIDA, "National Survey on Drug Abuse" indicates the following projections based on a survey sample of respondents' reports of their own drug use:

- In the age 18–25 category, of a total population of 32,490,000:

—19,670,000 (60%) used marijuana sometime during their life;

—7,110,000 (22%) used marijuana within the past month;

—8,170,000 (25%) used cocaine sometime during their life;

—2,510,000 (8%) used cocaine within the past month.

- In the age 26 and over category, of a total population of 136,600,000:

—37,000,000 (27%) used marijuana sometime during their life;

—8,000,000 (6%) used marijuana within the past month;

—12,950,000 (9%) used cocaine sometime during their life;

—2,704,000 (2%) used cocaine within the past month.

Not only do these statistics raise concerns in those agencies charged by Congress to administer transportation safety programs, they raise concerns in the public at large where the reasonable expectation exists that persons in sensitive safety and security-related transportation occupations should not be drug abusers. The following are the results of a May-June 1986 national survey conducted by Populus Incorporated of Greenwich, Connecticut, and Decision/Making/Information of McLean, Virginia, concerning the general public's views on the drug testing of individuals in various occupations. Of those surveyed:

—88% favored testing of airline pilots and air traffic controllers.

—85% favored testing of police and other law enforcement agents.

—81% favored testing of bus drivers.

—75% favored testing of military personnel.

—75% favored testing employees of pharmaceutical companies.

Further, the researchers indicated that those responding to the survey felt that "people who are responsible for the physical safety of others should be tested." Because workers in all modes of transportation are "responsible for the physical safety of others," the testing of transportation workers for drug abuse would be considered by the public as having a positive effect on public safety. A survey conducted by American Viewpoint, Inc., on August 6–19, 1986, found that, "by a margin of 75%—22%, Americans agree that the drug crisis today is serious enough for mandatory testing." The American Viewpoint survey used a "forced choice" list and asked which groups should submit to mandatory drug testing. While employees in the transportation modes were not included in the list (e.g., railroads, aviation, highways, pipelines, etc.), employees in sensitive safety and security-related occupations such as police and fire fighters (84%), members of the armed forces (81%), and doctors and nurses (81%) were at the top of the list of those employees the respondents felt should be tested. Another interesting facet of the study was that 80% of the respondents indicated that they would participate in voluntary testing if asked to do so by their employer.

These surveys suggest that a majority of the public is concerned about drug abuse and favors the mandatory testing of persons in certain sensitive safety and security-related occupations. While statistics indicate that the greatest incidence of drug abuse is found among those age 25 and under, and overall usage may drop as this group grows older, it is still of significance in older population groups.

A recently issued Special Report From the Comptroller General of the United States titled "Controlling Drug Abuse: A Status Report" (1988 GAO Report) states that "Drug abuse in the United States has persisted at a very high level throughout the 1980s. Drug abuse is a serious national problem that adversely affects all parts of our society * * *." The Department of Transportation, acting in accordance with Congressional mandates to ensure safe transportation, must operate under the assumption that the various transportation modes do not differ significantly from the overall population in terms of drug abuse.

The Drug Problem in Pipeline Transportation

Employees of the natural gas, liquefied natural gas (LNG), and hazardous liquid pipeline industries represent a broad and diverse cross-section of American society. It is reasonable to assume that the problem of drug abuse exists in this industry in similar proportion to that existing in

society as a whole. Personnel who use drugs can pose dangers to themselves and co-workers and can cause or exacerbate events that may take human life, destroy property, and seriously harm the environment. The Department of Transportation and the Research and Special Programs Administration (RSPA) are committed to the goal of a drug-free transportation system in all modes of transportation. Implementation of a drug abuse prevention program, including education and awareness, testing, and rehabilitation, is necessary to ensure that pipelines are operated in the safest manner possible.

RSPA believes that the public expects, and is entitled to expect, that transportation systems will be operated safely. The Department's drug abuse prevention initiative in this area was formulated in response to a potential threat to the safe operation of pipelines transporting natural gas, and hazardous liquids, as well as the production and storage of LNG. The potential for accidents caused by pipeline personnel whose skills may be impaired due to drug usage will be greatly decreased by the implementation of a drug testing program.

RSPA does not contend that drug abuse among personnel engaged in pipeline transportation is present in any greater degree than in the general public or that accident statistics demonstrate drug abuse as a major factor in pipeline accidents. No data exist to prove or disprove the presence of a drug abuse problem among pipeline personnel. The number of pipeline incidents is relatively low. We do know that a significant number of pipeline accidents occur because of outside force damage caused by excavators, over whom the Department has no authority. The remainder (65 percent) are due to such causes as operational error, the improper monitoring of corrosion, and equipment failure, all matters which can be adversely affected by the impairment of specific pipeline personnel. Further, many routine construction, operations, and maintenance functions, as well as emergency response activities, demand skilled, competent, alert and unimpaired workers to perform the functions safely. When a pipeline failure occurs, regardless of its cause, critical decisions must be made quickly to abate the risk and return the pipeline to safe operation. The ability of personnel to rapidly respond to such a situation is crucial to the overall safety of pipeline operation.

RSPA invites commenters to identify other indicators of the risks associated with drug use by employees performing sensitive safety and security-related functions. Commenters are specifically invited to submit data on the incidence of drug use among employees subject to this proposal.

Effects of Drug Use on Safety

Drugs are chemicals that affect the body (physiological and function-altering effects) and often the mind (pharmacological or mind-altering effects). In broad summary, controlled substances are drugs or other substances identified by the government as creating a potential for abuse and/or dependency. In comments before the Federal Railroad Administration, the American Medical Association and other parties have agreed that, as a general matter, controlled substances constitute the primary drugs of interest (other than alcohol) with respect to transportation safety.

Most controlled substances have at least some accepted medical applications. Therapeutic use of certain controlled substances is frequently indicated both from a medical point of view and from the point of view of transportation safety, since proper use of drugs can control disorders that adversely affect performance while permitting the individual to continue productive employment. If therapeutic drugs are used at appropriate levels established by medical practitioners and care is taken to monitor undesired "side effects," safety will not be materially compromised. Indeed, in many cases, control of the underlying disorder will produce net safety benefits.

However, when individuals make non-medical use of controlled substances, they often use illegal ("illicit") drugs that have unacceptable mind-altering and function-altering characteristics. Similarly, when individuals self-administer legal ("licit") drugs for non-medical purposes, or without proper medical supervision, adverse effects may result.

Drugs and Their Effects

Controlled substances are classified by pharmacological properties as—

- Narcotics, such as the opiate-based drugs;
- Central nervous system (CNS) depressants, such as the barbiturates, tranquilizers, or methaqualone:
- CNS stimulants, such as cocaine and amphetamines;
- Hallucinogens, such as LSD and PCP; and
- Cannabis (marijuana derivatives).

All controlled substances have a potential for abuse, and many have a high potential for dependence. The effects of these drugs vary to some extent by dosage, subject, frequency of use, route of ingestion, and pattern of use. An individual drug user may be affected differently by the same dosage on different occasions as a result of degree of fatigue, physical disorders, biorhythms, acquired tolerance, and other factors.

It is important to note that the effects of drugs on human performance are not limited to a perceived "high" or other immediate mind-altering sensation experience by the user. Instead, drug effects are complex and, in many cases, long-lived. They include—

- *Acute* effects, including the often sought-after change of mental state and physiological changes;
- *After*-effects, from individual doses or series of doses;
- *Chronic* effects from prolonged use, which may include profound biochemical changes and changes in cognitive functions; and
- *Withdrawal* effects when a drug-dependent individual ceases use of the drug. All of these potential effects are of concern with respect to transportation safety, yet only the acute effects correlate to some extent in time with body fluid concentrations of the impairing substance; and for most drugs that correlation is imperfect.

Perceived Dangers of Drugs in Transportation

The potential detrimental effects of drugs on performance are not a matter of speculation. There is a broad consensus among transportation companies, employees and related professionals that the use of alcohol and the non-medical use of controlled substances are not consistent with safety. Increasingly, knowledgeable safety professionals in transportation are coming to realize that "off-duty use" and "on-duty use" are not distinct categories warranting entirely separate consideration, but are instead facets of an overall picture—*i.e.*, fitness for duty involving sensitive safety and security-related functions. Although there are differences of opinion among transportation safety experts concerning appropriate countermeasures, the need for effective countermeasures is almost universally acknowledged.

Experimental/Clinical Data

A growing body of information related to drug effects on safety has influenced the opinion held by those in the transportation industry concerning the effects of drug use on the industry. Numerous behavioral studies and extensive clinical experience have established the fact that controlled

substances can powerfully alter the capacity of human beings to respond appropriately to their environment.

The following considers how drugs adversely affect safety. Since each human being is, biologically, a unique and whole organism, any such discussion will suffer from incompleteness, on the one hand, and an absence of total analytical integration, on the other. However, the available literature does offer useful information that can be placed in the appropriate context and that can guide the formulation of public policy. Among other sources, this discussion draws heavily on a draft study prepared by the Transportation Systems Center of the Department of Transportation. A copy of that report (Sussman, Salvatore, Huntley and Hobbs, "Data Available on the Impact of Drug Use on Transportation Safety," April 17, 1987) will be placed in the docket of this rulemaking.

Drug effects can be analyzed in experimental studies from the point of view of their impact on particular human faculties. These faculties are, of course, merely aspects of human performance capabilities, and experimental studies often involve tasks that may call on more than one faculty. "Sensory function" refers to the ability of an individual to detect, feel, identify, discriminate between, and recognize objects and conditions. Visual acuity and perception are the sensory functions whose impairment would be most detrimental to the safe functioning of a transportation employee. "Motor performance" is also important to the safe functioning of an employee. This involves the ability to make timely, accurate, and steady control movements, and includes both simple and complex reaction time, as well as tracking and steadiness.

"Vigilance" describes another ability necessary to safe performance. "Vigilance" is the term used to describe the ability of an individual to detect and respond to extremely infrequent signals provided as a part of a low event or boring task. Maintaining attention and alertness is important for all transportation operators, particularly during night operations. Finally, "cognitive functions" are of importance to safe operation. This refers to the ability to classify, store, intergrate and recall information. Judgment, memory, proclivity for risk-taking, and the ability to manage multiple tasks are areas of particular concern for transportation.

The available evidence indicates that all controlled substances tend, to a greater or lesser degree, to affect adversely one or more of the faculties critical to safe conduct of transportation and transportation-related duties. In some cases, acute effects may be of greatest concern, while with other drugs the primary hazards may relate to after effects and chronic effects. Some individuals may be unimpaired by some drugs at some dosages with respect to certain faculties relevant to performance. Indeed, in certain discrete settings CNS stimulants may temporarily enhance the ability of an individual to sustain attention (as an acute effect). However, when the full range of effects is considered, no controlled substance can be eliminated as a source of significant concern.

Narcotics are among the drugs having the highest potential for abuse and dependence, and use of narcotics is therefore unlikely to be limited to off-duty hours. Narcotics dull the perception of external and internal stimuli and tend to induce a feeling of pleasant lethargy. These drugs can adversely affect motor performance, as well as vigilance. Although there is no extensive body of literature on the effects of narcotics on tasks common to transportation, standard therapeutic practice requires warning that narcotics should not be used by transportation or heavy equipment operators except where side effects have been determined and then only under strict medical supervision.

CNS depressants include a variety of compounds that reduce sensitivity to stimuli, slow information processing, and impair the ability of the user to concentrate or focus attention. Behavioral studies of the acute effects of CNS depressants have demonstrated decline of motor performance, including tracking skills, simple reaction time, and choice reaction time. Depressants may adversely affect sensory functions such as signal recognition and cognitive functions such as short-term memory and information processing.

Experimental evidence also shows that after-effects of depressant use (hangovers) can impair performance. Further, most CNS depressants have a high dependency potential, and severe withdrawal symptoms can result if use is discontinued suddenly. Since the timing of withdrawal symptoms is not always predictable, the cessation of use by a depressant-dependent person can result in loss of control over a transportation vehicle or task. Instances of severe withdrawal from alcohol, involving convulsions and loss of control, have been reported in the aviation context; and withdrawal from other CNS depressants presents risks of equal gravity.

CNS stimulants such as cocaine and amphetamines tend to increase mental activity, responsiveness to external stimuli, and in some cases restore concentration to fatigued individuals. These apparently benign qualities make stimulants (particularly amphetamines) attractive "operational" drugs (taken in an effort to sustain or enhance performance), as well as so-called "recreational drugs." The non-regulated stimulant caffeine is taken for similar purposes.

However, powerful stimulants do not avoid fatigue, but only postpone it and thereby compound its severity. Side effects may include restlessness, increased anxiety, and confusion. Transportation employees may rely upon the drug for periods which go beyond its period of effectiveness, resulting in the sudden onset of deep sleep. Sustained reliance on amphetamines may result in toxic effects such as paranoia and delirium, since increasing doses are needed to offset developing tolerance. While it is widely held that stimulants do not produce true physical dependence, it is also recognized that they can induce a strong psychological dependence.

Recent experience with cocaine has confirmed the dependency-producing character of that drug, its potent psychoactivity, its ability to induce seizures after a single dose, and its ability to produce psychosis after chronic use. *See, e.g., Cocaine: Pharmacology, Effects, and Treatment of Abuse,* Research Monograph Series. No. 50 (National Institute on Drug Abuse 1984). Reports of drug experiences suggest strongly that cocaine use may promote risk-taking and cause the user to over-estimate his degree of control. Cocaine is not an attractive "operational" drug because of its short duration, but use by an employee prior to reporting for work may result in depression or exacerbate fatigue, leaving the employee poorly equipped to undertake a full work day. Because dependency on cocaine may manifest itself abruptly after a long period of apparently successful "occasional" use, the cocaine abuser's private "recreation" may become a matter of public safety concern at any time without warning.

Although no experimental studies reflecting effects of stimulants over an extended time period have been reported, clinical experience suggests that these substances have a significant potential for producing behavioral changes inimical to safety, particularly when used in high concentrations or over a long period of time.

Hallucinogens are ingested for the specific purpose of inducing euphoria and a distortion of time and space.

These drugs generally produce relaxation and a shortened attention span. Hallucinogens have not been the subject of responsible scientific research involving human subjects because of their capacity to produce psychotic reactions. Use of hallucinogens is of particular concern, since they may trigger mental distrubances that can last for extended periods or recur without warning.

Marijuana is sometimes classified as a hallucinogen but has properties that warrant its separate treatment. As the most popular illicit drug of abuse, marijuana was once viewed by many Americans as a mild and relatively harmless substance. However, as the potency of marijuana available on the illicit market increased and a large segment of the population gained experience on its use, it became apparent that marijuana had emerged as a major public health and safety risk.

By 1980, it could be said that marijuana impairs learning ability and interferes with complex psychomotor performance, including driving. *Marijuana Research Findings: 1980.* Research Monograph Series No. 31 (National Institute on Drug Abuse). In addition, marijuana became more widely recognized as a threat to health. Institute of Medicine, National Academy of Sciences, *Marijuana and Health* (National Academy Press 1982).

According to the experimental studies, marijuana affects such sensory functions as visual acuity, signal detection, and balance or standing steadiness. Motor performance on flight similator tasks was adversely affected, as were tracking tasks and pursuit rotor tracking. Closed-course and city driving tests both indicated reduced driving precision, some of which the Institute on Medicine (*Id.* at 118) assessed as indicating impairment of judgment as well as care handling skills.

Laboratory studies have also demonstrated reduced vigilance in signal detection tasks. Studies evaluating cognitive functions indicate that marijuana may reduce risk taking, but also show that marijuana reduces performance in divided attention situations.

Recent research has suggested the possibility of next-day after effects from marijuana that may reduce performance on complex divided attention tasks. Yesavage, Leirer, Denari and Hollister, "Carry-Over Effects of Marijuana Intoxication on Aircraft Pilot Performance: A Preliminary Report" (*Am. J. Psychiatry* 142: 1325–1329 (1985)). Some experts also believe that the accumulation of cannabinoids in the body through chronic use may produce adverse effects that do not abate at any time while the marijuana habit is sustained. Since marijuana metabolites have been identified at low levels in the urine for as long as 77 days after cessation of heavy and chronic use, the possibility of significant chronic effects cannot be excluded. *See* Ellis, Mann, Judson, Schramm and Tashchian, "Excretion Patterns of Cannabinoid Metabolites After Last Use in a Group of Chronic Users" (*Clin. Pharmacol. Ther.* 38:573–578 (1985)).

In summary, drugs in each of the classes of controlled substances have mind and function-altering effects on the human subject. Recent research involving several widely-used drugs vividly illustrates the correlation among clinical data, theoretical pharmacology, and performance on transportation-related tasks. Smiley, Moskowitz, and Ziedman, "Effects of Drugs on Driving", DHHS Publication No. (ADM) 85–1386 (National Institute on Drug Abuse and National Highway Traffic Safety Administration 1985). Smiley, *et al.*, examined the effects of secobarbital and diazepam (CNS depressants), marijuana and alcohol in a complex, blind study using a driving simulator. The study measured performance on a variety of driving tasks, including stop or swerve decisions, tracking, passing, and maintaining distance at two dosage levels for each drug. The results revealed differences in particular effects and performances on individual phases of the study. However, when the data were combined the authors concluded as follows:

> Secobarbital, diazepam, marijuana, and alcohol were all found to impair performance of a variety of simulated driving tasks. Drug levels tested for secobarbital and diazepam were therapeutic doses; the marijuana doses were considered moderate to strong by the subject population used; the alcohol effects were reported for levels up to and slightly above the legal limit. *No clear-cut differences in the pattern of effects were found among the drugs tested.* All drugs impaired perceptual-motor skills (*e.g.*, tracking, speed and headway control), perceptual tasks where response time and detection ability were measured, and decisionmaking tasks.

Id. at 19 (emphasis supplied). This research suggests that the subtle differences in the way certain drugs affect human functions may be less important than the overall disordering effect of those drugs on the user's ability to respond to the complex challenges posed by the transportation environment.

Finally, as noted above, many of the detrimental effects of drugs relate not so much to the toxic or acute action of the drug when it may be found in high concentrations in the blood stream, but rather the chronic or cumulative action of the drug on the body and the mind. Much of this long-term impairment of the organism is poorly understood, but what is known is a source of concern.

Epidemiological Studies

The optimal approach to evaluating the effects of drugs on safety would include a program to ascertain the presence of drug use in an adequate sample of accidents and the development of good data on the incidence of drug use in the same population. By this means it would be possible to ascertain the relative risk presented by the drug user in relation to the non-user. Stated differently, it would be possible to ascertain whether the user was over-represented in the relevant population. Over a period of years, analysis of this kind has permitted the Department of Transportation, through its National Highway Traffic Safety Administration, to determine the role of alcohol in highway accidents.

A variety of methodological problems make such an undertaking for other drugs difficult, if not ultimately impossible. Drug abuse incidence is known to vary to a considerable extent by the demographics of the population, and the various regulated transportation modes employ workforces that are not of the same composition. Thus, any study would have to discriminate carefully by transportation mode.

In recent years, a variety of countermeasures have been attempted to address drug abuse in transportation. Some of these have had positive effects, and no doubt some of these effects have waned with the passage of time. This likely volatility in drug abuse incidence creates a moving target, making comparisons of relative risk very difficult.

Further, when focused on a relatively small population within an industry, any attempt to measure drug use incidence among those involved in accidents will itself likely affect drug use incidence, since detection will produce some degree of general deterrence. Until recently, incidence of drug use among those involved in accidents has not been determined on a routine basis, and adequate data is not yet available from the initial efforts to make appropriate comparisons, even if incidence of use in the general population were reliably determined.

Proceeding in the absence of an incidence/over-representation study is difficult, at best. Those most popular illicit drugs, marijuana and cocaine, are

eliminated from the blood very quickly after last use. While alcohol is somewhat readily distinguished as to likely involvement by use of blood alcohol levels, the very complex effects of other drugs make a blood concentration approach less useful. Attempts to obtain good post-accident toxicology are only now beginning to provide data that may, in combination with careful field investigations, provide sufficient anecdotal evidence to evaluate, at least on a qualitative basis, the true involvement of drugs in transportation accidents.

However, the limited epidemiological data that do exist suggest that the inferences drawn from experimental and clinical data are warranted. A study of 440 fatally injured young California drivers detected alcohol in 70 percent of the drivers, marijuana in 37 percent, and cocaine in 11 percent. Each of 24 other drugs was detected in fewer than 5 percent of the fatally injured group. Although only alcohol could be clearly "associated with crash responsibility" within the limitations of the available data, the authors concluded that the role of marijuana in automobile crashes needs further investigation. Williams, Peat, Crouch, Wells, and Finkle. "Drugs in Fatally Injured Young Male Drivers" (*Public Health Reports* 100:19–25 (1985)).

A detailed study of 497 drivers injured in motor vehicle accidents and treated in a Rochester, New York, hospital found that 38 percent of the drivers had alcohol or another drug in their systems. Alcohol was found in 25 percent, marijuana in 9.5 percent, and tranquilizers in 7.5 percent. Culpability was determined for accident causation from police reports and interviews. Alcohol showed the highest culpability rate (74 percent at high BAC), but marijuana users also had a high culpability rate of 53 percent, in contrast to drug-free drivers (34 percent). The culpability rate for tranquilizer users was less than that of drug-free drivers, and the blood levels determined were consistent with therapeutic doses which suggests that the use of prescription medications is not per se hazardous. These results were considered conservative, since drivers were not required to provide blood samples, and many refused. However, the relatively small number of drivers surveyed permitted the authors to determine culpability at a level deemed statistically significant only for alcohol. Terhune and Fell, "The Role of Alcohol, Marijuana, and Other Drugs in the Accidents of Injured Drivers", NHTSA Technical Report DOT–HS–806–181 (Revised-March 1982).

Both of the foregoing studies noted a substantial number of cases in which drug use was combined with alcohol use. The polydrug phenomenon both suggests the hazard of relying on countermeasures directed exclusively to alcohol and complicates the evaluation of drug involvements. This dilemma is particularly critical when it is considered that employed drug abusers may elect to use drugs other than alcohol on the job precisely for the purpose of avoiding detection.

Conclusions

The full extent of drug effects and the dose-response characteristics of individual drugs on particular subjects is the subject of continuing study. Such study could be expected to continue indefinitely, even if the pharmacopeia were a closed class and a steady stream of new compounds were not being introduced into licit and illicit marketplaces on a daily basis. But the fact that continuing study is warranted does not mean that no other action is appropriate. It is important to draw reasonable conclusions from the available data that can help to protect the public safety.

The only responsible conclusion that can be drawn from available evidence is that the non-medical use of controlled substances among transportation employees in sensitive safety and security-related functions constitutes a clear threat to the public safety. The threat flows from the after-effects, chronic effects, and withdrawal effects of these substances, as well as the more heavily-researched acute affects. Any set of countermeasures must therefore encourage drug abusers in the subject populations to abate their habits or seek treatment for their chemical dependencies, as appropriate.

Jurisdiction

The two primary statutes under which RSPA administers the pipeline safety program are the Natural Gas Pipeline Safety Act of 1968 (NGPSA), as amended (49 App. U.S.C. 1671 *et seq.*), and the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA), as amended (49 App. U.S.C. 2001 *et seq.*). Under both statutes, RSPA develops and implements minimum Federal safety standards for operators of natural gas, liquefied natural gas, and hazardous liquid pipelines. RSPA also regulates operators of offshore gas gathering lines under the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 *et seq.*). In the case of interstate pipelines, enforcement is performed by the Federal Office of Pipeline Safety (OPS). In the case of intrastate pipelines, enforcement is performed predominantly by the State enforcement personnel. In the latter case, pursuant to statutory authorization and upon filing an annual certification with the Department, a State enforces the Federal standards adopted by the State under its independent regulatory authority. If adopted, these proposed rules would become part of the Federal pipeline safety regulations, 49 CFR Parts 192, 193, and 195, and would in turn be adopted by and enforced by the States with respect to the intrastate pipelines under their jurisdiction.

Authority to implement drug education, awareness and testing programs is derived from the broad authority granted in the above cited statutes. This authority is applicable to various aspects of pipeline facilities affecting pipeline safety, including "design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities." 49 App. U.S.C. 1672 and 2002. Under this authority, OPS can set qualifications, such as experience and training, for pipeline personnel. In fact, OPS has set technical qualification requirements for welders.

The proposed rule will take the obvious next step by establishing standards for ensuring that operator personnel directly affecting the safety of pipeline transportation are free of drug induced impairment that may affect the safety of the pipeline.

Goals of Testing

The objective of drug testing is to ensure a drug-free transportation system environment which will enhance overall safety and assure public confidence. A drug-free environment means that an individual covered by these proposals *may not have drugs in his or her system at levels above certain test limits at any time.* If drugs are discovered in quantities above those limits, individuals may face the possibility of losing their right to perform the specific sensitive safety and security-related functions for which drug testing is required. Thus, even if an individual uses drugs "off duty", if the evidence of the use remains in the system above the established levels during "on-duty" hours, it would require action under this rule. The implementation of drug testing would serve as a deterrent to drug use by inducing employees to seek help based on fear of detection through drug testing. Employees who are voluntarily undergoing rehabilitation would, in all likelihood, be subject to a special testing

schedule contained in their rehabilitation program in place of the random tests which would be applicable to employees in general.

Additionally, implementation of drug testing would enable RSPA to collect data. Currently, very little data exists evidencing the extent of drug abuse in the pipeline transportation industry. A random sampling program would enable the Office of Pipeline Safety to collect statistically valid and representative data on usage and extent of usage in the pipeline industry. RSPA would collect, consider, and evaluate data on such things as age and occupational position of users, and type of drugs used. This data would enable RSPA to assist the industry in more effectively combatting substance abuse through rehabilitation, further education, training, and testing programs. The RSPA is very interested in receiving any additional data on the use of controlled substances by pipeline personnel.

Overview of the Proposed Drug Program

A drug program would be established by pipeline operators for individuals who perform specific sensitive safety and security-related functions. Pipeline operators covered by these proposals would include all operators subject to regulation under either 49 CFR Parts 192, 193, or 195, except for master meter operators. This includes small municipal gas systems. This rule does not propose to cover master meter operators since they do not usually perform the functions traditionally considered as operating or maintaining a pipeline. The gas distribution company is responsible for the operational characteristics of the pipeline system. Therefore, the types of incidents that would arise, such as leaks or explosions, would not be prevented by the drug testing of master meter operators. Comments are requested as to whether this approach is valid. RSPA also invites comments as to what methods might be used to facilitate the inclusion of other small operators in the program and whether all other small operators should be required to develop and implement a drug abatement program. Commenters who believe that the proposed rule should not cover such entities, either in whole or in part, should explain the basis for their views and describe how they would define small operators for this purpose.

The proposed drug program would be composed of two parts: the first part would be testing for drugs to detect users and to deter future drug use; the second part would be an ongoing and active "preventive" program that would offer Employee Assistance Program services including rehabilitation, education, and training. The two parts of the program are complementary and mutually supportive because the problem of drug abuse must be addressed from several perspectives. Pipeline operators would test, or ensure that the contractors test, individuals who directly or indirectly perform specified sensitive safety and security-related functions for those operators for prohibited drug levels above limits set by the proposed rule. These individuals would generally include a large portion of an operator's operation and maintenance staff (including operator contractor employees). Comments are requested as to whether pipeline inspectors who are employed by the States should be subject to drug testing.

Under the proposed drug program, the operator would be required to conduct the following types of testing: pre-employment testing for all applicants for safety-related jobs; post-accident testing for employees or contractor employees directly involved in an accident; random testing; and testing based on reasonable cause. The test regimen would include an initial test followed by a more specific confirmation test if the initial test were positive. This testing would be required to be carried out according to the HHS guidelines. Each operator would be required to make sure that any testing conformed to these guidelines. Failure by the employer to do so, like any failure by a regulated party to comply with a RSPA safety rule, makes the employer subject to RSPA enforcement action, including civil penalties.

Under the proposed rule, employers would have 120 days from the effective date of the final rule in which to develop a drug plan. Under Parts 192 and 195, the drug plan would be required to be incorporated into the operator's operating and maintenance plan (O&M Plan). Under Part 193, the drug plan would be required to be incorporated into the operator's personnel health plan. The drug plan would be required to be implemented 180 days after the plan is incorporated into the O&M or personnel health plan.

Several Administrations within the Department of Transportation have developed proposed rules that would mandate drug testing, and would require that drug programs formulated in the private sector be submitted to them for approval prior to being implemented. RSPA invites comments on whether it is necessary as well as feasible to require that drug programs mandated by the proposed rule be submitted to RSPA for approval. One possible solution is to require the plans to be submitted and to have them go into effect a set number of days after their submission unless RSPA determines that they are inadequate and notifies the submitter of the inadequacy. RSPA also invites comments on whether employers should have the flexibility to develop company-specific drug abatement programs and submit such programs to RSPA for approval in lieu of following the RSPA-proposed program. RSPA is also interested in comments on ways in which the policy behind this NPRM can be achieved through procedures or programs without the need for detailed regulatory requirements.

An Employee Assisted Program (EAP) is an important component of the proposed drug program. Minimum requirements for rehabilitation, education, and training have been included in the proposed rule and are discussed below. This proposed rule would not prohibit employers from adopting and enforcing additional or more stringent procedures which are not inconsistent with the proposed rule. However, under certain circumstances and alternatives as discussed *infra*, an employee, other than a temporary employee, may not be disciplined or fired upon receipt of their first positive drug test, if the individual agrees to participate in an EAP.

The issue of testing for alcohol is not included in this rulemaking. Alcohol testing is not being proposed because the two preferred methods of testing an individual for the presence of alcohol are by breath analysis and by drawing blood. It tests were run for alcohol and for drugs, two different types of tests (blood alcohol concentration and urinalysis) would have to be conducted since urinalysis has been chosen as the method by which drugs would be tested for. This would greatly complicate the process as well as increase costs. Also, the blood test method generally is considered to be a more invasive procedure. Finally, it is easier to identify someone who abuses alcohol and reports for work impaired than someone who uses drugs.

Who Would Establish a Drug Program

Both the NGPSA and the HLPSA place the responsibility for compliance with safety regulations on the pipeline operator. In enforcement, RSPA has consistently taken this position and held the operator responsible for compliance even when the operator contracts out part or all of its sensitive safety and security-related functions. Therefore, it is reasonable to place the responsibility for testing on the operator to ensure that all individuals who perform sensitive

safety and security-related functions for the operator are drug-free. Operators would be required to include a drug testing plan conforming to the proposed rule in their operating and maintenance or their personnel health plans. The operator may provide in its contract with a contractor that the testing, training, and rehabilitation required by its drug testing plan be carried out by the contractor. However, the operator would remain responsible for ensuring that the terms of its drug testing plan are complied with. In addition, the operator would remain responsible for ensuring that employees who fail a drug test do not perform sensitive safety and security-related functions until successful rehabilitation has taken place. Finally, the operator would have to ensure that the contractor would allow access by the operator, by RSPA, and by State Pipeline Safety Representatives, to property and records kept by the contractor for the purpose of monitoring the operator's compliance with the proposed rule. This raises privacy questions that are discussed below.

Who Would Be Tested

Under the proposed rule, all employees performing sensitive safety and security-related functions would be tested. These functions might include welding, radiography, dispatching, pressure testing, joining plastic pipeline, security and emergency response. Comments are requested as to how "sensitive safety and security-related" functions should be defined, and which specific functions should trigger the testing requirement. Commenters addressing these issues should provide empirical evidence to support their comments.

What Drugs Would Be Tested For

The proposed rule would require that during each test required by the rule, the presence of marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP) be tested for. In reasonable cause or post-accident testing, the employer may test for any substance specified in Schedule I or II of the Controlled Substances Act, 21 U.S.C. 801.812 (1981 & 1987 Cum. P.P.). RSPA invites comments as to which additional drugs, if any, should be included. Commenters should also provide cost and benefit data regarding any additional drug groups.

What Method Would Be Used

RSPA proposes to require chemical testing, urinalysis, to verify that individuals performing sensitive safety and security-related functions in pipeline transportation are drug free. Urinalysis was chosen on the basis of cost, simplicity in taking samples, and effectiveness of testing equipment and procedures. Specimen collection and testing would be conducted as provided in the Department of Health and Human Services Scientific and Technical Guidelines for Drug Testing Programs (HHS Guidelines).

When Testing Would Be Conducted

RSPA is proposing that operators conduct four types of testing: (1) Before employment, (2) after an accident, (3) at random, and (4) based on reasonable cause. RSPA is not proposing periodic testing because the pipeline industry does not have periodic physical examinations. These types of testing, each specific to certain circumstances, together form a part of a deterrent or preventive drug program. The types of testing are described as follows:

1. *Pre-employment testing* would be required of all applicants for specified sensitive safety and security-related positions. The purpose of testing applicants is two-fold: One, it would convey a clear message that the employer is serious about establishing and maintaining a drug-free environment; and two, it would help indentify those who are either addicted to or so dependent upon drugs that they cannot abstain from drug use. All tests that produce positive results for drugs would be confirmed using a method of testing as specified in the HHS guidelines. Applicants would be informed that tests will be conducted to determine the presence of drugs. Although pre-employment testing would not necessarily identify those individuals who temporarily abstain to avoid detection, it would help to ensure that habitual abusers are not selected for sensitive and security-related positions. An applicant would not be hired after receiving a confirmed positive test. Applicants could withdraw an application after a confirmed positive test and the record of the test would be destroyed.

2. *Post-accident testing.* Employees who perform sensitive safety and security-related functions as described in the proposed rule, and whose performance of that function is directly related to an accident, would be required to provide a urine sample for drug testing under the proposed rule. An employee involved in an accident would be selected for testing based on a decision made by the operator or authorized government personnel (e.g., inspectors) that such testing is necessary. The employer or government official must consider the extent of an individual's involvement in the accident when selecting employees for testing.

3. *Random (or Random Sampling) testing* is expected to be the primary method used in the drug program to deter drug use. Random testing can be an extremely effective method for decreasing drug use because abstinence from continued use is the only way to prepare for an unannounced test. The success of random drug screening has been demonstrated in various programs. The United States Coast Guard implemented a random testing program for its uniformed personnel which led to a 75 percent decrease in drug use over a five-year period. RSPA requests commenters to address whether the experience of uniformed personnel in the Coast Guard program is a valid indicator of how pipeline employees would respond to a similar program.

Random testing avoids potential bias toward, and selective harassment of, an employee because every employee has an equal chance for selection at any time. Random selection is usually accomplished through scientifically accepted methods such as the use of a random-number table or computer-based, random-number generator. Both methods select individuals by matching these randomly selected numbers against an employee's social security number or payroll account number. With random testing, abstinence is the only alternative to possible detection. Using a true random selection basis, employees selected for each weekly or monthly increment would be returned to the poll of those eligible for testing and would be subject to reselection. The vulnerability for reselection deters drug abuse because an individual selected early in the testing cycle would still be subject to testing throughout the remainder of the year and would still risk detection if he or she used drugs after the first test. One feature of this plan is that some employees might not be selected at all and others could be selected more than once a year. In addition, although surprise is an essential feature of a true random testing program, when an employee is located in a remote location and must be transported some distance to provide a sample, the element of surprise may be lost in many cases. RSPA seeks comment on how to deal with these problems.

Random drug testing requires a specific implementation plan to deter drug use. The proposed rules would require that up to 125 percent of employees performing specific sensitive safety and security-related functions would be tested each year. This does

not mean that testing would be carried out at the 125% rate, but denotes a cap upon the rate to be chosen. RSPA intends to select an appropriate rate based on effectiveness, deterrence, costs, and benefits. Comments are requested as to what the proper percentage should be and data supporting this view is also requested. How would different sampling rates affect the numbers of drug users who volunteer for rehabilitation under each of the rehabilitation options? Is there any evidence to support alternative assumptions regarding the rates at which drug users would volunteer for rehabilitation? What is the lowest sampling rate for random testing that would be effective in deterring drug abuse? Would higher sampling rates result in sufficiently higher benefits to justify the costs? Do lower sampling rates necessarily result in lower benefits? Is reasonable to assume that benefits are directly proportional to the sampling rate? Would the higher sampling rate add sufficient deterrence to reduce the costs of and need for rehabilitation? Would a lower sampling rate be more effective if the severity of the sanction is increased? RSPA is also considering whether programs should provide for adjustment of the minimum sampling rule based upon the success of the program. Although a numerical target is needed as a benchmark for discussion, in actual practice there may come a point of sharply diminishing returns from any set level as the mix of countermeasures detects most chronic substance abuse and deters casual use. The testing program could be designed so that it could be phased up or down as appropriate and in response to the pattern of results obtained through the program. In combination with post-accident testing experiences, the results of random testing would provide the most useful gauge of the need. RSPA is considering whether there are circumstances under which the program should allow for the level of effort to be increased or scaled back based on a method of evaluation stated in the rule or, if an approval process is used, based on individual applications and specifically requests comments on this issue. RSPA also solicits comments on whether companies that develop exemplary records should be relieved at some future time from some or all of the requirements of this proposal. As with other issues, RSPA reserves the right to make appropriate adjustments in the rule in response to public comments. RSPA also requests comments as to whether the rule should contain a provision allowing a company with a high level of safety with regard to drug use, demonstrated over a designated time period, more latitude in determining the application of its drug program.

RSPA believes that an operator-sponsored program is the most effective form of random testing. The operator has an interest in ensuring that its pipeline operations are conducted by employees who do not use controlled substances. The DOT is mandating that pipeline operators, as well as operators in other transportation modes, be subject to random drug testing. This will assist in achieving a drug-free transportation environment. We realize that there may be difficulties in applying these types of testing to small operators. Comment is requested on the problems inherent in such an application and solutions that would ensure an effective random testing program for small operators. For example, could small operators form consortiums to implement random testing? RSPA invites comments as to what methods might be used to facilitate inclusion of small entities in the program and whether all small entities should be required to develop and implement a drug abatement program. Should the rule permit operators, especially the small ones, to use a third party to set up and maintain their drug testing program? They could choose to comply with the rule through the use of several options, including:

(1) Form consortiums made up of owner operators that would develop a centrally administered random testing program.

(2) Form consortiums, and hire a contractor to develop and implement a random testing program.

(3) Contract separately with an outside company that would set-up and provide these services.

(4) Have existing industry-related groups (e.g., trade associations) set-up drug programs in which small entities could participate.

(5) Arrange to be included as a part of a larger company's drug testing program.

4. *Testing based on reasonable cause* would arise from either of two circumstances. The first is involvement in the commission of serious or repetitive errors in the job environment which fall short of accidents, but could lead to an accident and are reasonably likely to be linked to drug use. Because of the subjectivity of the criteria, at least two of the employee's supervisory personnel would have to concur that there is reasonable cause to believe that an error or errors have been committed, that drug use is indicated, and that the employee should be tested.

Second, reasonable cause testing could be initiated on the basis of a belief that an individual is using or is under the influence of a prohibited drug while on duty. Changes in character or behavior may be symptomatic of drug use. Such changes are often characterized by mood swings and changes in appearance, attitude, speech, and work habits. Because of the subjectivity of the criteria, at least two of the employee's supervisory personnel would have to concur that there is reasonable cause to believe that drug use exists and that the employee should be tested. RSPA does not seek to have this type of testing used to harass an employee. Therefore, commenters should address how to protect a disfavored employee from potential harassment through drug testing. Should there be a limit to the number of times an employee can be subjected to reasonable cause testing, in order to prevent unwarranted harassment? With respect to this type of reasonable cause for small operators, it may not be possible to require two supervisors. Comment is requested concerning possible exemptions for small operators from part or all of reasonable cause drug testing. Commenters also should present any data on the effectiveness of any existing programs that they are aware of which use reasonable cause or suspicion-type testing.

Employee Assistance Program (EAP)

An employee assistance program under the proposed rule would have three components—rehabilitation, education, and training.

EAP Rehabilitation Program

The proposed rule would require under three of the proposed options, that the responsible party provide access to an EAP Rehabilitation Program for certain employees who are not considered to be temporary employees under the proposed rule.

The operator may establish the EAP as a part of its internal personnel services or the employer may make arrangements with an outside entity to provide EAP services to an employee. The employer is not required to pay for the EAP Rehabilitation Program. Commenters should address: Who should be afforded EAP services and under what circumstances? What is the estimated level of voluntary enrollment in EAP services at sampling rates of 125 percent and at 12.5 percent under each rehabilitation option?

We believe that there may be some employees in the industry whose normal period of employment is too short to make it practical to require rehabilitation and reemployment. For example, even if a short-term hire tested positive for drugs, the end of the scheduled employment term might come before the completion of a rehabilitation program. Therefore, we do not propose to require employers to offer an opportunity for rehabilitation to temporary employees who are hired for a period of less than 90 days. That is, if such employees test positive, they could be dismissed immediately.

However, we recognize that some employees hired on a "temporary" basis are actually reemployed. Some of these employees are recurring seasonal hires, others are continually reemployed at the end of each specified term. These persons are regular members of the industry, and thus should not be excluded from the opportunity for rehabilitation and reemployment. Under the proposal, an employee would not be considered temporary for the purposes of rehabilitation, if he or she is eligible for reemployment by the same employer within 90 days following the end of the employment term. We specifically request comments on (1) the merits of excluding temporary employees from the opportunity for rehabilitation, and (2) the definition of temporary employee.

EAP Education Program

Under the proposed rule an EAP education program would be required to include, at a minimum, the display and distribution of informational material on the nature and effects of drugs, and the operator's policy regarding drugs and drug use in the workplace.

EAP Training Program

Under the proposed rule each operator would be required to conduct an EAP training program annually for all employees. The training program would be required to include at least the following elements: the effects and consequences of drug and alcohol use on personal health, safety, and work environment; the manifestations and behavioral cues that may indicate drug or alcohol use, and abuse; and documentation of training given to employees and to the operator's supervisory personnel. EAP training programs for employees and supervisory personnel would consist of at least 60 consecutive minutes for each employee and supervisor each year. Is 60 minutes appropriate, or is some other period justified? Should RSPA specify the minimum training time required? Once all employees have received training, should the annual training requirement apply only to supervisors and to new employees?

Rehabilitation Options

The NPRM proposes four different options concerning the circumstances under which employees would be given an opportunity to seek rehabilitation. Under the first option, an employee who comes forward voluntarily or tests positive for drugs for the first time would be eligible for rehabilitation rather than be discharged. Once rehabilitated, the employee could be reinstated into his or her prior position. The second option would give rehabilitation rights to employees who come forward voluntarily or who are identified as drug users during random tests, but would not require that the same opportunity be afforded drug users identified in post-accident or reasonable cause tests; those not afforded the right to rehabilitation could be discharged. In the third option, only volunteers could claim rehabilitation rights. Anyone testing positive for drugs could be fired immediately. Under the fourth option, rehabilitation would not be mandated. The operator would be able to decide what its policy regarding rehabilitation would be. In all cases, of course, employers would be free to offer more rehabilitation options than the minimums we propose. Thus, for example, an employer could voluntarily offer two chances at rehabilitation rather than one. On the other hand, the proposed rule does not require the employer to offer an opportunity for rehabilitation to a repeat offender, to persons not currently employed by the employer who fail a preemployment test, to persons who have been found to use illicit drugs on the job, or to persons who refuse to take a required drug test.

Each of these approaches has its own merits. For example, the broad rehabilitation program that would be provided by the first option is likely to maximize the benefits to society, by ensuring that more drug users will get the help they need. If users are simply fired, they may lose access to, and perhaps incentive to use, rehabilitation services, and they will continue to be drug users. However, it could be argued that employees who are found to be drug users through post-accident or reasonable cause tests are less deserving of an opportunity for rehabilitation. Unlike reasonable cause or post-accident testing, random testing is not triggered by an event that provides a particularized basis for inquiry as to the fitness of a given employee. Further, it is not accompanied by blood testing or a blood test option, an investigation technique that can yield information more specific to current fitness. Therefore, there may be good reason to offer abatement or rehabilitation only to employees whose drug use is identified by self-referral or random testing. The third alternative is to require no program of rehabilitation and abatement following a positive test. This alternative is likely to be lower in direct costs, because rehabilitation would only be required for employees who seek it voluntarily, but for the same reason this alternative might produce less in societal benefits. Finally, not mandating rehabilitation may provide the most flexibility to labor and management to determine the need for and shape of any rehabilitation program. It also could provide deterrence to drug use and thus may yield large benefits with low costs. Commenters should address whether this alternative would be effective for the pipeline industry. How would this alternative affect the deterrence value of the proposal? What impact would it have on the costs and benefits? Would not requiring rehabilitation foster other approaches to combating drug usage.

What are the estimated costs of individual EAP rehabilitation services under each rehabilitation option? To what extent would each of the four alternatives raise or lower costs and benefits? Is it reasonable to assume that more drug users would self-identify under Options 3 and 4 than under either of the other two options? Are the costs of required rehabilitation programs warranted by the reduction in societal costs resulting from drug abuse? Which of these or other alternatives offers the greatest benefits at the lowest cost? We are especially interested in comments on how to implement opportunities for rehabilitation among smaller operators.

Individuals who successfully complete an EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions would be required to, at a minimum, have two unannounced drug tests in the twelve months following the completion of an EAP. The specific time of the test would be left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP and the first post-EAP test would be required to be sufficient to ensure that the post-EAP test was not identifying the drug use incident previously identified. Failure to comply with post-EAP drug testing would be cause for termination.

Privacy

We specifically request public comment on what, if any, procedures and safeguards we should prescribe to assure adequate protection of the privacy of the persons being tested. We are particularly concerned with the circumstances under which test results would be given to persons other than the employer and the employee. For example, should test results be submitted to a prospective future employer? If so, there would appear to be several ways in which such data could reach the future employer. The data could be given at the request of the future employer, at the discretion of the employer conducting the test, or at the request of the employee. A subsequent employer could require that an applicant either disclose prior drug test results or give the employer permission to obtain prior drug tests results as a condition of employment. Another option we are considering is authorizing the release of test results to future employers only in specified circumstances, such as cases where the employee had been discharged for refusing to undergo rehabilitation or had failed a second test after rehabilitation. In addition to future employers, other individuals may want access to the results of drug tests conducted under this rule. RSPA could prohibit access to test results by the general public, including the news media. Moreover, other government agencies may want the data for statistical, regulatory, or law enforcement purposes. We request comments on whether we can and should prohibit access to the results of the drug program to individuals other than the employer and the employee.

The potential for release of data may also complicate the issue of an employee's right to contest the results of a test. A urine sample that had been subject to tampering could unjustly end an employee's career even with another employer, and it might be necessary to permit the employee to challenge the integrity of the test procedure. We invite comments on what procedures should be adopted and whether the types of procedures afforded an employee should vary, depending upon the consequences of a positive test.

We would also like interested persons to discuss whether any final rule based on those proposals should treat the privacy issue of pre-employment tests differently from random or reasonable cause tests. Should we mandate the destruction of the results of pre-employment tests for persons not hired? If not, what access should be allowed to them?

Recordkeeping

Related to the issue of privacy is the issue of what records should be kept. The proposed rule would require that each operator maintain a record concerning the results of its drug testing program. This record would summarize and coordinate information on the following topics for each type of testing required: 1. The functions performed by the employees tested; 2. the prohibited drugs that were used by employees; 3. the ultimate disposition in each case (e.g., rehabilitation, termination); 4. the age of each employee who tested positive for prohibited drugs; and 5. the number of employees tested. This raises privacy concerns. Should we distinguish between general statistical data (the total number of positive tests at a company in a month or year) and particularized data (name-specific data). Small operators who employ few individuals will have difficulty concealing the identity of individuals tested under the proposed drug program. Since small operators will have fewer individuals to test in any given time period, even seemingly neutral statistical data would result in identification of an individual employee who was dismissed as a result of a confirmed positive test result. This potential problem may be exacerbated if we require that only a small percentage of employees be tested each year.

The proposed rule would require that the operator or an entity contracting with the operator, permit RSPA and State Pipeline Safety Representatives to have access to the record. We request comments on what type of records should be kept, including whether records should be kept of the number of times an employee has been tested and found negative for drugs. This would enable operators to evaluate the effectiveness of their programs and to make appropriate modifications. Should employers keep records of pre-employment positive tests? If records are to be kept, for how long should they be retained?

Regulatory Impact

Economic Summary

RSPA has prepared a Draft Evaluation of the economic impact of this proposal, which is available for review in the docket. The following is a summary of the preliminary industry cost impact and benefit evaluation for the proposed rules to require pipeline operators to have a drug program for employees who perform sensitive safety and security-related functions. RSPA has analyzed the first three alternatives concerning rehabilitation for costs and benefits using 125 percent and 12.5 percent annual sampling rates for random testing. Under the first option, an employee who comes forward voluntarily or tests positive for illicit drug use for the first time would be eligible for rehabilitation. The second option would afford rehabilitation rights to employees identified as illicit drug users during random tests, but would not require employers to afford the same opportunity to drug users identified in post-accident or reasonable cause tests. Under the third option, only volunteers who self identify would be afforded rehabilitation rights. RSPA has estimated that first year costs associated with the drug program would range from a low of $3.5 million under the third option at a 12.5 percent sampling rate to a high of $31.5 million under the third option at a 125 percent sampling rate.

As shown in a June 1984 U.S. Department of Health and Human Services report entitled "Economic Costs to Society of Alcohol and Drug Abuse and Mental Illness: 1980", the economic cost to society at large from drug abuse is estimated to be $66 billion annually.

The 1988 GAO Report cited a Research Triangle Institute study, "Economic Costs to Society of Alcohol and Drug Abuse and Mental Illness",

which estimated that the economic cost of drug abuse to the United States during 1983 was $59.7 billion. This study, prepared for the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA), estimated "the costs of drug abuse to society for crime . . ., reduced productivity, treatment, and other items. The estimate did not include items such as social costs (e.g., family conflict, suicide) and the value of the illicit drugs consumed." A copy of the GAO report has been placed in the docket. As RSPA obtains other data on drug use, it will place that date in the docket.

The estimated 116,500 employees in the pipeline industry covered by these proposals represent approximately .05 percent of the United States population of 236,000,000. Thus, if these proposals induce current drug users in the pipeline industry to abandon drug use, RSPA estimates that there would be a savings to society of $33 million.

Furthermore, RSPA has determined that the maximum annual benefit of preventing pipeline accidents due to human error (including drug abuse) would be $24.9 million. RSPA specifically invites comment on its Draft Evaluation, including its analysis of annual costs and benefits. Commenters should be aware that other operating administrations within the Department of Transportation also are proposing drug testing programs. Elsewhere in today's **Federal Register** are NPRMs issued by the Urban Mass Transportation Administration and the Coast Guard. In addition, the Federal Aviation Administration published an NPRM in the **Federal Register** on March 14, 1988 (53 FR 8368); the Federal Railroad Administration's NPRM was published on May 10, 1988 (53 FR 16640); and the Federal Highway Administration published its NPRM on June 14, 1988 (53 FR 22268). Each of these rulemakings addresses the costs and benefits of the proposals and are generally consistent with one another. In some instances, however, and generally as a result of differences in the industries affected, the assumptions differ from those discussed in this proposed rulemaking. Obviously, changes in assumptions could affect the costs and benefits. Because of the nature of some industries, costs for similar elements also may vary or could vary enough to warrant sensitivity analyses. Other changes in assumptions, such as test costs or rehabilitation costs, also can have an effect on the analysis. Commenters may find it helpful to review the notices of proposed rulemaking or the economic analyses prepared by the other operating administrations. Comparisons may aid commenters in reviewing data on this proposal and in formulating comments. In reviewing the economic analysis and the basic assumptions made, commenters should address specific areas where there agree or disagree with the assumptions and the basis for the comment. Commenters are directed to the other rulemakings and their assumptions as a source of information in submitting comments. A copy of each of the documents has been placed in the docket.

Regulatory Flexibility Determination

These proposed rules would apply to all entities subject to RSPA's jurisdiction under Parts 192, 193 or 195, other than operators of master meter systems. Operators or master meter systems constitute the bulk of small businesses or other small entities that operate gas pipeline systems. There are few, if any, small entities that operate hazardous liguid pipeline subject to Part 195 or liquefied natural gas facilities that are subject to Part 193. Therefore, I certify that pursuant to Section 605 of the Regulatory Flexibility Act, these proposed rules will not, if adopted as final have a "significant economic impact on a substantial number of small entities."

Paperwork Reduction Act

The proposed rules would require, under 49 CFR 192.605, 193.2711, and 195.402 that the operator develop plans and maintain records on its drug testing program, and provide RSPA and State pipeline officials with access to those plans and records. In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), these information collection requirements will be submitted to the Office of Management and Budget for approval. Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503; Attention: RSPA Desk Officer. A copy of these comments should also be submitted to the RSPA Docket as indicated above under **"ADDRESS."**

Federalism Implications

RSPA has reviewed the proposals in this Notice in light of the Federalism considerations set forth in Executive Order 12612. Although the proposals relate to requirements that would have to be adopted by States participating in the Federal-State relationships prescribed in the NGPSA and the HLPSA, the impact of those requirements based upon currently available information would not be substantial. In addition, RSPA does not expect that those requirements would have a substantial direct effect on the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government. Accordingly, preparation of a Federalism Assessment under Executive Order 12612 is not warranted.

Significance

These proposed regulations are considered to be non-major under Executive Order 12291. However, they are significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because they concern a matter on which there is substantial public interest.

List of Subjects

49 CFR Part 192

Pipeline safety, Operation, Maintenance, Reporting and recordkeeping requirements.

49 CFR Part 193

LNG facility, Operation, Maintenance, Reporting and recordkeeping requirements.

49 CFR Part 195

Pipeline safety, Hazardous liquids, Operation, Maintenance, Reporting and recordkeeping requirements.

Request for Public Comment

RSPA proposes to amend Parts 192, 193, and 195 of Title 49, Code of Federal Regulations, as set forth below. RSPA solicits comments on all aspects of the proposed rule and the data and analysis advanced in explanation of the proposed rules, whether through written submissions, or participation at the public hearings, or both. RSPA may make changes in the final rule based on comments received in response to this notice.

Issued in Washington, DC on June 29, 1988.

M. Cynthia Douglass,

Administrator.

PART 192—[AMENDED]

In consideration of the foregoing, RSPA proposes to amend 49 CFR Part 192 as follows:

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1671 and 1804; and 49 CFR 1.53.

2. Section 192.603 would be amended by adding a new paragraph (c) to read as follows:

§ 192.603 General provisions.

* * * * *

(c) No operator may knowingly allow the performance of any function specified in Part II of Appendix E to this part by any individual who:

(1) Fails a drug test as defined in Appendix E, and fails to successfully complete rehabilitation as defined in Appendix E, Section VII,

(2) Refuses to take a drug test required under Appendix E by the operator's drug testing program, or

(3) Has a prohibited drug in his or her system.

3. Section 192.605 would be amended by adding new a paragraph (f) to read as follows:

§ 192.605 Essentials of operating and maintenance plan.

* * * * *

(f) A drug testing program meeting the requirements prescribed in Appendix E to this part, except that an operator of a master meter system, as defined by 49 CFR 191.3 of this subchapter, is not required to have such a program for that system.

4. A new Appendix E would be added at the end of Part 192:

Appendix E—Drug Testing Program

This appendix contains the standards for, and components of, a drug testing program required by this part.

I. Definitions.

For the purposes of this appendix:

"Accident" means an incident as defined in 49 CFR 191.3.

"Employee" is a person who performs either directly or by contract, a function listed in section II of this appendix for a pipeline operator.

"Failing a drug test" means that the confirmation test result shows positive evidence of the presence of a prohibited drug in an employee's system.

"HHS Guidelines" Drug testing programs subject to the requirements of this Part shall be operated consistent with the "Scientific and Technical Guidelines for Federal Drug Testing Programs and Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies" published by the Department of Health and Human Services (53 FR 11970, April 11, 1988). Drug testing programs governed by the requirements of this Part shall use only drug testing laboratories certified by the Department of Health and Human Services under the guidelines. These guidelines are available for inspection and copying at RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, Room 8417.

"Passing a drug test" means that initial testing or confirmation testing does not show evidence of the presence of a prohibited drug in an employee's system at levels above those prescribed in section III of this appendix.

"Prohibited drug" means a substance specified in Schedule I or Schedule II of the Controlled Substances Act, 21 U.S.C. 801.812 (1981 & 1987 Cum.P.P.), unless the drug is being used as authorized by, and in accordance with, a legal prescription or exemption under Federal, State, or local law.

II. Employees Who Must be Tested

Employees who performs for an operator sensitive safety and security-related functions must be tested pursuant to the operator's drug testing program.

III. Substances for Which Testing Must be Conducted

Each operator shall test a specimen from each employee who perform a function listed in section II of this appendix for evidence of marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP) during each test required by section IV of this appendix in conformity with the HHS Guidelines. An operator may test for any prohibited drug in conformity with the HHS Guidelines in a post-accident or reasonable cause test.

IV. Types of Drug Testing Required

Each operator shall conduct the following types of testing:

A. *Pre-employment testing.* No operator may hire, or, in the case of a person who is hired by a contractor, allow the use of, any person to perform a function listed in section II of this appendix unless the applicant passes an initial test or confirmation test specified in the HHS Guidelines. If an initial test is positive, confirmation testing as specified in the HHS Guidelines must be done. The operator shall advise an applicant that pre-employment testing will be conducted to determine the presence of any prohibited drug in the applicant's system. If the applicant fails the confirmation test, the applicant shall not be hired. The applicant may withdraw his or her application for employment and the operator shall not disclose the failure or the results of a failed test to any person.

B. *Post-accident testing.* Each operator shall test a specimen collected from each employee who performs a function listed in section II of this appendix and whose performance of that function is directly related to an accident.

C. *Random testing.* Each operator annually shall collect a specimen from, and test randomly, up to 125 percent of all employees who perform a function listed in section II of this appendix. The operator shall select employees for random testing using a random number table or a computer-based number generator which is matched with an employee's social security number, payroll identification number, or other appropriate identification number.

D. *Testing based on reasonable cause.* Each operator shall test a specimen collected from each employee who performs a function listed in section II of this appendix and who is involved in the commission of serious or repetitive errors which could lead to an accident and which may be linked to drug use. At least two of the employee's supervisors shall substantiate and concur in the determination that there is reasonable cause to believe that drug use is indicated in the commission of an error or errors, and that the employee should be tested. In addition, if at least two of the employee's supervisors substantiate and concur in the determination that there is reasonable cause to believe that the employee is using prohibited drugs, on the basis of physical indications of probable intoxication (e.g., the employee's speech or physical appearance), the employer should test the employee.

V. Specimen Collection and Testing Procedures

Each operator must conform to the HHS Guidelines during collection, and initial and confirmation testing of specimens.

VI. Employee Assistance Program (EAP)

A. *EAP Rehabilitation Program—Option 1.*

1. Each operator shall provide access to one opportunity for rehabilitation for the following employees:

a. Each employee, who is not a temporary employee, and who voluntarily enrolls in an EAP Rehabilitation Program.

b. Each employee, who is not a temporary employee, who is referred to an EAP Rehabilitation Program as a result of receiving his or her first positive confirmation drug test result.

2. The operator may establish an EAP Rehabilitation Program as part of its internal personnel services, or the employer may make arrangements with an outside entity to provide services to an employee.

3. The operator shall determine whether the operator or the employee who requires treatment shall bear the cost of the EAP Rehabilitation Program.

4. Individuals covered by these rules who successfully complete an EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions, must, at a minimum, have two unannounced drug tests in the twelve months following the completion of the EAP Rehabilitation Program. The specific time of the test is left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP Rehabilitation Program and the first post-EAP test must be sufficient to ensure that the post-EAP test is not identifying the drug use incident previously identified. Failure to comply with post-EAP drug testing is cause for termination.

A. *EAP Rehabilitation Program—Option 2.*

1. Each operator shall provide access to one opportunity for rehabilitation for the following employees:

a. Each employee, who is not a temporary employee, and who voluntarily enrolls in an EAP Rehabilitation Program.

b. Each employee, who is not a temporary employee, who, as a result of a random drug test, is referred to an EAP Rehabilitation Program after receiving his or her first positive confirmation drug test result.

2. The operator may establish an EAP Rehabilitation Program as part of its internal personnel services, or the employer may

make arrangements with an outside entity to provide services to an employee.

3. The operator shall determine whether the operator or the employee who requires treatment shall bear the cost of the EAP Rehabilitation Program.

4. Individuals covered by these rules who successfully complete an EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions, must, at a minimum, have two unannounced drug tests in the twelve months following the completion of the EAP Rehabilitation Program. The specific time of the test is left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP Rehabilitation Program and the first post-EAP test must be sufficient to ensure that the post-EAP test is not identifying the drug use incident previously identified. Failure to comply with post-EAP drug testing is cause for termination.

A. *EAP Rehabilitation Program—Option 3.*

1. Each operator shall provide access to one opportunity for rehabilitation for the following employees:

Each employee, who is not a temporary employee, and who voluntarily enrolls in an EAP Rehabilitation Program.

2. The operator may establish an EAP Rehabilitation Program as part of its internal personnel services, or the employer may make arrangements with an outside entity to provide services to an employee.

3. The operator shall determine whether the operator or the employee who requires treatment shall bear the cost of the EAP Rehabilitation Program.

4. Individuals covered by these rules who successfully complete an EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions, must, at a minimum, have two unannounced drug tests in the twelve months following the completion of the EAP Rehabilitation Program. The specific time of the test is left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP Rehabilitation Program and the first post-EAP test must be sufficient to ensure that the post-EAP test is not identifying the drug use incident previously identified. Failure to comply with post-EAP drug testing is cause for termination.

A. *EAP Rehabilitation Program—Option 4.*

1. Each operator shall determine its policy concerning whether rehabilitation will be offered.

2. The operator may establish an EAP Rehabilitation Program as part of its internal personnel services, or the employer may make arrangements with an outside entity to provide services to an employee.

3. Individuals who are offered an opportunity for rehabilitation provided voluntarily by the operator, who successfully complete an EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions, must, at a minimum, have two unannounced drug tests in the twelve months following the completion of the EAP Rehabilitation Program. The specific time of the test is left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP Rehabilitation Program and the first post-EAP test should be sufficient to ensure that the post-EAP test is not identifying the drug use incident previously identified.

B. *EAP education program.* Each EAP education program must include, at minimum, the display and distribution of informational material on the nature and effects of drugs, and the operator's policy regarding drugs and drug use in the workplace.

C. *EAP training program.* Each EAP training program must be conducted annually for employees. The training program must include at least the following elements: the effects and consequences of drug and alcohol use on personal health, safety, and work environment; the manifestations and behavioral cues that may indicate drug or alcohol use and abuse; and documentation of training given to employees. EAP training programs for employees must consist of at least 60 consecutive minutes for each employee and supervisor each year.

VII. Action That May Be Taken by an Operator

An operator may not discipline or terminate an employee for drug-related causes, who is not a temporary employee, if the employee successfully completes rehabilitation and receives a recommendation for return to duty by the rehabilitation program director. However, the employee must be temporarily moved from his or her position until rehabilitation is successfully completed, and the required recommendation is obtained from the rehabilitation program director. An operator is not required to offer rehabilitation to an employee who refuses a required drug test or to one who has been found to use a prohibited drug while on the job.

VIII. Operator's Drug Testing Plan

A. Each operator shall include a drug testing plan, which conforms to this Appendix and to the HHS Guidelines, in its operating and maintenance plan by 120 days after the effective date of this rule. The drug testing plan must be implemented within 180 days after the plan is incorporated in the operating and maintenance plan.

B. The plan must provide the name and address of the laboratory which has been selected by the operator for analysis of the specimens collected during the drug testing program.

C. With respect to those employees who are hired by a contractor to perform functions for the operator specified in section II of this appendix pursuant to a contract with the operator, the operator may provide by contract that the testing, training and rehabilitation required by its drug testing plan be carried out by the contractor provided that: (1) The operator remains responsible for ensuring that the terms of its drug testing plan are complied with, (2) the operator remains responsible for ensuring that an employee who fails the testing does not perform any functions specified in section II until successful rehabilitation has taken place, and (3) the contractor shall allow access to property and records by the operator, by State Pipeline Safety Representatives, and by RSPA for the purpose of monitoring the operator's compliance with the requirements of this appendix.

IX. Recording Results of Drug Testing Program

Each operator shall maintain a record of the results of its drug testing program. Each operator shall permit duly authorized RSPA and State Pipeline Safety Representatives to have access to the record. The record shall include the following information categorized by method of testing:

1. The functions performed by the employees who tested positive for prohibited drug.

2. The prohibited drugs which were used by the employees.

3. The disposition of employees who failed the test (e.g., termination, rehabilitation, leave without pay).

4. The age of each employee who failed a drug test.

5. The number of employees tested.

PART 193—[AMENDED]

In consideration of the foregoing, RSPA proposes to amend 49 CFR Part 193 as follows:

1. The authority citation for Part 193 would be revised to read as follows:

Authority: 49 App. U.S.C. 1671 *et seq.*; and 49 CFR 1.53.

2. Section 193.2707 would be amended by adding a new paragraph (d) to read as follows:

§ 193.2707 Operations and maintenance.

* * * * *

(d) No operator may knowingly allow the performance of any function specified in Part II of Appendix B to this part by any individual who:

(1) Fails a drug test as defined in Appendix B, and fails to successfully complete rehabilitation as defined in Appendix B Section VII,

(2) Refuses to take a drug test required under Appendix B by the operator's drug testing program, or

(3) Has a prohibited drug in his or her *system.*

3. Section 193.2711 would be revised to read as follows:

§ 193.2711 Personnel health.

Each operator shall follow a written plan to verify that personnel assigned operating, maintenance, security, or fire protection duties at the LNG plant do not have any physical condition that would impair performance of their assigned duties. The plan must be designed to detect both readily observable disorders, such as physical handicaps or injury, and conditions requiring professional examination for discovery. The plan must also include a

drug testing program meeting the requirements prescribed in Appendix B to this part.

4. Appendix B would be added at the end of Part 193:

Appendix B—Drug Testing Program

This appendix contains the standards for, and components of, a drug testing program required by this part.

I. Definitions

For the purposes of this appendix:

"Accident" means an incident as defined in 49 CFR 191.3.

"Employee" is a person who performs either directly or by contract, a function listed in section II of this appendix for a pipeline operator.

"Failing a drug test" means that the confirmation test results shows positive evidence of the presence of a prohibited drug in an employee's system.

"HHS Guidelines". Drug testing programs subject to the requirements of this Part shall be operated consistent with the "Scientific and Technical Guidelines for Federal Drug Testing Programs and Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies" published by the Department of Health and Human Services (53 FR 11970, April 11, 1988). Drug testing programs governed by the requirements of this Part shall use only drug testing laboratories certified by the Department of Health and Human Services under the guidelines. These guidelines are available for inspection and copying at RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, Room 8417.

"Operator" is a pipeline operator who is subject to the NGPSA or the HLPSA.

"Passing a drug test" means that initial testing or confirmation testing does not show evidence of the presence of a prohibited drug in an employee's system at levels above those prescribed in the HHS Guidelines.

"Prohibited drug" means a substance specified in Schedule I or Schedule II of the Controlled Substances Act, 21 U.S.C. 801.812 (1981 & 1987 Cum.P.P.), unless the drug is being used as authorized by, and in accordance with, a legal prescription or exemption under Federal, state, or local law.

II. Employees Who Must Be Tested.

Employees who perform sensitive safety and security-related functions for an operator involving the operating or maintaining of an LNG facility must be tested pursuant to the operator's drug testing program.

III. Substances for Which Testing Must be Conducted

Each operator shall test a specimen from each employee who performs a function listed in section II of this appendix for evidence of marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP) during each test required by section IV of this appendix in conformity with the HHS Guidelines. An operator may also test for any other prohibited drug in conformity with the HHS Guidelines during a post-accident or reasonable cause test.

IV. Types of Drug Testing Required

Each operator shall conduct the following types of testing:

A. *Pre-employment testing.* No operator may hire, or, in the case of a person who is hired by a contractor, allow the use of, any person to perform a function listed in section II of this appendix unless the applicant passes an initial test or confirmation test specified in the HHS guidelines. If an initial test is positive, confirmation testing as specified in the HHS Guidelines must be done. The operator shall advise an applicant that pre-employment testing will be conducted to determine the presence of any prohibited drug in the applicant's system. If the applicant fails the confirmation test, the applicant shall not be hired. The applicant may withdraw his or her application for employment and the operator shall not disclose the failure or the results of a failed test to any person.

B. *Post-accident testing.* Each operator shall test a specimen collected from each employee who performs a function listed in section II of this appendix and whose performance of that function is directly related to an accident.

C. *Random testing.* Each operator annually shall collect a specimen from, and test randomly, up to 125 percent of all employees who perform a function listed in section II of this appendix. The operator shall select employees for random testing using a random number table or a computer-based number generator which is matched with an employee's social security number, payroll identification number, or other appropriate identification number.

D. *Testing based on reasonable cause.* Each operator shall test a specimen collected from each employee who performs a function listed in section II of this appendix and who is involved in the commission of serious or repetitive errors which could lead to an accident and which may be linked to drug use. At least two of the employee's supervisors shall substantiate and concur in the determination that there is reasonable cause to believe that drug use is indicated in the commission of an error or errors, and that the employee should be tested. In addition, if at least two of the employee's supervisors substantiate and concur in the determination that there is reasonable cause to believe that the employee is using prohibited drugs, on the basis of physical indications of probable intoxication (e.g., the employee's speech or physical appearance), the employer should test the employee.

V. Specimen Collection and Testing Procedures

Each operator must conform to the HHS Guidelines during collection, and initial and confirmation testing of specimens.

VI. Employee Assistance Program (EAP)

A. *EAP Rehabilitation Program—Option 1.*

1. Each operator shall provide access to one opportunity for rehabilitation for the following employees:

a. Each employee, who is not a temporary employee, and who voluntarily enrolls in an EAP Rehabilitation Program.

b. Each employee who is not a temporary employee and who is referred to an EAP Rehabilitation Program as a result of receiving his or her first positive confirmation drug test result.

2. The operator may establish an EAP Rehabilitation Program as part of its internal personnel services, or the employer may make arrangements with an outside entity to provide services to an employee.

3. The operator shall determine whether the operator or the employee who requires treatment shall bear the cost of the EAP Rehabilitation Program.

4. Individuals covered by these rules who successfully complete an EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions, must, at a minimum, have two unannounced drug tests in the twelve months following the completion of the EAP Rehabilitation Program. The specific time of the test is left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP Rehabilitation Program and the first post-EAP test must be sufficient to ensure that the post-EAP test is not identifying the drug use incident previously identified. Failure to comply with post-EAP drug testing is cause for termination.

A. *EAP Rehabilitation Program—Option 2.*

1. Each operator shall provide access to one opportunity for rehabilitation for the following employees:

a. Each employee, who is not a temporary employee, and who voluntarily enrolls in an EAP Rehabilitation Program.

b. Each employee who is not a temporary employee and who, as a result of a random drug test, is referred to an EAP Rehabilitation Program after receiving his or her first positive confirmation drug test result.

2. The operator may establish an EAP Rehabilitation Program as part of its internal personnel services, or the employer may make arrangements with an outside entity to provide services to an employee.

3. The operator shall determine whether the operator or the employee who requires treatment shall bear the cost of the EAP Rehabilitation Program.

4. Individuals covered by these rules who successfully complete an EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions, must, at a minimum, have two unannounced drug tests in the twelve months following the completion of the EAP Rehabilitation Program. The specific time of the test is left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP Rehabilitation Program and the first post-EAP test must be sufficient to ensure that the post-EAP test is not identifying the drug use incident previously identified. Failure to comply with post-EAP drug testing is cause for termination.

A. *EAP Rehabilitation Program—Option 3.*

1. Each operator shall provide access to one opportunity for rehabilitation for the following employees:

Each employee, who is not a temporary employee, and who voluntarily enrolls in an EAP Rehabilitation Program.

2. The operator may establish an EAP Rehabilitation Program as part of its internal personnel services, or the employer may make arrangements with an outside entity to provide services to an employee.

3. The operator shall determine whether the operator or the employee who requires treatment shall bear the cost of the EAP Rehabilitation Program.

4. Individuals covered by these rules who successfully complete an EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions, must, at a minimum, have two unannounced drug tests in the twelve months following the completion of the EAP Rehabilitation Program. The specific time of the test is left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP Rehabilitation Program and the first post-EAP test must be sufficient to ensure that the post-EAP test is not identifying the drug use incident previously identified. Failure to comply with post-EAP drug testing is cause for termination.

A. *EAP Rehabilitation Program—Option 4.*

1. Each operator shall determine its policy concerning whether rehabilitation will be offered.

2. The operator may establish an EAP Rehabilitation Program as part of its internal personnel services, or the employer may make arrangements with an outside entity to provide services to an employee.

3. Individuals who are offered an opportunity for rehabilitation provided voluntarily by the operator, who successfully complete an EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions, must, at a minimum, have two unannounced drug tests in the twelve months following the completion of the EAP Rehabilitation Program. The specific time of the test is left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP Rehabilitation Program and the first post-EAP test should be sufficient to ensure that the post-EAP test is not identifying the drug use incident previously identified.

B. *EAP education program.* Each EAP education program must include at minimum, the display and distribution of informational material on the nature and effects of drugs, and the operator's policy regarding drugs and drug use in the workplace.

C. *EAP training program.* Each EAP training program must be conducted annually for employees. The training program must include at least the following elements: the effects and consequences of drug and alcohol use on personal health, safety, and work environment; the manifestations and behavioral cues that may indicate drug or alcohol use and abuse; and documentation of training given to employees. EAP training programs for employees must consist of at least 60 consecutive minutes for each employee each year.

VII. Action That May Be Taken by an Operator

An operator may not discipline or terminate an employee for drug-related causes, who is not a temporary employee, if the employee successfully completes rehabilitation and receives a recommendation for return to duty by the rehabilitation program director. However, the employee must be temporarily moved from his or her position until rehabilitation is successfully completed, and the requried recommendation is obtained from the rehabilitation program director. An operator is not required to offer rehabilitation to an employee who refuses a required drug test or to one who has been found to use a prohibited drug while on the job.

VIII. Operator's Drug Testing Plan

A. Each operator shall develop and implement a drug testing plan, which conforms to this Appendix and the HHS Guidelines, and incorporate it into its Personnel Health Plan by 120 days after the effective date of this rule. The drug testing plan must be implemented within 180 days after the plan is incorporated in its Personnel Health Plan.

B. The plan must provide the name and address of the laboratory which has been selected by the operator for analysis of the specimens collected during the drug testing program.

C. With respect to those employees who are hired by a contractor to perform functions for the operator specified in section II of this appendix pursuant to a contract with the operator, the operator may provide by contract that the testing, training and rehabilitation required by its drug testing plan be carried out by the contractor provided that: (1) The operator remains responsible for ensuring that the terms of its drug testing plan are complied with, (2) the operator remains responsible for ensuring that an employee who fails the testing does not perform any functions specified in section II until successful rehabilitation has taken place, and (3) the contractor shall allow access to property and records by the operator, by State Pipeline Safety Representatives and by RSPA for the purpose of monitoring the operator's compliance with the requirements of this appendix.

IX. Recording Results of Drug Testing Program

Each operator shall maintain a record of the results of its drug testing program. Each operator shall permit duly authorized RSPA and State Pipeline Safety Personnel to have access to the record. The record shall include the following information categorized by method of testing:

1. The functions performed by the employees who tested positive for prohibited drug.

2. The prohibited drugs which were used by the employees.

3. The disposition of employees who failed the test (e.g., termination, rehabilitation, leave without pay).

4. The age of each employee who failed a drug test.

5. The number of employees tested.

PART 195—[AMENDED]

In consideration of the foregoing, RSPA proposes to amend 49 CFR Part 195 as follows:

5. The authority citation for Part 195 would be revised to read as follows:

Authority: 40 App. U.S.C. 2002; and 49 CFR 1.53.

6. Section 195.401 would be amended by adding a new paragraph (d) to read as follows:

§ 195.401 General requirements.

* * * * *

(d) No operator may knowingly allow the performance of any function specified in Part II of Appendix B to this part by any individual who (1) fails a drug test as defined in Appendix B and fails to complete successful rehabilitation as decribed in Appendix B VII, (2) refuses to take a drug test required pursuant to Appendix B by the operator's drug testing program, or (3) has a prohibited drug in his or her system.

7. Section 195.402 would be amended by adding a new paragraph (c)(14) to read as follows:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

* * * * *

(c) Maintenance and normal operations. * * *

(14) Establishing and implementing a drug training program that meets the requirements of Appendix B to this part.

* * * * *

8. A new Appendix B would be added at the end of Part 195:

Appendix B—Drug Testing Program

I. Definitions

For the purposes of this appendix, the following definitions apply:

"Accident" means a failure required to be reported in accordance with Subpart B of this part.

"Employee" is a person who performs either directly or by contract, a function listed in section II of this appendix for a pipeline operator.

"Failing a drug test" means that the confirmation test result shows positive evidence of the presence of a prohibited drug in an employee's system.

"HHS Guidelines". Drug testing programs subject to the requirements of this Part shall be operated consistent with the "Scientific and Technical Guidelines for Federal Drug Testing Programs and Standards for Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies" published by the Department of Health and Human Services (53 FR 11970, April 11, 1988). Drug testing programs governed by the requirements of this Part shall use only drug testing laboratories certified by the

Department of Health and Human Services under the guidelines. These guidelines are available for inspection and copying at RSPA, Department of Transportation, 400 Seventh Street, SW., Washington DC 20590, Room 8417.

"Operator" is a pipeline operator who is subject to the NGPSA or the HLPSA.

"Passing a drug test" means that initial testing or confirmation testing does not show evidence of the presence of a prohibited drug in an employee's system at levels above those prescribed in the HHS Guidelines.

"Prohibited drug" means a substance specified in Schedule I or Schedule II of the Controlled Substances Act, 21 U.S.C. § 801.812 (1981 & 1987 Cum. P.P.), unless the drug is being used as authorized by, and in accordance with, a legal prescription or exemption under Federal, state, or local law.

II. Employees Who Must Be Tested

Employees who perform for an operator sensitive safety and security-related functions must be tested pursuant to the operator's drug testing program.

III. Substances for Which Testing Must be Conducted

Each operator shall test a specimen from each employee who performs a function listed in section II of this appendix for evidence of marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP) during each test required by section IV of this appendix in conformity with the HHS Guidelines. An operator may test for any other prohibited drug in conformity with the HHS Guidelines in a post-accident or reasonable cause test.

IV. Types of Drug Testing Required

Each operator shall conduct the following types of testing:

A. *Pre-employment testing.* No operator may hire, or, in the case of a person who is hired by a contractor, allow the use of, any person to perform a function listed in section II of this appendix unless the applicant passes an initial test or confirmation test specified in the HHS guidelines. If an initial test is positive, confirmation testing as specified in the HHS Guidelines must be done. The operator shall advise an applicant that pre-employment testing will be conducted to determine the presence of any prohibited drug in the applicant's system. If the applicant fails the confirmation test, the applicant shall not be hired. The applicant may withdraw his or her application for employment and the operator shall not disclose the failure or the results of a failed test to any person.

B. *Post-accident testing.* Each operator shall test a specimen collected from each employee who performs a function listed in section II of this appendix and whose performance of that function is directly related to an accident.

C. *Random testing.* Each operator annually shall collect a specimen from, and test randomly, up to 125 percent of all employees who perform a function listed in section II of this appendix. The operator shall select employees for random testing using a random number table or a computer-based number generator which is matched with an employee's social security number, payroll identification number, or other appropriate identification number.

D. *Testing based on reasonable cause.* Each operator shall test a specimen collected from each employee who performs a function listed in section II of this appendix and who is involved in the commission of serious or repetitive errors which could lead to an accident and which may be linked to drug use. At least two of the employee's supervisors shall substantiate and concur in the determination that there is reasonable cause to believe that drug use is indicated in the commission of an error or errors, and that the employee should be tested. In addition, if a least two of the employee's supervisors substantiate and concur in the determination that there is reasonable cause to believe that the employee is using drugs, on the basis of physical indications of probable intoxication (e.g., the employee's speech or physical appearance), the employer should test the employee.

V. Specimen Collection and Testing Procedures

Each operator must conform to the HHS Guidelines during collection, and initial and confirmation testing of specimens.

VI. Employee Assistance Program (EAP)

A. *EAP Rehabilitation Program—Option 1.*

1. Each operator shall provide access to one opportunity for rehabilitation for the following employees:

a. Each employee who is not a temporary employee and who voluntarily enrolls in an EAP Rehabilitation Program.

b. Each employee who is not a temporary employee and who is referred to an EAP Rehabilitation Program as a result of receiving his or her first positive confirmation drug test result.

2. The operator may establish an EAP Rehabilitation Program as part of its internal personnel services, or the employer may make arrangements with an outside entity to provide services to an employee.

3. The operator shall determine whether the operator or the employee who requires treatment shall bear the cost of the EAP Rehabilitation Program.

4. Individuals covered by these rules who successfully complete an EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions, must, at a minimum, have two unannounced drug tests in the twelve months following the completion of the EAP Rehabilitation Program. The specific time of the test is left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP Rehabilitation Program and the first post-EAP test must be sufficient to ensure that the post-EAP test is not identifying the drug use incident previously identified. Failure to comply with post-EAP drug testing is cause for termination.

A. *EAP Rehabilitation Program—Option 2.*

1. Each operator shall provide access to one opportunity for rehabilitation for the following employees:

a. Each employee who is not a temporary employee and who voluntarily enrolls in an EAP Rehabilitation Program.

b. Each employee who is not a temporary employee and who, as a reuslt of a random drug test, is referred to an EAP Rehabilitation Program after receiving his or her first positive confirmation drug test result.

2. The operator may establish an EAP Rehabilitation Program as part of its internal personnel services, or the employer may make arrangements with an outside entity to provide services to an employee.

3. The operator shall determine whether the operator or the employee who requires treatment shall bear the cost of the EAP Rehabilitation Program.

4. Individuals covered by these rules who successfully complete an EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions, must, at a minimum, have two unannounced drug tests in the twelve months following the completion of the EAP Rehabilitation Program. The specific time of the test is left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP Rehabilitation Program and the first post-EAP test must be sufficient to ensure that the post-EAP test is not identifying the drug use incident previously identified. Failure to comply with post-EAP drug testing is cause for termination.

A. *EAP Rehabilitation Program—Option 3.*

1. Each operator shall provide access to one opportunity for rehabilitation for the following employees:

Each employee who is not a temporary employee and who voluntarily enrolls in an EAP Rehabilitation Program.

2. The operator may establish an EAP Rehabilitation Program as part of its internal personnel services, or the employer may make arrangements with an outside entity to provide services to an employee.

3. The operator shall determine whether the operator or the employee who requires treatment shall bear the cost of the EAP Rehabilitation Program.

4. Individuals covered by these rules who successfully complete an EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions, must, at a minimum, have two unannounced drug tests in the twelve months following the completion of the EAP Rehabilitation Program. The specific time of the test is left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP Rehabilitation Program and the first post-EAP test must be sufficient to ensure that the post-EAP test is not identifying the drug use incident previously identified. Failure to comply with post-EAP drug testing is cause for termination.

A. *EAP Rehabilitation Program—Option 4.*

1. Each operator shall determine its policy concerning whether rehabilitation will be offered.

2. The operator may establish an EAP Rehabilitation Program as part of its internal personnel services, or the employer may make arrangements with an outside entity to provide services to an employee.

3. Individuals who are offered an opportunity for rehabilitation provided

voluntarily by the operator, who successfully complete and EAP Rehabilitation Program and wish to be retained in sensitive safety and security-related positions, must, at a minimum, have two unannounced drug tests in the twelve months following the completion of the EAP Rehabilitation Program. The specific time of the test is left to the discretion of the operator. However, the time period between the positive drug test event before entrance into an EAP Rehabilitation Program and the first post-EAP test should be sufficient to ensure that the post-EAP test is not identifying the drug use incident previously identified.

B. *EAP education program.* Each EAP education program must include, at minimum, the display and distribution of informational material on the nature and effects of drugs, and the operator's policy regarding drugs and drug use in the workplace.

C. *EAP training program.* Each EAP training program must be conducted annually for employees. The training program must include at least the following elements: the effects and consequences of drug and alcohol use on personal health, safety, and work environment; the manifestations and behavioral cues that may indicate drug or alcohol use and abuse; and documentation of training given to employees. EAP training programs for employees must consist of at least 60 consecutive minutes for each employee each year.

VII. Action That May Be Taken by an Operator

An operator may not discipline or terminate an employee for drug-related causes, who is not a temporary employee, if the employee successfully completes rehabilitation and receives a recommendation for return to duty by the rehabilitation program director. However, the employee must be temporarily moved from his or her position until rehabilitation is successfully completed, and the required recommendation is obtained from the rehabilitation program director. An operator is not required to offer rehabilitation to an employee who refuses to take a required drug test or to one who has been found to use a prohibited drug while on the job.

VIII. Operator's Drug Testing Plan

A. Each operator shall include a drug testing plan, which conforms to this Appendix and the HHS Guidelines, in its operating and maintenance plan by 120 days after the effective date of this rule. The drug testing plan must be implemented within 180 days after the incorporation of the plan in the operating and maintenance plan.

B. The plan must provide the name and address of the laboratory which has been selected by the operator for analysis of the specimens collected during the drug testing program.

C. With respect to those employees who are hired by a contractor to perfrom functions for the operator specified in section II of this appendix pursuant to a contract with the operator, the operator may provide by contract that the testing, training and rehabilitation required by its drug testing plan be carried out by the contractor provided that: (1) The operator remains responsible for ensuring that the terms of its drug testing plan are complied with, (2) the operator remains responsible for ensuring that an employee who fails the testing does not perform any functions specified in section II until successful rehabilitation has taken place, and (3) the contractor shall allow access to property and records by the operator, by State Pipeline Safety Representatives, and by RSPA for the purpose of monitoring the operator's compliance with the requirements of this appendix.

IX. Recording Results of Drug Testing Program

Each operator shall maintain a record of the results of its drug testing program. Each operator shall permit duly authorized RSPA and State Pipeline Safety Personnel to have access to the record. The record shall include the following information categorized by method of testing:

1. The functions performed by the employees who tested positive for prohibited drug.
2. The prohibited drugs which were used by the employees.
3. The disposition of employees who failed the test (e.g., termination, rehabilitation, leave without pay).
4. The age of each employee who failed a drug test.
5. The number of employees tested.

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Friday
July 8, 1988

Part VIII

Department of Transportation

Urban Mass Transportation Administration

49 CFR Part 653

Control of Drug Use in Mass Transportation Operations; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 653

[UMTA Docket No. 88-F]

Control of Drug Use In Mass Transportation Operations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: UMTA is requesting comment on a proposed rule which would require a recipient of Federal transit funding to certify that it has established a comprehensive anti-drug program. The impetus for this action is the safety concern associated with the use of drugs by mass transportation workers in sensitive safety positions. The overall goal of testing is to ensure a drug-free transportation environment which, in turn, would reduce accidents and casualties in mass transit operations. Among other things, a recipient's anti-drug program would be required to mandate chemical testing for the use of drugs by those in certain sensitive safety positions. In addition, the NPRM sets out four options concerning rehabilitation for certain employees. Finally, a recipient's program would be required to include an employee assistance program.

DATES: Written comments should be received by September 6, 1988. Public hearings will be held in the following cities: Washington, DC, New York, Chicago, and Los Angeles. The dates and locations of the hearings will be published in a notice in the **Federal Register** soon.

ADDRESS: Written comments should be addressed to: U.S. Department of Transportation, Urban Mass Transportation Administration, Office of the Chief Counsel, Docket No. 88-F, 400 7th Street SW., Room 9316, Washington, DC 20590. Comments will be available for review by the public at this address from 9:00 a.m. to 5:00 p.m., Monday through Friday. The dates and locations of the public hearings will be published soon in a Notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Franz K. Gimmler, Deputy Associate Administrator for Safety, or Judy Z. Meade, Drug and Alcohol Program Manager, Urban Mass Transportation Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-2896.

SUPPLEMENTARY INFORMATION:

A. Background

Drug Abuse in American Society

Drug abuse constitutes a major societal problem. Statistics have been compiled and reported by the National Institute of Drug Abuse (NIDA) and by media polls. The results indicate that the use of drugs is widespread. Compared with 1979 and 1982 levels, the 18-25 year old group was most likely to have stabilized or decreased their use of most drugs in 1985. In contrast, the 26 plus year old group was most likely to have increased their use of most drugs. For instance, preliminary data from the 1985 NIDA, "National Survey on Drug Abuse," indicate the following:

In the 18-25 age category:

—60.5 percent reported using marijuana sometime during their life;
—21.9 percent reported using marijuana within the past month;
—25.2 percent reported using cocaine sometime during their life;
—7.7 percent reported using cocaine within the past month.

In the age 26 and over category:

—27 percent reported using marijuana sometime during their life;
—9.5 percent reported using marijuana within the past month;
—9.5 percent reported using cocaine sometime during their life;
—2.1 percent reported using cocaine within the past month.

Because of statistics like the above, the public is concerned that an individual who uses drugs may jeopardize the personal safety of others. A recently issued special report from the Comptroller General of the United States titled "Controlling Drug Abuse: A Status Report" (1988 GAO Report) states that "Drug abuse in the United States has persisted at a very high level throughout the 1980's. Drug abuse is a serious national problem that adversely affects all parts of our society * * *."

There is widespread public belief that persons in safety-affecting occupations should not be abusers of drugs. POPULUS, Inc., and Decision/Making/Information conducted a national survey in 1986 on mandatory drug testing in the work place. The following are the results of that survey concerning the general public's views on drug testing of individuals in various occupations. Of those surveyed:

—88% favored testing of airline pilots and air traffic controllers.
—85% favored testing of police and other law enforcement agents.
—81% favored testing of bus drivers.
—75% favored testing of military personnel.
—75% favored testing employees of pharmaceutical companies.

The researchers concluded that the respondents believed "people who are responsible for the physical safety of others should be tested." Transportation workers affect public safety and the public supports testing these workers for the use of drugs. POPULUS, Inc., and Decision/Making/Information, "Mandatory Drug Testing: A Nation Divided * * * Or Is It?" Final Report, Greenwich, CT (July 1986).

Another 1986 survey examined the public's attitude toward drug testing of certain occupational groups. American Viewpoint, Inc., conducted a national telephone survey of 1,000 respondents. The results indicate, "by a margin of 76 percent to 22 percent, Americans agree that the drug crisis today is serious enough for mandatory drug testing." American Viewpoint, Inc., used a "forced choice" list that did not include the transportation modes when doing the survey. The persons surveyed placed the following occupations at the top of their list for mandatory drug testing:

—Police and firefighters (84%)
—Members of the armed forces (83%)
—Doctors and nurses (81%)

Eighty percent of the respondents indicated they would participate in voluntary testing if asked to do so by their employers. American Viewpoint, Inc., "U.S. National Survey," Alexandria, VA (August 1986).

Based on the above information, UMTA concludes that the public is concerned about drug abuse and supports drug testing of workers affecting public safety. Although drug abuse is more prevalent among the 25 and under age group, younger users are aging, and not stopping. The Department of Transportation in its regulatory role of protecting public safety, assumes that the problem of drug abuse among transportation workers does not differ significantly from that in the overall population.

Effects of Drug Use on Safety

This NPRM proposes to prohibit certain mass transportation workers in sensitive-safety positions from making non-approved uses of controlled substances, whether on duty or off duty. The premise of this proposal is very simple: Use of any controlled substance has the potential to degrade safety performance. In order to understand this premise, it is necessary to review what controlled substances are and what effects they have on individual persons.

Drugs are chemicals that affect the body (physiological or function-altering

effects) and often the mind (psychological or mind-altering effects). In broad summary, controlled substances are certain drugs identified by the government as having mind- or function-altering effects of a kind that create a potential for abuse and/or dependency. In comments before the Department of Transportation, the American Medical Association and other parties have agreed that, as a general matter, controlled substances constitute the primary drugs of interest (other than alcohol) with respect to transportation safety.

The Controlled Substances Act (26 U.S.C. 801 *et seq.*), among other things, establishes five schedules of controlled substances. Most controlled substances have at least some accepted medical applications, but those classified in Schedule I of the controlled substances list do not. Therapeutic use of certain controlled substances is frequently indicated both from a medical point of view and from the point of view of transportation safety, since proper use of drugs can control disorders that adversely affect performance while permitting the individual to continue productive employment. If therapeutic drugs are used at appropriate levels established by medical practitioners and care is taken to monitor undesired "side effects," safety will not be materially compromised. Indeed, in many cases, control of the underlying disorder will produce net safety benefits.

However, when individuals make non-medical use of controlled substances, they often use illegal drugs that have unacceptable mind-altering and function-altering characteristics. Similarly, when individuals self-administer legal drugs for non-medical purposes, or without proper medical supervision, adverse effects may result.

Drugs and Their Effects

Controlled substances are classified as—

- Narcotics, such as the opiate-based drugs;
- Central nervous system (CNS) depressants, such as the barbiturates, tranquilizers, or methaqualone;
- CNS stimulants, such as cocaine and amphetamines;
- Hallucinogens, such as LSD and PCP; and
- Cannabis (marijuana derivatives).

All controlled substances have a potential for abuse, and many have a high potential for dependence. The effects of these drugs vary to some extent by dosage, subject, frequency of use, route of ingestion, and pattern of use. An individual drug user may be affected differently by the same dosage on different occasions as a result of degree of fatigue, physical disorders, biorhythms, acquired tolerance, and other factors.

It is important to note that the effects of drugs on human performance are not limited to a perceived "high" or other immediate mind-altering sensation experienced by the user. Instead, drug effects are complex and, in many cases, long-lived. The potential effects of drugs include—

- *Acute effects*, immediate physiological or psychological changes including the often sought-after change of mental state;
- *After effects*, delayed or prolonged physiological or psychological changes from individual doses or series of doses;
- *Chronic effects*, physiological or psychological changes, including changes in cognitive functions and biochemistry resulting from prolonged use; and
- *Withdrawal effects*, physiological or psychological changes resulting from termination of use.

All of these potential effects are of concern with respect to transportation safety. Yet only the acute effects correlate to some extent with blood concentrations of the impairing substance. For most drugs the extent of that correlation is unknown.

Perceived Dangers of Drugs in Transportation

The potential detrimental effects of drugs on performance are not a matter of speculation. There is a broad consensus among transportation companies, employees and related professionals that the use of alcohol and the non-medical use of controlled substances are not consistent with safety. Increasingly, knowledgeable safety professionals in transportation are beginning to realize that "off-duty use" and "on-duty use" are not completely distinct categories warranting entirely separate consideration. Instead, such uses are facets of an overall picture—*i.e.*, overall fitness for duty involving "sensitive-safety" functions. Although there are differences of opinion among transportation safety experts concerning appropriate countermeasures, the need for effective countermeasures is almost universally acknowledged.

Experimental/Clinical Data

Developing opinion in the transportation industries is informed by a growing body of information related to drug effects on safety. Numerous behavioral studies and extensive clinical experience have established the fact that controlled substances can powerfully alter the capacity of human beings to respond to their environment.

The following discussion will explain how drugs can and do adversely affect safety. Since each human being is, from a scientific view, a unique and whole organism, any such discussion will suffer from incompleteness and an absence of total analytical integration. However, available literature does offer useful information that can be placed in appropriate context and can guide the formulation of public policy. Among other sources, this discussion draws heavily on a draft study prepared by the Transportation Systems Center of the Department of Transportation. A copy of that report (Sussman, Salvatore, Huntley and Hobbs, "Data Available on the Impact of Drug Use on Transportation Safety," April 17, 1978) will be placed in the docket of this rulemaking.

Drug effects can be analyzed in experimental studies from the point of view of their impact on particular human faculties. These faculties are, of course, merely aspects of human performance capabilities, and experimental studies often involve tasks that may call on more than one faculty. "Sensory function" refers to the ability of an individual to detect, feel, identify, discriminate between, and recognize objects and conditions. Visual acuity and perception are of greatest concern for transportation employees. "Motor performance" concerns that ability to make timely, accurate, and steady control movements. Both simple and complex reaction time, as well as tracking and steadiness, are skills of concern to transportation. "Vigilance" is a term used to describe the ability of an individual to detect and respond to extremely infrequent signals provided as a part of a low event or boring task. Maintaining attention and alertness is important for all transportation operators, particularly during night operations. "Cognitive functions" refers to the ability to classify, store, integrate and recall information. Judgment, memory, proclivity for risk-taking, and ability to manage multiple tasks are areas of particular concern for transportation.

The clear message from available evidence is that all controlled substances tend to affect adversely one or more of the faculties critical to safe conduct of transportation and transportation-related studies. In some cases, acute effects may be of greatest concern. With other drugs the primary hazards may relate to after effects and chronic effects. Some individuals may be unimpaired by some drugs at some dosages with respect to certain faculties

relevant to performance. Indeed, in certain discrete settings CNS stimulants may temporarily enhance the ability of an individual to sustain attention (as an acute effect). However, when the full range of effects is considered, no controlled substance can be eliminated as a source of significant concern.

Narcotics are among the drugs having the highest potential for abuse and dependence, and use of narcotics is therefore unlikely to be limited to off-duty hours. Narcotics dull the perception of external and internal stimuli and tend to induce a feeling of pleasant lethargy. These drugs can adversely affect motor performance, as well as vigilance. Although there is no extensive body of literature on the effects of narcotics on tasks common to transportation, standard therapeutic practice requires warning that narcotics should not be used by transportation or heavy-equipment operators except where side effects have been determined and then only under strict medical supervision.

CNS depressants include a variety of compounds that reduce sensitivity to stimuli, slow information processing, and impair the ability of the user to concentrate or focus attention.

Behavioral studies of the acute effects of CNS depressants have demonstrated decrements to monitor performance, including tracking skills, simple reaction time, and choice reaction time. Depressants may adversely affect sensory functions such as signal recognition and cognitive functions such as short-term memory and information processing.

Experimental evidence also shows that after effects of depressant use (hangovers) can impair performance. Further, most CNS depressants have a high-dependency potential, and severe withdrawal effects can result if use is discontinued suddenly. Since the timing of withdrawal symptoms is not always predictable, the cessation of use by a depressant-dependent person can result in loss of control over a transportation vehicle or task. Instances of severe withdrawal from alcohol, involving convulsions and loss of control, have been reported in the aviation context. Moreover, withdrawal from other CNS depressants present risks of equal gravity.

CNS stimulants such as cocaine and amphetamines tend to increase mental activity, responsiveness to external stimuli, and in some cases restore concentration to fatigued individuals. These apparently benign qualities make stimulants (particularly amphetamine) attractive "operational" drugs (taken in an effort to sustain or enhance performance), as well as so-called "recreational drugs". The non-regulated stimulant caffeine is taken for similar purposes.

However, powerful stimulants do not avoid fatigue, but only postpone it and thereby compound its severity. Side effects may include restlessness, increased anxiety, and confusion. Transportation employees may rely upon the drug for periods which go beyond its period of effectiveness, resulting in the sudden onset of deep sleep. Sustained reliance on amphetamines may result in toxic effects such as paranoia and delirium, since increasing doses are needed to offset developing tolerance. While it is widely held that stimulants do not produce true physical dependence, it is also recognized that they can induce a strong psychological dependence.

Recent experience with cocaine has confirmed the dependency-producing character of that drug, its potent psychoactivity, its ability to induce seizures and cardiovascular events after a single dose, and its ability to produce psychosis after chronic use. *See e.g., Cocaine: Pharmacology, Effects, and Treatment of Abuse*, Research Monograph Series, No. 50 (National Institute on Drug Abuse 1984). Reports of drug experiences strongly suggest that cocaine use may promote risk-taking and cause the user to over estimate his degree of control. Cocaine is not an attractive "operational" drug because of its short duration, but use by an employee prior to reporting for work may result in depression or exacerbate fatigue, leaving the employee poorly equipped to undertake a full work day. Because dependency on cocaine may manifest itself abruptly after a long period of apparently successful "occasional" use, the cocaine abuser's private "recreation" may become a matter of public safety concern at any time without warning.

Although no experimental studies reflecting the effects of stimulants over an extended period of time have been reported, clinical experience suggests that these substances have a significant potential for producing behavioral changes inimical to safety, particularly when used in high concentrations or over a long period of time.

Hallucinogens are ingested for the specific purpose of inducing euphoria and a distortion of time and space. These drugs generally produce relaxation and shortened attention span. Hallucinogens have not been the subject of responsible scientific research involving human subjects because of their capacity to produce psychotic reactions. Use of hallucinogens is of particular concern, since they may trigger mental disturbances that can last for extended periods or recur without warning.

Marijuana is sometimes classified as an hallucinogen but has properties that warrant its separate treatment. As the most popular illegal drug of abuse, marijuana was once viewed by many Americans as a mild and relatively harmless substance. However, as the potency of marijuana available increased and a larger segment of the population gained experience in its use, it became apparent that marijuana had emerged as a major public health and safety risk.

By 1980, it could be said that marijuana impairs learning ability and interferes with complex psychomotor performance, including driving. *Marijuana Research Findings: 1980*, Research Monograph Series No. 31 (National Institute on Drug Abuse). In addition, marijuana became more widely recognized as a threat to health. Institute of Medicine, National Academy of Sciences, *Marijuana and Health* (National Academy Press 1982).

According to the experimental studies, marijuana affects such sensory functions as visual acuity, signal detection, and balance or standing steadiness. Closed-course and city driving tests both indicated reduced driving precision, some of which the Institute on Medicine (*Id.* at 118) assessed as indicating impairment of judgment as well as car-handling skills.

Laboratory studies have also demonstrated reduced vigilance in signal-detection tasks. Studies evaluating cognitive functions indicated that marijuana may reduce risk taking, but also show that marijuana reduces performance in divided-attention situations.

Recent research has suggested the possibility of next-day after effects from marijuana that may reduce performance on complex, divided-attention tasks. Yesavage, Leirer, Denari and Hollister, "Carry-Over Effects of Marijuana Intoxication on Aircraft Pilot Performance: A Preliminary Report" (*Am. J. Psychiatry* 142:1325–1329 (1985)). Some experts also believe that the accumulation of marijuana metabolites in the body through chronic use may produce adverse effects that do not abate at any time while the marijuana habit is sustained. Since marijuana metabolites have been identified at low levels in the urine for as long as 77 days after cessation of heavy and chronic use, the possibility of significant chronic effects cannot be excluded. *See* Ellis, Mann, Judson, Schramm and Tashchian, "Excretion Patterns of Cannabinoid

Metabolites After Last Use in a Group of Chronic Users" (*Clin. Pharmacol. Ther.* 38:572–578 (1985)).

In summary, drugs in each of the classes of controlled substances have mind and function-altering effects on the human subject. Recent research involving several widely-used drugs vividly illustrates the correlation among clinical data, theoretical pharmacology, and performance on transportation-related tasks. Smiley, Moskowitz, and Ziedman, "Effects of Drugs on Driving", DHHS Publication No. (ADM) 85–1386 (National Institute on Drug Abuse and National Highway Traffic Safety Administration 1985). Smiley, *et al.,* examined the effects of secobarbital and diazepam (CNS depressants), marijuana and alcohol in a complex, blind study using a driving simulator. The study measured performance on a variety of driving tasks, including stop or swerve decisions, tracking, passing, and maintaining distance at two dosage levels for each drug. The results revealed differences in particular effects and performances on individual phases of the study. However, when the data were combined the authors concluded as follows:

> Secobarbital, diazepam, marijuana, and alcohol were all found to impair performance of a variety of simulated driving tasks. Drug levels tested for secobarbital and diazepam were therapeutic doses. The marijuana doses were considered moderate to strong by the subject population use. The alcohol effects were reported for levels up to and slightly above the legal limit. *No clear-cut differences in the pattern of effects were found among the drugs tested.* All drugs impaired perceptual-motor skill (*e.g.,* tracking, speed and headway control), perceptual tasks where response time and detection ability were measured, and decision-making tasks. *Id.* 19 (emphasis supplied).

This research suggests that the subtle differences in the way that certain drugs affect human functions may be less important than the overall disordering effect of those drugs on the user's ability to respond to the complex challenges posed by the transportation environment.

Finally, as noted above, many of the detrimental effects of drugs relate not so much to the toxic or acute action of the drug when it may be found in high concentrations in the blood stream, but rather to the chronic or cumulative action of the drug on the body and the mind. Much of this long-term impairment of the organism is poorly understood but what is known is a source of concern.

Epidemiological Studies

An approach to evaluating the effects of drugs on transportation safety would include a program to determine the presence of drug use in an adequate sample of accidents and the collection of data on the incidence of drug use among all drivers. With this information, it would be possible to determine whether the user was overrepresented in the accident population. Over a period of years, analysis of this kind has permitted the Department of Transportation, through its National Highway Traffic Safety Administration, to determine the role of alcohol in highway accidents. Attempts to obtain post-accident toxicology results are only now beginning to provide data that may, in combination with careful field investigations, provide sufficient evidence to estimate accurately the involvement of drugs in transportation accidents.

A study of 440 fatally-injured, young California drivers detected alcohol in 70 percent of the drivers, marijuana in 37 percent, and cocaine in 11 percent. Each of 24 other drugs was detected in fewer than 5 percent of the fatally-injured group. The authors concluded that only alcohol could be clearly "associated with crash responsibility" within the limitations of the available data, and that the role of marijuana in automobile crashes warrants further investigation. Williams, Peat, Crouch, Wells, and Finkle, "Drugs in Fatally Injured Young Male Drivers," *Public Health Reports* 100:19–25 (1985).

Another study examined the presence of alcohol and drugs among 497 drivers injured in motor vehicle accidents and treated in a Rochester, New York hospital. Thirty-eight percent of the drivers had alcohol and/or another drug in their systems. Alcohol was found in 25 percent of the drivers, marijuana in 9.5 percent of the drivers, and tranquilizers in 7.5 percent of the drivers. These results were considered conservative, because the drivers were not required to provide blood samples and many refused. Terhune and Fell, "The Role of Alcohol, Marijuana, and Other Drugs in the Accidents of Injured Drivers," NHTSA Technical Report DOT–HS–806–181 (Revised—March 1982).

As the foregoing studies indicate, in a number of instances, people may have used both drugs and alcohol. The multiple drug phenomenon suggests the hazard of relying on countermeasures directed exclusively at alcohol and complicates the evaluation of drug involvement. This dilemma is particularly critical when it is considered that workers may use drugs other than alcohol on the job to avoid detection by their employer.

The Problem of Drugs in the Mass Transit Industry

Employees of the mass transit industry represent a broad and diverse cross section of American society. It is reasonable to assume that the problem of drug and alcohol abuse exists in this industry in similar proportion to that existing in society as a whole. Personnel who use drugs and alcohol can pose dangers to themselves and coworkers and can cause or exacerbate events that may take human life, destroy property, and seriously harm the environment. The Department of Transportation (DOT) and the Urban Mass Transportation Administration (UMTA) are committed to the goal of a drug-free transportation system in all modes of transportation.

UMTA does not contend that drug abuse among personnel engaged in mass transportation is present in any greater degree than in the general public or that accident statistics demonstrate drug abuse as a major factor in mass transit accidents. No data exist to prove the presence of a drug or alcohol abuse problem among mass transit personnel. UMTA is very interested in receiving any additional data on the use of controlled substances by sensitive safety personnel in mass transit. However, UMTA believes that the public expects, and is entitled to expect, that transportation systems will be operated safely. The potential for accidents caused by mass transit personnel whose skills may be impaired due to drug usage will be greatly decreased by the implementation of a drug-testing program. Implementation of a drug abuse prevention program, including education and awareness, testing and rehabilitation, is necessary to ensure that mass transportation operates in the safest manner possible.

B. The Statutory Basis for the Rule

The grant programs under both section 3 and section 9 of the Urban Mass Transportation Act of 1964, as amended (The UMT Act) require a recipient of Federal financial assistance to have the inherent capacity to carry out the purposes of the transit grants. Under the section 3 discretionary grants program, section 3(a)(2)(A)(i) provides that "No grant or loan shall be provided under this section unless the Secretary determines that the applicant has or will have—(i) the legal, financial, and technical capacity to carry out the proposed project; * * *."

Essentially the same requirement is contained in the formula grant program under section 9, although in the form of

a certification. Section 9(e)(3) provides that each recipient of section 9 funding "* * * should submit to the Secretary annually a certification that such recipient * * * has or will have the legal, financial, and technical capacity to carry out the proposed program of projects * * *". This provision also requires a certification by the recipient that it has "satisfactory continuing control" over the use of UMTA-assisted facilities and equipment.

The technical capacity to carry out a mass transit project necessarily must include an ability to provide essentially *safe* mass transportation services, and it is within the scope of this requirement for UMTA to require recipients of sections 3 and 9 funding to undertake measures that would enhance their ability to provide safe operations. "Satisfactory continuing control" also necessarily implies the ability to ensure that the safe operation of UMTA-assisted facilities and equipment is not endangered by drug use by sensitive-safety and security personnel.

Under the section 3 discretionary program, moreover, the Secretary is authorized to make grants "* * * on such terms and conditions as the Secretary may prescribe * * *," providing even broader authority under this program to require a recipient to institute a drug program before a grant will be awarded.

For the section 18 transportation program for non-urbanized areas, subsection 18(f) provides that "grants under this section shall be subject to such terms and conditions (which are appropriate to the special needs of public transportation in areas other than urbanized areas) as the Secretary may prescribe." The requirements proposed here would be among the terms and conditions imposed under the authority of this section.

Section 22 of the UMT Act provides the Secretary (and, by delegation, UMTA) with authority to investigate certain conditions which the Secretary believes creates a serious hazard of death or injury. If the Secretary determines that such conditions do create such a hazard, the Secretary shall require the recipient of UMTA funding to submit a plan for correcting or eliminating such condition. The Secretary is authorized to withhold funding under the UMT Act until the plan is implemented.

Finally, the Department is considering seeking legislation from Congress to clarify this existing authority.

C. Purpose of NPRM

It is the policy of UMTA that workers in sensitive-safety positions of recipients of Federal transit funds be free of drugs. To detect and deter the use of drugs by such employees, this proposed rule would require recipients to establish a program that would include four types of testing for the use of controlled substances: (1) Pre-employment; (2) post-accident; (3) reasonable cause; (4) and random drug testing. The testing procedures would protect individual privacy, ensure accountability and integrity of specimens, require confirmation of all positive screening tests, mandate the use of laboratories operating within the guidelines to be established by the U.S. Department of Health and Human Services, provide confidentiality for test results and medical histories, and ensure nondiscriminatory testing methods and random drug testing.

Failure of a recipient to certify that it has established a drug program will render it ineligible to receive Federal financial assistance under section 3, 9, or 18 of the UMT Act.

D. The Proposed Rule

The overall goal of testing is to ensure a drug-free transportation environment which, in turn, would reduce accidents and casualties in mass transit operations. This proposed rule would require recipients of Federal transit funding to establish an effective, comprehensive anti-drug program within 180 days of the effective date of the rule.

Under a comprehensive anti-drug program under this proposed rule, an employee in a sensitive safety position may not use controlled substances on or off duty. (The terms controlled substances and drugs are synonymous in this proposal.) If controlled substance use is detected, an individual shall not perform in a sensitive safety position. An individual may not be hired or continue to work at a sensitive safety position if he or she has a confirmed positive drug test as a result of a pre-employment, post-accident, reasonable cause, or random test.

This NPRM proposes specific requirements for testing procedures and options for rehabilitation programs. As noted later, UMTA realizes that some of these requirements may be difficult to achieve as proposed. This may be especially true for small transit providers. UMTA is interested in comments on ways in which the objectives of this NPRM can be achieved through procedures or programs without the need for detailed regulatory requirements. For example, should UMTA permit programs developed by consortiums of transit authorities or employee organizations to be used to comply with the following UMTA proposed program? We also seek comment on whether an industry-wide program, developed by industry and/or labor associations may be a viable and expedient mechanism to implement drug abatement programs. If so, UMTA requests detailed comments on how such program would be implemented.

Drug testing and sanctions for use will help discourage substance abuse and reduce absenteeism, accidents, health care costs, and other drug-related problems. It will act as a deterrent to those individuals who might be tempted to try drugs for the first time or who currently use drugs. Finally, drug testing will protect the safety of the employees of mass transit entities, through the early identification and, under some options, rehabilitation of workers with drug abuse problems.

This proposed rule would only affect employees in sensitive safety positions. UMTA specifically requests comment on whether security related positions should be subject to this proposed rule for the same reasons that sensitive safety positions are.

UMTA also requests comment on the practicality of recipients getting a comprehensive anti-drug program in place in the 180 day time period set out in the NPRM. UMTA recognizes that many recipients are State and local governments with their own policies and procedures as well as legislative and regulatory bodies. Specifically, UMTA requests comment on alternative time frames and reasons for them.

Pre-employment Testing

UMTA proposes to require recipients to ensure that employees in sensitive safety positions are chemically tested for evidence of the use of controlled substances. A urine specimen would be used for testing purposes. An applicant who tests positive for the use of a controlled substance or refused to be tested could not be hired to perform sensitive-safety functions.

A recipient would be responsible for ensuring that testing is carried out according to the requirements of the proposed rule, for receiving and maintaining documentation of the results for sensitive safety employees for 3 years, and for notifying applicants of the results and affording them an opportunity to explain the presence of a controlled substance. If the applicant is not hired, no record of the test results will be maintained by the recipient. UMTA specifically requests comment on the proposed requirements that the employer keep no records of an application for employment that has been withdrawn because of a failed

drug test and on the proposed requirement that the recipient not disclose the results of the test to any other person. We have made these proposals because we believe they are appropriate policies for the implementation of an effective and non-punitive anti-drug program. Comments are invited to the extent to which these proposals are necessary or justified.

Post-accident Testing

Post-accident testing is a necessary part of a drug program. UMTA proposes mandatory testing for sensitive-safety employees involved in fatal accidents. The limitation to fatal accidents is purely a practical matter, and this proposed regulation should not be interpreted to prohibit recipients from testing employees involved in other categories of accidents.

A recipient would be responsible for ensuring that testing is done in the prescribed manner after a fatal accident. A fatal accident is defined as one in which a fatality occurs within 24 hours of the accident. Testing would be done as soon as possible, but no later than 12 hours after the fatality. If testing is not done, the recipient would be required to furnish an explanation. In administering a drug test after an accident, UMTA proposes to authorize employers to test sensitive safety employees for any Schedule I or Schedule II drug, even though many of these substances would not be tested for in a pre-employment, random, or periodic test. This is the same practice as would be followed by DOT in testing its employees under the proposed Department of Health and Human Services (HHS) guidelines.

Post-accident testing would require the employee to go to a collection site and provide a urine sample within 12 hours of the fatality. A twelve-hour period was selected because UMTA believes this time frame will capture those individuals who used prohibited drugs prior to the accident. Furthermore, this time frame takes into consideration the myriad of factors (geographic isolation of the accident, late notification of the accident to the recipient, injury, etc.) which could legitimately delay collection of a sample. UMTA requests comments on whether post-accident testing should be limited only to fatal accidents. For example, should it be expanded to include accidents or incidents where hospitalization is required or include all accidents? Should positive post-accident tests be reported to UMTA and, if so, at what intervals?

Reasonable Cause Testing

UMTA proposes to require a recipient to conduct testing when it has reasonable cause that an on-duty sensitive-safety employee has used a controlled substance. Reasonable cause is based on a belief that an individual is using or is under the influence of controlled substances while on duty. Changes in character or behavior may be evidence of the use of controlled substances. These changes are often characterized by mood swings and changes in appearance, attitude, speech, and work habits. In light of the subjectivity of this criteria, two witnesses would be required to substantiate this determination. At least one witness would have to be a person in a supervisory capacity.

Are there practical problems to this approach? Should both of the observers have to be supervisors? What other criteria could be used that would protect a disfavored employee from potential harassment through drug testing? Should there be a limit to the number of times an employee can be subjected to reasonable cause testing in order to prevent unwarranted harassment? Should there be specified circumstances, such as rule violations, under which drug testing would be automatic? If so, what kind of rule violations would suggest a drug problem and should trigger reasonable cause testing? We note in this regard that the Federal Railroad Administration has specified, in its existing anti-drug rule, the types of incidents that could justify requiring an employee to undergo drug testing. Could a similar program work for recipients?

Commenters also should present any data on the effectiveness of existing programs which use reasonable cause- or suspicion-type testing. At least one program that we are aware of provides for rehabilitation similar to that proposed under option 3 below, but which was worked out by labor and management. Sanctions, in terms of salary loss, are potentially quite severe for persons discovered to have drugs in their systems as a result of a test. Commenters should address the benefits, costs and deterrence value of such a program.

UMTA proposes to authorize employers to test sensitive-safety employees for any Schedule I or Schedule II drug when there is reasonable cause to believe a drug was used, even though many of the Schedule I and II substances would not be tested for in a pre-employment or random test. This is the same practice as would be followed by DOT in testing its employees under the proposed HHS guidelines.

Random Testing

Random testing is expected to be the primary method of deterrence in the anti-drug program. Random testing avoids potential bias toward and selective harassment of an employee because every employee has an equal chance for selection at any time. Random selection is usually accomplished through scientifically accepted methods such as the use of a random number table or computer-based, random number generator. Both methods select individuals by matching these random numbers against an employee's social security number or payroll account number.

With random testing, abstinence is the only way to avoid the risk of detection of drug use. Random drug testing requires a specific implementation plan to deter drug use. The rule proposes to use a sampling rate of up to 125 percent of employees performing specific sensitive safety functions. The 125 percent sampling rate is based on the Coast Guard testing program. This does not mean that the rate would be set at 125 percent, but this figure serves as a benchmark on which comments about the most appropriate rate can be based. UMTA intends to select an appropriate rate based on effectiveness deterrence, and costs. Commenters are asked to suggest what the rate should be and provide the basis for their views.

A 125 percent rate for random testing would have certain advantages. This testing rate has been shown to be a viable deterrent in the Coast Guard program to future drug use and has been proven effective in reducing the present incidence of drug use. The Coast Guard's random testing program of its uniformed personnel resulted in reducing detected drug use by 75 percent in the five years since the program was implemented. This testing rate currently is the best evidence available to UMTA regarding a successful random testing program. UMTA is proposing 125 percent as a potential maximum testing rate. At the same time, UMTA recognizes that the higher the sampling rate, the higher the costs of the program UMTA invites comments on how low a sampling percentage could be adopted while still maintaining a credible deterrent. In particular, UMTA is interested in information on documented, effective random testing programs and the sampling rates that were used as measured against the incidence of drug use on a year-to-year basis, and information that would

provide updated estimates of the relative costs and effectiveness associated with various sampling rates. UMTA also requests commenters to address whether the experience of uniformed personnel in the Coast Guard program is a valid indicator of how sensitive safety mass transit employees would respond to a similar program.

A sampling rate of 125 percent would mean that a population of 10,000 would provide 12,500 annual samples. Similarly, a sampling rate of 12.5 percent would provide 1,250 samples from the same population. Using true random selection, employees selected for each weekly or monthly increment would be returned to the pool of those eligible for testing and would be subject to reselection. The vulnerability for reselection deters drug abuse because an individual selected early in the testing cycle would still be equally subject to testing throughout the remainder of the year and would still risk detection if he or she used drugs after the first test. One feature of this plan is that some employees might not be selected at all during the first year and others could be selected more than once. Another issue in this area is the matter of "randomness" among small or isolated populations. What, for example, is the meaning of a random test to an employee population consisting of only one employee, or a few employees? This problem is particularly acute if the owner or manager of the business is also the sole person, or one of only a few persons, subject to testing. Similarly, although suprise is an essential feature of true random selection, how can this be achieved when the employee is located in a remote location and must be transported some distance to provide a sample? This could result in the loss of the element of surprise in many cases. UMTA seeks comments on how to deal with these problems.

Should the rule permit transit providers, especially the small ones, to use a third party to set up and maintain their drug testing program? They could choose to comply with the rule through the use of several options, including:

1. Form consortiums made of small providers that would develop a centrally administered random testing program.

2. Form consortiums, and hire a contractor to develop and implement a random testing program.

3. Contract separately with an outside company that would set-up and provide these services.

4. Have existing industry-related groups (e.g. trade associations) set-up drug programs in which small entities could participate.

5. Arrange to be included as a part of a larger grantee's drug testing program.

UMTA invites comments as to what methods might be used to facilitate the inclusion of small entities in the program and whether all small entities should be required to develop and implement a drug abatement program. Commenters who believe that the proposed rule should not cover small entities, either in whole or in part, should explain the basis for their views and describe how they would define small entity for this purpose.

UMTA is considering whether programs should provide for adjustment of the minimum sampling rate based upon the success of the program. Although a numerical target is needed as a benchmark for discussion, in actual practice there may come a point of sharply diminishing returns from any set level as the mix of countermeasures detects most chronic substance abuse and deters casual use. The testing program could be designed so that it could be phased up or down as appropriate and in response to the pattern of results obtained through the program. In combination with post-accident testing experiences, the results of random testing would provide the most useful gauge of the need. UMTA is considering whether there are circumstances under which the program should allow for the level of effort to be increased or scaled back based on a method of evaluation stated in the rule based on individual applications and specifically requests comments on this issue. As with other issues, UMTA reserves the right to make appropriate adjustments in the rule in response to public comments. Are there any other ways to reduce costs or improve the effectiveness of the proposed rule? For example, are there any ways to grant employers flexibility without compromising the objectives of the rule? What would be the likely cost savings, if any, in a more flexible approach.

UMTA also requests comments as to whether the rule should contain a provision allowing a company with a high level of safety with regard to drug use, demonstrated over a designated time period, more latitude in determining the application of its anti-drug program.

Applicability to Employees in Safety Sensitive Positions

The NPRM would require a recipient of UMTA funding under section 3, 9, or 18 of the UMT Act, or 23 U.S.C. 103(e)(4), to certify that it had established a drug program that, at a minimum, provided for four types of drug testing and an employee assistance program. The NPRM would only require that the drug program apply to sensitive safety positions, including vehicle operators, controllers, and mechanics. UMTA seeks particular comment on this definition. Does it adequately cover all employees who have or could have an impact on the operational aspects of a recipient? Is it too broad? Should other specific jobs be included such as other maintenance personnel?

Employee Assistance Programs

UMTA has determined that properly managed Employee Assistance Programs (EAP's) benefit both management and employees and can be a positive factor in controlling drug use.

UMTA recognizes that individually established EAP's may be beyond the fiscal resources of some recipients. However, the recipient of Federal financial transit assistance has a responsibility to employees and the public to provide a drug-free environment to the maximum extent practical. As such, in certain circumstances, under the proposed rule, recipients would provide EAP services or make such services available through one of the following means: company-operated EAP; contractor or consortium arrangement; or arrangements with local community service organizations for voluntary referrals or employer-directed referrals. Other alternatives to the above must be approved by UMTA and would have to provide an equivalent level of EAP service to employees.

The proposed rule would require that an EAP provide education, training for employees and supervisory personnel, and, under three of four proposed options, an opportunity for rehabilitation.

An EAP may include the following components:

(a) Employee policy and procedures on drug use based on a grantee's unique needs, organizational structure, and goals and resources;

(b) Employee communications that include ongoing printed educational materials directed at both drivers and family members;

(c) Service delivery system which may include:

(1) Drug screening and confirmation testing and

(2) Treatment (rehabilitation) and/or referral to more appropriate or specialized professional facility (usually all testing is on a contract basis);

(d) Training of supervisors; and

(e) Evaluation of the effectiveness of the EAP.

UMTA has determined that properly managed EAPs benefit both the grantee

and employee. We propose to require that all grantees develop EAPs for their employees. Each EAP would be required to have an educational component which would minimally have display and distribution of informational material; display and distribution of the community-service hot-line telephone number for driver assistance (if one is available); and display and distribution of the grantee policy regarding drug use by drivers. Additionally, each EAP of a grantee would be required to provide annual training for employees and supervisory personnel. The training would minimally require the following elements: The effects and consequences of drug use on personal health, safety, and work environment; the manifestations and behavioral causes that may indicate drug use and abuse; and documentation of training given to employees and supervisory personnel. EAP training programs for employees and supervisory personnel would consist of at least 60 minutes for each driver and supervisor the first year. Is 60 minutes a sufficient time for this training? Finally, each EAP, under three of the four options presented, would provide an opportunity for rehabilitation. How should small grantees establish and manage EAPs?

Employers would be required to appoint or designate a Medical Review Officer (MRO). The MRO would perform several functions, including review of the results of the employer's drug testing program; interpretation of each confirmed positive test result; and evaluation of an individual in conjunction with an EAP rehabilitation program. UMTA also seeks comments on the MRO's appropriate role in determining when an individual might be returned to duty. The proposed rule (by reference to the HHS Guidelines) requires that an MRO be a licensed doctor of medicine or osteopathy. The MRO could be a currently employed company physician or could be a private physician who performs MRO service for the employer on a contractual basis. Comments are requested on the need for an MRO and if the MRO need be a licensed physician or could be another type of medical professional.

An employee must successfully complete a rehabilitation program before being returned to his or her previous duties. UMTA is not proposing to require employers to pay the cost of rehabilitation. At this time, the proposed rule does not impose any limits on the amount of time that an employee may use to complete a rehabilitation program. However, UMTA recognizes that requiring an employer to hold a position open or adjust operations for an indefinite period, while an employee is enrolled in a rehabilitation, may result in inconvenience and hardship for some employers, especially smaller companies. Therefore, UMTA solicits comments on an equitable and appropriate amount of time for an employee to complete a rehabilitation program to be specified in the rule, and whether the amount of time should be different for smaller companies. UMTA is particularly interested in time frames that have been shown to be appropriate for other documented rehabilitation programs, taking into account how long it may take for an employee to be admitted to a rehabilitation program.

Commenters also should address whether employees involved in EAP programs could be employed in nonsensitive safety positions during the rehabilitation process. The proposed rule does not require the employer to offer these same opportunities to a repeat offender, to persons not currently employed by the employer who fail a pre-employment test, or persons who have been found to use drugs on the job.

UMTA is considering four different options concerning the circumstances under which employees would be given an opportunity to seek rehabilitation. Under the first option, an employee who comes forward voluntarily or tests positive for drugs for the first time would be eligible for rehabilitation rather than be discharged. Non-employees given a pre-employment drug test need not be given an opportunity for rehabilitation. Once rehabilitated, the employee would be reinstated into his or her prior position. The second option would provide rehabilitation rights to an employee who comes forward voluntarily or who is identified as a drug user during a random test; but would not require that the same opportunity be afforded to an employee identified as a drug user in a post-accident or reasonable cause test. Under this option, a rehabilitated employee would be reinstated into his or her prior position, but an employee who is not afforded the right to rehabilitation could be discharged. In the third option, only an employee who comes forward voluntarily could claim rehabilitation rights, and anyone testing positive for drugs (regardless of the circumstances, e.g., random, post-accident, reasonable cause) could be fired immediately. Under all three proposed options, recipients would be free to offer more rehabilitation options than proposed. The proposed options only establish minimum rehabilitation requirements for EAP's. Thus for example, a recipient could voluntarily offer two chances at rehabilitation rather than one.

The fourth option would require the employer to determine, as part of its anti-drug program, what rehabilitation opportunities to provide. This is essentially a "local option" approach. The employer could choose any of the three other options as its approach or some variation of them. It could choose not to provide an opportunity for rehabilitation in any circumstance, in which case an employee who was identified as a drug user could be fired. In any case, however, the employee could not return to a sensitive safety position unless he or she met the conditions established in the option 4 version of § 653.52.

Each of these approaches has its own merits. For example, the broad rehabilitation program anticipated by the first alternative is likely to maximize both the costs and the benefits to society, by ensuring that more drug users will get the help they need. If users are simply fired, they will often lose access to, and perhaps incentive to use rehabilitation services, and they may continue to be drug users. However, it could be argued that employees who are found to be drug users through post-accident or reasonable cause tests are less deserving of an opportunity for rehabilitation, and the second alternative would therefore exclude them. The third alternative is likely to be the lowest in direct costs, because rehabilitation would be required only for employees who seek it voluntarily, but for the same reason, however, this alternative might produce less in societal benefits. Commenters should address whether, and to what extent the third alternative would encourage drug users to identify themselves before they are tested, in contrast to the first and second alternatives, which appear to provide less incentives for drug users to identify themselves before they are discovered through the testing process. The fourth option could permit employees to rid their work forces of drug users more quickly and at a lower cost (if rehabilitation opportunities were not provided). It would also permit greater flexibility at the local level. The benefits of rehabilitation might be lost, however. Commenters should address whether this alternative would be effective for the transit industry. How would this alternative affect the deterrence value of the proposal? What impact would it have on the costs and benefits? Would not requiring rehabilitation foster other approaches to combating drug usage?

UMTA specifically invites comment on which of these or other alternatives offer the greatest benefits at the lowest costs.

Under any of these options, if the individual was successfully rehabilitated, the program would require that he or she be offered the opportunity to return to his or her former position. The NPRM does not specify who makes the decision concerning whether the individual has been successfully rehabilitated, however. UMTA seeks comments on whether the final rule should so specify.

If the final rule does specify who makes this decision, who should the decision-maker be? Should it be the medical review officer, the head of the EAP, the head of the drug rehabilitation program in which the employee participated, an independent physician, or some combination of these persons? Are there other individuals that should be participated or required to make the decision?

UMTA also seeks comments on whether the rule should contain standards for making this determination. If so, what should they be? Should the employer, UMTA, or both have a procedure through which the employee can contest a determination that he or she had not been rehabilitated?

Post-rehabilitation Testing

Once an employee has undergone rehabilitation, there may be a need to conduct tests to ensure continued disassociation from drugs. At the time of the adoption of a final rule in this proceeding, we intend to provide procedures for the conduct of such tests. We invite public comment on what the final rule should contain.

For example, should there be a uniform testing period after rehabilitation, or should this be determined on a case-by-case basis? Who should make such a determination: the medical review officer (whose role is noted in the HHS Guidelines), the EAP counselor, or both together? Should the employee be involved? How could employee involvement be accomplished? If we adopt a uniform post-rehabilitation period, how long should it be? Is six months reasonable? Would longer periods constitute an unacceptable burden on employees and on the employer? Others might argue that a longer follow-up period, such as one year, is called for. Should the length of the follow-up period depend on the kind of drug that was detected? Should it depend on the severity of the individual's drug problem, as indicated by the kind of treatment that was found to be necessary? For example, should someone undergoing inpatient rehabilitation be subject to post-rehabilitation testing for a longer time than someone who needs only abatement counseling?

During the post-rehabilitation period, should we prescribe the minimum and/or maximum number of tests to be administered? We would want to ensure that any necessary tests would be given frequently enough to ensure that the employee is free of drugs. At the same time, however, we do not want drug testing to become an instrument of harassment of the employee or an undue burden on the employer. Here again is the issue of whether the number of tests given should vary with the kind of drug used and the severity of the employee's problem.

One alternative, on which we also invite comments, is a specified post-rehabilitation testing period that would apply only if the employee, the EAP counselor, and perhaps the employer failed to agree on an individualized program. Such a fall-back system could provide, for example, for up to four additional tests over the 12 months following rehabilitation.

Temporary Employees

Although the rehabilitation for drug users is a cornerstone of this program, we believe that there may be some employees in the industry whose normal period of employment is too short to make it practical to require rehabilitation and reemployment. For example, even if a short-term hire seeks rehabilitation, the end of the scheduled employment term might come before the completion of a rehabilitation program. Therefore, we are considering not requiring employers to offer an opportunity for rehabilitation to temporary employees who are hired for a period of less than 90 days. That is, if such employees are found to be drug users, it would be permissible to dismiss these persons immediately.

However, we recognize that some employees hired on a "temporary" basis are actually regularly reemployed. Some of these employees are recurring seasonal hires, others are continually reemployed at the end of each specified term. These persons are regular members of the industry, and thus, should not be excluded from the opportunity for rehabilitation and reemployment. Under the proposal, an employee would not be considered temporary for the purposes of rehabilitation, if he or she is eligible for reemployment by the same employer within 90 days following the end of the employment term. We specifically request comments on (1) the merits of excluding temporary employees from the opportunity for rehabilitation, and (2) the definition of temporary employees. Commenters also should address how the rules should be applied to striking employees or employees scheduled for layoffs. Definitions of these terms also should be addressed.

Reporting Requirements

Semi-annual and annual reports of the results under each program would be required under the proposed rule. The report would contain demographic data of drug abuse by occupational category, drugs detected, and geographic locations.

Those semi-annual and annual progress reports would be sent to UMTA. UMTA is proposing that the reports should provide the following summary information for each type of testing performed: Occupational group of tested employees, the specific drugs detected and the disposition of employees (e.g., termination, rehabilitation, resignation, and other categories as applicable, such as leave without pay). Confidentiality must be afforded to all information regarding drug abuse by employees. This data would be used by UMTA only to summarize trends and determine if additional actions or changes may be required to combat drug use and abuse in aviation. We invite comments on the frequency and content of reports to be filed.

Access to Employee Drug Use Information

The proposed rule would regulate access to information about an employee's drug testing history under the anti-drug program by future employers, including future employers in other transportation modes. UMTA specifically requests public comment on what procedures, if any, should be included in the rule to safeguard the privacy of persons tested under the anti-drug program. As noted above, we are considering a variety of options with respect to pre-employment drug tests, including mandatory destruction of the documents for employees not hired. The results of drug tests performed for other reasons, however, also raise important privacy questions. Therefore, we specifically invite comments about whether there are circumstances under which we should permit the disclosure of drug test data to persons other than the employer and the employee (such as future employers). If, in the final rule, we were to allow such disclosure, there would appear to be a number of options. First, the data could be released only at

the specific request of the future employer, at either the discretion of the employer conducting the test, or only at the request of the employee. Under another option, a subsequent employer could require that an applicant either disclose prior drug test results or give the employer permission to obtain prior drug test results as a condition of employment. A final option under consideration by UMTA is authorizing the release of test results to future employers only in specified circumstances. For example, confirmed positive test results would be released to subsequent employers where an employee had been discharged for a refusal to participate in a rehabilitation program or an employee had failed a drug tests after completing rehabilitation. Interested persons also should comment on whether the proposed rules should treat the privacy issues related to pre-employment test differently from random or reasonable cause tests.

The potential release of data highlights the importance of an employee's right to contest the test results. A urine sample that had been subject to tampering could unjustly end an employee's career. An employee should have an opportunity to challenge the integrity of the testing process, for example, by contesting whether the positive test result arose from a tampering incident or other error in the testing process. UMTA, therefore, requests comments on what procedures should be adopted. Commenters also should address whether the types of procedures afforded an employee should vary depending upon the consequences of a positive test and whether the burden of proof on the validity of test results should be borne by the employee or the employer.

In addition to future employers, other individuals may want access to the results of drug tests conducted under the proposed rules. UMTA could prohibit access to test results by the general public, including the news media. Moreover, other government agencies may want the data for statistical, regulatory, or law enforcement purposes. UMTA requests comments on whether the rule can and should prohibit access to the results of the anti-drug program to individuals other than the employer and the employee.

A related issue involves whether UMTA should distinguish between general statistical data (the total number of positive tests at a company in a month or a year) and particularized data (name-specific data). Small operators who employ few individuals will have difficulty concealing the identity of individuals tested under the proposed anti-drug program. Since small operators will have few individuals to test in any given time period, even seemingly neutral statistical data would result in identification of an individual employee who was dismissed as a result of a confirmed positive test result. This potential problem may be exacerbated if UMTA requires that only a small percentage of employees be tested each year.

HHS Guidelines

On April 11, 1988, the Department of Health and Human Services (HHS) published Mandatory Guidelines for Federal Workplace Drug Testing Programs. These include guidelines for drug testing procedures and standards for certifying drug testing laboratories (53 FR 11970). As drafted, the guidelines apply to drug testing programs conducted by Federal agencies themselves. This NPRM would direct regulated parties to conduct their drug-testing programs according to these guidelines as well.

The HHS guidelines include proposed solutions to concerns such as the integrity of the sample collection process, maintaining a proper chain of custody, and ensuring that laboratories that do drug testing are qualified to do so.

The HHS guidelines would establish what illegal drugs are to be tested for (e.g., marijuana, cocaine, amphetamines, PCP, and opiates) and the levels of drug metabolites in a sample that would result in a positive test being reported. The guidelines specify the types of tests that would be required for initial screening tests (an immunoassay test) and confirmatory tests (a gas chromatography/mass spectrometry test).

The guidelines also specify collection procedures. These include the use of toilet bluing agents, temperature monitoring, and other steps to ensure the integrity of the sample without requiring observation of the individual while he or she is providing the sample. The sample collection procedures also include filling out a chain-of-custody form to accompany the sample as it goes to the laboratory.

The guidelines for laboratory processing of samples cover both technical and procedural steps designed to ensure that a proper chain of custody is maintained and that the test is conducted accurately. Intralaboratory chain-of-custody forms would be used; only authorized personnel would have access to the sample. Records concerning the calibration of testing instruments would be maintained. Laboratories would report test results to the employer in a timely manner, and statistics on the tests would be retained by the laboratory for 2 years.

In addition to setting forth qualifications for key laboratory personnel and quality control procedures for the laboratories, the guidelines include standards and procedures through which HHS certifies laboratories. Regulated parties would be required to use only those laboratories which HHS has certified pursuant to these standards.

E. Hearings and Request for Written Comment

UMTA intends to hold hearings on today's proposed rulemaking in Washington, DC, New York City, Chicago, and Los Angeles. The exact times and locations of these hearings are not yet available. Once the exact times and locations of these hearings are confirmed, UMTA will publish a notice in the **Federal Register**. Commenters wishing acknowledgment of their written comments should include a self-addressed, stamped postcard with their comments. The Docket Clerk will stamp the card with the date and time the comments are received and return the card to the commenter.

F. Regulatory Impacts

1. Executive Order 12291

This action has been reviewed under Executive Order 12291, and UMTA has determined this is not a major rule. If promulgated, this rule will not result in an annual effect on the economy of $100 million or more.

2. Regulatory Evaluation

The proposed regulation would be a "significant" rule, as defined by the Department's Policies and Procedures on Improving Governmental Regulations, because it involves important departmental policy and will generate substantial public interest. UMTA has prepared a Regulatory Evaluation in support of this rulemaking. The Regulatory Evaluation is on file as part of the docket to this rulemaking.

Commenters should be aware that other operating administrations within the Department of Transportation also are proposing drug testing programs. Elsewhere in today's **Federal Register** are NPRMs issued by the Coast Guard & Research & Special Program Administration.

In addition, the Federal Aviation Administration published an NPRM in the **Federal Register** on March 14, 1988

(53 FR 8368); the Federal Railroad Administration's NPRM was published on May 10, 1988 (53 FR 16640); and the Federal Highway Administration (FHWA) published its NPRM on June 14, 1988 (53 FR 22268).

Each of these rulemakings addresses the costs and benefits of the proposal and are generally consistent with one another. In some instances, however, and generally as a result of differences in the industries affected, the assumptions differ from those discussed in this proposed rulemaking. Obviously, changes in assumptions could affect the costs and benefits, because of the nature of some industries, costs for similar elements also may vary or could vary enough to warrant sensitivity analyses. Other changes in assumptions, such as test costs or rehabilitation costs, also can have an affect on the analysis. Commenters may find it helpful to review the notices of proposed rulemakings or the economic analyses prepared by the other operating administrations. Comparisons may aid commenters in reviewing data on this proposal and in formulating comments. In reviewing the economic analysis and the basic assumptions made, commenters should address specific areas where they agree or disagree with the assumptions and the basis for the comment. Commenters are directed to the other rulemakings and their assumptions as a source of information in submitting comments. A copy of each of the documents has been placed in the docket.

3. Executive Order 12612—Federalism Assessment

UMTA has reviewed this proposed rule under Executive Order 12612, concerning Federalism. UMTA has determined that the proposal has sufficient Federalism implications to warrant the preparation of this Federalism assessment.

The Federalism impacts of this rulemaking result from its proposal for new, uniform UMTA requirements that federally-assisted mass transportation providers create and implement the drug programs described in this notice. Historically, transportation safety in the mass transit industry has not been the subject of specific UMTA regulatory requirements. Unlike other DOT organizations (e.g., FAA, FHWA, Coast Guard, FRA), UMTA has never directly licensed or regulated industry employees for safety. These matters have been handled locally by transit authorities.

Congress has shown increasing concern about UMTA's role in transit safety, for example in the enactment of section 22 of the UMT Act. More importantly, however, the necessity of promoting safe transportation through the use of vigorous anti-drug programs designed to ensure a drug-free mass transit workplace is national in scope and overriding in importance. This safety imperative is the primary basis for UMTA's decision to propose a new Federal requirement which goes beyond the traditional relationship between UMTA, transit grantees, and their employees. The basis for imposing these requirements is the Federal financial assistance provided to the recipients by UMTA. It is also important that UMTA ensure the maximum effectiveness of its financial assistance; i.e., it must ensure that the funds are used in a safe, drug-free environment. From a national perspective, safety is important in its own right but also to ensure Federal funds are not wanted because of drug-related accidents or other misuses.

In considering the Federalism impacts of this proposal, UMTA has focused on several key provisions of Executive Order 12612.

• *Necessity for action.* As noted above, there is an overriding safety necessity to ensure a drug-free transportation workplace. Passengers on bus, rail, and other mass transportation systems must be ensured that vehicle operators and others whose actions are important to passenger safety do not use illegal drugs. In the absence of an UMTA requirement for drug programs, which will identify drug users, deter drug use, and may provide opportunities for rehabilitation, this assurance cannot be made.

• *Consultation with State and local governments.* Unlike other DOT organizations with respect to drug rules, UMTA's regulated parties are primarily State and local government agencies (e.g., State departments of transportation, local transit authorities). This is the peculiarity of the UMTA drug rule which creates a larger Federalism impact than that created by drug rules in other modes. Consequently, the views of affected State and local agencies are particularly crucial to UMTA's consideration of the issues raised in this NPRM. On any significant rulemaking affecting its grantees, UMTA receives numerous and thorough comments from State and local agencies. UMTA will take its normal extra steps, beyond **Federal Register** publication, to ensure that these State and local governments are made aware of this proposed rule. Between the written comments and the four public hearings UMTA is planning to hold, UMTA expects to learn, in detail, the concerns of State and local governments about this proposal. These comments will be taken into account as UMTA makes decisions concerning the final rule on this subject.

• *National scope of the problem.* As noted elsewhere, the country has a nationwide, pervasive drug problem. There is no community in the country that is not affected, actually or potentially, by this problem. Mass transit users in every community need the same assurance that their safety will not be compromised by drug use by sensitive safety transit employees. They also need assurance that their tax dollar used in Federal assistance are not wasted because of drug-related accidents.

• *Need for uniform, national standards.* Only with uniform minimum national standards in this area can the safety concerns of passengers and the privacy and reliability concerns of employees be resolved in a way that addresses the national drug problem we face. State and local agencies are free to tailor the basic program requirements to meet their needs. Federal intrusion into local implementation decisions will be minimized through the use of self-certification by grantees of their compliance with UMTA requirements.

• *Authority.* The statutory authority for this proposal is discussed elsewhere in this preamble. As a statutory and constitutional matter, the authority of Federal agencies to impose reasonable and necessary conditions on the receipt of Federal financial assistance is well established.

• *Preemption.* The NPRM does not, as such, preempt State or local laws. However, there may be a few instances in which a State or local agency could face a conflict between compliance with the proposed regulation and State and local requirements. For example, the NPRM would require random testing. Some State or local laws may prohibit or limit random testing. In this situation, the UMTA rule would not preempt the application of the State or local law; if compliance with the State or local law prevented the grantee from complying with the UMTA rule, however, the grantee's UMTA funding could be jeopardized. It is our understanding that most grantees operate under statutes that permit them to take all necessary actions to comply with Federal grant conditions. Such laws, in most cases, could resolve the potential conflict outlined above. UMTA seeks comments on whether conflicts of this sort are likely to arise and, if so, what steps should be taken to avoid or resolve them.

Given these considerations, UMTA has determined that, while the proposed

rule will have Federalism impacts, the justifications for and proposed methods of dealing with the impacts are such that proposing the rule is consistent with the Administration's Federalism policy. UMTA seeks comments on any additional alternatives that would achieve the proposal's objectives while reducing Federalism impacts or that would mitigate these impacts.

4. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96–354, UMTA certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities within the meaning of the Act.

5. Environmental Impacts

This proposed regulation would not adversely affect the environment.

6. Paperwork Reduction Act

The collection of information requirements contained in this proposed rule are subject to the Paperwork Reduction Act, Pub. L. 96–511, 44 U.S.C. Chapter 35. These requirements are being submitted to the Office of Management and Budget for review. Comments on the proposed certification requirement must be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Department of Transportation. UMTA requests that the commenter also transmit an information copy of any such comments to UMTA Docket No. 88–F.

List of Subjects in 49 CFR Part 653

Drug testing, Grant programs—transportation, Mass transportation.

G. NEW 49 CFR PART 653

Accordingly, for the reasons described in the preamble, 49 CFR Chapter VI would be amended by adding new Part 653 to read as follows:

PART 653—CONTROL OF DRUG USE IN FEDERALLY FUNDED MASS TRANSPORTATION OPERATIONS

Subpart A—General

Sec.

653.1 Purpose.
653.2 Scope.
653.3 Definitions.
653.4 Establishment of recipient anti-drug program.
653.5 Recipient's comprehensive anti-drug program.
653.6 Use of prescribed drugs.

Subpart B—Post Accident Toxicological Testing

653.10 Testing requirements.
653.11 Testing procedures.
653.12 Guidelines for drug testing.
653.13 Fatal accident drug test report.
653.14 Driver fatalities.

Subpart C—Reasonable Cause Testing

653.20 Testing requirements.
653.21 Testing procedures.

Subpart D—Pre-Employment Testing

653.30 Testing requirements.
653.31 Testing procedures.

Subpart E—Random Testing

653.40 Testing requirements
653.41 Testing procedures.

Subpart F—Employee Assistance Programs and Rehabilitation

653.50 Employee assistance program.
653.51 Opportunity for rehabilitation.
653.52 Job security.
653.53 EAP education program.
653.54 EAP training program.

Authority: 49 U.S.C. 1601, 1602, 1607, and 1618, and 23 U.S.C. 103(e)(4).

Subpart A—General

§ 653.1 Purpose.

(a) This part requires a recipient of Federal transit funds to establish a program to detect and deter the use of controlled substances.

(b) This part does not restrict a recipient from adopting and enforcing additional or more stringent requirements consistent with this part.

§ 653.2 Scope.

(a) This part applies to a recipient of Federal financial assistance under sections 3, 9, or 18 of the Urban Mass Transportation Act of 1964, as amended, or 23 U.S.C. 103(e)(4).

(b) The program required by this part applies to employees of the recipient in sensitive-safety positions, including vehicle operators, controllers, and mechanics.

§ 653.3 Definitions.

As used in this part—

"Administrator" means the Administrator of the Urban Mass Transportation Administration or his or her designee.

"Fatal accident" means an accident involving a vehicle of the recipient which leads to the death of a human being within 24 hours after the accident.

"HHS Drug Testing Guidelines" means the Scientific and Technical Guidelines for Drug Testing Programs issued by the Alcohol, Drug Abuse, and Mental Health Administration of the U.S. Department of Health and Human Services. These guidelines are available for review at UMTA headquarters and each UMTA regional office.

"Prohibited drug" means a substance specified in Schedule I or Schedule II of the Controlled Substances Act, 21 U.S.C. 801.812, unless the drug is being used as authorized by, and in accordance with a legal prescription or exemption under Federal, State, or local law.

"Random selection process" means that tests are unannounced; that every employee in a sensitive-safety position of a given recipient has an equal chance of selection; and the total number of random tests conducted annually shall equal or exceed a specified (up to 125) percent of the total number of sensitive safety employees of a recipient.

"Reasonable cause" means the recipient reasonably believes that the appearance and/or conduct of the employee on duty are indicative of being under the influence of or impaired by a controlled substance based upon specified observations. The questioned conduct must be witnessed and documented by at least two employees, one of whom is in a supervisory capacity.

"Recipient" means a direct recipient of Federal financial assistance under sections 3, 9 or 18 of the UMT Act, or 23 U.S.C. 103(e)(4).

"Sensitive safety position" means any position of a recipient that involves operation of passenger-carrying equipment, including any directly related support activities that control or affect the operation of such equipment.

"UMTA" means the Urban Mass Transportation Administration.

§ 653.4 Establishment of recipient anti-drug program.

(a) No later than 180 days after the effective date of this subpart, each recipient shall certify to UMTA that it has established and implemented a comprehensive anti-drug program meeting the requirements of this part.

(b) Failure to make the certification required under paragraph (a) shall render the recipient ineligible to receive Federal financial assistance under sections 3, 9 or 18 of the Urban Mass Transportation Assistance Act of 1964, as amended.

§ 653.5 Recipient's comprehensive anti-drug program.

(a) Each recipient's comprehensive anti-drug program shall provide that—

(1) No employee of the recipient shall perform sensitive safety functions if the employee uses any controlled substances, except as provided in § 653.6 of this subpart;

(2) No employee shall perform sensitive safety functions if the employee tests positive for the presence of controlled substances, except as provided in § 653.6 of this subpart;

(3) All employees are subject to post-accident, reasonable cause and random testing for drugs under Subparts B, C, and E of this part;

(4) All prospective employees are subject to pre-employment testing for drugs under Subpart D of this part;

(5) Certain employees who use controlled substances are eligible to participate in an employee assistance program under Subpart F of this part; and

(6) An employee who refuses to be tested as prescribed under this part shall not perform sensitive safety functions until the individual tests negative for the use of controlled substances.

§ 653.6 Use of prescribed drugs.

(a) A comprehensive anti-drug program shall provide that any employee of a recipient who tests positive for the use of a controlled substance shall have available as an affirmative defense, to be proven by the employee through clear and convincing evidence, that his or her use of the controlled substance (except for methadone) was as prescribed by a licensed medical practitioner who has considered the employee's medical history and has determined such use to be consistent with the employee's assigned duties and that the level was at the prescribed dosage.

(b) This section does not restrict a recipient from requiring an employee to notify the recipient of therapeutic drug use.

Subpart B—Post-Accident Toxicological Testing

§ 653.10 Testing requirements.

(a) A recipient's drug program shall ensure that post-accident toxicological tests are conducted on an employee in a sensitive-safety position who is involved in a fatal accident.

(b) Such an employee shall submit to controlled substance testing following a fatal accident.

§ 653.11 Testing procedures.

(a) A recipient's drug program shall require an employee of the recipient in a sensitive-safety position to be tested for controlled substance use if the employee is involved in a fatal accident. The sample should be collected as soon as possible, but no later than 12 hours after the fatality.

(b)(1) Such an employee of the recipient shall report or be transported to a collection site and give a urine sample as soon as possible, but not later than 12 hours following a fatality. If a hazard to occupants of the vehicle would be increased by compliance with this subpart, the employee of the recipient may move the vehicle to the nearest safe place to reduce or eliminate the hazard.

(2) If the employee is incapacitated or unconscious, the recipient shall request the treating medical facility to obtain a body fluid sample as determined appropriate by a medical practitioner.

(c) A recipient shall ensure that a legible copy of instructions for collection, labeling, packaging, and mailing of body fluid samples shall be maintained on each recipient vehicle. The instructions for collection, labeling, and packaging shall conform with the HHS guidelines. Mailing instructions shall include the name, mailing address, and telephone number of the test laboratory used by the recipient.

§ 653.12 Guidelines for drug testing.

The recipient shall ensure that its drug testing program conforms with the HHS Drug Testing Guidelines.

§ 653.13 Fatal accident drug test report.

(a) Within 24 hours of receipt of a drug test result, a recipient shall prepare a report on the results.

(b) Refusals. If a recipient cannot report a drug test result because an employee refuses to give a sample or for other reasons, the recipient's report shall so provide.

§ 653.14 Driver fatalities.

(a) A recipient shall ensure that controlled substance testing is conducted on a deceased employee involved in an accident in accordance with the procedures of this subpart.

(b) If the employee is deceased, the recipient shall request the responsible local authority (e.g., a coroner or medical examiner) to obtain a body fluid or tissue sample as appropriate.

(c)(1) If urine is obtained, the responsible local authority should place 60 milliliters (ml) of urine in a standard 80 ml screw-top container.

(2) If blood is obtained, the responsible local authority should place 20 milliliters of blood in red-top glass tubes.

(3) If tissue is obtained, the responsible local authority should place 50 to 100 grams of liver, kidney, spleen, lung or muscle tissue, as available, or gastric content, up to 100 milliliters, as available, in a red-top glass tube.

(d) Sample handling, packaging, and mailing should follow the instructions prescribed in § 653.11(c) of this subpart.

Subpart C—Reasonable Cause Testing

§ 653.20 Testing requirements.

A recipient's drug program shall require an employee of the recipient in a sensitive-safety position to be tested upon reasonable cause for the use of controlled substances under the conditions specified in this subpart.

§ 653.21 Testing procedures.

(a) The recipient shall ensure that the employee of the recipient in a sensitive-safety position is transported immediately to a collection site for the collection of a urine sample.

(b) The recipient's program shall ensure that its drug-testing program conforms with the HHS Drug Testing Guidelines.

Subpart D—Pre-Employment Testing

§ 653.30 Testing requirements.

(a) A recipient's drug program shall require an applicant for employment for a sensitive-safety position to be tested as a condition to employment for the use of controlled subtances as a condition of employment.

(b) Prior to collection of a urine sample an applicant for employment for a sensitive-safety position shall be notified that the sample will be tested for the presence of controlled substances.

(c) The applicant will be notified if the test is positive and be afforded an opportunity to explain the presence of a controlled substance.

(d) If the applicant is not hired, no record of the test results shall be maintained by the recipient.

§ 653.31 Testing procedures.

(a) The sample shall consist of a urine specimen.

(b) A recipient shall ensure its drug-testing program conforms with the HHS Drug Testing Guidelines.

Subpart E—Random Testing

§ 653.40 Testing requirements.

A recipient's drug program shall provide for a random selection process to select and require an employee of the recipient in a sensitive-safety position to be tested for the use of controlled substances.

§ 653.41 Testing procedures.

(a) The sample shall consist of a urine specimen.

(b) A recipient shall ensure its drug-testing program conforms with the HHS Drug Testing Guidelines.

Subpart F—Employee Assistance Programs and Rehabilitation

§ 648.50 Employee Assistance Program.

The employer shall provide an employee assistance program (EAP) for employees. The employer may establish the EAP as a part of its internal personnel services or the employer may enter into a contract with an entity that will provide EAP services to employees. Each EAP must include education and training on drug use for employees and the employer's supervisory personnel and [shall] [may] include an opportunity for rehabilitation as provided in this subpart.

§ 653.51 Opportunity for rehabilitation [Option #1].

Each employer shall provide one rehabilitation opportunity for the following employees:

(a) Each employee who voluntarily enrolls in an EAP.

(b) Each employee who is identified as a drug user through random, periodic, or post-accident testing, or testing based on reasonable cause.

§ 653.52 Job security [Option #1].

(a) Each employer shall retain or rehire an employee who—

(1) Has successfully completed his or her first rehabilitation program after voluntary enrollment or notification to the employee that he or she failed a drug test;

(2) Has not failed a drug test required by the employer's drug testing plan for employees who have completed rehabilitation; and

(3) Has received a recommendation for return to duty as a result of that rehabilitation program.

(b) Employees who are identified as drug users on the job are not required to be afforded an opportunity for rehabilitation or to be retained or rehired.

§ 653.51 Opportunity for rehabilitation [Option #2].

Each employer shall provide on rehabilitation opportinity for the following employees:

(a) Each employee who voluntarily enrolls in an EAP.

(b) Each employee who is identified as a drug user through random or periodic testing.

§ 653.52 Job security [Option #2].

(a) Each employer shall retain or rehire an employee who—

(1) Has successfully completed his or her first rehabilitation program after voluntary enrollment or notification to the employee that he or she has failed a random or periodic drug test;

(2) Has not failed a drug test required by the employer's drug testing plan for employees who have completed rehabilitation; and

(3) Has received a recommendation for return to duty as a result of the rehabilitation program.

(b) Employees who are identified as drug users on the job or as a result of testing based on reasonable cause or post-accident testing required by this appendix are not required to be afforded an opportunity for rehabilitation or to be retained or rehired.

§ 653.51 Opportunity for rehabilitation [Option #3].

Each employer shall provide one rehabilitation opportunity for each employee who voluntarily enrolls in an EAP.

§ 653.52 Job security [Option #3].

(a) Each employer shall retain or rehire an employee who—

(1) Has successfully completed his or her first rehabilitation program after voluntary enrollment;

(2) Has not failed a drug test required by the employer's drug testing plan for employees who have completed rehabilitation; and

(3) Has received a recommendation for return to duty as a result of that rehabilitation program.

(b) Employees who are identified as drug users on the job or as a result of testing required by this appendix are not required to be afforded an opportunity for rehabilitation or to be retained or rehired.

§ 653.51 Opportunity for rehabilitation [Option #4].

Each employer shall determine, as part of its anti-drug program, whether to provide one rehabilitation opportunity for each employee who is identified as a drug user by one or more types of testing or who voluntarily enrolls in the EAP.

§ 653.52 Job security [Option #4].

(a) An employer may not retain or rehire for a sensitive safety position an employee who has been identified as a drug user through a drug test or through voluntary enrollment in an EAP unless the employee—

(a) Has successfully completed his or her first rehabilitation opportunity after voluntary enrollment or notification to the employee that he or she has failed a particular type of drug test, if the employer's anti-drug program provides for a rehabilitation opportunity in that circumstance;

(2) Has not failed a drug test required by the employer's drug testing plan for employers who have completed rehabilitation; and

(3) Has received a recommendation for return to duty as a result of that rehabilitation program.

(b) Employees who are identified as drug users on the job are not required to be afforded an opportunity for rehabilitation or to be retained or rehired.

§ 653.53 EAP education program.

Each EAP must include an education program with the following elements:

(a) Display and distribution of informational material;

(b) Display and distribution of a community service hot-line telephone number for employee assistance; and

(c) Display and distribution of the employer's policy regarding drug use in the workplace.

§ 653.54 EAP training program.

Each EAP must include a training program to be conducted annually for employees and employer's supervisory personnel. During the first year of the program, such training must be conducted for all such personnel. The training program must include at least the following elements: the effects and consequences of drug use on personal health, safety, and work environment; the manifestations and behavioral cues that may indicate drug use and abuse; and documentation of training given to employees and employer's supervisory personnel. EAP training programs for employees and supervisory personnel must consist of at least 60 minutes for each employee and supervisor each year.

Dated: June 30, 1988.

Alfred A. DelliBovi,

Administrator.

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Friday
July 8, 1988

Part IX

Department of Transportation

Coast Guard

46 CFR Parts 4, 5, and 16

Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 4, 5, and 16

[CGD 86-067]

Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Due to the safety and health concerns associated with drug abuse by merchant marine personnel, as well as legal restrictions on drug use, the Coast Guard is proposing drug abatement programs which include periodic drug tests (urinalysis) as part of required physical exams, preemployment testing and random sampling programs for all marine employees, and post accident and reasonable cause testing. The post accident and reasonable cause portions of the program will also involve testing for alcohol use. Four options are proposed concerning rehabilitation for those individuals who are detected as drug users for the first time.

The Coast Guard is also proposing an implied consent provision for the chemical testing of license, certificate of registry, and merchant mariners document holders as well as for all individuals accepting employment on board any vessel on which licensed, certificated, or documented personnel are required.

Through chemical testing, the Coast Guard expects to discourage drug and alcohol use by merchant marine personnel, an activity which adversely impacts the users, their shipmates, the marine industry, and the public in general. Chemical testing should also reduce the potential for marine casualties related to drug and alcohol use.

DATE: Comments must be received on or before September 6, 1988.

ADDRESSES: Comments should be submitted to the Executive Secretary, Marine Safety Council (G-LRA-2/21) [CGD 86-067], U.S. Coast Guard, Washington, DC 20593-0001. Comments may be delivered to and will be available for inspection or copying between 8:00 a.m. and 3:00 p.m., Monday through Friday, at the Marine Safety Council (G-LRA-2/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Mr. Sean T. Connaughton, Project Manager, Merchant Vessel Personnel Division, Office of Marine Safety, Security and Environmental Protection (G-MVP), Phone (202) 267-0229.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. Comments should include the name and address of the person making them, identify this notice (CGD 86-067), give the specific section of the proposal to which the comment applies, and the reasons for the comment. Persons desiring acknowledgement that their comment has been received should enclose a stamped, self-addressed postcard or envelope. All comments received before the expiration of the comment period will be considered to the extent practicable before final action is taken on this proposal.

No public hearing has been scheduled, however, the Coast Guard is considering holding a public hearing on this proposal. If a hearing is scheduled, the time and place will be published in a separate notice in the **Federal Register.**

Background

Drug and Alcohol Abuse in American Society

Drug and alcohol abuse constitutes a major societal problem. Statistics compiled and reported by the National Institute of Drug Abuse (NIDA), and by media polls, indicate the use of drugs such as marijuana to be widespread. While the problem appears to be "youth centered," in that the majority of users are in the younger age categories, the problem also exists in older groups. For instance, based on random sampling and using population projections, data from the 1985 NIDA "National Survey on Drug Abuse," indicates the following:

—In the 18 to 25 age category:

—Sixty (60) percent reported using marijuana sometime during their life.

—Twenty-two (22) percent reported using marijuana within the last 30 days.

—Twenty-five (25) percent reported using cocaine sometime during their life.

—Eight (8) percent reported using cocaine within the last month.

—In the 26 and over age category:

—Twenty-seven (27) percent reported using marijuana sometime during their life.

Six (6) percent reported using marijuana within the past month.

Nine (9) percent reported using cocaine sometime during their life.

Two (2) percent reported using cocaine within the last month.

Because of statistics like the above, many members of the public have expressed concern that the use of drugs or alcohol by others may jeopardize their personal safety. There is widespread public perception that drug or alcohol abusers should not be in safety-related occupations. A May-June 1986 national survey jointly conducted by Populus Incorporated, of Greenwich, Connecticut, and Decision/Making/Information of McLean, Virginia, produced the following results:

—88 percent favored testing airline pilots and air traffic controllers.

—85 percent favored testing police and other law enforcement agents.

—81 percent favored testing bus drivers.

As the researchers indicate, the respondents believed that people who are responsible for the physical safety of others should be tested.

Another survey conducted by American Viewpoint, Inc., on August 6-19, 1986, examined the public's attitude toward drug testing and produced informative results, specifically, "by a margin of 76 percent to 22 percent, Americans agree that the drug crisis today is serious enough for mandatory testing." The American Viewpoint survey used a "forced choice" list and asked which groups should submit to mandatory drug testing. While the transportation modes, e.g., railroad, aviation, highway, marine, etc., were not included in the list, safety and health related occupations such as police and firefighters (84 percent), armed forces (81 percent), and doctors and nurses (81 percent) were at the top of the list. Another interesting fact was that 80 percent of the respondents indicated that they would participate in voluntary testing if asked to do so by their employer.

The surveys suggest that the majority of the public is concerned about drug and alcohol abuse and favors the testing of persons in certain safety-related occupations. While the bulk of drug abuse occurs in the 25 and under category and overall usage may drop as this group grows older, maturation cannot be considered a solution to the problem. The Department of Transportation in its regulatory role must operate under the assumption that the various transportation modes do not significantly differ from the overall population in terms of drug and alcohol abuse.

In February 1987, the Federal Aviation Administration (FAA) began performing drug screens in connection with periodic medical examinations required of certain safety-sensitive agency employees. As of April 22, 1988, the FAA has received reports on 25,000 FAA employees urine specimens pursuant to its periodic testing program. Specimens

for 25 employees have been determined to include one or more illegal drugs. In addition, the Department implemented its employee drug testing program on September 8, 1987. As of April 22, 1988, DOT has received reports on 1651 urinalysis tests pursuant to its random drug testing program for DOT employees occupying critical safety- or security-sensitive positions. 15 employees have tested positive for illegal drugs. These employees are currently in counseling or rehabilitation programs and have been relieved of their critical safety duties pending successful completion of these programs. In addition, since the inception of the DOT program, 6 employees have tested positive for illegal drugs as a result of reasonable cause drug testing.

Drug and Alcohol Problem in the Merchant Marine

It is reasonable to assume that because there is a drug problem in society, there is also a potential drug problem in the merchant marine. However, while the threat posed to society by drug and alcohol use and abuse is diffused, the same cannot be said of the threat drugs and alcohol pose to transportation industries such as the merchant marine. Not only do personnel who use drugs and alcohol pose dangers to themselves and shipmates, they are in the position to cause, or contribute to, vessel casualties that may take human life, destroy property, and/or seriously harm the environment.

The problem in the marine industry is increased by the fact that personnel often live on board their vessels for long periods of time. What in another context might be considered "recreational" or off-duty drug or alcohol use can have a detrimental effect upon vessel safety because the vessel is frequently also where the individual lives. Intoxicated personnel cannot serve their vessel in an emergency, and pose a hazard if they attempt to perform any necessary safety-related functions.

Coast Guard data do not specifically identify the use of drugs or alcohol as a major causal effect in commercial vessel losses or casualty damage. However, the use of alcohol and drugs has had a substantial impact on marine safety. Coast Guard marine casualty records spanning the years 1981 to 1986 reveal 75 deaths, 52 injuries, and $6.5 million in property damages resulting from casualties attributable to the use of intoxicants. In addition, during the same period, the Coast Guard took suspension or revocation action against 89 seamen for alcohol-related offenses and 134 seamen for drug-related offenses.

It is acknowledged that the above data are sparse and are not conclusive. However, fatal accidents and suspension and revocation proceedings cannot be the only basis on which to judge whether or not there is a problem with substance abuse. There is no way to gauge how many minor or near accidents there have been due to intoxication.

The absence of widespread data may be due to several factors. First, the use of drugs and the abuse of alcohol is something that many people go to great lengths to conceal. Second, detection by employers is not easy. Many merchant mariners never see their employers, or see them only on an infrequent basis, and full-time surveillance by the Coast Guard and others is neither practical nor economically feasible. Third, even when there is supervision or surveillance of individuals, few people (including fellow crewmembers) are trained in how to detect drug or alcohol abuse. As one commenter to the Federal Aviation Administration's Advance Notice of Proposed Rulemaking entitled "Control of Drug and Alcohol Use for Personnel Engaged in Commercial and General Aviation Activities," (FAAD 86–20, 51 FR 44432, December 9, 1986), stated, "We have been surprised by the persons who have tested positive. Employees whose personal habits, appearances and lifestyles appear to be above reproach have tested positive for drugs and subsequently admitted their use." Finally, it is possible there are individuals who are "enablers," in that they may tolerate or cover for a person with a drug or alcohol problem, especially if the person might suffer the loss of a job and the associated adverse financial consequences.

The Coast Guard has previously addressed the issue of drug and alcohol abuse in an Advance Notice of Proposed Rulemaking concerning Certification of Seamen (CGD 84–088, 50 FR 4875 February 4, 1985), and in a Final Rule concerning Operating a Vessel While Intoxicated (CGD 84–099, 52 FR 47526, December 14, 1987). A review of the comments submitted on these rulemakings indicates that there is wide support for drug screening among marine companies, industry associations, and marine personnel. A recent Towing Safety Advisory Committee (TSAC) recommendation objected to employer involvement in testing and enforcement, but otherwise endorsed the need to eliminate drug users and those who operate a vessel while intoxicated from the merchant marine. While the Coast Guard does not dispute the professionalism of the vast majority of those in the marine industry and their commitment to a drug and alcohol abuse-free marine environment, reports from some shipping companies that screen their crews for drug usage indicate that a significant number of their employees were found to be users of drugs.

In light of these factors the Coast Guard is proposing regulations to require effective chemical testing programs for holders of licenses, certificates of registry, and merchant mariners documents and other maritime personnel in order to minimize the drug and alcohol problem in the merchant marine. The Coast Guard is very interested in receiving any additional data on the use of drugs in the maritime industry.

Readers will note that proposals by other modes in the Department of Transportation use the term "Sensitive Safety and Security Related Positions" when classifying personnel subject to testing programs. It is the position of the Coast Guard that all individuals engaged on board a vessel contribute to the function of the vessel or the accomplishment of its service. In addition to regularly assigned duties, each individual has responsibilities which relate to safety and to emergency situations. Non-performance of these duties could pose threats to the safety of the individual seaman, the vessel, other persons on board, and the marine environment. Therefore, the testing programs proposed in these rules do not differentiate between classes of personnel subject to testing. The proposal applies to all individuals engaged aboard any vessel on which licensed, certificated, or documented personnel are required; such individuals perform sensitive safety related duties.

Jurisdiction

Congress has long recognized the danger posed by drug and alcohol use among merchant marine personnel. This is evidenced by certain statutes contained in Title 46, United States Code (U.S.C.), regarding alcohol and drug use by merchant mariners, particularly those who hold licenses, certificates of registry, or merchant mariners documents.

46 U.S.C. 2302 provides for penalties for all marine personnel who operate a vessel in a negligent manner or while intoxicated. The Coast Guard considers "negligent manner" as including the operation of a vessel while under the influence of drugs or alcohol. The standard to be applied in determining intoxication for personnel operating commercial vessels was set out in the

Final Rule concerning Operating a Vessel While Intoxicated (CGD 84–099, 52 FR 47526, December 14, 1987). This Final Rule set both a behavioral standard and a blood alcohol concentration (BAC) standard of 0.04 percent.

For those who hold licenses, certificates of registry, or merchant mariners documents, the laws contain additional provisions regarding drug and alcohol use. 46 U.S.C. Chapter 77, "Suspension and Revocation," contains strict provisions concerning drug and alcohol use. The Secretary, under 46 U.S.C. 7703, can suspend or revoke a license, certificate, or document if an individual has committed an act of misconduct or negligence, or demonstrated incompetence. It is well settled that incompetence, misconduct, and negligence, include acts involving alcohol and drug use. Under 46 U.S.C. 7704, whenever drug use is proved at a suspension and revocation hearing, revocation is mandatory unless cure is shown.

For drug abuse, 46 U.S.C. 7704 states:

> (b) If it is shown at a hearing under this chapter that a holder of a license, certificate of registry, or document issued under this part, within 10 years before the beginning of the proceedings, has been convicted of violating a dangerous drug law of the United States or of a State, the license, certificate, or document shall be revoked. (c) If it is shown that a holder has been a user of, or addicted to, a dangerous drug, the license, certificate, or document shall be revoked unless the holder is cured.

In addition, in Chapter 75, "General Procedures for Licensing, Certification, and Documentation," 46 U.S.C. 7503 dictates that:

> A license, certificate, or document authorized to be issued under this part may be denied to an individual who: (1) within 10 years before applying for the license, certificate, or document, has been convicted of violating a dangerous drug law of the United States or of a State; or (2) when applying, has ever been a user of, or addicted to, a dangerous drug unless the individual provides satisfactory proof that the individual is cured.

In both chapters, "dangerous drug" is defined as "narcotic drug, controlled substance, and marihuana (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802))."

It is clear that the statutes are intended to exclude drug users and violators of drug statutes from serving on U.S. merchant vessels, as well as preventing the operation of vessels by intoxicated personnel. The Coast Guard currently enforces the statutes through the examination of the criminal conviction records of license and document applicants and holders, through the prosecution of those operating a vessel negligently or while intoxicated, and through administrative remedies such a civil penalty actions and suspension and revocation proceedings. However, these methods have not been particularly effective since, as a practical matter, an incident typically must occur before the Coast Guard obtains evidence on which to base remedial or punitive action. With advances in the reliability of methods utilized to detect drugs in urine, as well as the increased accessibility of test processing facilities and the relatively simple procedures involved in collecting samples for testing, the Coast Guard is offered the opportunity to propose requirements that will effectively identify drug abusers. The proposed requirements are similar in nature to those in place or proposed in the other regulated transportation industries, and are intended to ensure, to the extent feasible, uniformity within the transportation industries of the United States.

The Coast Guard's authority over commercial vessels is based primarily on the type of vessel. Some commercial vessels, such as fishing and towing vessels, are not required to be inspected and are subject to limited Coast Guard regulation. Although the vessel itself may be subject to limited regulation, some or all of the vessel's crew may, by statute or regulation, be required to hold a license, certificate, or document issued by the Coast Guard. To provide the greatest possible assurance that the commercial fleet has a safe, drug-free, work environment for all personnel, the Coast Guard is proposing that an individual may not be employed, including self employment, on a vessel in a postion for which a license, certificate of registry, or merchant mariners document is required, unless the entire crew is covered by the proposed rules. This means that the entire crew of a fishing vessel over 200 gross tons, an uninspected passenger vessel, and a towing vessel, would be covered.

Proposals

Goals of Testing

The overall goal of testing is to foster a drug and alcohol abuse free transportation environment which will continue to merit public confidence. A drug-free environment means that an individual covered by this proposal does not have dangerous drugs in his or her system at any time. If drugs are used, the individual could lose the right to work in his or her occupation. Thus, even "off-duty" use would be prohibited.

In the case of alcohol, present urine testing technology only permits a rough estimation of alcohol concentration levels in an individual's blood. For this reason, this proposal does not require urine testing for alcohol. The rule could be modified if there are advances in urine testing in the future.

This does not mean the Coast Guard condones abuse of alcohol. The Coast Guard has issued a Final Rule concerning Operating a Vessel While Intoxicated (CGD 84–099, 52 FR 47526, December 14, 1987) that prohibits an individual from consuming alcohol on-duty or performing duties while intoxicated. Off-duty use is limited and subject to the restrictions contained in the final rule. With reasonable cause, testing to determine blood alcohol levels can be directed.

In addition to determining whether drugs have been used, the chemical testing program outlined in this proposal will enable the Coast Guard to collect data as to the extent of substance abuse. This data will in turn enable the Coast Guard to plan future action, such as education and training to combat substance abuse.

This NPRM proposes specific requirements for testing procedures and rehabilitation programs. As noted below, the Coast Guard realizes that some of these requirements may be difficult to achieve as proposed. This may be especially true for small employers. The Coast Guard is interested in comments on ways in which its goals can be achieved through procedures or programs without the need for detailed regulatory requirements. For example, should Coast Guard permit programs developed by consortiums of marine employers that conform with the basic requirements of the following proposed specific program? As noted later in this preamble, the Coast Guard is also interested in obtaining comments on the feasibility and effectiveness of having Coast Guard approve company-specific programs that conform with the basic requirements of the proposed program. If this approach is adopted, an industry-wide program, developed by employers may be a viable and expedient mechanism to implement drug abatement programs. In addition, this type of approval may provide more flexibility to the industry. If so, the Coast Guard requests detailed comments on how such an approval program would be implemented. The Coast Guard believes that any divergence from the proposed specific

program would have to comply with its goals.

Chemical Testing Procedures

On April 11, 1988, the Department of Health and Human Services (HHS) published final guidelines for drug testing procedures and standards for certifying drug testing laboratories (53 FR 11970; April 11, 1988). The guidelines apply to drug testing programs conducted by Federal agencies themselves. This NPRM would direct regulated parties to conduct their drug-testing programs according to these guidelines as well.

The HHS guidelines include solutions to concerns such as the integrity of the sample collection process, maintaining a proper chain of custody, and ensuring that laboratories that do drug testing are qualified to do so.

The HHS guidelines establish what illegal drugs must be tested for (marijuana and cocaine), as well as additional drugs which may be tested (e.g., amphetamines, PCP, and opiates). In addition, the guidelines specify the levels of drug metabolites in a sample that would result in a positive test being reported. The Coast Guard invites comments as to which additional drugs, if any, should be included. Commenters should also provide cost and benefit data regarding any additional drug groups.

The guidelines specify the types of tests that would be required for initial screening tests (an immunoassay test) and confirmatory tests (a gas chromatography/mass spectrometry test). The guidelines also specify collection procedures. These include the use of toilet bluing agents, temperature monitoring, and other steps to ensure the integrity of the sample without requiring observation of the individual while he or she is providing the sample. The sample collection procedures also include filling out a chain-of-custody form to accompany the sample as it goes to the laboratory.

The guidelines for a laboratory processing of samples cover both technical and procedural steps designed to ensure that a proper chain of custody is maintained and that the test is conducted accurately. Intralaboratory chain-of-custody forms would be used; only authorized personnel would have access to the sample. Records concerning the calibration of testing instruments would be maintained. Laboratories would report test results to the employer in a timely manner, and statistics on the tests would be retained by the laboratory for 2 years.

In addition to setting forth qualifications for key laboratory personnel and quality control procedures for the laboratories, the guidelines include standards and procedures through which HHS certifies laboratories. Regulated parties would be required to use only those laboratories which HHS has certified pursuant to these standards.

The guidelines also mandate the use of Medical Review Officer (MRO) to review test results. The MRO is specifically intended to ensure that drug tests were properly administered and that the test results were accurate.

While the use of any controlled drugs, unless medically prescribed, is not condoned, the Coast Guard recognizes that due to equipment limitations and possible "passive" exposure to drugs, any test results indicating drug or metabolite levels below the cut-offs may not be accurate reflections of whether an individual has used drugs. Therefore, drug or metabolite levels below these cut-offs will be considered a negative test result and will not disqualify a person from service in the merchant marine.

Prescription drug use, used as medically prescribed, would not generally be considered a reason for corrective action; however, partial or total impairment due even to prescribed drug use is nonetheless a threat to safety, and, as is current practice, the Coast Guard may deny or suspend licenses, certificates of registry, and merchant mariners documents for this reason in appropriate circumstances.

Implied Consent

The proposed regulations state that any individual accepting employment on board any vessel on which any individual is required to be licensed, certificated, or documented would be deemed to have consented to submit to chemical testing. This implied consent provision is consistent with the Federal Railroad Administration regulations dealing with substance abuse.

Note.—See 49 CFR Part 219.

The existence of an implied consent provision would facilitate the acquisition of breath, blood, or urine samples in a timely and efficient manner. An individual could still refuse testing since the regulations do not authorize physical coercion; however, refusal would be considered a violation of regulation and could subject an individual to proceedings which may result in suspension or revocation of a license, certificate, or document under 46 U.S.C. 7003 and Part 5 of Title 46, Code of Federal Regulations, or termination or refusal of employment in the case of an individual who does not possess a license, certificate, or merchant mariners document.

Periodic Testing

The Coast Guard proposes to require urinalysis in connection with required physical examinations which are incident to various license or merchant mariners document transactions. Only those individuals required to receive a physical examination for a license or document transaction, or those required to receive periodic physical examinations, would be required to undergo a periodic urinalysis for drugs. The testing would be part of that physical examination. The results of the physical examination and urinalysis would have to be presented at the Regional Examination Center (REC) and an application would not be considered complete until the chemical test results required by these regulations have been submitted. All test results would be kept by the REC and become part of the individual's file.

Some individuals are required to receive periodic physical examinations, normally on an annual basis. When they renew their license, they would have to present documentation of each urinalysis taken with a physical examination since their last license transaction. This would ensure that the individual received all required drug tests.

An individual who has been subject to a random sampling program, and who has been tested under that program would not be subject to the requirement for periodic testing if the applicant provides satisfactory evidence certifying that he or she has been continuously subject to a random sampling program for not less than six months, has not tested positive for dangerous drugs, has not refused to participate in required chemical tests, and has been tested within the past six months. However, even if the above conditions are met, the periodic testing requirement would continue to be applicable to those individuals whose chemical test is part of a physical examination for issuance of an original license or merchant mariners document.

Because the date of periodic testing is known to the employee, an individual who uses drugs could stop taking them prior to the test in order to avoid detection. However, not all individuals would have sufficient control over their drug use to do so. Periodic testing would have the advantage of being less costly, since it would be performed during an already required exam. Because of the scheduled nature of periodic testing, comment is requested concerning its

effectiveness. Should this type of testing be a part of all future drug programs, or should it be phased out after several years when the other forms of testing are established and working smoothly? Periodic testing would appear more likely to detect dependent drug users as opposed to casual users. After an initial round of periodic tests, most of the dependent users should be detected and, therefore, the benefits of additional periodic testing may decrease. The Coast Guard, therefore, is also considering only requiring periodic testing once for each licensed individual. This alternative would significantly cut down on the costs of testing, and in light of other testing measures such as pre-employment and random testing, commenters should address the costs and benefits associated with this alternative.

Preemployment Testing Programs

The Coast Guard is proposing that preemployment testing be required of all applicants for employment aboard any vessel on which licensed, certificated, or documented personnel are required. The purpose of testing applicants is twofold: One, it would convey a clear message that the employer is serious about establishing and maintaining a drug-free environment; and two, it would help identify those who are either addicted to or so dependent upon drugs that they cannot abstain from drug use. Applicants would be informed that tests will be conducted to determine the presence of drugs. The concept of preemployment testing is flawed to some extent because individuals can avoid detection by abstinence. However, data on preemployment testing in the airline industry reveals some positive test results ranging from 4.2 percent to 20 percent among selected carriers. As such, preemployment testing does provide a valuable service in the selection of employees.

It is intended that the preemployment testing program be employer sponsored, however, the Coast Guard will consider other arrangements that would produce equivalent coverage. The Coast Guard recognizes that, in many instances, employment on commercial vessels is of relatively short duration, such as a single voyage, and that unduly repetitive testing of an individual could result. For pilots, their term of employment on a particular vessel, or for a particular employer, is frequently measured in hours. The Coast Guard specifically invites suggestions by unions, associations, or other organizations for alternative testing programs that would provide adequate assurance to employers that a prospective employee is not a substance abuser.

The Coast Guard also recognizes that employment of crewmembers frequently takes place on short notice and test results may not be available prior to signing on a new crewmember at the time of vessel sailing. While this could result in some instances where a crewmember could not be readily replaced at the time the results were made available to the employer, the Coast Guard anticipates that the number of such occurrences would not be significant since many experienced mariners will already be subject to random sampling programs from previous employers. However, the Coast Guard may revise the regulations to ensure that preemployment test results are made available before a vessel sails, or make provision for the acceptance of test results from previous periodic or random tests in lieu of the preemployment test. Comments on how to address this issue are specifically invited.

Random Sampling Programs

In addition to the testing programs outlined above, the Coast Guard is proposing the implementation of employer-sponsored random drug sampling programs. The proposed rules delineate the basic requirements for a random sampling program.

Random drug sampling applies the principle of random selection in that individuals are subject to drug testing at any given time. Periodic and preemployment screening on their own may not be sufficient deterrents since they permit individuals to schedule periods of abstinence from drug use. It is believed that random sampling programs are the most effective method currently available to limit potential drug use since they prevent a drug user from preparing for the screening in advance. There are data suggesting that random drug screening can reduce drug use. In the Defense Department's 1985 Worldwide Survey of Drug and Alcohol Abuse, overall drug use was registered to have dropped from 27 percent in 1980, to 19.0 percent in 1982, and then to only 8.9 percent in 1985. This drop in drug use corresponds to the implementation of servicewide random sampling programs. The Coast Guard's own experience with random sampling of its uniformed personnel has resulted in detected drug use falling 75 percent in the five years since the program was implemented. The success of the military's program, as well as those in industry, leads the Coast Guard to believe that random sampling would significantly limit the use of drugs in the marine industry.

It is envisioned that random sampling programs would be mandatory for all employers owning or operating vessels on which crewmembers are required to hold licenses, certificates of registry, or merchant mariners documents. Testing would be required for all personnel on inspected vessels and uninspected vessels on which any one or more personnel are required to be licensed, registered, or certificated. The Coast Guard's regulatory authority over these types of vessels and personnel is generally contained in 46 U.S.C. 2103, 3306, 7101, 7301, and 7701.

Besides employer-sponsored programs, there are alternative approaches that could be used to implement random programs, including Coast Guard or State administered programs. However, both of these alternatives were considered and rejected due to perceived problems with effectiveness, authority, cost, and applicability on both the federal and state level. The Coast Guard believes that employer-sponsored programs are the most effective because employers maintain routine contact with their personnel and have a vested interest in ensuring that their vessels and equipment are used properly.

Random selection means that every member of a given population has an equal chance of selection on a scientifically valid basis. Random selection would be accomplished through the use of a random-number table or computer based, random-number generator. Both methods select individuals by matching random numbers against employees' indentification numbers, e.g., social security number of employee, payroll account number, etc.

The Coast Guard desires that the standards utilized for random sampling ensure randomness and selection of a sufficient number of employees to force drug users to modify their behavior. The Coast Guard requests comments on a range of possible annual testing rates up to 125 percent for random selection. This does not mean that the rate will be set at that percentage, but it serves as a cap upon which comment and data are requested. In particular, the Coast Guard invites comments on documented cases or examples of other random sampling programs, the testing rates that were used, and their success. How would different sampling rates affect the numbers of drug users who volunteer for rehabilitation under each of the rehabilitation options appearing elsewhere in this text? Is there any evidence to support alternative assumptions regarding the rates at

which drug users would volunteer for rehabilitation? What is the lowest sampling rate for random testing that would be effective in determining drug abuse? Would a lower rate be more effective if the severity of the penalties increase? Would higher sampling rates result in sufficiently higher benefits to justify the costs? Do lower sampling rates necessarily result in lower benefits? Is it reasonable to assume that benefits are directly proportional to the sampling rate? Would the higher sampling add sufficient deterrence to reduce the costs of and need for rehabilitation? The Coast Guard intends to select an appropriate rate based on effectiveness, deterrence, costs, and benefits. Commenters need to identify what that rate should be and provide the basis for their views.

Random drug testing requires a specific implementation plan to deter drug use. For instance, a 125 percent plan would mean that a population of 1,000 would be targeted to provide 1,250 annual samples. Using a true random selection basis, employees selected for each weekly/monthly increment would be returned to the pool of eligibles and subject to reselection. The possibility of reselection ensures continuous deterrence in that an individual selected early in the testing cycle would still be subject to testing throughout the remainder of the year. One feature of this plan (which could be considered a drawback) is that some employees might not be selected at all during the first year and others could be selected more than once.

The Coast Guard is considering whether the drug programs should provide for adjustment of the minimum sampling rate based upon the success of the program. Although a numerical target is needed as a benchmark for discussion, in actual practice there may come a point of sharply diminishing returns from any set level as the mix of countermeasures detects most chronic substance abuse and deters casual use. The testing program could be designed so that it could be phased up or down as appropriate and in response to the pattern of results obtained through the program. In combination with post-accident testing experiences, the results of random testing would provide the most useful gauge of the need. The Coast Guard is considering whether there are circumstances under which the program should allow for the level of effort to be increased or scaled back based on a method of evaluation stated in the rule or, if an approval process is used, based on individual applications, and specially requests comments on this issue. The Coast Guard also solicits comments on whether companies that develop exemplary records should be relieved at some future time from some or all of the requirements of this proposal. As with other issued rules, the Coast Guard reserves the right to make appropriate adjustments in the rule in response to public comments. Are there any other ways to reduce costs or improve the effectiveness of the proposed rule? For example, are there any ways to grant employers flexibility without compromising the objectives of the rule? What would be the likely cost savings, if any, in a more flexible approach. The Coast Guard also requests comments as to whether the rule should contain a provision allowing a company with a high level of safety with regard to drug use, demonstrated over a designated time period, more latitude in determining the application of its anti-drug program.

The Coast Guard is concerned that the standards developed for random sampling protect an employee from harassment or discrimination. Thus, the Coast Guard is proposing to require employers to adopt a method of selection which ensures randomness (e.g., random number table), and to conduct this portion of its drug testing program at unannounced intervals.

In view of the above, the following questions regarding the standards for random sampling are posed:

1. Should the Coast Guard specify the method to be used by employers to select employees for testing?

2. Should the rule permit employers, especially the small ones, to use a third party to set up and maintain their drug testing program? They could choose to comply with the rule through the use of several options, including: (a) Form consortiums made up of small employers that would develop a centrally administered random testing program; (b) Form consortiums, and hire a contractor to develop and implement a random testing program; (c) Contract separately with an outside company that would set-up and provide these services; (d) Have existing industry-related groups (e.g. trade associations) set-up drug program in which small entities could participate; (e) Arrange to be included as a part of a larger company's drug testing program. who would be responsible for their implementation? Oversee their operation?

3. Another issue in this area is the matter of "randomness" among shall or isolated populations. What, for example, is the meaing of a random test to an employee population consisting of only one employee, or a few employees? This problem is particularly acute if the owner or manager of the business is also the sole person, or one of only a few persons, subject to testing. Similarly, although surprise is an essential feature of a true random sampling program, how can this be achieved when the employee is located in a remote location and must be transported some distance to provide a sample? This could result in the loss of the element of surprise in many cases.

A fundamental issue with a requirement for employer-sponsored random sampling programs is how to implement programs that are effective yet take into consideration the differences in the industry operations. Such problems as high turnover of personnel, vessels operated by only one licensed person, companies with small staffs, and differences in vessel operations and service all combine to make uniform implementation of random programs an extremely difficult proposition. To deal with these problems, the proposal also allows for the random sampling programs to be conducted by an association, union, or other organization with which individuals serving in the marine industry are associated. The Coast Guard encourages small operators to organize for this purpose.

One of the more difficult problems associated with random programs is the implementation of testing for individuals who own and operate their own vessels. These individuals are both employer and employee, and occasionally operate with a small staff to assist them. The same problem exists for pilots, who in most cases operate independently from any "steady" employer and instead work on a contract to contract basis. We recognize that a requirement for random sampling by and for these individuals would be extremely difficult to implement, and the Coast Guard welcomes any comments on how best to include them in the drug testing.

The requirement for random sampling may not only present practical problems, but may also have a disproportionate impact upon the owner or operator of a small vessel. The proposed rule is applicable to all inspected vessels and those uninspected vessels which must be operated by persons holding licenses, certificates or registry, or merchant mariners documents, regardless of the size of a company or number of individuals in a vessel's crew. For small vessels having only two or three affected crew members, the cost of actually conducting the chemical test and verifying the test results should be in the range of $100 to $300 per year, assuming

a random test rate of 125%, the use of a Medical Review Officer (MRO) under the HHS Guidelines, and that outside resources are readily available for an employee assistance program. Of more concern is the administrative burden on the owners and operators in establishing and conducting a random test program and arranging for MRO services, employee assistance counseling, and rehabilitation. Because the Coast Guard is concerned with the adverse effect this rule may have upon small entities, comments concerning this issue are requested. Specific comments are requested on whether cut-offs could be used to limit the applicability of the rule, i.e. size of vessel's crew, total number of company seagoing personnel, the gross revenue of the company, etc. It should be kept in mind that many of the unlicensed and undocumented personnel on these vessels later advance to hold a license or merchant mariners document and serve on larger vessels.

While the Coast Guard is currently considering only applying random sampling programs to vessel personnel, there are numerous categories of personnel in other marine related positions who, if intoxicated, can jeopardize the safety of vessel operations. Shipboard personnel today are only a small percentage of the personnel necessary for vessel operation. Shoreside personnel perform many functions that are essential to vessel operations, such as handling lines, loading or unloading cargo, operating ship or shoreside cargo gear and cranes, or transferring fuel. The potential for these shoreside personnel causing a dramatic marine accident is often just as great, and in some cases greater, than for those who actually serve on board the vessels. For this reason, the Coast Guard requests any comments on including shore-based personnel in an employer sponsored program.

The Coast Guard envisions that for any covered individuals who test positive for drug use, remedial action could be taken. If illicit drug use is determined, the individual would be ineligible for seagoing employment in the merchant marine until (1) he or she had been rehabilitated, if the individual did not hold a license, certificate of registry, or merchant mariners document, or (2) he or she was reissued a license, certificate of registry, or merchant mariners document, if the individual originally held one. Reissuance of the license, certificate, or document would be contingent on successful completion of rehabilitation. Commenters should address whether the types of procedures afforded an employee should vary depending upon the consequences of a positive test, and whether the burden of proof on time validity of test result should be borne by the employer or the employee. The issues of employer rights to terminate or retain an individual and whether employers must reemploy individuals after rehabilitation are discussed below.

It should be noted that it is not envisioned that the Coast Guard will actually review and approve random sampling programs. It is estimated that over 19,000 vessels would be covered by these rules, and most are owned or operated by companies which have only one or two vessels. The size and diversity of this population would create an enormous administrative burden both on the Coast Guard and the marine employers. By permitting program self-certification, this administrative burden would be avoided while permitting program sponsors to more easily implement programs which meet their operational needs. However, in cases where questions arise as to whether a program is meeting the standards proposed in this rule, the Coast Guard will review the program to ensure compliance with the standards. The employer is responsible for carrying out the anti-drug programs, including compliance with the applicable HHS Guidelines. Failure of the employer to do so, like any failure of a regulated party to comply with Coast Guard regulations, makes the employer subject to enforcement action, including civil penalties. This should ensure that employers do not circumvent the rules.

The Coast Guard does not envision that any Government funds will be expended for random sampling, except those costs associated with suspension and revocation proceedings for those holders of licenses, certificates of registry and merchant mariners documents who test positive for drug use. This does not include costs associated with data collection discussed below. Other than these, all costs would be borne by the industry, either the employer, the mariner, or any association or union that represents them. These groups could cut costs by joining together to negotiate volume or large scale testing contracts, since volume orders with laboratories will allow the price per sample to drop significantly. The Coast Guard is considering defining what it considers an "employer" sponsored program to include those innovative cost sharing schemes that may arise and which are legitimate. However, for an alternative scheme to be acceptable it should not represent a decrease in coverage or effectiveness.

Reasonable Cause Testing

In the Final Rule concerning Operating a Vessel While Intoxicated (CGD 84–099, 52 FR 47526, December 14, 1987), the Coast Guard included a section, 33 CFR 95.035, concerning reasonable cause for testing to determine whether an individual is intoxicated. These proposals would go a step further by requiring testing based on a reasonable and articulable belief that an employee is using drugs, but is not necessarily intoxicated. Even if no mistakes are made at work, the employee may demonstrate a change in character or behavior that is symptomatic of drug use or alcohol abuse. Such changes are normally characterized by mood swings and changes in appearance, attitude, and speech.

Because of the subjectivity of the criteria and the possibility of employee harassment, at least two of the employee's supervisory personnel would have to concur in the decision to test an employee based on a reasonable suspicion of drug or alcohol use. At least one of these supervisors would have to be trained in detecting symptoms of drug use or alcohol abuse. Are there practical problems to this approach? Should the observers have to be supervisors? There will be situations where only one supervisor is available or the only persons in a position to observe an employee are not the employee's supervisors. What other criteria could be used that would protect a disfavored employee from potential harassment through testing? Should there be a limit to the number of times an employee can be subjected to reasonable cause testing, in order to prevent unwarranted harassment.

The Federal Railroad Administration has specified, in its existing chemical testing rule, the types of incidents that could justify requiring an employee to undergo testing. Should there be specified circumstances, such as particular rule violations, under which chemical testing would be automatic? If so, what kinds of rule violations would suggest a drug or alcohol problem and should trigger reasonable cause testing? Could a similar program work in the marine industry? One difficulty lies in identifying which of the many operating rules applicable to vessels are sufficiently related to the mental and physical condition of the person responsible for compliance to permit inference that the violation of the rule

may be due to drug or alcohol use. Should all operating rules so identified be treated equally, with a violation of any rule establishing reasonable cause for testing, or should violation of only the more important or critical rules be treated in this manner? Would the impact of establishing a list of specific rule violations fall disproportionately on masters or persons directing the movement of the vessel and have little or no application to engineering personnel and others performing tasks that may be equally important to the safety of the vessel but not directly related to its navigation? The Coast Guard welcomes comments on whether this provision should be included in the final rule, how this provision might be implemented, and recommendations for specific operating rules which, when violated, would indicate reasonable cause.

We propose to authorize employers to test for any Schedule I or Schedule II drug, if there is reasonable cause to believe that a particular drug was used, even though any Schedule I and Schedule II substances would not be tested for in pre-employment, periodic, and random testing.

Commenters also should present any data on the effectiveness of existing programs which use reasonable cause- or suspicion-type testing. At least one program that we are aware of provides for rehabilitation similar to that proposed under option 3, but which was worked out by labor and management. Sanctions, in terms of salary loss, are potentially quite severe for persons discovered to have drugs in their systems as a result of a test. Commenters should address the benefits, costs and deterrence value of such a program.

Post-Accident Testing

A number of toxicological sampling and chemical testing methods are available today for accurately assessing post-accident drug and alcohol levels in the human body:

Breath alcohol testing is a well accepted and instantaneous means of indirectly determining the blood alcohol concentration (BAC) level in a person's system at the time of the sampling if the test is properly administered through the use of a correctly calibrated evidential breath testing (EBT) device. Breath alcohol testing will not detect the presence of drugs in the person's system. BAC standards have been empirically related to functional impairment, and blood alcohol testing is widely accepted as proof of intoxication due to alcohol if conducted in a timely fashion following a serious incident. In this instance, what constitutes testing in a timely fashion is partially dependent on the sensitivity and operating capabilities of the specific EBT being used. Breath alcohol testing may be conducted by non-medical personnel. However, prior to being considered qualified, an EBT operator must undergo a formalized course of instruction covering such subjects as the effect of alcohol on the human body, scientific concepts related to breath alcohol testing, and proper use, calibration, and maintenance of the specific EBT being used. Data obtained through breath alcohol testing must be properly documented, but is not subject to chain of custody considerations.

Urine testing will detect the presence of alcohol and/or drugs in the urine at the time of the test. However, urine testing is of limited value in determining the recency of drug use because of the wide variances in the time periods over which drug metabolites dissipate, or remain detectable, in the urine (e.g., marijuana is detectable for several weeks or more after use, while cocaine remains for no more than 2–4 days). Collection of urine samples requires no specialized training and can be conducted by non-medical personnel. However, to ensure the validity of sampling and subsequent testing, procedural safeguards are required.

Blood testing provides the most accurate and comprehensive determination of the level of alcohol and drugs in the blood at the time of the test. Also, blood test results are well accepted as a means of specifically identifying impairment due to alcohol if sampling is conducted in a timely fashion following the incident. Impairment standards are not yet available for drugs, but are currently being studied by the National Institute of Drug Abuse, U.S. Department of Health and Human Services. Blood specimens must be taken at a medical facility or by qualified medical personnel, and must be obtained in a timely manner (within a maximum of 8–12 hours after an incident) because of the relatively rapid elimination of drugs and alcohol from the blood. Blood samples must be refrigerated and the chain of custody must be preserved.

In a direct effort to improve the quantity and quality of marine safety data and to implement provisions of the Coast Guard Authorization Act of 1984 (Pub. L. 98–557), the Final Rule concerning Operating a Vessel While Intoxicated (52 FR 47526, December 14, 1987), imposed a requirement for the owner, charterer, managing operator, agent, master, or person in charge (hereinafter designated as the "marine employer") to determine whether there was any evidence of alcohol or drug use by individuals directly involved in a marine casualty. The rule provides two methods by which the above determination may be made: by personal observation of an individual's demeanor, appearance, etc.; or through optional chemical testing methods including breath analysis, or urine and blood sample testing.

The Coast Guard believes that many marine employers will opt to make a post-casualty intoxication determination through personal observation methods rather than through chemical testing. This belief is based on two reasons. First, some employers will consider the expenses associated with purchasing sampling or testing equipment, training personnel, and arranging chemical analysis of samples, to be too great. Second, since marine casualty reports may be referenced in potential civil litigation proceedings related to the casualty, some marine employers may be reluctant to obtain definitive evidence of the role of alcohol or drugs in the casualty.

While personal observation is a valid qualitative method for determining intoxication, obtaining blood, urine, and breath samples and chemically testing such samples is absolutely necessary to accurately determine blood alcohol concentration (BAC) levels and to detect the presence of specific drugs in the body. Therefore, while the Coast Guard believes that the existing rules will improve marine casualty data to a degree, requiring chemical testing is considered essential for better defining the extent of alcohol and drug involvement as primary or contributing causes of such incidents and for providing more reliable information upon which to base enforcement actions and is proposing mandatory post-accident testing. However, vessel personnel may not be physically compelled to provide samples under this proposal.

Requiring blood, urine, or breath sampling and chemical testing following the occurrence of *all* categories of reportable marine casualties would provide the most complete picture of the incidence of alcohol/drug-related accidents. However, to do so for all casualties would not be practical nor economically reasonable. The Coast Guard therefore is proposing to require sampling and testing following only those marine incidents which result in death, injury, or significant property or environmental damage. These would be called "serious marine incidents." A "serious marine incident" includes any

marine casualty involving a commercial vessel which results in: One or more deaths; an injury to a crewmember, passenger, or other person which requires professional medical treatment beyond first aid, and in the case of a person employed aboard a commercial vessel, which renders the crewmember unfit to perform routine or emergency vessel duties (Note: It is also proposed to revise the definition of reportable injury in the present 46 CFR 4.05 in order to conform with these new requirements.); damage to property in excess of $100,000; actual or constructive total loss of any vessel subject to inspection under 46 U.S.C. 3301; or actual or constructive total loss of any self-propelled vessel, not subject to inspection under 46 U.S.C. 3301, of 100 GT of more. The term "serious marine incident" also includes a discharge of oil of 10,000 gallons or more into the navigable waters of the United States, as defined in 33 U.S.C. 1321, whether or not resulting from a marine casualty; and a discharge of a reportable quantity of a hazardous substance into the navigable waters of the United States, or a release of a reportable quantity of a hazardous substance into the environment of the United States, whether or not resulting from a marine casualty.

The Coast Guard recognizes that the extent of injury or damages associated with a marine casualty, or the quantities involved in a pollution incident may be difficult to discern or estimate in the immediate aftermath of such an occurrence. Nevertheless, the marine employer would be required to make a timely, good-faith judgment as to whether or not an incident is, or is likely to become, a serious marine incident.

When reporting marine casualties to which the sampling and testing requirements are applicable, marine employers would be required to submit a Toxicological Sampling Report (Form CG–2692B) directly to the Coast Guard along with the Report of Marine Casualty or Accident (Form CG–2692). The Toxicological Sampling Report (Form CG–2692B) would be required to be submitted whether or not sampling or testing was conducted. (Note: Please refer to § 4.06–1 of the proposed regulations for details concerning Form CG–2692B.) A second copy of the completed form CG–2692B would also be required to be included with any blood and urine samples being shipped to the laboratory. A properly completed Form CG–2692B would constitute appropriate documentation of the chain of custody on the part of the marine employer from the time of sampling until shipment. The laboratory would then indicate receipt of the samples which will complete the chain of custody.

Following a serious marine incident that is not a reportable marine casualty, such as a pollution incident not resulting from a casualty, submission of a Report of Marine Casualty or Accident (Form CG–2692) would not be required. However, submission of a Toxicological Sampling Report (CG–2692B) would be required in these cases, in the manner specified above.

All marine employers would be required to arrange and pay for blood and urine sampling at an American medical facility or by qualified medical personnel as soon as possible after the occurrence of a serious marine incident, in all cases where it is feasible to obtain samples within 24 hours following the incident. Each employer would be required to have available an appropriate blood and urine sampling and shipping kit for use by medical personnel. Employers would also be required to ensure the chain of custody of samples and prompt shipment of samples to a laboratory for analysis. In some cases, chain of custody and shipment could be handled by the medical facility or medical personnel collecting the samples. These requirements would be applicable to foreign vessels which experience serious marine incidents in U.S. territorial waters. However, operators of such vessels would have the option to have American steamship agents arrange for blood and urine sampling of involved foreign seamen.

Because certain classes of vessels routinely operate beyond 24 hours from American medical facilities, it is recognized that in a substantial number of cases, the obtaining of blood and urine samples at American medical facilities or by medical personnel will not be feasible. For this reason, inspected vessels certificated for unrestricted ocean routes (i.e., tankers, freighters, MODUs, and most offshore supply vessels) and inspected vessels certificated for restricted overseas routes would additionally be required to be equipped with evidential breath testing devices (EBTs) and the means to provide secure storage of urine samples. When a serious marine incident occurs involving vessels of this type, and blood and urine samples of appropriate personnel cannot be obtained at American medical facilities within 24 hours, breath testing and collection of urine samples would be required to be performed on board as soon as possible after the serious marine incident. Marine employers would be required to train appropriate personnel in proper EBT equipment use, to provide for secure storage of urine samples aboard the vessel, to ensure the chain of custody, and to ensure prompt shipment of urine samples to the designated laboratory.

All marine employers would be required to have available blood and urine sampling and shipping kit(s) for use whether samples are collected aboard the vessel or ashore. Marine employers operating one or more vessels within a local geographic area could satisfy this requirement by maintaining a kit or kits at a central shoreside location. Standardized sampling and shipping kits would be made available for purchase through a designated laboratory, for an estimated cost of $25 per box.

Evidential breath testing devices (EBTs) would be required aboard inspected vessels certificated for unrestricted ocean routes (i.e., tankers, freighters, MODUs, and most offshore supply vessels) and aboard inspected vessels certificated for restricted overseas routes. They are to be selected from among those listed on the Conforming Products List of Evidential Breath Measurement Devices amended and published periodically by the National Highway Traffic Safety Administration (NHTSA), Department of Transportation. This listing would also be available through Coast Guard Marine Safety Offices and Marine Inspection Offices. Similarly, EBTs would be required to be calibrated by use of a unit listed on the NHTSA Conforming Products List of Calibrating Units for Breath Alcohol Testers. Calibration would be required to be performed with sufficient frequency to ensure the accuracy of the device, but not less frequently than provided for in the manufacturer's instructions. Calibration frequency varies from as often as before each breath test to once a year, depending on the sophistication of the device being used.

It should be noted that the proposed regulations specify that a BAC of less than .02 percent is considered to be a negative result. 33 CFR Part 95 presently defines intoxication as .04 BAC and above, however, the Coast Guard desires to know any EBT test results above .02 BAC to determine whether alcohol could have contributed in any way to an accident, as well as whether there was a violation of 33 CFR 95.045 with its rules limiting alcohol use. A BAC of .02 is the present limit for accurate EBT equipment readings, therefore, any BAC level .02 or above should be noted on Form CG–2692B.

even if the intoxication standard of .04 BAC was not violated.

In addition to the good-faith determination previously described concerning whether an incident fits the definition of a serious marine incident, the marine employer would be further required to determine whether obtaining blood and urine samples at a medical facility or by medical personnel within 24 hours is practicable. In this respect, the Coast Guard also recognizes that commercial marine operations are unique when compared to other transportation modes due to the frequent remoteness of vessels from land or medical facilities and personnel, and the inherent need for vessel crew members to provide the initial trained response for indefinite periods of time to a wide variety of emergency situations such as fire, explosion, grounding, flooding, oil or chemical spill, etc. until the arrival of and relief by shore-based or other assistance. Factors to be considered when determining whether samples can be reasonably or safely obtained include, but are not limited to, the vessel's capability to reach port within 24 hours; the feasibility of transporting personnel to a medical facility ashore or transporting medical personnel to the vessel; whether compliance will adversely affect the safety of life, property, or the environment; etc. Cases of serious marine incidents in which sampling is not conducted will be carefully scrutinized on a case by case basis to determine whether compliance could have been reasonably and safely achieved. When it is determined that samples could have been reasonably and safely obtained but were not, the Coast Guard would consider initiating appropriate enforcement action under 46 U.S.C. 6103 or 46 U.S.C. 7703.

A person who needs to be tested after a serious marine casualty is a "person directly involved in a marine casualty or serious marine incident." This is considered to be a person who supervises, performs assigned duties in connection with, or otherwise actively participates in, any commercial vessel operation or any activity occurring aboard a commercial vessel which is a substantial factor in the events leading to the marine casualty or serious marine incident. The term "person directly involved in a marine casualty or serious marine incident" also includes any individual serving aboard a commercial vessel who is fatally injured or who is injured to the degree specified in 46 CFR 4.03–2. The following guidelines are given for determining the persons typically directly involved in a serious marine incident;

(1) For a vessel casualty such as a collision or grounding: The master, person in charge of the vessel, pilot, deck or engineroom watchstanders, lookouts, and any other person who may have been performing duties related to the operation or navigation of the vessel, as appropriate, may be directly involved.

(2) For a vessel equipment casualty, such as failure of propulsion, steering equipment, or auxiliary machinery: The chief engineer, engineroom watchstanders, and any other person involved in causing the casualty, may be directly involved.

(3) For fires and explosions: The master, chief engineer, and any other person possibly involved in causing the casualty, may be directly involved.

(4) For injuries or deaths: The injured or deceased person(s), the person's supervisor, if the person was performing duties when the injury or death occurred, and any other person involved in the accident, may be directly involved.

(5) For oil or chemical pollution incidents not resulting from a marine casualty: The person supervising the oil or chemical transfer operation, any other individual participating in such an operation, and any person performing any duties or activities who may have caused or contributed to causing the pollution incident, may be directly involved.

The Coast Guard recognizes that situations will undoubtedly arise in which the master or person in charge of a vessel is one of the individuals directly involved in a serious marine incident and is subject to providing blood and urine samples, or breath testing, as appropriate. Such individuals would still be required to ensure that the necessary samples are obtained and tests performed, including their own. However, owners, managing operators, and charterers are equally responsible under 46 U.S.C. 6101 for arranging contingency plans for such eventualities. On a large vessel such as a tank or cargo vessel, for example, the chief mate, chief engineer, or other responsible, licensed personnel could and should be trained to assist the master in ensuring that samples are obtained, as well as to arrange and witness the master's participation when necessary. On a smaller vessel such as a towing vessel with a single licensed operator aboard, the owner could establish contingency plans which involve the assistance or supervision of shoreside personnel.

Similarly, a situation may arise in which the owner, managing operator, master, and person in charge of a vessel are the same person; for example, the owner/operator of an inspected or uninspected small passenger vessel. In that instance, the single owner/operator would also be required to arrange for sampling, including his or her own. If that individual is unwilling or unable to comply with the sampling requirements, due to possible intoxication, injury, or other reason, the Coast Guard may become actively involved in arranging for sampling, if notified of the incident. Limited numbers of Coast Guard personnel will be trained and equipped to respond in such situations.

As previously indicated, the Coast Guard would evaluate any situation in which samples could not be obtained to determine whether or not samples could have been reasonably or safely obtained. When it is determined that samples could have and should have been obtained, but were not, the Coast Guard would consider initiating appropriate enforcement action under 46 U.S.C. 6103 or 46 U.S.C. 7703.

At room temperature, blood samples will deteriorate within a matter of hours following extraction from the body. Blood samples would therefore be required to be kept in cool or refrigerated storage until shipment to a designated laboratory for analysis; to be shipped in a standardized shipping box which is lined with styrofoam and which includes a sealable ice can for cold preservation during shipment; and to be shipped via an overnight freight service to ensure arrival at the laboratory within 24 hours of shipment. These provisions are designed to maintain the integrity of each blood sample to the maximum degree that is reasonable, and to provide the most valid sample for analysis purposes.

At room temperature, drug metabolites and other substances in urine will also dissipate, though much more slowly than blood. For this reason, urine samples need not be refrigrated after collection if expeditious shipment to the laboratory is ensured; however, for practical purposes, urine samples obtained at an American medical facility could be shipped in the same cooled shipping kit along with blood samples. Urine samples obtained on board an inspected vessel to which on-board urine sampling requirements apply would not be required to be shipped to the laboratory by overnight freight service; however, they would be required to be shipped by the next most expeditious means available.

For analysis, marine employers must provide the samples to a laboratory which meets the HHS Guidelines. This may require increased costs to the marine employer in connection with overnight shipment of samples to the lab, however, this will provide a much higher level of consistency and confidence in analysis results, and would ensure timely, accurate reporting of analysis results to the Coast Guard.

Rehabilitation

The NPRM proposes four different options concerning the circumstances under which employees would or would not be given an opportunity to seek rehabilitation. Under the first option, an employee who comes forward voluntarily or tests positive for drugs for the first time would be eligible for rehabilitation rather than be discharged. Non-employees given a preemployment drug test need not be given an opportunity for rehabilitation. Once rehabilitated, the employee could be reinstated into his or her prior position. The second option would give rehabilitation rights to employees who come forward voluntarily or who are identified as drug users during periodic or random tests, but would not require that the same opportunity be afforded to drug users identified in reasonable cause or post-accident tests; those not afforded the right to rehabilitation could be discharged. In the third option, only volunteers could claim rehabilitation rights. Anyone testing positive for drugs could be fired immediately. In the fourth option, employers would not be required to offer an opportunity for rehabilitation. However, the employers could voluntarily offer a rehabilitation program. In all cases, employers would be free to offer more rehabilitation options than the minimum proposed. For example, an employer could voluntarily offer two chances for rehabilitation rather than one, however, drug use following rehabilitation would subject an individual's license, certificate of registry, or merchant mariners document to revocation proceedings. Employees who undergo rehabilitation, whether voluntary or mandatory, and want to retain or regain their position would have to meet the requirements of this rule to complete the program and receive a recommendation for reinstatement.

Each of these approaches has its own merits. For example, the broad rehabilitation program anticipated by the first alternative is likely to maximize the benefits to society by ensuring that more drug users will get the help they need. If users are simply fired, they will often lose access to, and perhaps incentive to use, rehabilitation services, and they will continue to be drug users. However, it could be argued that employees who are found to be drug users through reasonable cause tests are less deserving of an opportunity for rehabilitation, and the second alternative would therefore exclude them. The third alternative would be lower in direct costs, because rehabilitation would only be required for employees who seek it voluntarily, but for the same reason this alternative might produce less in societal benefits. To what extent would each of the three alternatives raise or lower costs and benefits? Is it reasonable to assume that more drug users would self-identify under option (3) than under either of the other two options? Are the costs of required rehabilitation programs warranted by the reduction in societal costs resulting from drug abuse? The Coast Guard specifically invites comment on which of these or other alternatives offers the greatest benefits at the lowest cost, while remaining consistent with the intent and purpose of 46 U.S.C. 7704.

The fourth option, under which rehabilitation would not be mandated, would be the lowest in costs. This alternative may provide the most flexibility to labor and management to determine the need for and the shape of any rehabilitation program and that it also could provide deterrence to drug use and thus may yield large benefits with low costs. Commenters should address whether this alternative would be effective for the maritime industry. How would this alternative affect the deterrence value of the Coast Guard proposal? What impact would it have on the costs and benefits? Would not requiring rehabilitation foster other approaches to combating drug usage?

Under the first three proposed options, rehabilitation would only be required to be made available to those individuals testing positive for the first time; a second positive, including a positive detected during the monitoring program, would subject the individual's license, certificate of registry, or merchant mariners document to revocation proceedings or termination of employment of an individual who does not possess a license, certificate, or merchant mariners document. In addition, refusal to surrender the license, certificate or registry, or merchant mariners document would initiate revocation proceedings.

Present Coast Guard regulations provide that an individual who voluntarily deposits his or her license, certificate of registry, or merchant mariners document and subsequently demonstrates a satisfactory rehabilitation or cure and complete non-association with dangerous drugs for a period of six months, can have the documents returned or reissued. A person whose license, certificate of registry, or merchant mariners document was revoked for use or possession of drugs is still subject to the three years waiting period in 46 CFR 5.901; however, the rules permit waiver of the three years upon completion of a rehabilitation program followed by a one year period of complete non-association with dangerous drugs.

The Coast Guard is considering applying similar voluntary deposit provisions to seamen who are detected as having used drugs as the result of an employer-sponsored program. Seamen who are eligible for and choose to undertake rehabilitation would be allowed to deposit their license, certificate of registry, or merchant mariners document with the Coast Guard. After completion of a drug rehabilitation program, the individual would have to enroll in a drug monitoring program, which would include unscheduled drug tests. At the end of this period, the individual would have to present to the Coast Guard evidence of successful completion of the drug rehabilitation and drug monitoring programs.

At the time of the adoption of a final rule in this proceeding, we intend to provide procedures for the conduct of such tests. We invite public comment on what the final rule should contain. For example, should there be a uniform testing period after rehabilitation, or should this be determined on a case-by-case basis? Who should make such a determination: The medical review officer, the EAP counselor, or both together? Should the employee be involved? How could employee involvement be accomplished? If we adopt a uniform post-rehabilitation period, how long should it be? Is six months reasonable? Would longer periods constitute an unacceptable burden on employees and on the employer? Others might argue that a long follow-up period, such as one year, is called for. Should the length of the follow-up period depend on the kind of drug that was detected? Should it depend on the severity of the individual's drug problem, as indicated by the kind of treatment that was found to be necessary? For example, should someone undergoing inpatient rehabilitation be subject to post-rehabilitation testing for a longer time

than someone who needs only abatement counseling?

During the post-rehabilitation period, should we prescribe the minimum and/or maximum number of tests to be administered? We would want to ensure that any necessary tests would be given frequently enough to ensure that the employee is free of drugs. At the same time, however, we do not want drug testing to become an instrument of harassment of the employee or an undue burden on the employer. Here again is the issue of whether the number of tests given should vary with the kind of drug used and the severity of the employee's problem.

One alternative, on which we also invite comments, is a specified post-rehabilitation testing period that would apply only if the employee, the EAP counselor, and perhaps the employer failed to agree on an individualized program. Such a fall-back system could provide, for example, for up to four additional tests over the 12 months following rehabilitation.

Ideally, the seaman would be retained in an employee status, which could include leave without pay while undergoing in-patient or other intensive rehabilitation program, and employment as other than a crewmember while undergoing an out-patient monitoring program. For holders of a license, certificate, or document, upon return of the individual's license, certificate of registry, or merchant mariners document; or for those not holders of a license, certificate, or document, upon successful completion of a rehabilitation program; the individual would be entitled to resume the seagoing position he or she previoulsy held or an equivalent position.

The Coast Guard seeks comment on practical problems that may arise incident to rehabilitation efforts. For example, vessels subject to the inspection and manning requirements of Subtitle II, Title 46 U.S.C., have prescribed minimum manning levels that necessitate the immediate hiring of personnel to replace the seaman undergoing rehabilitation. Even large vessels have few, if any, positions that do not require a license, certificate of registry, or merchant mariners document, and many vessel operators do not have suitable alternate employment available ashore. These problems are intensified for small vessels with limited crew and shoreside employees.

In considering the feasibility of implementing a comprehensive program for assisting and rehabilitating employees, the following questions are applicable:

(1) What is the minimum employment relationship that an owner or operator should be required to maintain while an employee is undergoing rehabilitation and monitoring?

(2) Should an employer be required to pay for rehabilitation and the drug monitoring program? (The NPRM does not propose such a requirement.)

(3) What is the appropriate duration of a monitoring program and the number of random chemical tests that should be conducted during the program?

(4) What should be considered a bona fide rehabilitation and monitoring program?

(5) What are the appropriate roles for the owner or operator and the Coast Guard in overseeing the monitoring program?

(6) Are the costs of required rehabilitation programs warranted by the reduction in the societal costs resulting from drug abuse?

The Coast Guard believes there may be some employees whose normal period of employment is too short to make it practical to require rehabilitation and reemployment. For example, even if a short term hire tested positive for drugs, the end of the scheduled employment term might come before completion of the rehabilitation program. Therefore, the Coast Guard does not propose to require employers to offer an opportunity for rehabilitation to temporary employees who are hired for a short period. That is, if such employees test positive, they could be dismissed immediately.

The Coast Guard is considering defining a temporary employee as one hired for a period of 90 days or less. However, there may be a considerable number of vessels that typically hire seasonal employees for periods slightly in excess of 90 days. For example, some small passenger carrying vessels hire additional personnel for the annual summer tourist season that lasts from Memorial Day to Labor Day. Should the temporary employment period be 120 days or some other period? Should the definition of temporary employment provide for different categories, by type of vessel or employee, and, if so, what categories are appropriate? Would it be feasible to define the temporary employment period as not more than 90 days, but provide for individual waivers or extensions?

We recognize that some employees hired on a "temporary" basis are actually regularly reemployed. Some of these employees are recurring seasonal employees, others are continually reemployed at the end of a specified term. These persons are regular members of the industry, and thus should not be excluded from the opportunity for rehabilitation and reemployment. Comment is requested on how to include these individuals under the rehabilitation and reemployment program.

The Coast Guard specifically requests comments on the (1) the merits of excluding temporary employees from the opportunity for rehabilitation, and (2) the definition of temporary employee.

The Coast Guard is also considering not requiring employers to provide an opportunity for rehabilitation and rehire under two other situations: employees on strike and employees scheduled for layoff. The Coast Guard specifically requests comments on the merits of excluding striking employees or employees scheduled for layoff, and asks commenters to define "scheduled for layoff."

Another problem concerns new employees. Should a seaman be offered the opportunity of rehabilitation and reemployment even though he or she may have joined a company only recently and might still be on some sort of probation? Should eligibility for rehabilitation and reemployment be based on length of service, hiring status, or some other criteria?

Employee Assistance Programs

One method of preventing, as well as encouraging the voluntary cessation of, drug and alcohol use is the establishment of an Employee Assistance Program (EAP). An EAP, in addition to including any of the rehabilitation options described above, includes education and training components.

An EPA program is multi-faceted and supportive in that it offers education and training as a means of combating and preventing drug or alcohol abuse. It must be recognized that an EPA itself will not seriously deter drug or alcohol abuse unless accompanied by the threat of discovery by drug testing. The Coast Guard had a Drug Exemption Program that was intended to encourage Coast Guard military personnel to seek rehabilitation by voluntary disclosure of past illegal drug use. A Commanding Officer's grant of a one-time exemption, following disclosure, precluded disciplinary action and administrative action other than an honorable discharge. Rehabilitation for members who were retained included counseling, education, and inpatient treatment at U.S. Navy facilities for members diagnosed as drug-dependent. Users detected without voluntary disclosure were subject to disciplinary or other adverse administrative action. The

Coast Guard's experience between 1980 to 1982 disclosed that the Drug Exemption Program failed to convince members using illegal drugs to seek help and cease their misconduct. Very few drug-dependent members were identified or treated and the incidence of drug use did not appear to decline as a result of the program.

Based on the above results, the Coast Guard cancelled the exemption program and initiated a random drug testing program which witnessed a decrease in the number of routine confirmatory urinalysis tests from 103 per 1,000 in 1983 to 29 per 1,000 in 1986. Thus, it is felt that the threat of detection through random sampling is a necessary part of an effective drug program. It should motivate individuals to stop using drugs and may encourage them to seek help through EAPs voluntarily.

The type of EAP services provided should consist of the following:

(1) Educational materials regarding drug and alcohol abuse and the consequences of such use from an employment, safety, and personal health/welfare perspective.

(2) Annual and other recurring training in the form of classes, forums, speakers, etc. for supervisory personnel.

(3) If adopted, rehabilitation, to consist of referral and other services as well as procedures for returning a rehabilitated employee to work, and monitoring their continued drug-free status.

The establishment of an EAP would not require payment of compensation for absence from work to obtain counseling and treatment. Compensation remains a matter between employee and employer.

Who should be afforded EAP services and under what circumstances? What is the estimated level of voluntary enrollment in EAP services at sampling rates of 125 percent and at 12.5 percent under each rehabilitation option? What are the estimated costs of individual EAP rehabilitation services under each rehabilitation option? Should training be mandatory for employees only in the first year and required annually only for supervisors? Should the Coast Guard specify a minimum training period?

It is recognized that not all employers will have the fiscal resources to implement a "company" EAP; however, the employer has a responsibility to both employees and the public to provide for a drug and alcohol abuse free environment to the maximum extent practical. As such, employers could provide or make EAP type services available through one of the following means: (1) A company operated EAP; (2) contractor/consortium arrangement; (3) arrangements with local community service organizations; or (4) other alternatives justified as being workable and providing an equivalent level of services. Comment is requested on the other possible alternatives.

Oversight of the Chemical Testing Program

Procedures for testing and analysis of tests, as well as the accreditation of laboratories, must follow the HHS Guidelines under this proposal. However, because of the nature of the marine transportation industry, there is always the possibility that testing will be required of employees in remote locations. It is expected that every employer will attempt to ensure that all the requirements of the testing program are met. However, it is realized that in some cases an employer will not be able to supervise testing or even ensure testing is performed; therefore, the Coast Guard intends to establish guidelines on acceptable deviations from the testing requirements and procedures. These guidelines would not exempt employers from the testing requirements, but would outline the instances in which testing deviations may be acceptable to the Coast Guard. Employers would be required to make good faith efforts to ensure that testing is conducted in the most expedient but proper method available; non-compliance may result in administrative penalties.

Employer Flexibility

The Coast Guard recognizes that drug use is a complex problem that requires dynamic responsive solutions. The Coast Guard believes that its proposed program meets the agency's statutory mandate to promote safety and that it responds to the public's need for a safe and drug free marine environment. The Coast Guard is also interested in comments on whether there are ways to increase flexibility in the program or reduce costs without decreasing safety. For example, should the Coast Guard allow covered employers the option of submitting to the Coast Guard a company-specific anti-drug program that conforms with the basic requirements of the Coast Guard proposed rule?

The Coast Guard recognizes the costs and burdens associated with drug abatement in general, and wants to ensure that marine anti-drug programs are as cost-effective as practicable. Would providing for company-specific programs encourage the development of innovative solutions that may be less costly and more effective? How? Could similar innovations be developed under the proposal set forth in this notice? How can the Coast Guard ensure that its final rule promote the development of efficient and effective solutions?

The proposed Coast Guard program includes a required random sampling rate that could range as high as 125 percent of the tested population. This level has proven to be effective in reducing drug use among Coast Guard personnel, but we have asked for comments on how low a testing percentage could be adopted without undermining the deterrent effect of the testing program. Whatever sampling rate is chosen as the industry-wide norm, would it be possible for a company-specific program to be designed in a way that would allow employers who can justify a need to test at a lower or higher sampling rate to test at this rate. How could this be accomplished?

The Coast Guard also requests comments on whether employers could also limit the size of the population subject to a full range of testing strategies to those sub-groups of employers where an initial round of testing has revealed a more serious drug-use program. In such a case, the employers may be able to rely on a less costly set of requirements to ensure that employees in sub-groups with less serious or more easily determined problems, remain risk-free. In addition, are there ways employers may avail themselves of less costly and less instrusive technologies as such advances are made while ensuring an appropriate-level of safety? Are there other types of flexibility that the Coast Guard should consider? Commenters are requested to submit any empirical data that support their views.

Could the current proposal provide similar flexiblity by simply providing a waiver for companies that, for example, ask to use a test they establish which achieves an equivalent level of safety? What, if any, fundamental requirements should be present in an acceptable company-specific drug abatement program, and what guidelines would the Coast Guard use in reviewing requests for waviers or amendments if such modifications are allowed? Should, for example, the Coast Guard be required to approve any modifications that are designed to achieve a safe and drug-free marine environment? Should these requirements or review guidelines be different from modifications submitted by small companies? Should the Coast Guard be required to act on an application for approval of a company-specific program, an amendment, or a waiver request, within a set time period? What form should the application take? What impact would allowing these

alternatives for increasing flexibility have on the Coast Guard?

The Coast Guard invites comments as to what methods might be used to facilitate the inclusion of small entities in the program and whether all small entities should be required to develop and implement a drug abatement program. Commenters who believe that the proposed rule should not cover small entities, either in whole or in part, should explain the basis for their views and describe how they would define small entity for this purpose.

Employee Privacy

The Coast Guard specifically requests public comment on what, if any, procedures and safeguards should be prescribed to minimize the invasion of the privacy of the persons being tested. Since the provisions of 46 U.S.C. 7704 require revocation of the license, certificate of registry, or merchant mariners document of an individual convicted of violating a drug law or shown to be a user or addicted to drugs, the proposed rules would require that the Coast Guard be notified of all positive tests of individuals holding licenses, certificates, or documents. A second positive would result in revocation proceedings being initiated against an individual's license, certificate of registry, or merchant mariners document. Are there ways to ensure that an employer is aware of a person's past testing history without denying that person an appropriate level of confidentiality?

The Coast Guard is concerned with the circumstances under which test results would be given to persons other than the employer sponsoring the testing program or the employee. For example, should test results be submitted to a prospective employer? If so, should the data be given at the request of the future employer, at the discretion of the employer conducting the test, or at the request of the employee? Another option is authorizing the release of test results only in specified circumstances, such as cases where the employee had their license, certificate of registry, or merchant mariners document revoked after refusing to undergo rehabilitation or had failed a second test after rehabilitation.

The potential for the release of data may also complicate the issue of an employee's right to contest the results of a test. A urine sample that had been subject to tampering could unjustly end an employee's career even with another employer, and it might be necessary to permit the employee to challenge the integrity of the test procedure.

There are other persons who may wish to know the results of drug tests, and it may be appropriate to develop rules to govern the release of test data to them. For example, should the Coast Guard prohibit providing access to test results to the general public, including the news media? Does the Coast Guard have the authority to do so? What about access by other government agencies which might want data for statistical, regulatory, or law enforcement purposes?

A related issue involves whether to distinguish between releasing general statistical data, such as the total number of positive tests at a company in a month or year, and name-specific data. Small companies and their employees may have an especially difficult problem since small organizations will have fewer people to test at any given time period. It may be that even seemingly neutral statistical data would have the effect of identifying an individual. This potential may be exacerbated if only a small portion of the population is tested in a year.

Should the Coast Guard treat the privacy issue for the various testing programs differently?

The Coast Guard is proposing under some of the rehabilitation options discussed above that employees not be fired on the basis of a single positive drug test. As described elsewhere in this notice, the employee may have an opportunity for rehabilitation following the first positive drug test. If the employee declines to take advantage of this opportunity, or if the employee does not successfully complete rehabilitation, he or she may be fired and their license, certificate of registry, or merchant mariners document subject to suspension and revocation proceedings. If, however, following successful completion of rehabilitation, the employee again tests positive for drug use, the employee may be fired and the employee's license, certificate of registry, or merchant mariners document is subject to suspension and revocation proceedings without further opportunity for rehabilitation. This policy may involve some complications in practice. Implementation of the policy seems straightforward when an employer continuously employs the individual throughout the process, but in some instances employment is more transient, with many employees regularly moving from one employer to another. An employee might test positive with one employer and, with or without having completed rehabilitation successfully, move on to another job. This possibility is great if the individual does not hold a license, certificate of registry, or merchant mariners document.

In these situations, how is the second employer to know of the first positive test, especially if the individual does not hold a license, certificate of registry, or merchant mariners document? How is a subsequent employer to know of a series of two positive tests with two different employers? What action should each of these parties take upon learning of a positive drug test or tests with a former employer?

One possible way of dealing with these questions is to require employers covered by these rules to require job applicants to disclose, in writing, all instances in which they have tested positive for drugs within a certain period of time. A false response would itself be grounds for firing the worker. Comments on the merits of this disclosure approach are requested. In addition, if this approach was used, to what period of time should the disclosure requirement refer? (e.g., one, two, or three years? Any time in the applicant's work history?) Should the disclosure requirement apply only to positive drug tests under the provisions of this rule, or should any positive drug test (e.g., one conducted in connection with athletics or school activities) have to be disclosed?

Another issue pertains to a situation in which an employer has hired an individual who the employer knows, perhaps through voluntary disclosure, to have had a prior positive drug test, and the employee again tests positive for drugs. Should the employer then be authorized to fire the worker, even though this is the first instance of a positive drug test while the worker has worked for the current employer? Should the employer treat the positive test as a "first positive test" and provide an opportunity for rehabilitation if the last prior positive test was a certain amount of time in the past (e.g., more than three years ago)?

What is the position of an employer confronted with an applicant for employment who tested positive twice within the disclosure period, but who at the time of his application is "clean" or alleges that he or she has been successfully rehabilitated? Should the employer refuse to hire (or, indeed, be barred from hiring) the applicant? (Where they apply, statutes prohibiting nondiscrimination on the basis of handicap, such as section 504 of the Rehabilitation Act of 1973, as amended, may forbid a refusal to hire a drug abuser unless the individual's current drug use poses a danger to persons or property.)

Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291 and significant under the DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). A draft regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the Marine Safety Council (G–CMC/21) (CGD 86–067), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593, from 8 a.m. to 3 p.m. Copies may also be obtained by referring to the **"FOR FURTHER INFORMATION CONTACT"** paragraph.

The proposed regulations would require proof of an individual's drug-free condition through the use of various testing programs. The proposed regulations mandate periodic urinalysis in connection with required physical examinations for licensed and documented personnel, and pre-employment and random sampling of all employees aboard any vessel on which licensed, certificated, or documented personnel are required. The testing programs also contain requirements concerning reasonable cause and post accident testing. Under the options proposed for comment, rehabilitation would be made available to certain personnel testing positive for drug use the first time, or those who volunteer for rehabilitation, with the opportunity to return to their previous position after undergoing a six month drug monitoring program. The Coast Guard does not believe these requirements will impose significant costs on either the private or public sectors, and the costs will normally be proportional to the size of the vessel or operation. There may be a substantial administrative burden on the operators of small vessels and some individuals.

Commenters should be aware that other operating administrations within the Department of Transportation also are proposing drug testing programs. Elsewhere in today's **Federal Register** are NPRMs issued by Urban Mass Transportation Administration and the Research and Special Programs Administration. In addition, the Federal Aviation Administration published an NPRM in the **Federal Register** on March 14, 1988 (53 FR 8368); the Federal Railroad Administration's NPRM was published on May 10, 1988 (53 FR 16640); and the Federal Highway Administration (FHWA) published its NPRM on June 14, 1988 (53 FR 22268). Each of these rulemakings addresses the costs and benefits of the proposals and are generally consistent with one another. In some instances, however, and generally as a result of differences in the industries affected, the assumptions differ from those discussed in this proposed rulemaking. Obviously, changes in assumptions could affect the costs and benefits. Because of the nature of some industries, costs for similar elements also may vary or could vary enough to warrant sensitivity analyses. Other changes in assumptions, such as test costs or rehabilitation costs, also can have an affect on the economic analyses. Commenters may find it helpful to review the notices of proposed rulemakings or the economic analyses prepared by the other operating administrations. Comparisons may aid commenters in reviewing data on this proposal and in formulating comments. In reviewing the economic analysis and the basic assumptions made, commenters should address specific areas where they agree or disagree with the assumptions and the basis for the comment. Commenters are directed to the other rulemakings and their assumptions as a source of information in submitting comments. A copy of each of the documents has been placed in the docket.

There were several alternatives considered. These included: Not addressing the problem in regulation or policy; only requiring periodic drug screens for personnel receiving physical examinations; requiring only pre-employment testing; requiring only random sampling programs; requiring only reasonable cause testing; requiring only post accident testing; having the Coast Guard or States conduct testing; or requiring random sampling programs in combination with periodic, pre-employment, reasonable cause, and post accident testing.

The last alternative was determined to be the most acceptable, since all crewmembers on vessels covered by the rules will be subject to random and pre-employment testing programs administered by employers, associations, and unions as well as providing for periodic testing of individuals holding licenses or merchant mariners documents. Random programs are believed to be the most effective method in deterring drug use because of the increased probability of detection. Concurrently, those personnel not subject to a random screening program for the prescribed period of time or those initially applying for employment in the merchant marine would still be screened for drug use. In addition, the evaluation of the role of drugs and alcohol in marine accidents will be possible. This approach facilitates program flexibility, increases probabilities of detection, eases the administrative burden, lowers cost, and provides greater effectiveness, while at the same time ensuring that all crewmembers on covered vessels are subject to testing.

Program Costs

The approximate costs (in constant 1986 dollars) of the regulatory proposal associated with the requirement for drug screening are as follows:

Periodic Testing

The estimated number of annual license and merchant mariners document transactions that require physical examinations (39,250), multiplied by the estimated cost of an initial drug screen ($25), gives the total costs of initial periodic drug test ($.98 million). Using that figure, and an assumed percentage of possible positive testings of 25%, gives an estimate of the number of required second, confirmatory testings (9,812). Using a cost of $60 per confirmatory screen the average annual cost expected for confirmatory tests is $.59 million. The total estimated annual cost of the periodic drug screening would be $1.57 million.

If all the individuals subject to periodic testing are enrolled in employer-sponsored or equivalent testing programs, and therefore eligible for testing at costs comparable for pre-employment and random sampling ($15 for initial tests, and $25 for confirmatory tests), the total estimated annual cost of the periodic screening would be reduced to $.84 million.

It should be noted that these testing costs do not take into consideration those individuals obtaining raises of grade who have had physical examinations for original licenses or renewals within three years nor those individuals holding First Class Pilot licenses but not serving on them and therefore not required to receive an annual physical examination. Actual costs are therefore expected to be less than those shown above.

Preemployment Testing Programs

Due to the career paths of many mariners, the costs of a preemployment testing program are extremely difficult to assess. Computation of the program's estimated cost will be dependent on how preemployment testing is applied and whether or not unions and other organizations are to be considered employers.

It is estimated that 131,700 individuals are employed on vessels on which

licensed, certificated, or documented personnel are required. Until comments are received relative to application of this program, it is assumed, for purposes of the evaluation, that 10 percent of the total individuals are new to the industry each year, and, of the remainder, 20 percent change employers each year. Therefore, an estimated 36,876 mariners would receive preemployment testing annually.

Multiplying the number of mariners tested by the cost of an initial drug screen ($15), it will cost $.55 million for initial preemployment drug tests. Assuming a need to confirm a percentage of possible positive testings of 25%, the projected number of required second, confirmatory testing is 9,219. Multiplying this figure times the estimated cost of confirmatory tests ($25), it is estimated that it will cost $.23 million for confirmatory testing. With an average annual administrative cost of sample testing of $.23 million (36,876 + 9,219 x $5), the total estimated annual cost of the preemployment testing program is $1.01 million.

(Note.—Estimated testing cost is lower for preemployer testing than periodic testing due to volume contracts.)

Random Sampling Programs

(Note.—A 125% random selection rate is used for this analysis. This is the same rate used by the Coast Guard for testing its military personnel. If a lower rate is adopted in the final rule, the following costs will be correspondly less.)

The total annual cost of the random sampling program is estimated to be $4.5 million. This was arrived at by assuming that out of an estimated affected population of 131,700 seamen, 125 percent are to be tested each year. Therefore, 164,625 samples are to be tested annually. Multiplying this figure times the estimated cost of an initial drug screen ($15), it will cost $2.5 million for initial random drug tests. Assuming a need to confirm a percentage of possible postive testings of 25%, the projected number of required second, confirmatory testing is 41,156. Multiplying this figure times the estimated cost of confirmatory tests ($25), it is estimated that it will cost $1 million for confirmatory testing. With an average annual administrative cost of sample testing of $1 million (164,625 + 41,156 x $5), the total estimated annual cost of the random testing program is $4.5 million.

(Note.—Estimated testing cost is lower for random sampling than periodic testing due to volume contracts.)

Reasonable Cause Testing

Reasonable cause testing is discretionary, highly subjective, and contingent on the availability of more than one supervisor, as well as the level of training of the supervisor(s). In addition, there is little or no data available concerning the incidence of drug use in the commercial marine industry. For these reasons, it is difficult to estimate the number of instances in which such testing would be potentially necessary or undertaken, nor is it possible to accurately assess the cost/benefit impacts of such testing.

In general, however, it is evident that the primary value of reasonable cause testing is its potential capability for detecting and determining drug use prior to the occurrence of marine casualties or other significant events. It is not possible to estimate how many such incidents could be prevented. As discussed later, if even a small percentage of deaths, injuries, or property/environmental damage is prevented through reasonable cause testing, the benefits will outweigh the associated costs.

As an estimate, it is believed that up to 7.5 percent of the seamen covered by this program could be tested annually. The total annual cost of the reasonable cause testing is therefore estimated to be $.27 million. This was arrived at by assuming that out of an estimated affected population of 131,700 seamen, and a testing rate of 7.5 percent, 9,878 samples are to be tested annually. Multiplying this figure times the estimated cost of an initial drug screen ($15), it will cost $.15 million for initial drug tests. Assuming a need to confirm a percentage of possible positive testings of 25%, the projected number of required second, confirmatory testings is 2,470. Multiplying this figure times the estimated cost of confirmatory tests ($25), it is estimated that it will cost $.06 million for confirmatory testing. With an average annual administrative cost of sample testing of $.06 million (9,878 + 2,470 x $5), the total estimated annual cost is $.27 million.

Post Accident Testing

Based on historical data, there are approximately 4800 marine casualties per year. Of these, approximately 1900 can be considered "serious marine incidents." It is estimated that, for various reasons, only 75 percent of the serious marine incidents will be able to conduct testing in a timely and efficient manner. The following costs are estimated for those 1425 incidents where testing will occur.

Of the estimated 1425 serious marine incidents occurring each year and where testing will be possible, it is estimated 66 percent (950) will occur in locations where blood and urine samples can be collected at American medical facilities within 24 hours. Using an estimate of three (3) persons being tested in each incident, 2850 samples will have to be taken. Multiplying that number by the estimated medical fees for obtaining the samples ($50 per sample), the cost of transporting personnel to be tested ($50 per individual), and the cost of shipping the samples to an approved laboratory ($50 per sample), it is estimated that it will cost $.43 million to conduct this testing. Adding this number to the cost of analyzing the samples ($100 per sample), it is estimated that it will annually cost $.72 million to conduct this type of testing.

Of the estimated 1425 serious marine incidents occurring each year and where testing will be possible, it is estimated 33 percent (475) will occur in locations where urine samples can only be collected by ship's crew. Using an estimate of three (3) persons being tested in each incident, 1425 samples will have to be taken. Multiplying that number by the estimated cost of shipping the samples to an approved laboratory ($50 per sample), it is estimated that it will cost $.07 million to conduct this testing. Adding this number to the cost of analyzing the samples ($100 per sample), it is estimated that it will annually cost $.21 million to conduct this type of testing.

In addition to the testing, the cost of providing shipboard sample kits and EBTs are necessary. It is estimated 35,000 kits will be purchased at a cost of $25 apiece for a one time cost of $.88 million. Each year, due to accidents, 1425 kits would have to be restocked for a cost of $.04 million. Additionally, there are approximately 1600 vessels certificated for unrestricted ocean routes, or for restricted overseas routes, which will provide an EBT at an approximate cost of $440 apiece, for a total cost of $.7 million. Training for personnel to use EBT (approximately 9600 people) is estimated to be $4.8 million if it costs $500 to train each one. The total equipment and training costs will be approximately $5.72 million.

The costs of the post casualty testing requirements is $6.65 million.

Rehabilitation

The costs involved with rehabilitation and drug monitoring are difficult to compute since the type of services available vary with the drug involved. Also, the number of personnel who will

take advantage of the opportunity for rehabilitation are unknown. However, the following are offered as estimates for the total costs of Option 1, the broadest option under consideration.

(Note—The detection rate used for this analysis is based on a 125% random selection rate. If a lower random selection is adopted in the final rule, the detection rate, and the following costs, will be correspondingly less.)

The number of persons employed on vessels required to have individuals holding a license, certificate of registry, or merchant mariners document is estimated to be 131,700. Multiplying that number by .075 (7.5 percent estimated detection rate), the total number of personnel who could be eligible for rehabilitation is 9,878. Multiply that number by .33 (33 percent) to determine the number of personnel who are eligible for, and undergo, rehabilitation (3,260). An estimated 67 percent of detected drug users will not undergo rehabilitation because they: (1) Refuse to be rehabilitated; (2) are not eligible for rehabilitation because they are temporary employees; (3) will decline the opportunity for rehabilitation; or (4) will be subject to termination of employment and/or subject to suspension or revocation proceedings because they tested positive for drug use a second time. This percentage applies to the marine industry and reflects the composition of its workforce.

Multiply that figure by the maximum estimated cost for an in-patient rehabilitation program ($13,000) to receive the estimated annual cost for in-patient rehabilitation ($42.4 million). The Coast Guard is proposing that all persons undergo in-patient rehabilitation. 46 U.S.C. 7704 mandates that a person be "cured" in order to forego revocation of their license, certificate of registry, or merchant mariners document. Since many individuals detected for drug use may not require full in-patient care, lowering this 100% requirement to another percentage, e.g. 5% as has been used by the FAA in their NPRM (March 14, 1988, 53 FR 8368), would decrease the costs substantially.

Multiply the number of individuals undergoing rehabilitation by the maximum estmated cost for a six month out-patient monitoring program ($1,800) to determine the cost of out-patient rehabilitation ($5.9 million). The total annual estimated cost of rehabilitation is $48.3 million.

No estimate is offered for the costs of employing an individual during rehabilitation or rehiring them after rehabilitation. There is no requirement that the individual be paid during rehabilitation, therefore, the costs of paying an employee during rehabilitation will depend totally upon company policy or the labor agreement an employer has with the employee. Costs can range from the price of the rehabilitation solely, to full pay up to six months or more.

Administrative costs will also vary, being dependent upon the type of program an employer adopts. However, for the majority of employers, it is believed the administrative costs will be minimal since most employers will contract out for rehabilitation services and include the administrative costs in the total rehabilitation cost.

Option four, which does not mandate any type of rehabilitation program, would have negligible costs.

Transportation

Periodic, Preemployment, Random and Reasonable Cause Testing: The costs associated with transportation and test taking are difficult to accurately calculate since such numbers are entirely dependent upon whether the merchant mariner will have to go to a laboratory or other facility for testing or whether test samples will be collected incident to employment. Many sample takings will be conducted during an individual's free time, since the requirement for a test is for a personal license, certificate, or document. However, it is assumed that, for the most part, mariners will be within one-half hour of a testing facility when located at their residence, place of employment, or Regional Examination Center, and that it should take fifteen minutes to complete a test. Therefore, it is projected that it will take a typical mariner one and one-quarter hours to complete this requirement, with the majority of testing during an individual's free time. Also many employers currently have some type of testing program in place that, with little or no program alteration, may meet the criteria the Coast Guard is proposing.

Rehabilitation: The costs associated with transportation are difficult to accurately calculate since such numbers are entirely dependent upon whether the merchant mariner will have to visit a rehabilitation or monitoring center or whether the employer will have a program run at the place of employment. However, it is assumed that, for the most part, mariners will be within one-half hour of a rehabilitation or monitoring facility when located at their residence or place of employment. Therefore, it is projected that it will take a typical mariner one hour travel to complete this requirement, with the majority of this time during an individual's free time.

Option four, which does not mandate any type of rehabilitation program, would have negligible costs unless an employer chose to provide for rehabilitation voluntarily.

Post casualty Testing: For the 1425 serious marine incidents after which toxicological sampling will be feasible, it is estimated that an average of 1 hour will be required to transport individuals to and from medical facilities for blood and urine sampling following approximately 950 incidents, and 1 hour will be required for collecting samples. An estimated 3 persons will be subject to sampling for each incident. This will result in 5700 hours expended by the persons being tested. Also an estimated 2 supervisory personnel will be necessary for witnessing and documentation. These individuals would require 1 hour for the round trip to the medical facility, 1 hour at the medical facility, and 1 hour for completing documentation and for arranging shipment of samples to the designated laboratory. This would result in 5700 hours expended by supervisory personnel. The total hours associated with obtaining blood and urine samples at medical facilities would be 11,400 hours.

It is estimated that toxicological sampling aboard vessels will occur following approximately 475 serious marine incidents. An estimated 3 persons per incident would be subject to sampling, and 0.5 hour would be required for the urine sampling and breath alcohol testing procedure. This would result in 713 hours expended by persons providing samples. An additional 2 supervisory personnel would participate for witnessing and documenting the sampling. Approximately 0.5 hour per person sampled and tested would be expended by the supervisors, as well as 0.5 hour for completing required documentation. This would result in 950 hours expended by supervisory personnel. Finally, delivery of samples to a shipping location upon reaching port would require one person approximately 1.5 hours roundtrip. This would result in 713 hours expended in shipment of samples. The total hours associated with obtaining urine samples and conducting breath alcohol testing aboard vessels would therefore be 2376 hours.

The total hours required to support the proposed requirements for drug and alcohol testing following serious marine incidents would be 11,400+2376=13,776 hours.

Total Cost

The total first year maximum cost of the drug testing programs, plus the cost of rehabilitation, is estimated to be:

	Million
Periodic testing	$1.57
Preemployment testing	1.01
Random testing	4.50
Reasonable cause testing	0.27
Post casualty testing	6.65
Rehabilitation	48.30
Total	62.30

Based on experience with in place chemical testing programs, such as DOD and the Coast Guard, the percentage of persons testing positive should drop significantly over a period of time. Since the worker population in the marine industry is highly mobile as compared to servicemen in the armed forces, no prediction can be made as to how fast this decrease in positive test results will occur. Therefore, it has been assumed that costs will decrease constantly over the first three years, and thereafter costs for confirmation tests and rehabilitation should decrease to 33% of the amounts calculated above, thereby reducing the costs in subsequent years to approximately $22 million.

Program Benefits

As shown in a June 1984 U.S. Department of Health and Human Services report entitled *Economic Costs to Society or Alcohol and Drug Abuse and Mental Illness: 1980,* the economic costs to society at large from drug abuse is estimated to be $66 billion annually. Using this annual figure, the total cost to society from drug abuse over the 10-year period following 1988 would be $405.5 billion more if corrective measures are not taken. Over 50 percent of the $66 billion estimate of the cost of drug abuse in society at large is in the form of reduced income of drug users compared with those who do not use drugs. Is it reasonable to assume that a corresponding percentage of benefits would result from increased productivity of the covered marine employers? Are there more accurate estimates and estimating methodologies that should be used in estimating the potential benefits associated with this proposal? The Coast Guard has placed the 1984 report in the public docket, and invites commenters to submit their views on the applicability of the study's conclusion to this notice.

Although revisions to the casualty reporting program have recently been effected, existing data does not readily identify drug-related casualties; therefore, the Coast Guard will not estimate the total cost benefits of this proposal at this time. However, the following must be kept in mind. In 1984 there were approximately 2300 commercial vessel casualties (excluding fishing vessels), resulting in $237 million in damages and 68 deaths. Of these, 1133 were directly attributable to personnel-related causes, i.e. carelessness, misjudgment, etc., resulting in $77 million in damages and 29 deaths. (It should be noted that these statistics do not include personnel deaths or injuries which are not associated with vessel accidents.)

The Coast Guard believes that if drug screening can prevent even a low percentage of these accidents through drug testing and rehabilitation, the program will more than pay for itself. Using the minimum accepted value of a human life of one million dollars, the saving of but a few lives annually, along with reduced property damage, will more than match the cost of the proposed program. This goal is believed achievable, given the success of other drug testing programs.

Regulatory Flexibility Analysis

The costs of the proposed random sampling will be proportional to the number of personnel employed. For small vessels, having only two or three affected crew members, the cost should be in the range of $100 to $300 per year. For post-accident testing, the cost would basically be $25 for a sampling and shipping kit. However, as discussed previously in the preamble, even this seemingly low amount may have an adverse impact on small entities. Since the Coast Guard is considering a number of alternatives to this proposal for small entities, it is not possible to evaluate the economic impact at this time. The Coast Guard has solicited comment on the impact on small entities and will consider those responses and evaluate the impact prior to issuing a final rule.

Federalism Assessment

This regulatory proposal has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The proposed rules affect the safety of vessels in interstate and foreign commerce and are directly related to the qualifications of personnel licensed by the U.S. Coast Guard and their working conditions on vessels. These are express statutory responsibilities of the U.S. Coast Guard and there are no similar State responsibilities or programs in these areas.

Information Collection

This proposed rulemaking contains information collection requirements in the following sections proposed: Proposed subparts B and C, plus proposed sections 46 CFR 4.06–1 and 4.06–8. They are being submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). Persons desiring to comment on these information collection requirements should submit their comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, ATTN: Desk Officer, Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under "ADDRESS."

Commenters should especially provide their views on the accuracy of Coast Guard's estimates of the burdens associated with these requirements, the practical utility of the information obtained, and less burdensome reporting alternatives to those proposed in this notice.

List Of Subjects

46 CFR Part 4

Administrative practice and procedures, Investigations, Accidents, Marine safety, National Transportation Safety Board, Reporting requirements, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 5

Administrative practice and procedures, Investigations, Administrative law judge, Investigating officer, Seamen, License, Certificate, Document, Rehabilitation, Administrative hearings, Navigation (Water), Suspension and revocation, Marine safety, Alcohol and alcoholic beverages, Drugs.

46 CFR Part 16

Seamen, Marine safety, Navigation (Water), Rehabilitation, Navigation (Water), Alcohol and alcoholic beverages, Drugs.

Proposed Rule

For the reasons set out in the preamble, Title 46, Chapter I, of the Code of Federal Regulations, is proposed to be amended as follows:

PART 4—[AMENDED]

1–2. The authority citation for Part 4 is revised to read as follows:

Authority: 33 U.S.C. 1231, 43 U.S.C. 1333; 46 U.S.C. 103, 2306, 6101, 6301, 6305, 50 U.S.C. 198; 49 CFR 1.46, except subpart 4.40 for which the authority is: 49 U.S.C. 1903(a)(1)(E); 49 CFR 1.46.

3. Subpart 4.03 is amended by adding §§ 4.03–2, 4.03–4, 4.03–5, and 4.03–6 to read as follows:

§ 4.03–2 Serious marine incident.

The term "serious marine incident" includes the following events involving a commercial vessel:

(a) Any marine casualty as defined in § 4.03–1 of this part which results in any of the following:

(1) One or more deaths;

(2) An injury to a crewmember, passenger, or other person which requires professional medical treatment beyond first aid, and in the case of a person employed aboard a commercial vessel, which renders the crewmember unfit to perform routine or emergency vessel duties;

(3) Damage to property, as defined in § 4.05–1(f) of this part, in excess of $100,000;

(4) Actual or constructive total loss of any vessel subject to inspection under 46 U.S.C. 3301; or

(5) Actual or constructive total loss of any self-propelled vessel, not subject to inspection under 46 U.S.C. 3301, of 100 GT or more.

(b) A discharge of oil of 10,000 gallons or more into the navigable waters of the United States, as defined in 33 U.S.C. 1321, whether or not resulting from a marine casualty.

(c) A discharge of a reportable quantity of a hazardous substance into the navigable waters of the United States, or a release of a reportable quantity of a hazardous substance into the environment of the United States, whether or not resulting from a marine casualty.

§ 4.03–4 Person directly involved in a marine casualty or serious marine incident.

The term "person directly involved in a marine casualty or serious marine incident" is a person who supervises, performs assigned duties in connection with, or otherwise actively participates in, any vessel operation or any activity occurring aboard a vessel which is a significant factor in the events leading to or causing a casualty or serious marine incident. The term "person directly involved in a marine casualty or serious marine incident" also includes any individual serving aboard a commercial vessel who is fatally injured or who is injured to the degree specified in § 4.03–2 of this part.

§ 4.03–5 Medical facility.

The term "medical facility" means an American hospital, clinic, physician's office, or laboratory, where blood samples can be collected according to recognized professional standards and urine samples can be collected consistent with 46 CFR 16.301.

§ 4.03–6 Qualified medical personnel.

The term "qualified medical personnel" means a physician, physician's assistant, nurse, emergency medical technician, or other person authorized under State or Federal law to collect blood and urine specimens.

4. Section 4.05–1 is amended by revising paragraph (e) to read as follows:

§ 4.05–1 Notice of marine casualty.

* * * * *

(e) Injury which requires professional medical treatment beyond first aid and, in the case of a person employed on board a commercial vessel, which renders the crewmember unfit to perform routine or emergency vessel duties.

* * * * *

5. A new Supart 4.06 is added to read as follows:

Subpart 4.06—Mandatory Drug and Alcohol Testing Following Serious Marine Incidents Involving Commercial Vessels

Sec.

4.06–1 Responsibilities of the marine employer.
4.06–5 Responsibilities of persons directly involved in serious marine incidents.
4.06–10 Blood and urine sample collection at a medical facility or by qualified medical personnel.
4.06–15 Testing with evidential breath testing devices (EBTs).
4.06–20 Urine sample collection by the marine employer.
4.06–25 Sample collection in incidents involving fatalities.
4.06–30 Sample handling and shipping.
4.06–35 Sample analysis and follow-up procedures.
4.06–40 Reporting and review of results.
4.06–45 Employee Assistance Programs (EAPs).

Subpart 4.06—Mandatory Drug and Alcohol Testing Following Serious Marine Incidents Involving Commercial Vessels

§ 4.06–1 Responsibilities of the marine employer.

(A) All commercial vessels.

(1) Following the occurrence of a marine casualty, a discharge of oil into the navigable waters of the United States, a discharge of a hazardous substance into the navigable waters of the United States, or a release of a hazardous substance into the environment of the United States, the marine employer shall make a timely, good faith determination as to whether the occurrence currently is, or is likely to become, a serious marine incident.

(2) When it is determined that a casualty or incident has occurred that meets, or is likely to meet, the criteria in § 4.03–2, the marine employer shall take all practicable steps to assure that any person directly involved in the casualty or incident is transported to a medical facility or to qualified medical personnel for the purpose of obtaining blood and urine samples as soon as possible, or to transport qualified medical personnel to the vessel for the same purpose as soon as possible, when it is feasible to do so within 24 hours after the incident. This requirement shall not be construed to inhibit those vessel personnel required to be tested from performing duties in the aftermath of a serious marine incident, when such performance is necessary for the preservation of life or property, or the protection of the environment.

(3) The marine employer shall ensure that a blood and urine sampling and shipping kit meeting the requirements of § 4.06–30 of this part is readily available for use following serious marine incidents. The sampling and shipping kit need not be maintained aboard each vessel if it can be made available for sampling at a medical facility or by qualified medical personnel within 24 hours from the time of the occurrence of the serious marine incident.

(4) The marine employer shall ensure that all employees serving aboard vessels are fully indoctrinated in the requirements of this subpart, and that appropriate licensed vessel personnel are trained as necessary in the practical applications of these requirements.

(5) The marine employer shall submit the following information on Form CG–2692B (Toxicological Sampling Report) to the Coast Guard after a serious marine incident:

(i) Name of vessel, official number, date and location of serious marine incident.

(ii) Names and other identifying data for each person directly involved in the serious marine incident.

(iii) Exact information concerning location and duties of each person directly involved at the time of the serious marine incident.

(iv) Whether or not sampling or testing was conducted. If not, an explanation concerning why sampling or testing was not conducted.

(v) The names and other identifying data for each person from whom urine or blood samples are obtained or who undergoes breath testing.

(vi) Location of sampling or testing, either aboard vessel or ashore. If ashore at a medical facility, name and address of facility.

(vii) Type of sampling or testing conducted. If breath alcohol test was conducted aboard vessel, specific results of the test.

(viii) Identification of medical or vessel personnel conducting sampling or testing.

(ix) Identification of medical or vessel personnel witnessing sampling or testing.

(x) Exact disposition of all blood or urine samples following sampling (i.e. information concerning shipment to laboratory).

(6) Following a serious marine incident, the Form CG–2692B shall be submitted as soon as possible to the Officer in Charge, Marine Inspection (OCMI), at the port in which the incident occurred or nearest the port of first arrival. When blood or urine sampling is conducted, a copy of the form shall be forwarded to the designated laboratory with the samples.

(b) Inspected vessels certificated for ocean or overseas routes.

(1) When a serious marine incident occurs involving an inspected vessel certificated for unrestricted ocean operations or involving an inspected vessel certificated for a restricted overseas route, and it does not appear feasible to transport involved personnel to a medical facility or to qualified medical personnel within 24 hours, the marine employer shall ensure that urine samples are collected and breath tests administered on board the vessel as soon as possible for any person directly involved in the casualty incident. Breath testing and urine sampling shall be conducted in accordance with the procedures outlined in §§ 4.06–15 and 4.06–20 of this part.

(2) When a person directly involved in a serious marine incident cannot be transported to a medical facility or to qualified medical personnel, and the person is unconscious or otherwise unable to indicate consent in providing urine samples or participate in breath testing, the marine employer is not required to attempt to conduct breath testing or to obtain urine samples on board the vessel.

§ 4.06–5 Responsibilities of persons directly involved in serious marine incidents.

(a) Any individual employed aboard any vessel on which an individual is required by law or regulation to be licensed, certificated, or documented under Subpart B of this chapter, who is determined to be directly involved in a serious marine incident by their marine employer or a law enforcement officer, shall provide a blood, urine, or breath sample when directed to do so by a marine employer or law enforcement officer.

(b) Under § 16.110 of this chapter, any individual employed aboard any vessel on which an individual is required by law or regulation to be licensed, certificated, or documented, is deemed to have given his or her consent to toxicological sampling following serious marine incidents. No individual may be forcibly compelled to provide blood, urine, or breath samples, however, refusal or failure to submit to sampling is considered a violation of regulation and will subject the individual to suspension and revocation proceedings under Part 5 of this chapter, and/or termination of employment.

§ 4.06–10 Blood and urine sample collection at a medical facility or by qualified medical personnel.

(a) When obtaining blood and urine samples under this subpart, the marine employer shall comply with the requirements of this subpart and shall ensure that the collection process is supervised by either qualified medical personnel from the medical facility, the marine employer, a law enforcement officer, or the marine employer's representative.

(b) When urine samples are collected at a medical facility or by qualified medical personnel, the marine employer shall ensure that the collection procedures specified in 46 CFR 16.301 are followed to the extent practicable. Certification of the sampling process and documentation of the chain of custody shall be accomplished through proper completion of applicable portions of the Form CG–2692B (Toxicological Sampling Report).

(c) When compliance with any procedure specified in 46 CFR 16.301 is not feasible, the marine employer shall provide an explanation of the circumstances on the Form CG–2692B.

(d) Blood samples shall only be drawn by qualified medical personnel. The marine employer shall ensure that the following procedures are observed after collection of blood samples:

(1) The individual providing the sample and the person supervising the process shall keep the blood specimen in view at all times prior to the sample being sealed and labeled. If the specimen is transferred to a second container, the person supervising the process shall request that the individual providing the sample observe the transfer.

(2) The person supervising the process shall request that the individual witness the sealing of the blood specimen tube with evidence tape placed over the cap and down the sides. The individual shall also be requested to initial the blood specimen tube and to witness the labeling of the tube. The person supervising the process shall label the tube with the time and date, the individual's full name, and specimen number if assigned.

(3) Certification of the sampling process and documentation of the transfer of the chain of custody of blood samples must be accomplished through proper completion of the Form CG–2692B (Toxicological Sampling Report).

(e) The marine employer shall ensure that blood samples are promptly shipped to the designated laboratory following collection in accordance with procedures outlined in 46 CFR 4.06–30, and that urine samples are shipped according to 46 CFR 16.301.

(f) In the case of an injured individual from whom samples are required, the marine employer shall request that the treating medical facility obtain the necessary samples. If an injured employee is unconscious or otherwise unable to indicate consent to the sampling procedure, and the medical facility declines to obtain a blood sample after having been advised of the requirements of this subpart, the marine employer shall immediately notify the nearest Coast Guard Officer in Charge of Marine Inspection (OCMI).

(g) Nothing in this subpart shall be construed as limiting the discretion of qualified medical personnel to determine whether drawing a blood sample is neither medically acceptable or advisable.

§ 4.06–15 Testing with evidential breath testing devices (EBTs).

(a) All inspected vessels certificated for unrestricted ocean routes, and all inspected vessels certificated for restricted overseas routes, are required to have on board at all times an evidential breath testing device (EBT). EBTs must be selected from among those listed on the Conforming Products List of Evidential Breath Measurement Devices amended and published periodically by the National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

(b) The marine employer shall ensure that evidential breath measurement devices are maintained and calibrated through the use of a unit listed on the

NHTSA Conforming Products List of Calibrating Units for Breath Alcohol Testers. The marine employer shall ensure that calibration is performed with sufficient frequency to ensure the accuracy of the device, but not less frequently than provided for in the manufacturer's instructions.

(c) The marine employer shall ensure that breath testing is conducted through the use of an approved testing device. Breath testing must only be conducted by a person trained and qualified to operate the breath measurement device. The marine employer shall ensure that appropriate vessel personnel receive formal instruction in the following subject areas prior to being considered qualified operators of breath testing devices:

(1) The effects of alcohol on the body, including absorption, distribution, and elimination phases.

(2) Scientific concepts and technology of breath testing as a means for determining blood alcohol concentration in the human body, as well as theoretical and practical qualities of the particular breath testing device selected by the marine employer.

(3) Practical laboratory exercises involving the operation and calibration of the selected testing device.

(d) The marine employer shall ensure that operators of breath testing devices receive periodic refresher training following their initial qualification.

(e) The marine employer shall ensure that breath testing is conducted in accordance with procedures specified by the manufacturer of the testing device, consistent with sound technical judgment, and shall include appropriate restrictions on ambient air temperature.

(f) If a test indicates a BAC of .02 or more, the individual must be tested again after the expiration of a period of 15 minutes, in order to ensure that the test has properly measured the alcohol content of deep lung air.

(g) Because of the inherent limitations of instrumentation, any indicated breath test result of less than .02 percent is deemed a negative test.

§ 4.06–20 Urine sample collection by the marine employer.

(a) When urine samples are collected by the marine employer, the marine employer shall ensure that the collection procedures specified by 46 CFR 16.301 are followed to the extent practicable. Certification of the sampling process and documentation of the transfer of the chain of custody shall be accomplished through the proper completion of applicable portions of the Form CG–2692B (Toxicological Sampling Report).

(b) When compliance with any procedure specified by 46 CFR 16.301 is not feasible, the marine employer shall provide an explanation of the circumstances on the Form CG–2692B.

(c) The marine employer shall ensure that urine samples are promptly shipped to the designated laboratory as soon as the vessel reaches a location from which the requirements of 46 CFR 16.301 may be satisfied.

§ 4.06–25 Sample collection in incidents involving fatalities.

(a) In the case of a fatality occurring to the covered employee of a marine employer as a result of a marine casualty, body fluid samples must be obtained from the remains of the employee for chemical testing, if practicable to do so at an appropriate medical facility. To ensure that samples are obtained in a timely manner, the marine employer shall notify the appropriate local authority, such as the coroner or medical examiner, as soon as possible, of the fatality and of the requirements of this subpart. The marine employer shall make available the sampling and shipping kit and request that the local authority assist in obtaining the necessary body fluid samples. The marine employer shall also seek the assistance of the custodian of the remains, if a person other than the local authority.

(b) If the local authority or custodian of the remains declines to cooperate in obtaining the necessary samples, the marine employer shall immediately notify the nearest Coast Guard Officer in Charge of Marine Inspection (OCMI) with the pertinent information.

§ 4.06–30 Sample handling and shipping.

(a) As a minimum, a toxicological sampling and shipping kit must have:

(1) Six (06) 4 ounce plastic urine specimen bottles with tight fitting screw-type lids,

(2) Twelve (12) 10 milliliter evacuated blood specimen tubes containing potassium oxalate and sodium fluoride for sterile preservation,

(3) A cardboard box suitable for shipping, measuring approximately 11 inches x 8 inches x 11 inches, which contains an inner styrofoam liner,

(4) A sealable quart can for ice,

(5) A roll of evidence tape or other appropriate moisture-resistant, stick-on labels for marking specimen bottles and tubes, and,

(6) A set of Forms CG–2692B in triplicate, and

(7) A sealable plastic bag for protection of forms or documents being placed in the shipping box.

(8) A 3-tube styrofoam blood sample mailer.

(b) The marine employer shall ensure that blood samples collected at a medical facility or by qualified medical personnel are shipped in a cooled condition by pre-paid air freight (or other means adequate to ensure delivery within twenty-four (24) hours) to a designated laboratory.

(c) Urine samples need not be shipped in a cooled condition by overnight delivery. The marine employer shall ensure that urine samples are shipped by the next most expeditious means available.

(d) The marine employer shall ensure that the shipping kit containing blood or urine samples is securely sealed with tape and shall sign and date across the tape.

(e) The marine employer shall ensure that a copy of form CG–2692B, completed in accordance with § 4.06–1(a)(5), if forwarded in the shipping kit along with blood or urine samples.

(f) Samples shall be shipped to a laboratory approved by the Department of Health and Human Services.

§ 4.06–35 Sample analysis and follow-up procedures.

Each laboratory will provide prompt analysis of samples collected under this subpart, consistent with the need to develop all relevant information and to produce a complete analysis report. A urine sample which indicates the presence of a dangerous drug at a level equal to or exceeding the levels established by 46 CFR 16.301 is considered a positive indication of prior drug use by the individual providing the sample. A blood sample indicating any concentration of alcohol is considered a positive indication of prior alcohol use by the individual providing the sample. Analysis results which indicate the presence of alcohol or drugs shall not be construed by themselves as constituting a finding of the probable cause of a serious marine incident.

§ 4.06–40 Reporting and review of results.

The reporting and review of the results of urine tests for drug use shall proceed as provided by 46 CFR 16.301.

§ 4.06–45 Employee Assistance Programs (EAPs)

The marine employer shall follow the requirements of 46 CFR 16.310, which concern employee assistance programs and rehabilitation.

PART 5—[AMENDED]

6. The authority citation for Part 5 continues to read as follows:

Authority: 46 U.S.C. 7101, 7301, and 7701; 50 U.S.C. 198; 49 CFR 1.46(b).

7. In § 5.569 add to Table 5.569 the following new offense after Incompetence:

§ 5.569 Selection of an appropriate order.

* * * * *

Table 5.569—Suggested Range of an Appropriate Order:

Type of offense	Range of order (in months)
* * * * *	
Violation of Regulation:	
Failure to submit to required chemical test	12–24
* * * * *	

8. A new Part 16 is added to Subchapter B to read as follows:

PART 16—CHEMICAL TESTING

Subpart A—General

Sec.
16.101 Purpose of regulations.
16.105 Definitions of terms used in this part.
16.110 Implied consent.

Subpart B—Required Chemical Testing

Sec.
16.201 Application.
16.205 Events requiring chemical testing.
16.210 Required random sampling programs.

Subpart C—Standards

Sec.
16.301 HHS guidelines.
16.305 General.
16.310 Employee Assistance Program (EAP).

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.46(b).

Subpart A—General

§ 16.101 Purpose of regulations.

(a) The intent of the regulations in this part is to provide a means to minimize the use of dangerous drugs by merchant marine personnel and to promote a drug free and safe work environment.

(b) The regulations in this part delineate the minimum standards, procedures, and means necessary to test for the use of dangerous drugs.

(c) Nothing in this part is intended to limit an employer's ability to set lawful standards, procedures or means of testing employees for the use of dangerous drugs in excess of the requirements contained in this Part.

§ 16.105 Definitions of terms used in this part.

"Chemical Test" means a scientifically recognized test which analyzes an individual's breath, blood, urine, and/or saliva for evidence of dangerous drug and/or alcohol use.

"Dangerous Drug" means a narcotic drug, controlled substance, or marijuana (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)).

"Dangerous Drug Level" means the amount of traces of dangerous drugs or their metabolites in an individual's breath, blood, urine, and/or saliva.

"Preemployment Testing Program" means a preemployment testing program which is sponsored and administered by an employer or sponsoring organization.

"Random Sampling Program" means a random sampling program which is sponsored and administered by an employer or sponsoring organization, and satisfies the criteria contained in Subpart B of this part.

"Sponsoring Organization" is any company, corporation, association, union, or other organization with which individuals serving in the marine industry, or their employers, are associated.

"Urinalysis" means a chemical test of an individual's urine for dangerous drugs.

"Vessel Owned in the United States" means any vessel documented or numbered under the laws of the United States; and, any vessel owned by a citizen of the United States that is not documented or numbered by any nation.

§ 16.110 Implied consent.

(a) Any individual applying for, or acting under the authority of, a license, a certificate of registry, or a merchant mariners document issued under Subchapter B of this chapter after [the effective date of this rule], is deemed to have given his or her consent to testing as required by this part. Any individual accepting employment on board any vessel owned in the United States on which any individual is required by law or regulation to be the holder of a license, certificate of registry, or merchant mariners document, is also deemed to have given his or her consent to testing under this part.

(b) Each individual subject to paragraph (a) of this section shall participate in testing as required under conditions set forth in this part, in Part 4 of this chapter, and in 33 CFR Part 95. Refusal or failure to participate is considered a violation of regulation and will subject the individual to suspension or revocation of his or her license, certificate, or document under the procedures contained in Part 5 of this chapter and/or termination of employment.

(c) When an individual is required to be tested under Part 4 of this chapter or 33 CFR Part 95, and is taken to a medical facility for observation or treatment after a marine casualty or incident, that individual shall be deemed to have consented to the release to the Coast Guard of the following:

(1) The remaining portion of any body fluid sample taken by the treating facility within 24 hours of the accident or incident that is not required for medical purposes, together with the medical facility record(s) pertaining to the taking of such sample;

(2) The results of any laboratory tests conducted by or for the treating facility on such sample; and

(3) The identity, dosage, and time of administration of any drugs administered by the treating facility prior to the time samples were taken by the treating facility or prior to the time samples were taken in compliance with this part.

(d) Any individual who is required to be tested under Part 4 of this chapter or 33 CFR Part 95, is deemed to have consented to removal of body fluid and/or tissue samples necessary for toxicological analysis from the remains of the individual, if the individual dies within 12 hours as a result of a marine casualty.

(e) Nothing in this part shall be construed to authorize the use of physical coercion or any other deprivation of liberty in order to compel chemical testing.

Subpart B—Required Chemical Testing

§ 16.201 Application.

The regulations in this Subpart apply to:

(a) All individuals applying for, or acting under the authority of, a license, a certificate of registry, or a merchant mariners document issued under this subchapter;

(b) All other individuals employed or applying for employment aboard any vessel owned in the United States that is required by law or regulation to engage or be operated by an individual holding a license, certificate of registry, or merchant mariners document; and,

(c) All employers (1) owning or operating vessels owned in the United States that are required by law or regulation to engage or be operated by an individual holding a license, certificate of registry, or merchant mariners document, or (2) owning or operating vessels inspected, or subject to inspection, under 46 U.S.C. 3301.

§ 16.205 Events requiring chemical testing.

(a) Whenever a physical examination is required for an individual by this subchapter, a urinalysis must be

included as a part of the physical examination. If a physical examination is required for a license or merchant mariners document application, the applicant shall provide the results of the urinalysis administered as part of the physical examination to the Regional Examination Center. For those individuals required to receive physical examinations on a more frequent basis, the individual shall present to the Regional Examination Center the results of all required urinalyses for the past five years when applying for license renewal.

(b) The prospective employer of an individual applying for employment aboard any vessel owned in the United States that is required by law or regulation to engage or be operated by an individual holding a license, certificate of registry, or merchant mariners document, shall at the time of application require the applicant to undergo a urinalysis.

(c) An individual to whom this subpart applies shall submit to a chemical test when directed to do so under Title 33 CFR Part 95, or when directed to do so under Part 4 of this chapter.

(d) An individual who has been subject to a random sampling program under § 16.210 of this part, and who has been tested under that program is not subject to the provision of paragraphs (a) and (b) of this section provided:

(1) The urinalysis required by paragraph (a) of this section is not part of a physical examination for issuance of an original license or merchant mariners document; and,

(2) The applicant provides satisfactory evidence certifying that he or she has been continuously subject to a random sampling program meeting the criteria of § 16.210 of this part for not less than six months, has not tested positive for unacceptable dangerous drug levels, has not refused to participate in required chemical tests, and has been tested within the past six months.

(e) Each employer shall test each employee to whom this subpart applies when there is reasonable suspicion that the employee has used dangerous drug(s) or alcohol in violation of this part and 33 CFR Part 95. At least two of the employee's supervisors shall substantiate and concur in the decision to test an employee who is reasonably suspected of drug or alcohol use. At least one of these supervisors shall be trained in detecting symptoms of drug and alcohol use. The decision to test must be based on a reasonable and articularable belief that the employee is using a dangerous drug or alcohol on the basis of physical indications of probable use (e.g., the employee's manner of speech or physical appearance).

§ 16.210 Required random sampling programs.

(a) Employers of personnel to which this subpart applies shall provide for the chemical testing of their personnel on a random basis for dangerous drugs.

(b) Random basis means that every member of a given population has an equal chance of selection on a scientifically valid basis. Random selection is to be accomplished through the use of a random-number table or computer based, random-number generator.

(c) The employer annually shall test on a random basis (a percentage of covered employees to be determined up to 125 percent).

(d) All crewmembers on the following vessels must be subject to testing on a random basis:

(1) Inspected vessels and vessels subject to inspection under 46 U.S.C. 3301;

(2) Uninspected vessels which are required by law or regulation to engage or be operated by an individual holding a license, certificate of registry, or merchant mariners document.

(e) An individual may not be engaged or employed, including self employment, on a vessel in a position for which a license, certificate of registry, or merchant mariners document is required by law or regulation unless all crewmembers are subject to a random sampling program.

(f) The employer shall report the results of positive chemical tests to the cognizant Coast Guard Officer in Charge, Marine Inspection.

(g) Employers of personnel to which this Section applies shall maintain records of the results of their random sampling program sufficient to satisfy the requirements of § 16.205(d). These records shall be maintained for a period of at least 5 years and shall be made available, upon request, to persons tested and Coast Guard officials.

Subpart C—Standards

§ 16.301 HHS guidelines.

Drug testing programs subject to this regulation shall be operated consistent with the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published by the Department of Health and Human Services (53 FR 11970, April 11, 1988). Terms and concepts referenced in this part shall have the same meaning as in those guidelines. Where the guidelines refer to "Federal agencies" or "the agency," this shall mean "the employer" for the purpose of this regulation. This part contains requirements for drug testing programs in addition to those in the HHS guidelines. Drug testing programs governed by the regulation shall use only drug testing laboratories certified by the Department of Health and Human Services under the guidelines. These guidelines are available for inspection and copying at U.S. Coast Guard Headquarters, Marine Safety Council (G–LRA–2/21), Room 2110, 2100 Second Street SW., Washington, DC 20593–0001.

§ 16.305 General.

(a) If a chemical test required under § 16.205 of this part determines the existence of unacceptable dangerous drug levels as listed in the HHS Guidelines, the individual will be presumed to be a user of dangerous drugs and any license, certificate of registry, or merchant mariners document application will be denied.

(b) If a chemical test required under this part, Part 4 of this chapter, or 33 CFR Part 95 determines the existence of unacceptable dangerous drug levels as listed in the HHS Guidelines, the individual will be presumed to be a user of dangerous drugs. Subject to the rehabilitation options of § 16.310 of this part, an individual who currently holds a license, certificate of registry, or merchant mariners document, will be subject to suspension and revocation of his or her license, certificate, or document under Part 5 of this chapter. An individual who does not hold a license, certificate of registry, or merchant mariners document shall, subject to the rehabilitation options of § 16.310 of this part, be removed from the vessel or denied employment.

(c) If a chemical test required under this part, Part 4 of this chapter, or 33 CFR Part 95 determines the existence of unacceptable dangerous drug levels as listed in the HHS Guidelines, the individual will be presumed to be a user of dangerous drugs and may not serve on a vessel subject to this part, until:

(1) That individual is rehabilitated, if the individual is not a holder of a license, certificate of registry, or merchant mariners document; or

(2) That individual is reissued his or her license, certificate of registry, or merchant mariners document, if the individual is a holder of a license, certificate of registry, or merchant mariners document.

(d) Regardless of the rehabilitation options specified in § 16.310 of this part, if a chemical test required under this part, Part 4 of this chapter, or 33 CFR Part 95 determines the existence of

unacceptable dangerous drug levels as listed in the HHS Guidelines, and this is the individuals second confirmed positive test, the individual will be presumed to be a user of dangerous drugs. An individual who currently holds a license, certificate or registry, or merchant mariners document, shall be subject to suspension and revocation of his or her license, certificate, or document under Part 5 of this chapter. An individual who does not hold a license, certificate of registry, or merchant mariners document shall be removed from the vessel or denied employment.

§ 16.310 Employee Assistance Program (EAP).

The employer shall provide an EAP for all employees. The employer may establish the EAP as a part of its internal personnel services or the employer may contract with an entity that will provide EAP services to an employee. Each EAP must include education and training on drug use for employees and the employer's supervisory personnel and an opportunity for rehabilitation, as provided below:

(a) EAP rehabilitation program (Option 1).

(1) Each employer shall provide one rehabilitation opportunity for the following employees:

(i) Each employee who voluntarily enrolls in an EPA;

(ii) Each employee who is identified as a dangerous drug user through random, periodic, reasonable cause, or post casualty testing.

(2) Each employer shall retain or rehire an employee who:

(i) Has successfully completed his or her first rehabilitation program after voluntary enrollment or notification to the employee that he or she has failed a drug test;

(ii) Has not failed a drug test required by the employer's drug monitoring plan for employees who undergo rehabilitation; and

(iii) Has received a recommendation for return to duty as a result of that rehabilitation program.

(3) Employees who are identified as having used dangerous drugs on the job are not required to be afforded an opportunity for rehabilitation or to be retained or rehired.

(b) EAP rehabilitation program (Option 2).

(1) Each employer shall provide one rehabilitation opportunity for the following employees:

(i) Each employee who voluntarily enrolls in an EAP;

(ii) Each employee who is identified as a dangerous drug user through random or periodic testing.

(2) Each employer shall retain or rehire an employee who:

(i) Has successfully completed his or her first rehabilitation program after voluntary enrollment or notification to the employee that he or she has failed a random or periodic drug test;

(ii) Has not failed a drug test required by the employer's drug monitoring plan for employees who undergo rehabilitation; and

(iii) Has received a recommendation for return to duty as a result of that rehabilitation program.

(3) Employees who are identified as having specifically used drugs on the job or through reasonable cause or post casualty testing required by this part are not required to be afforded an opportunity for rehabilitation or to be retained or rehired.

(c) EAP rehabilitation program (Option 3).

(1) Each employer shall provide one rehabilitation opportunity for each employee who voluntarily enrolls in an EAP.

(2) Each employer shall retain or rehire an employee who:

(i) Has successfully completed his or her first rehabilitation program after voluntary enrollment; and

(ii) Has received a recommendation for return to duty as a result of that rehabilitation program.

(3) Employees who are identified as having used dangerous drugs on the job or through testing required by this part are not required to be afforded an opportunity for rehabilitation or to be retained or rehired.

(d) EAP rehabilitation program (Option 4).

(1) Each employer can decide its policy concerning whether rehabilitation will be offered.

(2) Individuals who are offered an opportunity for rehabilitation provided voluntarily by the employer, and who wish to be retained or rehired to their previous or similar position, should:

(i) Successfully complete his or her first rehabilitation program; and

(ii) Receive a recommendation for return to duty as a result of that rehabilitation program.

(e) EAP education program: Each EAP education program must include at least the following elements: Display and distribution of informational material; display and distribution of a community service hot-line telephone number for employee assistance; and display and distribution of the employer's policy regarding drug and alcohol use in the workplace.

(f) EAP training program: Each EAP training program must be conducted annually employer's supervisory personnel. The training program must include at least the following elements: The effects and consequences of drug and alcohol use on personal health, safety, and work environment; the manifestations and behavioral cues that may indicate drug and alcohol use and abuse; and documentation of training given to employees and employer's supervisory personnel. EAP training programs for employees and supervisory personnel must consist of at least 60 minutes for each employee and supervisor.

Date: June 30, 1988.

P.A. Yost,

Admiral, U.S. Coast Guard, Commandant.

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federal register

Friday
July 8, 1988

Part X

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 179

Life Estates and Future Interests; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 179

Life Estates and Future Interests

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: These are new regulations for the administration of life estates and future interests in Indian land. They cite the authorities and enunciate the policies and procedures which are to be followed in such administration.

EFFECTIVE DATE: August 8, 1988.

FOR FURTHER INFORMATION CONTACT: Howard Piepenbrink, Chief, Branch of Titles and Research, Bureau of Indian Affairs, Room 4520, Main Interior Building, 18th and C Streets, NW., Washington, DC; Telephone Number (202) 343–5473.

SUPPLEMENTARY INFORMATION: Proposed regulations were published in the **Federal Register** (52 FR 29701), on August 11, 1987.

Several comments and suggestions were received during the two-month comment period. Before discussing specific comments received in response to the proposed regulations, a common concern needs to be addressed. The concern is that the regulations will limit the ability of Indian people to control the disposition of their land. To reemphasize, these regulations only apply to the disposition of such assets where a testator/testatrix or grantor has not made provisions for their disposition in the will or document (such as an inter vivos conveyance of land) creating a life estate or future interest in the real property. Any Indian making a will or disposing of interest in Indian land can avoid the application of these regulations by specifying how assets are to be distributed in his or her will or in the conveyance document.

The AUTHORITY has been expanded to include 96 Stat. 2515 which pertains to conveyance of land within the Devils Lake Reservation in North Dakota.

One commentor expressed fear that the proposed regulations would interfere with the administration of tribal land assignments. As a matter of clarification, a sentence has been added to § 179.1 expressly stating that these regulations do not apply to any use rights assigned by tribes, in the exercise of their jurisdiction over tribal lands, to tribal members.

To avoid any confusion in meanings, the definition of "Contract Bonus" has been added to § 179.2, and a phrase has been added clarifying the definition of "Principal."

The language of § 179.3 has been changed to emphasize that the rules of life estates and future interests of the State in which the land is located shall apply on Indian land *only* in the absence of Federal law or Federally-approved tribal law to the contrary. Four commentors also expressed fear that any application of State law jeopardizes tribal jurisdiction. Again, in the absence of Federal law or Federally-approved tribal law to the contrary, State laws are frequently employed where Federal Indian property rights are involved. This is supported by court decisions. To reemphasize the language appearing in the preamble to the proposed rulemaking at § 179.3, "The use of State law to the extent provided herein, does not affect, nor does it imply to affect, the sovereignty and/or jurisdiction of Federally-recognized Indian tribes."

Section 179.4 remains the same with only minor editorial changes.

Two commentors suggested that section 179.4 may conflict with existing as well as proposed mineral regulations, 25 CFR 211.44(c) and 225.46(c) published in the **Federal Register**, Volume 52, No. 203 at 39332 on October 21, 1987. If these regulations are published as a final rule before the proposed mineral regulations, it has been recommended that the mineral regulations simply reference 25 CFR Part 179. This would eliminate any possible conflict.

It was suggested that the wording "or by application of State law the open mine doctrine does not apply" be eliminated from § 179.4, since all States do not have an open mine law and, where they do, the States have no jurisdiction over Indian lands. Because § 179.4 (a), (b), (c) and (d) *may* apply to Indian lands in those States where "by application of State law, the open mine doctrine does not apply," it is imperative that specific reference to that doctrine be made in § 179.4. With regard to the jurisdiction question, the use or application of State law does not give rise to State jurisdiction.

Since the definition of "Contract Bonus" has been added to § 179.2, the language of § 179.4(b) has been shortened.

Commenting on the effect of § 179.4, one individual stated that life tenants will be deprived of royalty proceeds and that, unlike non-Indian life tenants, most Indians are needy and should not be deprived of such mineral income for life. In addition, the same commentor suggested that life tenants receive all of any contract bonus below a certain arbitrary monetary limit, with any amount exceeding that limit to be divided equally with the remainderman. In response, these regulations were drafted with the intent of protecting the property rights of life tenants and remaindermen, either of whom may be Indian, and are promulgated without regard to race, business expertise or economic need of either party.

Concern was expressed by another commentor as to why mineral estates are treated different than all other natural resource estates in § 179.4(c) in terms of income distribution. The sale of minerals generally produce periodic increases in principal, whereas the sale of other types of natural resources comprising the corpus generally result in one-time payments.

It was suggested that "Column 2—Annuity" of Tables A(1) and A(2) in section 179.5 is extraneous to the needs of this regulation. The column has been removed and the language of § 179.5 adjusted accordingly.

Section 179.6 remains unchanged except for a minor editorial change.

In addition to the above, concerns were expressed regarding Bureau of Indian Affairs' accountability for income, principal and investments and the limited availability of estate planning services. Accounting procedures for the investment, management and distribution of proceeds are outside of the scope of 25 CFR Part 179. However, the accountability for proceeds under the supervision and management of the Bureau is undergoing substantial improvement with the development of an enhanced Integrated Records Management System (IRMS). In regard to the status of estate planning services which are recognized as supplemental to these regulations, several new initiatives are underway. A new and comprehensive manual on the drafting of wills has recently been prepared by the Department of the Interior's Office of Hearings and Appeals for use by Bureau of Indian Affairs personnel. In addition, the Bureau has created a Task Force on Estate Planning and Probate in a further effort to enhance its capabilities and expertise in those fields. This will include the preparation of procedural guidelines in life estates and future interests.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

The Department of the Interior has determined that this rulemaking does not constitute a major Federal action

significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environment Policy Act of 1969.

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

This rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The primary author of this document is Howard Piepenbrink, Chief, Branch of Titles and Research, Bureau of Indian Affairs, Room 4520, Main Interior Building, 18th and C Streets, NW., Washington, DC 20245; Telephone Number (202) 343–5473.

List of Subjects in 25 CFR Part 179

Future interests, Indians—lands, Life estates.

For the reasons set out in the preamble, Part 179 of Title 25, Chapter I of the Code of Federal Regulations is added as set forth below.

PART 179—LIFE ESTATES AND FUTURE INTERESTS

Sec.

179.1 Purpose, scope, and information collection.
179.2 Definitions.
179.3 Application of State law.
179.4 Distribution of principal and income.
179.5 Value of life estates and remainders.
179.6 Notice of termination of life estate.

Authority: 86 Stat. 530; 86 Stat. 744; 94 Stat. 537; 96 Stat. 2515; 25 U.S.C. 2, 9, 372, 373, 487, 607, and 2201–11.

Cross Reference: For regulations pertaining to income, rents, profits, bonuses and principal from Indian lands and the recording of title documents pertaining thereto, see Parts 150, Land Records and Title Documents; 152, Issuance of Patents in Fee, Certificates of Competency, Removal of Restrictions, and Sale of Certain Indian Lands; 162, Leasing and Permitting; 163, General Forest Regulations; 166, General Grazing Regulations; 169, Rights-of-Way over Indian Lands; 170, Roads of the Bureau of Indian Affairs; 212, Leasing of Allotted Lands for Mining; 213, Leasing of Restricted Lands of Members of the Five Civilized Tribes, Oklahoma, for Mining; 215, Lead and Zinc Mining Operations and Leases, Quapaw Agency.

§ 179.1 Purpose, scope, and information collection.

(a) These regulations set forth the authorities, policy and procedures governing the administration of life estates and future interests in Indian lands by the Secretary of the Interior. These regulations do not apply to any use rights assigned by tribes, in the exercise of their jurisdiction over tribal lands, to tribal members.

(b) These regulations do not contain information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

§ 179.2 Definitions.

"Agency" means an Indian Agency or other field unit of the Bureau of Indian Affairs having the Indian land under its immediate jurisdiction.

"Contract Bonus" means cash consideration paid or agreed to be paid as incentive for execution of the contract.

"Income" means the rents and profits of real property and the interest on invested principal.

"Indian Land" means all lands held in trust by the United States for individual Indians or tribes; or all lands, titles to which are held by individual Indians or tribes, subject to Federal restrictions against alienation or encumbrance.

"Principal" means the corpus and capital of an estate, including any payment received for the sale or diminishment of the corpus, as opposed to the income.

"Secretary" means the Secretary of the Interior or authorized representative.

"Superintendent" means the designated officer in charge of an Agency.

§ 179.3 Application of State law.

In the absence of Federal law or Federally-approved tribal law to the contrary, the rules of life estates and future interests in the State in which the land is located shall be applied on Indian land. State procedural laws concerning the appointment and duties of private trustees shall not apply.

§ 179.4 Distribution of principal and income.

In all cases where the document creating the life estate does not specify a distribution of proceeds; or where the vested remainderman and life tenant have not entered into a written agreement approved by the Secretary providing for the distribution of proceeds; or where, by such document or agreement or by the application of State law, the open mine doctrine does not apply; the Secretary shall:

(a) Distribute all rents and profits, as income, to the life tenant.

(b) Distribute any contract bonus one-half each to the life tenant and the remainderman.

(c) In the case of mineral contracts, invest the principal, with interest income to be paid the life tenant during the life estate, except in those instances where the administrative cost of investment is disproportionately high, in which case § 179.4(d) shall apply. The principal will be distributed to the remainderman upon termination of the life estate.

(d) In all other instances, distribute the principal immediately according to the formulas set forth in § 179.5, investing all proceeds attributable to any contingent remainderman in an account, with disbursement to take place upon determination of the contingent remainderman.

§ 179.5 Value of life estates and remainders.

(a) The value of a life estate shall be determined by the formula: Value of Life Estate = P × L, where P = Value of principal, and L = Life estate factor for the age and sex of the life tenant, as shown in Column 2 on Tables A(1) and A(2).

(b) The value of a remainder shall be determined by the formula: Value of Remainder = P × R, where P = Value of principal, and R = Remainder factor for the age and sex of the life tenant, as shown in Column 3 on Tables A(1) and A(2).

TABLE A(1)—SINGLE LIFE MALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF A LIFE ESTATE INTEREST, AND OF A REMAINDER INTEREST

(1)—Age	(2)—Life estate	(3)—Remainder
0	0.9305	0.06295
1	.96217	.03783
2	.96170	.03830
3	.96053	.03947
4	.95905	.04095
5	.95732	.04268
6	.95540	.04460
7	.95331	.04669
8	.95195	.04895
9	.94861	.05139
10	.94598	.05402
11	.94316	.05684
12	.94019	.05981
13	.93708	.06292
14	.93391	.06609
15	.93069	.06931
16	.92746	.07254
17	.92419	.07581
18	.92089	.07911
19	.91751	.08249
20	.91403	.08597
21	.91046	.08954
22	.90678	.09328
23	.90292	.09702
24	.89884	.10116
25	.89445	.10555
26	.88972	.11028
27	.88465	.11535
28	.87925	.12075
29	.87353	.12647
30	.86750	.13250
31	.86117	13883

TABLE A(1)—SINGLE LIFE MALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF A LIFE ESTATE INTEREST, AND OF A REMAINDER INTEREST—Continued

(1)—Age	(2)—Life estate	(3)—Remainder
32	.85451	.14549
33	.84752	.15248
34	.84020	.15980
35	.83255	.16745
36	.82455	.17545
37	.81622	.18378
38	.80755	.19245
39	.79854	.20146
40	.78923	.21077
41	.77960	.22040
42	.76967	.23033
43	.75944	.24056
44	.74891	.25109
45	.73808	.26192
46	.72695	.27305
47	.71552	.28448
48	.70385	.29615
49	.69198	.30802
50	.67997	.32003
51	.66785	.33215
52	.65560	.34440
53	.64320	.35680
54	.63060	.36940
55	.61776	.38224
56	.60466	.39534
57	.59131	.40869
58	.57778	.42222
59	.56417	.43583
60	.55052	.44948
61	.53687	.46313
62	.52321	.47679
63	.50954	.49046
64	.49585	.50415
65	.48212	.51788
66	.46836	.53164
67	.45458	.54542
68	.44077	.55923
69	.42689	.57311
70	.41294	.58706
71	.39889	.60111
72	.38474	.61526
73	.37051	.62949
74	.35624	.64376
75	.34194	.65806
76	.32761	.67239
77	.31327	.68673
78	.29895	.70105
79	.28481	.71519
80	.27098	.72902
81	.25773	.74227
82	.24527	.75473
83	.23354	.76646
84	.22217	.77783
85	.21070	.78930
86	.19955	.80045
87	.18870	.81130
88	.17822	.82178
89	.16831	.83169
90	.15922	.84078
91	.15097	.84903
92	.14350	.85650
93	.13681	.86319
94	.13081	.86919
95	.12535	.87465
96	.11998	.88002
97	.11487	.88513
98	.10999	.89001
99	.10532	.89468

TABLE A(1)—SINGLE LIFE MALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF A LIFE ESTATE INTEREST, AND OF A REMAINDER INTEREST—Continued

(1)—Age	(2)—Life estate	(3)—Remainder
100	.10087	.89913
101	.09661	.90339
102	.09250	.90750
103	.08846	.91154
104	.08439	.91561
105	.08000	.92000
106	.07471	.92529
107	.06718	.93282
108	.05426	.94574
109	.02830	.97170

TABLE A(2)—SINGLE LIFE FEMALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF A LIFE ESTATE INTEREST, AND OF A REMAINDER INTEREST

(1)—Age	(2)—Life estate	(3)—Remainder
0	0.95383	0.04617
1	.97370	.02630
2	.97372	.02628
3	.97308	.02692
4	.97217	.02783
5	.97110	.02890
6	.96989	.03011
7	.96853	.03147
8	.96703	.03297
9	.96541	.03459
10	.96365	.03635
11	.96176	.03824
12	.95975	.04025
13	.95764	.04236
14	.95543	.04457
15	.95314	.04686
16	.95076	.04924
17	.94829	.05171
18	.94572	.05428
19	.94303	.05697
20	.94021	.05979
21	.93724	.06276
22	.93412	.06588
23	.93085	.06915
24	.92739	.07261
25	.92375	.07625
26	.91993	.08007
27	.91591	.08409
28	.91168	.08832
29	.90725	.09275
30	.90259	.09741
31	.89773	.10227
32	.89265	.10735
33	.88733	.11267
34	.88176	.11824
35	.87593	.12407
36	.86985	.13015
37	.86349	.13651
38	.85687	.14313
39	.84998	.15002
40	.84281	.15719
41	.83536	.16464
42	.82764	.17236
43	.81962	.18038

TABLE A(2)—SINGLE LIFE FEMALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF A LIFE ESTATE INTEREST, AND OF A REMAINDER INTEREST—Continued

(1)—Age	(2)—Life estate	(3)—Remainder
44	.81131	.18869
45	.80269	.19731
46	.79374	.20626
47	.78448	.21552
48	.77488	.22512
49	.76498	.23502
50	.75476	.24524
51	.74423	.25577
52	.73339	.26661
53	.72220	.27780
54	.71062	.28938
55	.69859	.30141
56	.68612	.31388
57	.67320	.32680
58	.65988	.34012
59	.64622	.35378
60	.63226	.36774
61	.61803	.38197
62	.60352	.39648
63	.58871	.41129
64	.57355	.42645
65	.55803	.44197
66	.54211	.45789
67	.52583	.47417
68	.50924	.49076
69	.49241	.50759
70	.47540	.52460
71	.45823	.54177
72	.44088	.55912
73	.42341	.57659
74	.40587	.59413
75	.38833	.61167
76	.37073	.62927
77	.35307	.64693
78	.33546	.66454
79	.31811	.68189
80	.30117	.69883
81	.28489	.71511
82	.26935	.73065
83	.25439	.74561
84	.23956	.76044
85	.22441	.77559
86	.21010	.78990
87	.19674	.80326
88	.18431	.81569
89	.17285	.82715
90	.16241	.83759
91	.15301	.84699
92	.14470	.85530
93	.13741	.86259
94	.13103	.86897
95	.12535	.87465
96	.11998	.88002
97	.11487	.88513
98	.10999	.89001
99	.10532	.89468
100	.10087	.89913
101	.09661	.90339
102	.09250	.90750
103	.08846	.91154
104	.08439	.91561
105	.08000	.92000
106	.07471	.92529
107	.06718	.93282
108	.05426	.94574
109	.02830	.97170

§ 179.6 Notice of termination of life estate.

Upon receipt of a renunciation of interest or notice of death of an Indian or non-Indian who died possessed of a life estate in Indian land, the Superintendent having jurisdiction shall file a copy of the renunciation or death certificate or other evidence of death with the appropriate Bureau of Indian Affairs' Land Titles and Records Office for recording.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 88-14710 Filed 7-7-88; 8:45 am]

BILLING CODE 4310-02-M

federal register

Friday
July 8, 1988

Part XI

Department of the Interior

Minerals Management Service

Outer Continental Shelf; Western Gulf of Mexico, Oil and Gas Lease Sale 115; Notice

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Western Gulf of Mexico
Oil and Gas Lease Sale 115

1. Authority. This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331-1356 (1982)), as amended by the OCS Lands Act Amendments of 1985 (100 Stat. 147), and the regulations issued thereunder (30 CFR Part 256).

2. Filing of Bids. Sealed bids will be received by the Regional Director (RD), Gulf of Mexico Region, Minerals Management Service (MMS), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394. Bids may be delivered in person to that address during normal business hours (8 a.m. to 4 p.m.) until the Bid Submission Deadline at 10 a.m., August 30, 1988. All times cited in this Notice refer to Central Standard Time (c.s.t.) unless otherwise stated. Bids will not be accepted the day of Bid Opening, August 31, 1988. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the RD prior to 10 a.m., August 30, 1988. Bids may not be withdrawn unless written withdrawal is received by the RD prior to 8:30 a.m., August 31, 1988. Bid Opening Time will be 9 a.m., August 31, 1988, at the Marriott Hotel, 555 Canal Street, New Orleans, Louisiana. All bids must be submitted and will be considered in accordance with applicable regulations including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register at 53 FR 10570, published on April 1, 1988.

3. Method of Bidding. A separate bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 115, (map number, map name, and block number(s)), not to be opened until 9 a.m., c.s.t., August 31, 1988," must be submitted for each block or prescribed bidding unit bid upon. For those blocks which must be bid upon as a bidding unit (see paragraph 12), it is recommended that all numbers of blocks comprising the bidding unit appear on the sealed envelope. A suggested bid form appears in 30 CFR Part 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior--Minerals Management Service. No bid for less than all of the unleased portions of a block or bidding unit as described in paragraph 12 will be considered. Bidders are advised to use the description "All the Unleased Federal Portion" for those blocks having only aliquot portions currently available for leasing.

All documents must be executed in conformance with signatory authorizations on file. Partnerships also need to submit or have on file in the Gulf of Mexico regional office a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places after the decimal point, e.g., 50.12345 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All bids submitted at this sale must provide for a cash bonus in the amount of $25 or more per acre or fraction thereof. All leases awarded will provide for a yearly rental payment of $3 per acre or fraction thereof. All leases will provide for a minimum royalty of $3 per acre or fraction thereof. The bidding systems to be employed for this sale apply to blocks or bidding units as shown on Map 2 (see paragraph 12). The following bidding systems will be used:

(a) Bonus Bidding with a 12 1/2-Percent Royalty. Bids on the blocks and bidding units offered under this system must be submitted on a cash bonus basis with a fixed royalty of 12 1/2-percent.

(b) Bonus Bidding with a 16 2/3-Percent Royalty. Bids on the blocks and bidding units offered under this system must be submitted on a cash bonus basis with a fixed royalty of 16 2/3-percent.

5. Equal Opportunity. Each bidder must have submitted by the Bid Submission Deadline stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS-2033 (June 1985), and the Affirmative Action Representation Form, Form MMS-2032 (June 1985). See the Affirmative Action paragraph 14(f) under "Information to Lessees."

6. Bid Opening. Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks. The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block or bidding unit will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $25 or more per acre or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid together with the first year's annual rental as specified below, and satisfy the bonding requirements of 30 CFR 256, Subpart I. Successful bidders are required to submit the balance of the bonus and the first year's annual rental payment, for each lease issued, by electronic funds transfer in accordance with the requirements of 30 CFR 218.155.

11. Leasing Maps and Official Protraction Diagrams. Blocks or bidding units offered for lease may be located on the following Leasing Maps or Official Protraction Diagrams which may be purchased from the Gulf of Mexico regional office (see paragraph 14(a)):

(a) OCS Leasing Maps--South Texas Set. This set of maps sells for $5.

Map 1	South Padre Island Area
Map 1A	South Padre Island Area, East Addition (revised 12/16/85)
Map 2	North Padre Island Area
Map 2A	North Padre Island Area, East Addition
Map 3	Mustang Island Area
Map 3A	Mustang Island Area, East Addition
Map 4	Matagorda Island Area

(b) OCS Leasing Maps--East Texas Set. This set of maps sells for $7.

Map 5	Brazos Area
Map 5B	Brazos Area, South Addition
Map 6	Galveston Area
Map 6A	Galveston Area, South Addition
Map 7	High Island Area
Map 7A	High Island Area, East Addition
Map 7B	High Island Area, South Addition
Map 7C	High Island Area, East Addition, South Extension
Map 8	Sabine Pass Area

(c) OCS Protraction Diagrams. These diagrams sell for $2 each.

NG 14-3	Corpus Christi (revised 1/27/76)
NG 14-6	Port Isabel (revised 12/16/85)
NG 15-1	East Breaks (revised 1/27/76)
NG 15-2	Garden Banks (revised 12/2/76)
NG 15-4	Alaminos Canyon (revised 12/16/85)
NG 15-5	Keathley Canyon (revised 03/03/87)
NG 15-8	(No Name) (issued 03/03/87)

12. Description of the Areas Offered for Bids.

(a) Acreages of blocks are shown on Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased, or transected by administrative lines such as the Federal/State jurisdictional line. In these cases, the following supplemental documents to this Notice are available from the Gulf of Mexico regional office (see paragraph 14(a)):

(1) Western Gulf of Mexico Lease Sale 115 Unleased Split Blocks.

(2) Western Gulf of Mexico Lease Sale 115 Unleased Acreage of Blocks with Aliquots Under Lease.

(b) References to Maps 1, 2, and 3 in this Notice refer to the following maps which are available on request from the Gulf of Mexico regional office:

Map 1 entitled "Western Gulf of Mexico Lease Sale 115. Stipulations, Lease Terms, and Warning Areas."

Map 2 entitled "Western Gulf of Mexico Lease Sale 115. Bidding Systems and Bidding Units," refers largely to Royalty Rates and Bidding Units.

Map 3 entitled "Western Gulf of Mexico Lease Sale 115. Detailed Maps of Biologically Sensitive Areas," pertains to areas referenced in Stipulation No. 2.

(c) In several instances, two or more blocks have been joined together into bidding units totaling less than 5,760 acres. Any bid submitted for a bidding unit having two or more blocks must be for all of the unleased Federal acreage within all of the blocks in that bidding unit. The list of those bidding units with their total acreages appears on Map 2.

(d) The areas offered for leasing include all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraphs 11(a), (b), and (c), except for those blocks or partial blocks described as follows:

(1) Descriptions of blocks listed represent all Federal acreage leased unless otherwise noted.

S. Padre Island	N. Padre Island (continued)	N. Padre Is., East Addition (continued)	Mustang Island (continued)	Mustang Island (continued)	Mustang Island, East Addition (continued)
1031	915	A-22	762	A-2-	A-99
1032	916	A-27	763	(NE¼NW¼NE¼;	A-100
1039	927	A-30	765	NE¼NW¼;	A-102
1040	928	A-31	766	NE¼SE¼NW¼;	A-103
1062	936	A-33	768	W½NW¼NE¼)	A-106
1063	947	A-40	769	A-5	A-107
1070	956	A-41	777	A-6	A-108
1104-	967	A-42	778	A-7	A-110
(Landward of	968	A-43	780	A-10	A-111
8(g) Line)	969	A-45	781	A-11	A-112
1111	976	A-46	784	A-12	A-113
1112	1000-	A-47	785	A-13	A-114
1123	(Landward of	A-56	787	A-14	A-120
1124-	8(g) line)	A-57	788	A-15	A-121
(Portion	1006	A-58	789	A-16	A-122
Seaward of	1007	A-59	791	A-20	A-135
8(g) Line)	1010	A-60	798	A-21	A-138
1125		A-61	803	A-22	A-139
1144	N. Padre	A-65	804	A-23	A-142
1153	Island,	A-72	805	A-26	A-146
1154	E. Addition	A-83	807	A-28	A-164
		A-84	809	A-30	A-167
S. Padre	889		813	A-31	A-170
Island	890	Mustang	814	A-33	A-171
East	892	Island	815	A-34	A-174
Addition	893		822	A-35	A-175
	912	725	823		
1100	953	726	825	Mustang Is.,	Matagorda
1115	972	727	828	East	Island
1116	974	728	829	Addition	
1120	991	729	830		487
	995	739	831	735	518
N. Padre	996	740	834	736	519
Island	1011	742	835	A-51	520
	1018	743	836	A-52	526
886	A-1	752	845	A-62	527
887	A-4	753	846	A-63	528
888	A-5	754	847	A-65	529
894	A-9	755	849	A-85	554
895	A-10	756	855	A-86	555
897	A-11	757	868	A-90	556
906	A-14	758	873	A-94	557
908	A-15	759	875	A-95	558
909	A-16	761	876	A-97	564

Matagorda Island (continued)
565
566
567
568
587
588
591
592
599
600
601
602
604
605
606
607
616
617
618
619
620
621
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623
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631
632
633
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635
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637
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639
640
646
647
649
650
651
652
653
654
655
656

Matagorda Island (continued)
657
663
664
665
666
667
668
669
670
671
673
675
676
677
678
680
681
682
685
686
687
688
696
697
699
700
701
703
705
706
707
709
712
713
714
715
A-1
A-2
A-3
A-4
A-7

Brazos
335
342
364-
(Landward of 8(g) Line)
365
366
367
375
376
378
397
398
399
400
412
413
415
416
430
431
432
435-
(Seaward of 8(g) Line)
436
437
438 (E½)
451
452 (E½)
453
455
457
458
466
474
475
476
488
489-
(Landward of 8(g) Line)
491
492
493

Brazos (continued)
494
501
504
510
511
512
513
514
515
517
532
534
535
536
548
550
551
552
578
583
585
608
615
A-2
A-7
A-9
A-10
A-16
A-17
A-18
A-19
A-20
A-21
A-22
A-23
A-27
A-28
A-37
A-38
A-39

Brazos, S. Addition
A-47
A-50
A-51
A-52
A-53
A-54
A-63
A-64
A-65
A-66
A-67
A-68
A-70
A-73
A-76
A-79
A-89
A-102
A-105
A-118
A-119
A-132
A-133

Galveston
144
151
180
188
189
190 (W½)
191-
(Portion seaward of 8(g) Line)
192
209
210
211
213
223
227
237

Galveston (continued)
239
241 (S½)
242
243-
(Landward of 8(g) Line)
254
255
267
268
270
272-
(Seaward of 8(g) Line)
273
274
275
281
282
283
288
289
295-
(S½NE¼NE¼; NW¼NE¼; W½SW¼NE¼; NE¼SW¼NE¼; N½SE¼NE¼; W½;W½NW¼SE¼; S½SE¼)
296-
(NE¼; NE¼NE¼NW¼; S½NE¼NW¼; S½SW¼NW¼; SE¼NW¼; N½S½; NE¼SW¼SW¼; N½SE¼SW¼; N½SW¼SE¼; SE¼SE¼)
298
300
302
303

Galveston (continued)
312
313
314-
(Portion seaward of 8(g) Line)
315
316
317
318
319
320
321
324
325
326
327
328
331
332
333
343
344
345
346
347
348
349
350
351
352
353
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357
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360
361
363
379
380
382
383
384
385
386

Galveston (continued)
389
390
391
392
393
418
420
421
422
424
427
429
460
463
464
465
A-4
A-16
A-20
A-37
A-39
A-57
A-58
A-68
A-74
A-95
A-96
A-97
A-99
A-101
A-111

Galveston
Island
19
20
21
22
34
35
36
37
48
50
51
52
53
54
55

Galveston S. Addition (continued)
A-176
A-177
A-192
A-193
A-194
A-200
A-201
A-205
A-206
A-207
A-214
A-217
A-218
A-219
A-221
A-224
A-226
A-230
A-231
A-236
A-237
A-245
A-249
A-250
A-252
A-253

High
Island
(S½SW¼SW¼; N½S½SE¼;)
136-
(E½; E½NE¼SW¼; S½SE¼SW¼)
137
138 (N½)
139
140
141 (E½)
142
143
153
154
155 (W½)
156
157

High Island (continued)
66
67
68
69
71
72
73
86
87
88
105
106
107
109
110
111
115
116
117
131
133
134
135-
(N½; N½S½; SW¼SW¼; W½SE¼SW¼; NE¼SE¼SW¼; N½S½SE¼;)
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160-
NE¼; NE¼NW¼; E½SE¼NW¼; N½SE¼; N½SE¼SE¼)
161-
(NW¼NE¼NW¼; S½NE¼NW¼; W½NW¼; SE¼NW¼; NE¼NE¼SW¼; W½NE¼SW¼; NW¼SW¼; NW¼SW¼SW¼)
162
163
164
169
170
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194
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196
197
199
200
201
203
204
205
206
207
208
228
232
234
235

High Island (continued)
236
260
261
262
A-1
A-2
A-3
A-4
A-5
A-6
A-7
A-9
A-10
A-11
A-13
A-14
A-16
A-18
A-19
A-20
A-21
A-22
A-23
A-24
A-38
A-39
A-45
A-51
A-52
A-53
A-57
A-58
A-59
A-60
A-64
A-65
A-66
A-67
A-68
A-69
A-71
A-72
A-74
A-75
A-76

High Island, (continued)	High Island, S. Addition (continued)	High Island, S. Addition (continued)	High Island, S. Addition (continued)	High Island, E. Addition (continued)	High Island, E. Addition, S. Extension (continued)
A-82	A-433	A-500	A-561	A-173	A-261
A-83	A-435	A-501	A-563	A-174	A-264
A-87	A-437	A-502	A-564	A-176	A-268
A-88	A-438	A-503	A-566	A-178	A-269
A-89	A-439	A-505	A-567	A-180	A-270
A-90	A-440	A-506	A-568	A-183	A-271
A-100	A-442	A-507	A-570	A-185	A-272
A-103	A-443	A-510	A-571	A-187	A-276
A-119	A-444	A-511	A-572	A-192	A-279
A-120	A-445	A-512	A-573	A-193	A-280
A-122	A-446	A-513	A-574	A-194	A-281
A-123	A-447	A-515	A-576	A-196	A-282
A-124	A-448	A-516	A-577	A-198	A-283
A-126	A-450	A-517	A-582	A-200	A-285
A-127	A-451	A-519	A-584	A-205	A-286
A-129	A-460	A-520	A-585	A-206	A-289
A-130	A-461	A-521	A-587	A-207	A-290
A-131	A-462	A-522	A-591	A-214	A-292
A-132	A-463	A-523	A-594	A-215	A-295
A-139	A-465	A-525	A-595	A-224	A-298
A-141	A-466	A-527	A-596	A-231	A-299
A-142	A-467	A-528		A-234	A-302
A-149	A-468	A-529	High Island,	A-236	A-303
A-152	A-469	A-530	East	A-237	A-304
A-155	A-471	A-531	Addition	A-239	A-305
A-156	A-472	A-532		A-240	A-306
A-161	A-474	A-536	39	A-241	A-307
A-162	A-475	A-537	45*	A-244	A-308
A-165	A-476	A-539	46	A-245	A-309
	A-477	A-540	74	A-246	A-310
High Island,	A-479	A-542	75	A-250	A-311
South	A-480	A-544	76	A-253	A-312
Addition	A-481	A-545	85	A-254	A-313
	A-484	A-546	119	A-255	A-314
A-411	A-486	A-547	120	A-256	A-315
A-412	A-487	A-548	128	A-257	A-317
A-414	A-488	A-550	129	A-258	A-319
A-416	A-489	A-551	130	A-259	A-320
A-417	A-490	A-552	166		A-321
A-418	A-492	A-553	167	High Island	A-322
A-419	A-494	A-554	A-168	East	A-323
A-424	A-495	A-555	A-169	Addition,	A-324
A-425	A-496	A-556	A-170	S. Extension	A-325
A-426	A-497	A-557	A-171		A-326
A-432	A-499	A-560	A-172	A-260	A-327

*omitted in error from Proposed List

High Island, E. Addition, S. Extension (continued)	High Island, E. Addition, S. Extension (continued)	East Breaks (continued)	East Breaks (continued)	East Breaks (continued)	Garden Banks (continued)
A-330	A-383	112	302	626	84
A-332	A-384	114	304	637	95
A-333	A-386	117	305	638	96
A-334	A-387	118	339	639	97
A-335	A-388	119	340	640	98
A-336	A-389	120	341	641	103
A-337	A-390	122	342	642	104
A-338	A-391	123	376	643	108
A-339	A-392	127	377	644	109
A-340	A-393	128	383	645	110
A-341	A-395	129	384	646	112
A-343	A-396	146	386	684	115
A-344	A-397	147	420	685	117
A-347	A-399	152	421	686	118
A-348	A-400	154	425	688	119
A-349	A-401	158	428	689	124
A-350	A-402	159	430	728	125
A-351	A-403	160	431	732	126
A-352		161	469	943	127
A-353	Sabine Pass	164	475	945	128
A-354		165	481	946	129
A-355	17	166	512	988	134
A-356	18	167	525	989	139
A-358	40	168	555		140
A-360		170	556	Garden	141
A-361	Corpus	171	557	Banks	142
A-362	Christi	172	558		143
A-363		173	562	21	147
A-364	521	190	563	22	148
A-365	565	206	564	23	149
A-366	566	207	577	25	153
A-367	609	208	578	26	154
A-368	610	209	579	27	156
A-369	872	211	580	28	161
A-370	916	213	593	29	171
A-371		214	598	65	172
A-372	East	217	599	68	173
A-373	Breaks	250	600	69	177
A-376		251	602	70	178
A-377	73	252	607	71	180
A-378	74	257	621	72	181
A-379	108	258	622	73	182
A-380	109	282	623	81	186
A-381	110	283	624	82	187
A-382	111	296	625	83	189

Garden Banks (continued)	Garden Banks (continued)	Garden Banks (continued)	Garden Banks (continued)	Port Isabel (continued)	Alaminos Canyon (continued)
191	274	416	606	697	766
192	275	417	607	698	767
193	279	423	625	876	770
197	285	424	633		774
199	287	425	634	Alaminos	775
200	295	426	650	Canyon	776
202	296	427	651		778
203	297	441	653	20	779
204	298	451	695	65	780
205	300	452	697	133	781
208	302	453	741	192	796
212	304	456	754	236	797
213	305	457	782	237	810
215	314	458	785	280	811
216	315	459	803	336	813
217	334	460	804	337	814
221	335	461	826	380	818
222	339	462		390	822
223	341	469	Port	398	827
224	343	470	Isabel	441	854
225	344	471		442	856
226	346	485	130	475	857
229	348	494	131	518	865
230	349	498	166	557	900
231	359	499	167	558	901
232	360	500	174	578	903
234	367	501	175	595	904
235	368	505	214	600	908
236	369	515	217	601	947
237	370	516	218	602	951
239	371	517	258	622	954
248	372	525	298	645	955
251	373	529	481	647	998
252	378	535	482	648	999
255	379	536	525	691	
256	380	537	526	719	Keathley
257	382	538	562	720	Canyon
259	387	543	563	726	
260	388	544	564	728	156
266	390	545	568	730	157
267	405	562	570	731	191
268	406	563	606	734	192
269	411	579	607	736	236
271	412	580	653	763	583
273	413	588	654	764	584

(2) Although currently unleased and shown on Texas Leasing Map No. 7C, High Island Area, East Addition, South Extension, dated October 19, 1981, no bids will be accepted on the following blocks: # A-375 and A-398.

13. Lease Terms and Stipulations.

(a) Leases resulting from this sale will have initial terms as shown on Map 1 and will be issued on Form MMS-2005 (March 1986). Copies of the lease form are available from the Gulf of Mexico regional office (see paragraph 14(a)).

(b) The applicability of the stipulations which follow is as shown on Map 1 and Map 3 and as supplemented by references in this Notice.

Stipulation No. 1-- Protection of Archaeological Resources.

(This stipulation will apply to all blocks offered for lease in this sale.)

(a) "Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object (16 U.S.C. 470w(5)). "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Director (RD) believes an archaeological resource may exist in the lease area, the RD will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RD, to determine the potential existence of any archaeological resource that may be affected by operations. The report, prepared by an archaeologist and a geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent archaeological and environmental information. The lessee shall submit this report to the RD for review.

(2) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be; or

(ii) Establish to the satisfaction of the RD that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicists, using survey equipment and techniques deemed necessary by the RD. A report on the investigation shall be submitted to the RD for review.

(3) If the RD determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the RD will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the RD has told the lessee how to protect it.

(c) If the lessee discovers any archaeological resource while conducting operations on the lease area, the lessee shall report the discovery immediately to the RD. The lessee shall make every reasonable effort to preserve the archaeological resource until the RD has told the lessee how to protect it.

Stipulation No. 2--Protection of Topographic Features.

(This stipulation will be included in leases located in the areas so indicated on Maps 1 and 3 described in paragraph 12.)

The banks which cause this stipulation to be applied to blocks of the Western Gulf are:

Bank Name	No Activity Zone Defined by Isobath (meters)
Shelf Edge Banks	
West Flower Garden Bank* (defined by 1/4 1/4 1/4 system)	100
East Flower Garden Bank* (defined by 1/4 1/4 1/4 system)	100
MacNeil Bank	82
29 Fathom Bank	64
Rankin Bank	85
Geyer Bank	85
Elvers Bank	85
Bright Bank*****	85
McGrail Bank*****	85
Rezak Bank*****	85
Sidner Bank	85
Parker Bank	85
Stetson Bank	62
Applebaum Bank	85
Low Relief Banks**	
Mysterious Bank	74,76,78,80,84 (see leasing map)
Coffee Lump	Various (see leasing map)
Blackfish Ridge	70
Big Dunn Bar	65
Small Dunn Bar	65
32 Fathom Bank	52
Claypile Bank***	50
South Texas Banks****	
Dream Bank	78,82
Southern Bank	80
Hospital Bank	70
North Hospital Bank	68
Aransas Bank	70
South Baker Bank	70
Baker Bank	70

* Flower Garden Banks--In paragraph (c) a "4-Mile Zone" rather than a "1-Mile Zone" applies.

** Low Relief Banks--Only paragraph (a) applies.

*** Claypile Bank--Paragraphs (a) and (b) apply. In paragraph (b) monitoring of the effluent to determine the effect on the biota of Claypile Bank shall be required rather than shunting.

**** South Texas Banks--Only paragraphs (a) and (b) apply.

***** Central Gulf of Mexico bank with a portion of its "1-Mile Zone" and/or "3-Mile Zone" in the Western Gulf of Mexico.

(a) No activity including structures, drilling rigs, pipelines, or anchoring will be allowed within the listed isobath ("No Activity Zone" as shown on Map 3) of the banks as listed above.

(b) Operations within the area shown as "1,000-Meter Zone" shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(c) Operations within the area shown as "1-Mile Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom. (Where there is a "1-Mile Zone" designated, the "1,000-Meter Zone" in paragraph (b) is not designated.)

(d) Operations within the area shown as "3-Mile Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids from development operations to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

Stipulation No. 3--Military Warning Areas.

(This stipulation will be included in leases located within Warning Areas shown on Map 1 described in paragraph 12.)

(a) Hold and Save Harmless

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf (OCS), to any persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the OCS, if such injury or damage to such person or property occurs by reason of the activities of any Agency of the U.S. Government, its contractors or subcontractors, or any of their officers, agents, or employees being conducted as a part of, or in connection with, the programs and activities of the command headquarters listed in the following table.

Notwithstanding any limitation of the lessee's liability in section 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the appropriate military installation, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors or subcontractors, or any of its officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) Electromagnetic Emissions

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors, or subcontractors emanating from individual designated defense warning areas in accordance with requirements specified by the commander of the command headquarters listed in the following table to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing, or operational activities conducted within individual designated warning areas. Necessary monitoring control and coordination with the lessee, its agents, employees, invitees, independent contractors, or subcontractors will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees, independent contractors or subcontractors, and onshore facilities.

(c) Operational

The lessee, when operating or causing to be operated on its behalf boat or aircraft traffic in the individual designated warning areas, shall enter into an agreement with the commander of the individual command headquarters listed in the following table, upon utilizing an individual designated warning area prior to commencing such traffic. Such an agreement will provide for positive control of boats and aircraft operating in the warning areas at all times.

Warning Areas' Command Headquarters
Western Planning Area

Warning Areas	Command Headquarters
W-228	Chief, Naval Air Training Naval Air Station ATTN: Lt. Col. T. M. Aiton or Lt. J. L. Keith Corpus Christi, Texas 78419-5100 ATTN: N33 Telephone: (512) 939-3927/3902
W-602	Director of Air Space Management Deputy Chief of Staff Operations Headquarters Strategic Air Command ATTN: Lieutenant Colonel Rose Offutt AFB, Nebraska 68113-5001 Telephone: (402) 294-3103/3450 or (Scheduling) (402) 294-2334/4649

14. Information to Lessees.

(a) Supplemental Documents. For copies of the various documents identified as available from the Gulf of Mexico regional office, prospective bidders should contact the Public Information Unit, Minerals Management Service (MMS), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, either in writing or by telephone (504) 736-2519. For additional information, contact the Regional Supervisor for Leasing and Environment at that address or by telephone at (504) 736-2755.

(b) Navigation Safety. Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended. The U.S. Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

A final rulemaking to establish a shipping/safety fairway was published in the Federal Register on May 14, 1987, at 52 FR 18231.

For additional information, prospective bidders should contact Lt. Commander F. V. Newman, Assistant Marine Port Safety Officer, 8th Coast Guard District, Hale Boggs Federal Building, New Orleans, Louisiana 70130, (504) 589-6901.

(c) Offshore Pipelines. Lessees are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(d) 8-Year Leases. Bidders are advised that any lease issued for a term of 8 years will be cancelled after 5 years, following notice pursuant to the OCS Lands Act, as amended, if within the initial 5-year period of the lease, the drilling of an exploratory well has not been initiated, or if initiated, the well has not been drilled in conformance with the approved exploration plan criteria, or if there is not a suspension of operations in effect, etc. Bidders are referred to 30 CFR 256.37(a)(2).

(e) Affirmative Action. Revision of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS-2005, March 1986) would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1).

Submission of Form MMS-2032 (June 1985) and Form MMS-2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

(f) Ordnance Disposal Areas. Bidders are cautioned as to the existence of two inactive ordnance disposal areas in the Corpus Christi and East Breaks areas, shown on Map 1 described in paragraph 12 of this Notice. These areas were used to dispose of ordnance of unknown composition and quantity. These areas have not been used since about 1970. Water depths in the Corpus Christi area range from approximately 600 to 900 meters. Water depths in the East Breaks area range from approximately 300 to 700 meters. Bottom sediments in both areas are generally soft, consisting of silty clays. Exploration and development

activities in these areas require precautions commensurate with the potential hazards. Lessees are advised of an Environmental Protection Agency (EPA) dumping site located in portions of Alaminos Canyon, East Breaks, Garden Banks, and Keathley Canyon.

(g) Gulf Ocean Incineration Site. Bidders are advised of the existence of the Gulf Ocean Incineration Site located in the East Breaks, Garden Banks, Alaminos Canyon, and Keathley Canyon leasing areas, as shown on Map 1. This site is designated for the incineration of organohalogen wastes including polychlorinated biphenyls and ethylene dichloride. Lessees are advised to contact the EPA, Washington, D.C. office, when formulating plans for undertaking oil and gas activity in the designated incineration site area so that potential conflicts can be mitigated through coordination of activities. The following blocks are affected by the Gulf Ocean Incineration Site:

East Breaks

1008
1009

Garden Banks

969-980

Alaminos Canyon

40	260	480
41	261	481
84	304	524
85	305	525
128	348	568
129	349	569
172	392	612
216	436	656
217	437	657

Keathley Canyon

1-12	353-364
45-56	397-408
89-100	441-452
133-144	485-496
177-188	529-540
221-232	573-584
265-276	617-628
309-320	

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BILLING CODE 4310-MR-C

15. New Regulatory Provisions. The regulatory reference to provisions in 30 CFR Part 250 cited in this document refer to the new MMS regulations, "Oil and Gas and Sulphur Operations in the Outer Continental Shelf." They were published in the Federal Register at 53 FR 10595 on April 1, 1988, and became effective on May 31, 1988. This Notice is provided to bidders since any leases issued as a result of this sale will be subject to the April 1, 1988, regulations (not those existing in the 30 CFR Part 250, revised as of July 1, 1987, which may be in conflict with the new regulations).

Director, Minerals Management Service
William D. Bettenberg

Approved:

Assistant Secretary - Land and Minerals Management
J. Steven Griles

1 1988

Date

federal register

Friday
July 8, 1988

Part XII

Environmental Protection Agency

40 CFR Parts 156 and 170

Worker Protection Standards for Agricultural Pesticides; Public Meetings and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 156 and 170

[Docket No. OPP-300164A; FRL 3412-4]

Worker Protection Standards for Agricultural Pesticides; Public Meetings on Proposed Revision of Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Meetings.

SUMMARY: Notice is hereby given that public meetings will be held in Washington, DC, and in each EPA Region on the topic of EPA's proposal, which is published elsewhere in this issue of the Federal Register, to revise its regulations governing worker protection from agricultural pesticides. At these meetings, EPA will explain the proposed rule and answer questions concerning the proposal. EPA believes that these meetings will assist potential commentors in understanding the proposal, leading to more useful public comments which the Agency will use in developing the final rule.

DATES: The first public meeting will be held at 9 a.m. on July 18, 1988. Dates of the regional meetings will be announced in a subsequent Federal Register notice. Written comments on the proposal must be submitted on or before October 6, 1988.

ADDRESSES: The first public meeting will be held at the Office of Pesticide Programs, Environmental Protection Agency, Rm. 1112, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Locations of the regional meetings will be announced in a subsequent Federal Register notice. Written comments on the proposal may be submitted to the Document Control Officer (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20008. Comments should be in triplicate and bear the document control number, OPP-300164.

FOR FURTHER INFORMATION CONTACT: Dr. Patricia Breslin, Director, Pesticide Farm Safety Staff (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20008, (703)-557-7666.

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the Federal Register, EPA is proposing under authority of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136w(a)), to revise its regulations governing worker protection from agricultural pesticides (40 CFR Part 170). The proposed rule (Docket No. 300164) would enlarge the scope of the standards, expand existing requirements for warnings about application, personal protective equipment, and reentry restrictions, and add new provisions for decontamination, emergency medical duties, contact with handlers of highly toxic pesticides, cholinesterase monitoring of commercial pesticide handlers, and training. The proposal also includes a number of regulatory options on which EPA has specifically solicited public comment.

As part of its effort to obtain useful public comments on its proposal, EPA will hold a series of public meetings for persons and groups affected by or interested in the proposed regulations. At these meetings EPA will explain the content of proposed and associated regulatory options and answer any questions. The first meeting will be held in Washington, DC, on the date and at the location indicated above. At this time, the Agency is also planning to hold at least one meeting in each EPA Region shortly after the first meeting. Dates and locations for the regional meetings will be announced in a future Federal Register notice.

The Agency's proposed rule appears elsewhere in this issue of the Federal Register, and a copy of the proposal may also be obtained by writing or calling the contact person identified above. Written comments on the proposal may be submitted to the Document Control Officer identified above within the 90-day public comment period.

Dated: July 1, 1988.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

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BILLING CODE 6560-50-M

40 CFR Parts 156 and 170

[Docket No. OPP-300164; FRL 3314-4]

Worker Protection Standards for Agricultural Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to revise its regulations governing worker protection from agricultural pesticides. These revisions would expand the scope of the standards to include not only workers performing hand labor operations in fields treated with pesticides, but workers in forests, nurseries, and greenhouses, and workers who handle (mix, load, apply, etc.) pesticides in these locations. The proposal would expand requirements for warnings about applications, personal protective equipment, and reentry restrictions, and would add new provisions for decontamination, emergency medical duties, contact with handlers of highly toxic pesticides, cholinesterase monitoring, and training. EPA also proposes to revise its labeling regulations to require statements pertaining to general worker protection, reentry intervals, personal protective equipment, and posting of treated areas. EPA is concerned about the adequacy of the present regulations to protect agricultural workers from occupational exposure to pesticides. The proposal is intended to provide interim protection to workers until the pesticide reregisteration process can be completed, without creating undue burdens on agricultural producers.

DATE: Written comments, data, and other evidence concerning the proposal should be submitted on or before October 6, 1988.

ADDRESSES: Comments should be submitted in triplicate and addressed to the Document Control Officer (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. All comments should bear the document control number OPP-300164 and will be available for public inspection from 8:30 a.m. to 4 p.m., Monday through Friday, at the OPP Document Control Office, Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Patricia Breslin, Director, Pesticide Farm Safety Staff, Office of Pesticide Programs, Environmental Protection Agency, Room 1009, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-7666.

SUPPLEMENTARY INFORMATION: This Federal Register notice discusses the background and events leading to this proposal, the new health and safety data and other concerns giving rise to the proposal, the rationale underlying its specific provisions, the relationship of the proposal to State regulations, implementation of the proposal, and the applicable statutory and regulatory review requirements. References are identified in the text by the author's last name and the reference number while full bibliographic information is found in the References section near the end of this notice.

Public reporting burden for this collection of information is estimated to average 6.5 hours, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M. Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

As an aid to the reader, the following is an outline of the contents of this notice:

I. Background
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B. Promulgation of 40 CFR Part 170
C. Advance Notice of Proposed Rulemaking
D. Regulatory Negotiation
II. Reasons for This Proposal
A. Pesticide Poisoning Data
B. Enforcement
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III. Proposed Worker Protection Standards
A. Organization of Regulation
B. Applicability
C. Definitions
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E. Enforcement
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G. Notification
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I. Implementation of Labeling Changes
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VI. Implementation of Regulation
VII. Statutory Review
A. U.S. Department of Agriculture
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IX. Regulatory Requirements
A. Executive Order 12291
B. Regulatory Flexibility Act
C. Paperwork Reduction Act

I. Background

A. Statutory Authority

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) was originally enacted in 1947 (7 U.S.C. 135 *et seq.*). Since that time, pesticide products have been subject to Federal regulation under FIFRA and are required to be registered with EPA. In 1972, FIFRA was amended by the Federal Environmental Pesticide Control Act (7 U.S.C. 136 *et seq.*). Among other things, the amendments broadened Federal pesticide regulatory authority by making it "unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling" (7 U.S.C. 136j(a)(2)(G)). The amendments provided civil and criminal penalties for violations of the Act (7 U.S.C. 1361) and authorized the Administrator to provide regulations to carry out the Act (7 U.S.C. 136w(a)). The legislative history of the 1972 amendments indicates an expressed intent on the part of Congress that farmers, farm workers, and others be afforded protection under FIFRA.

B. Promulgation of 40 CFR Part 170

In 1974, EPA promulgated the regulations found at 40 CFR Part 170 pursuant to its authority under FIFRA (7 U.S.C. 136w(a)). These regulations deal with pesticide-related occupational safety and health of workers performing hand labor operations in fields during or after application of pesticides. They contain four basic requirements: (1) A prohibition against spraying workers; (2) specific reentry intervals for 12 pesticides and a general reentry interval for all agricultural pesticides prohibiting reentry into treated fields until the sprays had dried or dusts had settled; (3) a requirement for protective clothing for any worker who had to reenter treated fields before the specific reentry period had expired; and (4) a requirement for "appropriate and timely" warnings. Specifically exempted from coverage were soil-incorporated pesticides, mosquito abatement treatments and related public pest control programs, greenhouse treatments, livestock and other animal treatments, and treatments of golf courses and similar nonagricultural areas. EPA's authority to promulgate such requirements is well established. *Organized Migrants in Community Action (OMICA) v. Brennan*, 520 F.2d 1161 (D.C. Cir. 1975). See also *Public Citizen Health Research Group et al. v. Auchter*, 702 F2d. 1150 (D.C. Cir. 1983). In 1983, EPA issued PR Notice 83–2 requiring the basic provisions of 40 CFR Part 170 to be placed on labels of "all outdoor agricultural use products which are applied to crops whose culture requires hand labor."

C. Advance Notice of Proposed Rulemaking

A review of 40 CFR Part 170 was conducted during 1983. The Agency concluded that the current Part 170 was inadequate to protect workers occupationally exposed to pesticides, and decided to revise the Part. EPA published an Advance Notice of Proposed Rulemaking (ANPRM) in 1984 (49 FR 32605 *et seq.*; August 15, 1984). The ANPRM noted that while "the Agency has set additional reentry intervals for specific pesticide products through the registration and reregistration process," nevertheless "a more comprehensive revision of Part 170 is necessary" (49 FR 32606).

The ANPRM requested public comment on six specific issues: (1) Expansion of the scope of Part 170 to include other categories of workers, work activities, and pesticide uses; (2) revision of the reentry intervals; (3) revision of the protective clothing provisions; (4) revisions of the requirements for warning workers; (5) imposition of other types of safety requirements; and (6) enforcement mechanisms.

Almost all commenters agreed that Part 170 should be revised. As to possible expansion of the scope, the largest number of comments concerned expanding the scope to include mixers, loaders, and applicators. The majority of these comments favored this expansion, citing the dangers involved with application-related tasks. Other comments discussed expanding coverage to include greenhouses, nurseries, and forests.

Many commenters supported having more pesticides covered by reentry intervals, saying that the current intervals were not adequate. There was considerable support for the concept of generic reentry intervals as an interim measure until each pesticide product could be evaluated on its own. These commenters also pointed out that (1) some products are already known to require longer intervals, (2) provisions should be made for increasing intervals as new data warrant, and (3) individual reentry intervals for all specific pesticides should be established as soon as possible.

A few commenters took the position that the current definition of protective clothing was adequate, at least for certain occupational groups. Some commenters stated that increased requirements would prove to be unnecessary and lead to discomfort in some situations, such as working in hot weather or enclosed spaces. Others said

that all protective clothing requirements should be determined on a chemical-by-chemical basis and included on the label. Others, however, felt that protective clothing under the current definition of Part 170 does not protect workers. Some proposed minimal additions to the requirements in order to avoid encumbering workers, especially hand harvesters; others suggested stronger requirements.

There was support for requiring protective clothing for reentry before the expiration of the reentry interval, but the majority of comments stated that the reentry interval should be made long enough to protect workers and that protective clothing should not be required after that time. A few comments, however, favored continuing protective clothing requirements beyond the reentry interval.

There was no consensus among the commenters about whether warning requirements should be strengthened and, if so, what stronger requirements should be imposed. A significant number of commenters supported keeping the existing requirement, i.e., oral or posted warnings at treated areas. Some commenters wanted a requirement for only oral warnings, believing them to be most effective, at least in their occupational situation. Some thought both oral and posted warnings should be required, and pointed out that treated area posting should not be considered a substitute for oral warnings.

All commenters responding to the issue of bilingual warnings favored requiring them where necessary. It was also suggested that accepted international signs and symbols be added to posted warnings at treated areas.

As to training, medical surveillance, and changing areas, several commenters expressed opinions about the broad issue of whether Part 170 should include any occupational safety and health provisions similar to those promulgated by OSHA for other classifications of workers. There was confusion about whether existing OSHA rules currently apply to agricultural workers. A few comments stated that without these OSHA-type provisions, Part 170 would be largely ineffective and unenforceable. One comment proposed that the applicable OSHA regulations be included in Part 170, with the two agencies cooperating to enforce them. Several others, however, either urged caution to ensure that EPA regulations will not duplicate or conflict with OSHA's, or totally opposed inclusion of any OSHA-type provision in Part 170.

Several comments requested EPA to strengthen the enforceability of the worker safety regulations and stressed the need to ensure that all of the regulations are enforceable requirements. Some comments stated either that there is no evidence of inadequate enforcement of the existing regulation, or that their State laws are sufficient. Others, however, cited specific examples of enforcement failures in their States, stemming from such causes as understaffing and the lack of bilingual enforcement officials.

Most commenters agreed that the owner or lessee must have the primary legal responsibility for compliance with worker safety regulations. Some wanted the responsibility to extend to crew leaders, applicators, and/or field supervisors.

Comments were divided on the issue of whether chronic health effects should be dealt with by Part 170. Some were opposed to reentry intervals, warnings, and other measures directed toward chronic effects, and said that chronic effects should be considered on a case-by-case basis through the registration/reregistration process. Another group of comments, however, stated that chronic effects are likely to be the most serious threat to worker health and recommended extending Part 170 to consider such effects in the setting of generic interim standards. It was noted that the FIFRA requirements for protection of humans and the environment included both acute and chronic effects. Most comments that addressed this topic argued that chronic effects should be considered when determining toxicity levels and when setting reentry intervals and protective clothing requirements.

D. Regulatory Negotiation

In addition to the use of the ANPRM to encourage the widest possible public participation, EPA initiated a process called "regulatory negotiation" to develop this proposal. This process allows parties interested in or affected by the outcome of the proposed rule an opportunity to participate in the rule's development through face-to-face negotiation. Parties with different interests work to resolve issues by meeting, discussing facts and questions, and attempting to reach solutions.

The Agency held an organizational meeting on October 9, 1985. After a preliminary discussion of issues, committee representation, subcommittees, operational ground rules, and other basic protocols, it was decided that an advisory committee should be established. EPA announced in the **Federal Register** of October 18, 1985 (50 FR 42223) its intent to establish such a committee under the Federal Advisory Committee Act (Pub. L. 92-463). The Advisory Committee on Worker Protection Standards for Agricultural Pesticides held its first official meeting November 4, 1985, in Arlington, Virginia. The initial meeting and all subsequent meetings of the full Committee were announced in the **Federal Register** and were open to the general public.

Representatives of the following parties were members of the Committee:

1. American Association of Nurserymen.
2. American Farm Bureau.
3. American Seed Trade Association.
4. Arizona Farm Workers Union.
5. Association of Pesticide Control Officials.
6. Association of State and Territorial Health Officials.
7. California Rural Legal Assistance.
8. East Coast Farm Worker Support Network.
9. Farm Labor Organizing Committee-Florida.
10. Farm Labor Organizing Committee-Ohio.
11. National Agricultural Aviation Association.
12. National Agricultural Chemicals Association.
13. National Association of State Departments of Agriculture.
14. National Cotton Council; National Association of Wheat Growers.
15. National Council of Agricultural Employees.
16. National Farm Workers Health Group (UFW).
17. National Forest Products Association.
18. Society of American Florists.
19. State FIFRA Issues Research and Evaluation Group.
20. Texas Department of Agriculture.
21. United Farm Workers of America (AFL-CIO)—Texas.
22. United Fruit and Vegetable Association.
23. U.S. Environmental Protection Agency.
24. U.S. Department of Agriculture.
25. Florida Cooperative Extension Service.

At the first full Committee meeting on November 4, 1985, the group adopted operating protocols and divided into five working groups (Reentry, Training, Medical Monitoring and Greenhouses, Protective Clothing, Notification), deferring a sixth group on enforcement issues to a later time.

Initially, thirty-one major issues were identified and presented to the working groups for deliberation. Several key

issues overlapped working groups because of the interrelationship of the concerns. Discussions and recommendations of the working groups were considered at plenary sessions of the full Committee meetings, and working drafts of the proposed revisions were prepared and distributed on January 21 and February 18, 1986.

After the meeting on February 3 and 4, 1986, representatives from the Arizona Farm Workers Union, the Farm Labor Organizing Committee, California Rural Legal Assistance, the East Coast Farm Worker Support Network, and the National Farm Workers Health Group (UFW) decided to discontinue participation in the Regulatory Negotiation process. Meetings on March 6 and 7, 1986, and May 5 and 6, 1986, were held in order to discuss drafts of the proposed rule and receive comments from the remaining members of the Advisory Committee concerning subsequent drafts of the regulatory language prepared by the Agency. However, a regulatory negotiation consensus could not be reached without the full Committee's participation. All work on the regulation was performed by EPA alone after June 10, 1986.

Although a consensus on this rule was not achieved, Committee members representing the broad interests affected by this proposal discussed issues and regulatory language and helped shape the proposed regulation. EPA appreciates the commitment made by each member of the Committee and firmly believes that the Committee's deliberations sharpened the issues and will enhance future public discussions generated by this proposal.

II. Reasons for This Proposal

Agency concern about the adequacy of the present Part 170 has grown over the years for a number of reasons. New data on agricultural worker exposure that have been developed and assessed demonstrate the need for more worker protection features. The enforcement experiences of EPA and the States over the years have led the Agency to conclude that a clearer exposition of liability and responsibility provisions would lead to improved worker protection. The Agency has determined that since the reregistration program will not be completed for a number of pesticides within the near future, interim measures are necessary to adequately protect workers. EPA also believes that protection should be provided to certain types of workers by expanding coverage to workers not covered by the present Part 170. Finally, since 1974 there has been greatly increase use of certain chemical classes of pesticides, primarily the organophosphates and carbamates, which contain pesticides which are more acutely toxic to humans than previous pesticides in common use in agriculture. The present Part 170, however, does not account for this shift in classes of agricultural pesticides used.

A. Pesticide Poisoning Data

Pesticide illnesses in agricultural workers can result from excessive exposure to pesticides, which in turn can result from inadequate safety precautions. An estimated 2.3 million persons are exposed directly or indirectly to agricultural pesticide products or their residues as a result of occupational activities.

Accurate estimates of pesticide poisonings among agricultural workers are difficult to obtain for a variety of reasons: (1) The migratory nature of much of agricultural labor is an obstacle hampering collection of such data; (2) the geographic and seasonal heterogeneity of the population under scrutiny makes assessments of the number of workers at risk elusive; (3) many agricultural workers adversely affected by pesticides may not seek medical attention from United States health care providers; and (4) pesticide poisoning incidents often are treated symptomatically without being specifically diagnosed as pesticide-related or reported as such. EPA contracted with Research Triangle Institute (RTI) to review and analyze the 10 main sources of data relating to pesticide poisoning incidents in the United States. These sources are:

1. The 1971–73 and 1974–76 National Studies of Hospital-Admitted Pesticide Poisonings.
2. Pesticide Incident Monitoring System (PIMS) Data.
3. The Atlantic Coast Migrant Stream Pesticide Study.
4. EPA Report 540/9–80–003 Chronic Neurological Sequelae of Acute Organophosphate Pesticide Poisoning: A Case-Control Study.
5. Consumer Product Safety Commission Emergency Room Survey.
6. California Reports on the Incidence of Pesticide Poisonings.
7. Chemical Exposure Data from Bureau of Labor Statistics and Worker's Compensation Programs in Oregon and Ohio.
8. The Federal Government and the Incidence of Pesticide Poisonings: Survey of Migrant and Rural Health Clinics.
9. Washington: Occupational Mortality in Washington State.
10. EPA Report, National Monitoring Study: Citrus.

These reports indicate that there continue to be significant numbers of pesticide poisonings among agricultural workers every year, and in some cases a trend toward increasing numbers of poisonings, (Stuart et al., 86). For example, RTI noted an increase of 35 percent in annual pesticide poisonings in California between 1976 and 1983. RTI concluded that only a small fraction of occupational poisonings are reported or even identified. Thus, all studies probably understate the problem, for various reasons which are fully discussed in the RTI reports.

The Agency has also examined information on health effects in reentry situations gathered since 1974 from various sources. At that time it appeared that episodes of reentry worker poisonings were limited to the harvesting of tree fruit in California soon after the application of organophosphate pesticides. However, subsequent reports of reentry worker poisoning and injury episodes indicate that: (1) The problem exists throughout the country, although it appears to be greatest in California; (2) pesticides other than organophosphates can present significant hazards to workers; (3) residues on crops other than tree fruit can present significant hazards to workers; (4) tasks other than harvesting can present significant hazard to workers; and (5) activities taking place after the "minimum" reentry interval can present significant hazards to workers.

A review of pesticide poisonings and injuries in California, reported by physicians during the period from 1976–1985, shows 460 reported systemic poisonings among field workers exposed to residues after application of pesticides, and 1955 skin and eye injuries (Blondell, 8). The relative infrequency of reported reentry incidents does not reflect the degree of concern held by many occupational health specialists, who believe that occupationally related illnesses and injuries are underreported among the agricultural workforce. Only 7 States have mandatory reporting systems, while 16 other States have limited forms of data collection (McNeil, 57). Some workers are reluctant to seek medical attention, especially those of illegal or uncertain residency status and those not covered by worker compensation programs—only 16 States have mandatory worker compensation programs for agricultural workers. Misdiagnosis also may be a problem: when large groups of workers are involved the pattern of illness often suggests food poisoning or water-borne

gastroenteritis, and when small groups are involved, heatstroke is sometimes suggested (Quinby and Lemmon, 79).

The pesticide active ingredients involved in the reported California reentry incidents belong to all toxicity categories and many chemical classes (Blondell, 8). The poisoning episodes include incidents occurring up to 5 weeks after pesticide sprays have dried and dusts have settled. They also include incidents involving non-harvesting tasks. For example, workers thinning and detasseling seed corn have experienced severe dermatitis and symptoms of cholinesterase poisoning after application of carbofuran, and workers have experienced conjunctivitis while pruning grapes on the same day as application of elemental sulfur.

Large doses of acutely toxic pesticides may lead to death, but reentry workers are extremely unlikely to accumulate such doses as a result of exposure to residues. Rather, the Agency is concerned with the potentially debilitating effects of repeated exposures of reentry workers to lower levels of pesticides from field residues and the added burden of medical expenses and loss of income during illnesses that may result (Gunther et al., 33).

In addition to the effects of acutely toxic pesticides on reentry workers, the Agency is concerned about the chronic, subchronic, and cumulative effects of repeated low-level exposures to pesticides. A single exposure period might not trigger a poisoning incident, whereas repeated exposures on a frequent or regular basis may lead to an acute poisoning (e.g., cumulative cholinesterase inhibition) or to chronic or subchronic effects such as cancer.

B. Enforcement

A major impetus for revision of Part 170 is the problem of enforceability of its provisions. The Agency has identified four major enforcement concerns.

1. *Part 170 and pesticide labeling.* When the present Part 170 was developed and promulgated, little attention was given to the incorporation of its requirements on pesticide labeling, necessary for enforcement of violations under FIFRA section 12(a)(2)(G). The Agency believes that close attention should be given to this matter, to ensure user understanding of and compliance with the regulations as well as enforceability under FIFRA in the event of noncompliance.

2. *Assigning responsibility.* EPA believes that the present Part 170 needs to be improved by more clearly stating which persons have duties, and by broadening the group of persons who have duties. Complex arrangements have developed among owners, operators, lessees, commercial applicators, labor contractors, supervisors, and crew leaders for managing agricultural establishments and farm worker activities. The current regulations establish duties only for "owners" and "lessees" and do not define these terms. Many persons who are not owners or lessees are in positions to improve farm worker safety by taking care to use pesticides properly and by taking steps to see that workers under their supervision receive the necessary protections. In one enforcement case, a commercial aerial applicator who negligently sprayed a crew of workers could not be cited for violation of Part 170, since the applicator had no responsibility for farm worker protection under the present Part 170. Likewise, a labor contractor who orders a crew into an area under a reentry interval likely could not be charged with violating the current Part 170.

3. *Recordkeeping.* The present Part 170 lacks any requirement for keeping of records by responsible persons, which increases the difficulty of proving noncompliance. Monitoring of compliance with Part 170 duties would in most cases be facilitated by written documentation of required measures and actions. Records can provide both proof of compliance and evidence of noncompliance. However, recordkeeping may impose a significant economic burden on responsible parties. Any recordkeeping requirement must be closely assessed for need and expected benefits relative to cost. In addition, FIFRA section 11 prohibits the Agency from issuing regulations requiring private applicators to keep any records. Any general recordkeeping requirement would be subject to this exemption and its efficacy would be limited.

4. *Clarity and specificity.* The wording of certain requirements in the present Part 170 leaves room for broad interpretation due to lack of specificity. Under these circumstances, enforcement is difficult for the Agency and potentially unfair to those with Part 170 duties. One example is the requirement for "appropriate and timely" warnings (§ 170.5). Such vague language may contribute to noncompliance because the user may not be able to determine what to do to comply with the requirements. Careful drafting can assure clarity of language and achievement of intended regulatory purpose.

C. Registration and Reregistration

EPA has found that with present resources, only 20 to 30 Registration Standards for active ingredients can be completed each year. Currently there are several hundred standards for active ingredients used in agriculture yet to be completed. Even if the Agency is able to accelerate the reregistration effort, the individual review and reregistration of agricultural pesticides may not be completed until early in the 21st century.

Some kinds of requirements, such as reentry intervals and personal protective equipment, ideally should be tailored to individual products in a reregistration process. Revising Part 170 and implementing it through label changes will, however, provide workers better interim protection until each active ingredient receives closer scrutiny during reregistration. Other requirements are generic to all agricultural pesticides and, for these, rulemaking is clearly an efficient approach to regulation. This approach would also be fairer to registrants and users (restrictions on use would be implemented simultaneously for all products).

III. Proposed Worker Protection Standards

A. Organization of Regulation

This proposal is divided between two Parts. Proposed Part 170 contains detailed provisions designed to protect pesticide handlers and other persons who work on farms, forests, nurseries and greenhouses. This Part is divided into six subparts. Subpart A contains the general provisions, definitions and duties applicable to all types of workers. Subpart B contains provisions for pesticide handlers and early reentry workers working on farms, forests, nurseries and greenhouses. Subpart C contains provisions common to all workers on farms, forests, nurseries and greenhouses. Subpart D contains special provisions for workers on farms and forests. Subpart E contains special provisions for workers in nurseries. Subpart F contains special provisions for workers in greenhouses. Within Subparts B through F, regulatory provisions appear in the order of the chronological occurrence of activities associated with the use of pesticides, e.g., training, then notification, then reentry.

Proposed Part 156, Subpart K, addresses the labeling requirements with which registrants must comply. Persons who use products labeled in accordance with this Subpart must comply with the labeling statements.

Subpart K is structured first to provide the more general statements required on labeling, followed by specific required statements for reentry, posting and personal protective equipment.

B. Applicability

In 1974, EPA limited the scope of Part 170 to farm workers engaged in hand labor in fields during and after pesticide application (§ 170.1). The current Part 170 explicitly does not apply to (1) soil-incorporation of pesticides, (2) mosquito abatement treatments and related public pest control programs, (3) greenhouse treatments, (4) livestock and other animal treatments, (5) treatment of golf courses and similar nonagricultural areas, and (6) activities other than hand labor tasks, including pesticide handling (§ 170.4(c)). The applicability of Part 170 to nurseries and forests is unclear. After a careful review of these exclusions, EPA believes that certain revisions to the applicability of Part 170 are warranted.

1. *Pesticide Use Sites* (§ 170.3(c)). In addition to farms, the Agency has examined 4 specific application sites for possible inclusion in this Part—greenhouses, nurseries, forests, and small farms.

The Agency proposes to discontinue the exclusion for greenhouses. It is estimated that there are between 11,000 and 15,000 commercial greenhouse operations in the United States, with an average size of 1 acre, employing an estimated 175,000 workers. Use of pesticides in these greenhouses involves many of the same hazards as those encountered in outdoor field conditions. In addition, greenhouse applications can present hazards for workers greater than those found outdoors. For example, due to lack of wind, pesticides may dissipate more slowly in confined areas than in open fields. Also, reentry into enclosed areas following fumigation can result in a much greater inhalation hazard because the concentration of airborne residues may be extremely high.

The Agency also proposes to explicitly include nurseries within the scope of this Part. Nurseries employ an estimated 125,000 workers. They vary in size and types of agricultural activities they perform. Some nurseries are very much like farm in that they grow plants outdoors in the ground. Many different trees, flowers, shrubs, and vegetable- and fruit-bearing plants are cultivated. Other nurseries are much like greenhouses since they grow plants on benches, although the benches are not in an enclosed structure. Many nurseries conduct both farm-like and greenhouse-like activities.

The Agency proposes to specifically include forest areas used for the commercial production of wood fiber and timber products within the scope of this regulation. While pesticide use in the commercial management of forests is similar to pesticide use in traditional agricultural settings, including seasonal labor and high-intensity crop management practices involving pesticides, the use of pesticides in forest areas intended primarily for recreation, such as parks and picnic areas, is essentially dissimilar to use in agricultural settings. Moreover, requirements for reentry intervals and worker notification in such public areas would be impractical. Thus, the Agency proposes to include only areas being used commercially.

The Agency has received comments that the use of pesticides in forestry is less extensive than in traditional row crop agriculture, and that different pesticide use practices are employed. The Agency seeks comment on whether the proposed standards may be inapplicable or only partially applicable to commercial forestry.

The Agency has carefully considered the need for and impact of this proposal on small agricultural establishments which use pesticides. The Agency believes that the practices described in these standards should be employed on any farm, forest, nursery or greenhouse where pesticides are used, because the risks of adverse effects are similar among establishments without regard to the size of the establishment, both in terms of the degree of risk to individual workers and in terms of the total number of workers at risk.

As a practical matter, most agricultural establishments are small businesses. While accurate estimates of size and distribution of agricultural labor are difficult to substantiate, the Agency estimates that 89% of establishments which have hired labor have less than 10 workers. On the other hand, these smaller establishments (less than 10 workers) employ only an estimated 64% of all agricultural workers. These estimates agree with the regulatory impact analysis recently performed by OSHA for the Field Sanitation Standard (DOL, 113).

Thus, many small businesses would be affected by this proposal. A number of the proposed requirements are designed to allow flexibility of compliance method so long as the intent of the requirement is met (performance-type standards). This approach would serve to limit costs for all affected entities, including smaller entities which have limited resources for compliance. However, some of the costs associated with the proposed requirements are fixed (per establishment) capital costs, which would be more burdensome on smaller establishments. The Agency has identified as fixed the costs of posting the basic safety information at a central location, posting warning signs in fields (in part), decontamination water containers (only for establishments without accessible running water), and responding to medical emergencies (in part). All other costs are incurred on a per worker basis, and would not impact small agricultural entities in any disproportionately adverse way with respect to agribusiness as a whole.

The Agency is aware that OSHA has exempted farms where 10 or fewer workers are employed in hand labor activities on a given day from its Field Sanitation Standard (29 CFR 1910.110)(a)). OSHA stated at the time that it did so because an annual amendment to the House Appropriations Bill prohibited OSHA from regulating farms with fewer than 11 employees (DOL, 113). In addition, Texas has exempted small farms from its 1987 Agricultural Hazard Communication Act (governing worker right-to-know for agricultural pesticides) using different criteria: the Act does not apply to farms with less than a certain gross annual payroll. EPA has not been subject to this type of regulatory limitation by Congress, either through its appropriations or through FIFRA, nor has the Agency previously implemented an exemption from pesticide use restrictions for small agricultural establishments through labeling provisions.

The Agency has also considered the relationship between the applicability of this proposal to small agricultural establishments and its enforcement policy in this sector. The Agency does not believe that routine inspections by federal or State enforcement authorities on small agricultural establishments would be cost-effective with regard to these proposed standards. As a matter of policy, the Agency does not plan to carry out a program of routine inspections for the purpose of determining compliance with this rule on such small agricultural establishments, or to require the States to do so as a condition of cooperative enforcement agreements. Most States, however, have primary responsibility for use enforcement and may establish their own compliance policies. If on the other hand EPA or a State had reason to believe that significant infractions were occurring on a particulr small establishment, the Agency and/or the State would inspect and, if appropriate,

take enforcement action. The Agency believes this proposal policy is in keeping with the general approach of OSHA in enforcement of all its agricultural worker protection standards other than the Field Sanitation Standard, with the Congressional guidance to OSHA is the area of which the Agency is aware, and with EPA's current enforcement priorities and resources.

The Agency believes that Part 170 should govern work performed under typical employment or contractual relationships, and should not intrude into family relationships even if the latter may in some cases have business aspects. The Agency therefore proposes to exclude from the Part's coverage those small agricultural establishments where all work related to the production of agricultural plants is performed by the owner and the owner's immediate family, as defined, even if family members receive some form of compensation. Also, immediate family members are not included in the definition of "worker" or "handler" and are therefore excluded from coverage by this Part, even if covered workers are also employed on the same establishment and must receive the required protections. However, all pesticide users, including family members, must comply with instructions on pesticide labeling. In particular, family members must comply with personal protective equipment and reentry interval requirements, which will specifically appear on pesticide labeling (§ 170.3(d)).

The Agency has considered whether an OSHA-type exemption for smaller establishments (using either the same or a different number of workers to define establishment size); a Texas-type exemption for smaller establishments (using gross annual payroll to define establishment size); some other type of exemption (e.g. an exemption for smaller establishments, using one of the above size definitions, from some but not all of the proposed requirements, for example those involving fixed costs); or no exemption for smaller establishments, would be appropriate to this proposal. Comment is solicited on the issues discussed above and any others regarding the need for and impacts of this proposal on small agricultural establishments, including whether any specific threshold of establishment size, in terms of number of workers or size of payroll, is appropriate, and for which requirements this would be appropriate.

2. *Worker activities.* The scope of this Part was also reviewed in terms of work activities to be addressed. The existing Part 170 is directed exclusively to workers performing hand labor tasks in reentry situations. However, agricultural workers may also be exposed to pesticides and pesticide residues while mixing, loading, transferring, applying, or disposing of pesticides, transporting pesticides in open or previously opened containers, acting as flaggers, and cleaning, adjusting, or repairing contaminated parts of mixing, loading, or application equipment. A large number of existing pesticide labels do not adequately specify personal protective equipment or other safe work practices for these pesticide handlers, and there is little consistency among labels that do have requirements. Therefore, the Agency proposes to expand Part 170 to include agricultural pesticide handling activities. The Agency believes there are sufficient data on many aspects of pesticide handler exposure at these sites to support worker protection standards for this category of worker; the rationale for the particular handler standards proposed is discussed later in this preamble.

In considering what standards would be appropriate to protect workers during handling activities on agricultural sites, the Agency also considered whether it would be appropriate to apply such standards to workers at nonagricultural sites where pesticides may be occupationally handled. Nonagricultural sites include some that could be viewed as similar to agricultural sites, such as pasture and rangeland, rights-of-way, turf management (golf courses, home lawn care), ornamental tree and shrub management (grounds-keeping), and aquatic sites. Nonagricultural sites also include categories of usage such as household and institutional indoor treatments (structural, crack and crevice, fumigation), public health, demonstration and research, and food handling, and miscellaneous other occupational uses of pesticides.

The Agency considered four alternatives with respect to inclusion of nonagricultural pesticide handling within the scope of the proposed Subpart B standards: (1) Limit coverage to handling activities at agricultural sites; (2) include handling activities on other sites that are similar to agricultural sites; (3) include handling activities on all sites performed by fulltime, commercial handlers; and (4) include all occupational handling activities on all sites.

The handler standards in this proposal—training, personal protective equipment, access to labeling, decontamination water, and cholinesterase monitoring, found in Subpart B—present a generic scheme of protection for persons who mix, load, and apply concentrated or diluted pesticides. In general, handling activities at nonagricultural sites resemble one or another of the handling techniques used in agriculture; consequently, exposure scenarios and risks would be expected to be similar. For example, boom applications along highway rights-of-way resemble such applications in crop fields, and many methods of home fumigation by pest control operators approximate fumigation methods used in greenhouses. On the other hand, many differences can be discerned in the nature and degree of reentry-type exposures that may follow such applications. For this reason the Agency has only considered including nonagricultural handlers (as opposed to other workers) within the scope of this option.

The Agency recognizes that the extent of pesticide handling by particular individuals at any use site may vary. Some persons may handle pesticides on an essentially full-time basis, for instance commercial aerial applicators or pest control operators, while others may handle pesticides only occasionally. In general, the more extensive handling activities create greater exposure risks and more need for the protections afforded by these standards. The option of covering only full-time nonagricultural handlers of pesticides was therefore considered. One difficulty, however, would be defining the extent of handling that would qualify as "full-time" in a manner that did not appear arbitrary. A similar problem of nonarbitrary definition arises with respect to identification of use sites that are sufficiently similar to agricultural sites to justify application of these rules to those sites.

The economic impact of including nonagricultural pesticide handlers is difficult to predict, and has not been estimated for purposes of the Regulatory Impact Analysis. In addition to private costs, some impact on State certification and training programs can be anticipated from the extension of training requirements to additional pesticide handlers.

At this time the Agency proposes to limit coverage to agricultural handling. However, EPA invites comment on the four options enumerated above, and wishes to emphasize that the final rule may provide for extended coverage of nonagricultural sites.

3. *Other pesticide uses* (§ 170.3(b)). The Agency reviewed the exclusions for certain uses of pesticides found in the

current Part 170 and considered the explicit inclusion or exclusion of certain other uses of pesticides which may result in worker exposure.

The Agency proposes to discontinue the exclusion for soil-incorporated applications. Soil incorporation involves either injecting pesticides into the soil or covering them with a layer of soil. These applications may avoid the foliar exposure hazards for workers, but the Agency is concerned about workers who are performing tasks which require direct soil contact such as weeding, suckering, and cultivating, and about workers who may encounter inhalation hazards from volatile soil-incorporated chemicals.

The Agency proposes to continue to exempt livestock and other animal treatments, public mosquito abatement and similar public pest control programs, and uses on golf courses and similar nonagricultural turf areas. Animal treatments involve exposure situations that are dissimilar from other forms of agriculture and therefore tend to require case-by-case regulation through product labels. Other uses proposed for exemption are outside the traditional definition of agriculture.

The Agency proposes to exclude pesticide use on agricultural plants that are noncommercial in nature, such as treatments in malls, atriums and office buildings and uses in and around homes, e.g., on lawns and in home gardens and greenhouses. Such uses do not lead to exposure of agricultural workers as ordinarily defined.

The Agency proposes to exclude uses where pesticides are injected directly into agricultural plants. Since these pesticides are not broadcast over an area but are confined to the interior of the plant, there is no anticipated exposure to workers reentering the area to perform hand labor or other tasks. "Hack and squirt," "frill and spray" and other such application techniques that do not result in actual injection into the plant are not covered by this exclusion because the Agency considers that workers and applicators can receive significant exposure when these techniques are used (Lavy, 47).

The Agency proposes to exclude pesticide uses on agricultural establishments which are not directly related to the production of agricultural plants. Such uses may include structural pest control, control of vegetation along rights-of-way and in other noncrop areas, control of vertebrate pests, and the use of attractants and repellents in containers. Such uses do not pose hazards to workers during agricultural production-related activities.

Pest control after harvest includes fumigation of grain and other commodities, treatments to mitigate disease introduction and spread on vulnerable commodities such as fruits and some vegetables, and postharvest insect and mite control on crops during storage, packing, and shipping. The risks involved in fumigation of grain and other commodities are substantially different from the risks associated with the pesticide uses included in the scope of this regulation. These pesticide uses warrant separate attention as to protective requirements for pesticide handlers. On the other hand, postharvest uses of pesticides on the portion of the agricultural plant which remains at the production site after harvest are included in the scope of the proposed Part 170. These uses include postharvest applications for insect, mite, disease, and weed pests to reduce any carryover to the next crop, soil sterilization in nurseries and greenhouses, and pesticide applications to trees and other perennial plants to maintain those plants during the nonproductive portions of the cycle.

The Agency proposes to exclude pesticide uses for the purpose of research on the properties and effects of the pesticides. The Agency believes that researchers will be familiar with pesticide practices and hazards and will therefore be able to ensure safe pesticide practices, since they will be conducting research on pesticides themselves. However, such research will only be exempt from the requirements of this Part if all pesticide handling and other tasks associated with the research involving potential exposure to pesticides are performed by the researchers or by persons under their direct supervision. This proposal would not exclude research taking place on agricultural sites where the emphasis of the research is primarily on the various aspects of production of the agricultural plants or on the properties of the plants themselves, and where the use of pesticides during the research is incidental to the experiment.

C. Definitions

The proposed regulation contains a number of definitions (§ 170.5). Those discussed here are ones that merit further explanation.

Chemical-resistant. The terms "chemical-resistant," "impervious," "impermeable," "nonporous," "liquidproof," "water-resistant," and "waterproof" all have been used on pesticide product labeling and in applicator training manuals for describing the type of glove, boot, hat, hood, or apron material that is desirable for pesticide protection. The Chemical Manufacturers Association's ad hoc work group on standard phraseology has recommended the term "chemical-resistant," now used by numerous Government agencies, chemical companies, industrial groups, and trade associations (CMA, 13). The American Society for Testing Materials also uses the term "resistance" to describe the necessary level of performance of protective clothing materials against penetration by liquids (ASTM, 5). The Agency agrees that adopting a universal term would be appropriate and useful.

Forest. This term does not include trees and associated vegetation used solely for parks, recreation, or wilderness preservation. However, any part of a forest that is managed for commercial use as well as for recreational use would be subject to this regulation to the extent of such commercial use. The term includes forests owned and managed by the Federal government and other governmental entities, but does not include forest nurseries, which are treated as nurseries for purposes of this regulation.

Handler. This term covers those workers who may have direct contact with concentrated or dilute pesticides during the enumerated work activities. Workers exposed to residues of pesticides while performing tasks in previously treated areas are not considered to be handling pesticides.

Nursery. For purposes of this Part, nurseries are distinguished from farms by the subsequent use of the agricultural plant in its entirety in another location, and distinguished from greenhouses by the lack of a nonporous enclosure around production areas, although there may be a semi-enclosed area of a nursery, such as a shadehouse.

Owner. This term is intended to include any person who has the legal right to exclude entry to or eject persons from a farm, forest, nursery, or greenhouse. The term includes any fee owner of land on which the production of agricultural plans takes place, as well as any lessee of such land, but does not include any lessor of such land who retains no possessory interest. The term includes both sole and joint owners and lessees.

Personal protective equipment. This term is being adopted by the Agency in the place of other similar terms used in the past such as "protective clothing" or "protective clothing and equipment." The phrase encompasses all clothing and equipment which is worn over, in place of, or in addition to normal work attire for the express purpose of

protecting the wearer from pesticide exposure.

Worker. The term includes persons employed for any type of compensation, e.g., wage, salary, commission, sharecrop arrangement, piece work rate, or as part of an exchange of services. As discussed in Section IV.B.1 of this Preamble, the Agency does not intend the proposed rule to regulate to protect the immediate family of the owner of a farm, forest, nursery or greenhouse. Therefore, any person having any of the specified familial relationships with an owner is not considered to be a "worker" for purposes of this Part, even though the person might receive some form of compensation for work performed. The Agency has adopted the definition of immediate family found in the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and the Department of Labor regulations promulgated under MSPA (29 CFR Part 500) for this purpose.

D. Duties

The Agency believes that the clear identification and assignment of responsibility for implementing these standards will be extremely critical to the successful implementation of this proposal. Proposed § 170.7 attempts to meet the following goals: (1) Ease of understanding by persons who have duties; (2) a clear basis for enforcement action by the Agency and the States if duties are not performed; (3) fairness with respect to enforcement; and (4) consistency with Federal laws and regulations and applicable case law.

EPA considered a broad range of possible approaches to responsibility before deciding upon this proposed approach. Initially, EPA examined the relationship of the owner of the property to the activities which take place upon the property, including general State-law concepts of an owner's responsibility. EPA considered the relationship of owners (including absentee owners), lessees, and operators of property to activities occurring on their land in terms of their exercise or position of control over, their economic interest in, and their proximity to such activities. Furthermore, the Agency considered the relationships of others, including applicators, contractors, supervisors, other employees, and family members, to activities occurring on and off the property.

While specificity in assignment of duties is in general desirable, the requirements of this Part will typically be undertaken by a range of persons. Duties of pesticide users are therefore expressed in terms of general responsibility provisions applicable to classes of persons. Under the proposal, the Agency has assigned responsibilities to the following major classes of pesticide users involved in the production of agricultural plants on agricultural establishments: owners of agricultural establishments, supervisors of workers, workers, persons who contract with owners, and employers of commercial pesticide handlers. If activities of persons in these classes of responsible parties constitute use of a pesticide as defined in the regulation, these persons would be subject to enforcement action for any violation of this Part. In addition, responsibility for the acts of others may be imputed to such persons, depending on the situation, under FIFRA's vicarious liability provision found in section 14(b)(4). Each pesticide user is responsible for meeting certain requirements because of his or her activities, status, or the actions of others involved in the chain of responsibility.

1. *Duties of owners.* The owner of a farm, forest, nursery or greenhouse covered by Part 170 is one person who will virtually always be considered responsible for seeing that the Part's requirements are followed. With only one exception (discussed below), the owner has primary and continuous responsibility for compliance with the requirements of Part 170 governing activities that occur on the property.

The term "owner" is defined in this Part to include not only an owner in fee simple of agricultural property but also a lessee of such property with a current possessory interest. The term excludes a lessor of such property who has no current possessory interest. The broad responsibility of an owner under this proposal is based on the legal control that the owner possesses over activities that occur on the property. The Agency considered whether the person in charge of the day-to-day management of the property (operator) should be ultimately responsible for compliance with this Part, rather than the owner. The operator often is the owner; however, where the operator is not the owner, the operator is usually the agent or employee of an owner or lessee and receives direction from such person as to management of the property, including directions on employee relations and safety. The Agency believes that operators who are not owners or lessees are in actuality senior supervisors and should be viewed as agents of the owner or lessee, who retains ultimate responsibility.

Section 170.7(a) identifies the general duties of the owner—to assure that pesticides are used on the property in accordance with their labeling and with all applicable requirements of this Part, and to assure that all workers, including handlers and supervisors, are protected from pesticide exposure in accordance with this Part. To accomplish this end, the owner, in person or through agents, employees, or contractors, is specifically required to give any necessary information and directions to workers and supervisors concerning pesticide use and safety. This includes notifying workers and supervisors that certain actions are required by law and that violations by workers and supervisors may subject them to enforcement action. It also includes requiring supervisors to assure compliance by workers and to assure that Part 170 projections have been provided.

Workers on the property whose protection must be assured by the owner include not only employees of the owner but workers under contract—for example, those who have contracted (or whose employer has contracted) to apply pesticides or perform fieldwork. An owner under this proposal may hire contractors to take steps required by this regulation; however, he may not escape liability for failure of such contractors to meet the requirements of this Part if the violation occurs on his property.

2. *Duties of supervisors.* Persons who supervise work on agricultural establishments are generally in the best position to be aware of pesticide hazards and to prevent worker exposure. This proposal imposes duties on such persons parallel to those imposed on owners, but limited to the scope of their supervisory responsibility (§ 170.7(b)). Supervisors are required to comply with all directions they receive from owners and more senior supervisors (§ 170.79b)(1)), assure that workers under their supervision receive all protections afforded them by this Part (§ 170.7(b)(2)), and assure that pesticides used by them or under their supervision are used in accordance with the product labeling and this Part (§ 170.7(b)(3)). Persons who employ workers and contract with owners or their agents to provide the services of these workers on an agricultural establishment (labor contractors) stand in a supervisory position toward the workers and are treated by this Part as supervisors, responsible to the same extent as supervisors directly employed by the owner (foremen).

3. *Duties of workers.* In order to protect agricultural workers from exposure to pesticides, workers themselves must perform or refrain from certain activities for their own protection and the protection of others.

For example, a handler who misapplies a pesticide may expose field workers to direct spray or drift, and a worker instructed to inspect a respirator or put up a warning sign who fails to do so may put other workers at risk of poisoning. The Agency therefore proposes that workers be required to assume responsibility for conforming their actions to the requirements of this Part, and be subject to enforcement action for violation (§ 170.7(b)). To ensure that workers have knowledge of their duties under this Part, they must be informed by their supervisors of the existence of this Part and the types of actions it requires of them.

4. *Duties of contractors.* This Part imposes responsibility upon any applicator contractor, labor contractor, or other type of contractor, as well as any worker, handler, or supervisor employed by such contractor, who supervises or performs any work related to the production of agricultural plants on a farm, forest, nursery or greenhouse. Such persons will in general be "acting for" the owner of the property or his agent within the meaning of FIFRA section 14(b)(4). Their duties are those of supervisors and workers in general (§ 170.7(b)), with the exception of employers of commercial pesticide handlers, who have additional specific duties under § 170.22 related to cholinesterase monitoring.

There may be instances in which the employment agreements engaging the work of such contractors do not specifically refer to Part 170 responsibilities. The Agency does not consider absence of such a contractual provision to be grounds for defense by a contractor to an enforcement action based upon a violation of Part 170 requirements pertaining to any service which he or his employee was engaged to provide.

5. *Prohibited actions.* Under this proposal, no owner, employer or supervisor may allow or direct a worker to violate this Part or take any action intended to prevent or discourage any worker from complying or attempting to comply with this Part (§ 170.7(c)). This section is necessary to protect workers from direct interference with compliance, tacit encouragement of noncompliance, and reprisals due to worker insistence on compliance. Retaliation against workers in the form of threats of dismissal, actual dismissal, on-the-job discrimination or discipline, or other adverse employment actions based on compliance or attempted compliance would constitute a violation of this Part and be subject to enforcement action. With such protection, workers will be more likely to insist that these requirements be met, increasing both actual compliance and the Agency's ability to identify and enforce against situations of noncompliance. It should be noted, however, that this section is not intended to create a civil cause of action for any worker or to change any existing common law remedy.

Retaliatory dismissals must be distinguished from dismissals and other adverse employment actions against noncomplying workers. This Part does not prohibit an owner, employer or supervisor from discharging or otherwise disciplining any worker for failure to comply with any requirement of this Part (§ 170.7(c)). An owner, employer or supervisor can take steps to avoid or limit further liability by excluding workers from activities in which they fail to or refuse to comply with applicable worker protection requirements, including, if necessary dismissal.

E. Enforcement

1. *Use of a pesticide.* As relates to requirements such as those included in this proposal, enforcement under FIFRA is dependent upon language which appears on the label or labeling of pesticide products. FIFRA section 12(a)(2)(G) makes it unlawful to use a registered pesticide in a manner inconsistent with its labeling. These proposed revisions would require the placement of specific use instructions and references to Part 170 on the label (Part 156, Subpart K). By specific inclusion of certain Part 170 requirements and incorporation by reference of the remainder of Part 170, the requirements of this regulation would become an enforceable part of the labeling, and thus failure to comply with such requirements would be a violation of FIFRA section 12(a)(2)(G) as a use inconsistent with the label.

The regulation incorporates a definition of "use" which covers numerous activities in addition to application of pesticides, all of which the Agency has determined are necessary steps to assure the safe use of pesticides and the prevention of unreasonable adverse effects on workers (§ 170.9(a)). These activities occur prior to application, during application, and after application. This definition of "use" includes, but is not limited to, application, allowing or arranging for application, making necessary preparations for application, supervising application, and taking any required post-application actions.

This interpretation of "use" is not new in pesticide regulation. In the areas of pre-harvest intervals and rotational cropping restrictions, pesticide labels routinely require persons to take actions (or abstain from certain activities) for long periods following pesticide application (*See* 40 CFR 162.10(i)(2)(x)). Under FIFRA section 2(q)(1) (F) and (G), pesticide labeling must include "directions for use", "warnings" and "caution statements" which are "adequate to protect health."

2. *Joint responsibility.* In considering approaches to liability for violation of the requirements of this Part the Agency considered to what extent liability should be assigned when several potentially responsible persons are involved in the violation.

The Agency proposal is based on the idea that more than one person may be legally chargeable with the same offense. The liability scheme involves each person in the chain of management beginning with, for example, the person who is employed by an owner and who is directed to take an action to comply with this Part, including any supervisors involved in directing that employee's actions or allowing such employee to violate this Part, and ending with the owner of the agricultural establishment on which the violation took place. Under this approach, as an illustration, a failure to comply with a requirement of this Part by a hired applicator contractor occurring on the property of the owner may result in liability for a number of persons, including but not limited to, the applicator contractor, the owner, any persons employed to take actions involved in the violation whether employed by the applicator contractor or the owner, and any supervisory personnel involved in the activities. The Agency believes this liability scheme provides incentives for persons to hire employees and engage contractors who are careful and conscientious and who are likely to comply with the requirements of this Part.

This approach to liability (§ 170.9(c)) is consistent with the statutory provision on vicarious liability which appears in FIFRA section 14(b)(4). The proposed approach is also consistent with the one case of which the Agency is aware in this area, *United States v. Corbin Farm Service* (444 F.Supp. 510 (1978)). This case involved alleged misuse of a pesticide resulting in the death of waterfowl. Defendants in the case included a pesticide dealer, an employee of the pesticide dealer (a pesticide advisor), the owner of the treated fields, and an aerial applicator. While the case did not involve farm worker protection issues, it illustrates the broad view of liability which the

court was willing to take through construction of the term "acting for or employed by" in FIFRA section 14.

3. *Contractor violations off the property.* The Agency is concerned about instances in which an owner might hire a contractor to perform certain services on the property and thereby attempt to avoid, by contract, responsibilities assigned to the owner by this regulation. EPA proposes that such transfer of responsibilities should not be allowed to occur, except under the following circumstances.

Under the proposal, an owner who contracts with a commercial pesticide handler contractor, labor contractor, or other contractor to perform any actions which give rise to the need to comply with requirements of this Part would not be subject to an enforcement action for any failure by such contractor to meet such requirements solely on account of actions by the contractors which occur off the property of the owner (§ 170.9(d)). Although activities occurring off of the owner's property relate to applications which occur on the owner's property, these "off-property" actions are outside of the control of the owner. The persons in the best position to assure that the requirements of this Part pertaining to such "off property" activities are met are the contractor and his or her employees and supervisory personnel.

4. *Worker noncompliance.* The proposal includes a provision which may offer potentially liable persons some relief from enforcement action in the event of worker noncompliance with the requirements of this Part (e.g., worker failure to wear protective equipment, or to stay out of a posted field while a reentry interval is in effect and reentry is not authorized).

The proposal provides that responsible persons shall ensure that workers comply with the provisions of this Part and that worker noncompliance shall not preclude enforcement action (§ 170.9(e)). However, the proposal also provides that enforcement officials will, as appropriate, consider such worker noncompliance in deciding whether to initiate enforcement actions and in determining what penalty should be imposed. In practice, this would result in the gravity of the worker noncompliance being weighed against the efforts of the responsible person to comply with the requirements of this Part. If a responsible person had taken every reasonable step to comply and workers violated the provisions of the Part despite the responsible person's efforts, the enforcement official would be able to consider this in deciding the nature of the enforcement action, if any, to be taken.

5. *Enforcement discretion.* EPA and other enforcement authorities will review alleged, reported, or observed violations and determine on a case-by-case basis whether enforcement action and penalties are warranted and, if so, against which responsible persons. The enforcement authority will, as appropriate, take into consideration, in reaching enforcement decisions, the role of each potentially liable person in the activities which gave rise to the alleged violation, and efforts undertaken by that individual to comply.

This approach to enforcement may be especially relevant in the case of owners not actively involved in the management of the property. Under § 170.7(a), an absentee owner would be responsible for all violations which occur on his property. The enforcement authority would have the discretion to examine the relationship of the absentee owner to the activities occurring on his property and, in an appropriate case, to elect not to proceed against an absentee owner because of his remote relationship to the activities on his land, or to propose only a small penalty.

Likewise, the enforcement authority may consider, as appropriate, the degree of worker noncompliance, in a situation where workers have been warned, trained, and equipped as required and the noncompliance giving rise to the violation is isolated. Before deciding whether to seek an enforcement action or whether to assess a particular penalty, the enforcement authority may, as appropriate, consider the actions taken by the responsible persons to comply in the case under consideration as well as other factors such as the history of such responsible person's compliance with this Part.

F. Training and Information

1. *General pesticide safety information for workers.* The Agency proposes to require that general pesticide safety information be displayed in a prominent location on or in each farm, forest, nursery and greenhouse during the growing season (§ 170.32). Such information would enable workers to understand the basic safety measures needed for their protection while working in areas where pesticides are being used, providing workers with important knowledge to prevent serious acute poisonings and reduce long-term exposure.

The 18 items of information required to be displayed include: the location of emergency medical care facilities; a facsimile of the warning sign used for posting treated areas; statements concerning pesticide hazards and recommended safety practices derived from pesticide safety training programs in current use around the country (USDA and USEPA, 94; USEPA, 99; USEPA, 100; NRPC, 65); and statements concerning the rights and duties of employers, supervisors, and workers under this Part. The Agency solicits comment on whether it would be appropriate and practical to include information about the signs and symptoms of pesticide poisoning with the general pesticide safety information. EPA has recently developed and printed a poster featuring general pesticide safety information for farmworkers which could be used to fulfill this proposed requirement.

All information would be required to be in English. However, in order to communicate with workers who can only read another language, the information must either be put into that language, or a note must be added in that language recommending that the worker have someone explain the information. Employers and supervisors thus would be required to ascertain whether such a translation should be posted and, if required, to do so. Additional proposed conditions concerning the information display include requirements to inform workers of the location of the information, to allow them reasonable access to it (that is, the information should not be displayed where workers may be unable or reluctant to make use of it), and to maintain the information in a legible state.

The Agency considered whether other methods of communicating this information, such as oral instructions or a training program given either by employers or by other providers, would be more appropriate. However, the Agency believes that oral communication methods would likely prove less reliable and less convenient. The Agency solicits comments on the most appropriate method of conveying basic pesticide safety information to workers.

2. *Training of handlers and early reentry workers*—a. *Proposal.* The Agency proposes to require pesticide safety training for all persons who handle agricultural pesticides or who engage in early reentry activities (§ 170.12). The Agency believes that because of the significant opportunities for exposure, these persons need to know about basic safe use practices in order to reduce accidents and unnecessary exposures, and encourage more careful adherence to specific labeling instructions. The goal of this

training would be to provide information which would assist in understanding the requirements for safe pesticide use, the need for the requirements, and responsibilities of these workers to protect themselves and others from harm due to failure to handle a pesticide product safely. The Agency proposes that this requirement would be met either by certification as a private or commercial applicator or by undergoing a training program meeting certain minimum standards.

b. *Content.* In § 170.12(b)(2) the Agency proposes minimum standards for the content of training programs. The Agency has determined that training materials adequate to train noncertified handlers and other workers in the basic safety precautions and requirements of pesticide use are already developed and are accessible nationally. In particular, a training program utilizing the slide-tape presentation and bilingual training manual developed at the University of Florida under a grant from EPA would meet this proposed requirement. To date over 500 slide/tape sets and over 75,000 copies of the manual have been distributed around the country. Training programs utilizing these materials can be accomplished easily and inexpensively for groups of varying sizes.

c. *Trainers.* The Agency has determined that the presence of a trainer at each training session is a necessity. Merely showing a slide/tape program and handing out a manual is not sufficient to meet the requirements. A trainer must be present who is capable of answering questions which may arise and who is knowledgeable about the techniques and practices being taught.

The Agency proposes that the minimum qualifications for a trainer be either (1) certification under 40 CFR Part 171 as a private or commercial applicator, or (2) designation by any State or Federal agency as a trainer of certified applicators (§ 170.12(b)(1)). The Cooperative Extension Service and the other public and private groups now training certified applicators are a natural source of trainers. However, the participation of any certified applicator in a training program will be sufficient to meet the Agency's minimum requirement. The Agency believes that certified applicators are likely to be the most appropriate trainers available, in the event a State declines to specify trainer requirements and to implement its own programs to meet these requirements.

d. *Verification.* FIFRA section 11 prohibits the Agency from issuing regulations requiring recordkeeping by private applicators. This section may prohibit a recordkeeping requirement on trainers who are private applicators. Since much of the proposed training would be conducted by private applicators, EPA is not proposing a recordkeeping requirement for trainers. This does not preclude a State from instituting a recordkeeping requirement as part of its oversight of a training program. Without records indicating who has received training and who performed the training, the Agency believes enforcement of the requirement may be difficult.

e. *Emergency handling and early reentry.* Under emergency circumstances, trained workers might not be available when needed to handle pesticides or work in treated areas under a reentry interval. The Agency considered allowing untrained workers to substitute for such persons under these circumstances if they were given instructions specific to the pesticide to which they would be exposed. However, such emergency training, to be adequately protective, would not be significantly less burdensome than regular handler training. Moreover, the Agency believes that an exception to the training requirement would not be necessary under ordinary crop management conditions, and might be subject to abuse.

f. *Development of training programs.* The Agency is committed to aiding in the development of training materials which meet these minimum requirements. EPA, the States, and the State Cooperative Extension Services will support training efforts in varying ways and degrees, by making available model training materials at cost or for free and reviewing or othewise cooperating in the development by the private sector of training materials. The Agency does not propose to limit the training programs designed to meet the requirements of this Part to those programs pre-approved by EPA. However, individuals or groups who design such programs may submit them to EPA or to the appropriate State agency for review and comment on how well they comply with the requirements of this Part.

g. *State training requirements.* Certain States currently require training of pesticide handlers. The Agency does not wish to disrupt such programs if they provide adequate handler training. Therefore, the Agency proposes to allow a State to create or continue to use different standards for trainers and training programs (§ 170.12(d)). While additional requirements consistent with those of this Part may be freely imposed, if such State standards are inconsistent with the training requirements of § 170.12, the State must petition the Agency for review and approval of the modifications. In those States choosing not to involve themselves in handler training, the Agency's proposed minimum standards would apply.

3. *Access to labeling information.* The Agency proposes that any person who handles a pesticide be provided, upon request, any information from the labeling of the pesticide being handled (§ 170.14). The Agency considers this requirement to be complementary to the training of handlers in general pesticide safety. Handlers may need access to the particular safety requirements of pesticides being used in order to protect themselves and others. The labeling itself, if available, may be provided in lieu of requested information from labeling. The Agency proposes that such information be available before any scheduled handling or during the handling itself.

G. Notification

The existing Part 170 requires warnings to be given when workers are expected to be working in a field that has been treated or that is scheduled to be treated with a pesticide. The Agency has determined that the existing Part 170 does not adequately specify how these warnings shall be given, when the warnings shall be given, and of what the warnings shall consist. The Agency proposes to revise these notification requirements to ensure that workers are clearly and adequately notified of all pesticide applications and resulting reentry intervals. The methods of notification in this proposal vary according to use site.

1. *Farms and forests.* This proposal would require two different types of information about any pesticide application on a farm or forest to be provided to workers—daily oral warnings and further information available on request (§ 170.42). In addition, posting of treated areas would be required for some pesticides (§ 170.44). The Agency considers oral warnings to be the most effective means of communication. Oral warnings would be supplemented by specific pesticide application information available on request. Treated area posting would directly warn workers of the most toxic applications. These notification methods together would help avoid gaps in communication leading to workers accidentally entering a recently treated area or an area that is about to be treated.

a. *When notification is required.* This proposal would in general require

notification to workers, through one or more notification methods, of all pesticide applications to agricultural plants on farms and in forests. However, pesticides may be applied at times when workers are not present, or may be applied to distant areas of the establishment where no work activities are occurring, in which case the possibility of accidental or intentional reentry during reentry intervals is remote. The proposal therefore includes an exception to the notification requirements in the case of workers who will not have access to the pesticide-treated area or any "neighboring areas" during application and through the subsequent reentry interval. Any such worker need not be orally warned or be given the additional information available on request. If no worker will have access to the treated area during this time, posting of the area would not be required.

The Agency has limited the notification exception to cases where the least potential for accidental exposure exists and where notification would thus prove least useful. The duty to notify extends to notification of workers in "neighboring areas" such as adjacent fields or labor camps, and specifically includes workers in nearby fields or labor camps separated only by a roadway or other narrow right-of-way from the treated area. It also includes workers passing by the treated area on footpaths or in open vehicles, as when workers are traveling to other work sites. If not notified of the pesticide application, such workers who are present in "neighboring areas" may, for example, casually enter the treated area to have lunch, or be exposed to spray drift.

b. *Information to be provided orally* (§ 170.42(b)). The Agency is proposing that daily oral warnings be required for all pesticide-treated areas subject to notification. Oral warnings would consist of the specific location and description of the area and the time during which entrance into such area is restricted. The Agency considered whether to continue to require oral warnings to be given in an "appropriate language" as in the existing Part 170 or to allow warnings in English only. Since no information available indicates that this requirement has been burdensome, EPA proposes to retain the requirement while clarifying the conditions under which warnings in other languages are "appropriate", i.e., if the worker does not understand spoken English. The person responsible for notification need not be bilingual, but he or she must find someone who can effectively communicate warnings in the language of the worker.

c. *Information to be provided upon request* (§ 170.42(c)). The following information would be required to be provided upon request for all areas subject to notification, beginning on the day the pesticide is to be applied and continuing at least until the expiration of the reentry interval: The specific location and description of the area treated or to be treated, the brand name, active ingredients and EPA registration number of the pesticide used, and the reentry interval. Making this information available upon request would give workers the right to receive specific information about pesticides to which they may be or have been exposed during work activities. The Agency considered requiring this information to be displayed at a central location such as a notice board, or to be written on warning signs, but concluded that such a requirement would be more burdensome without providing any additional protection.

d. *Treated area posting* (§ 170.44). The Agency proposes to require posting of warning signs for areas treated with pesticides which have a reentry interval greater than 48 hours. The Agency believes that when oral warnings about specific pesticide applications are used, the potential for miscommunication and memory problems, and therefore the risk of accidental early reentry, increases with the length of the reentry interval. Therefore, it is important to reinforce the oral warnings with posted warnings when a longer reentry interval is used.

Another option would be to require posting for pesticides with reentry intervals of 24 hours or greater in place of oral warnings for those products under this option a greater number of the more acutely toxic pesticides would receive posting, which may be a more reliable method than oral warnings. Given the reentry interval provisions of this proposal, this option would require posting of all products with organophosphate and N-methyl carbamate active ingredients in Toxicity Categories I and II, and all products with active ingredients in Toxicity Category I, in addition to any other products with reentry intervals of greater than 24 hours based on case-by-case registration decisions. The economic cost of notification would thus increase under this option because of the greater number of products requiring posting, although this would be offset somewhat by the reduction in oral warnings.

A third option would be to require posting for pesticides with reentry intervals of 24 hours or greater in addition to oral warnings for all pesticides applications. Under this option, workers would have more extensive direct warnings of applications through posting, supplementing the daily oral warnings. However, the economic cost of this notification option would be greater than for the other two options.

The Agency concluded that requiring posting only for areas treated with pesticides with reentry intervals of greater than 48 hours would assist in reducing accidental poisoning by reinforcing oral warnings without a significant increase in economic cost. The Agency solicits comment on this proposal and on the other options considered.

The Agency is proposing that the warning sign contain the words "DANGER–PESTICIDES–KEEP OUT". The proposal states that the letters on the signs must be at least 20 inches high—a height that would be visible at 25 feet by a person with normal vision. The Agency is also proposing that the sign contain an upheld hand symbol and a stern-looking face. The upheld hand is an international symbol for "do not enter" and is also used as a "do not cross" pedestrian sign. The stern-looking face reinforces the seriousness of the warning to keep out. A symbol is important in addition to the written words since many field workers do not read at all or do not read English.

The skull and crossbones sign, used in California, was also considered because it is a universally recognized symbol of poison. However, the Agency believes that since the skull and crossbones is the symbol used on the label for the most highly toxic pesticides, field workers might confuse a skull and crossbones reentry symbol, where the exposure risk would be much less, with the symbol on the label of a concentrate, where a very small amount could kill a person. In addition, since the Agency is requiring posting in greenhouses and nurseries for all pesticides, not just the most highly toxic pesticides, use of the skull and crossbones could lead to the assumption that all pesticides are highly toxic, which would detract from its usefulness to farmworkers who associate that symbol with the most highly toxic pesticides. The symbol required by Texas (a slash mark across the figure of two people walking through a field) was also considered, but the Agency felt that it did not adequately convey the message of the proposed sign. The Agency believes that pilot testing under field conditions of any proposed warning sign symbol would

help to establish its relative effectiveness, and invites comment on how this could best be accomplished.

The Agency considered whether or not to require the name of the pesticide and the dates of the reentry period on the posted sign for use in case of an emergency. A generic sign would be easier to put up and take down, thus saving labor and material expenses. The Agency proposes to require generic signs for posting on farms and forests. However, the brand name, the active ingredients and the registration number of the pesticides, the dates of the reentry interval, and the field location would be provided to any worker upon request (§ 170.42).

The Agency is proposing that the signs be placed so as to be visible from the usual points of entry to the treated area. Posting at locations where farmworkers would most likely enter would achieve maximum visibility and protection. The proposal does not require labor-intensive posting at specific intervals along boundaries of fields.

In order for posting to be effective the signs must not be put up too far in advance of the pesticide treatment and must come down within a reasonable time after the reentry interval has expired. The proposed language permits posting no sooner than 24 hours before the scheduled application, and requires signs to be removed within 3 days of the end of the reentry interval. In no case may treatment begin before signs are posted, nor may workers enter without appropriate personal protective equipment until signs are removed. These time frames and conditions would assure that presence of signs correlates with pesticide hazards, while allowing some flexibility to farm managers.

Posting of a larger area than the treated area would be permitted where a continuous spraying operation treats alternate rows or areas, rather than the whole area, on a sequential basis (§ 170.44(b)(5)). Since posting of individual rows in this case would be difficult and expensive, the Agency is proposing that the entire area may be designated the treated area and be posted. However, no part of this entire area may be entered while signs are posted, except under the conditions specified in the regulation for early reentry.

2. *Greenhouses.* Requirements for notification for greenhouse workers (§§ 170.62 and 170.64) are different in many respects from those for outdoor agricultural workers. Since greenhouses, even large greenhouses, are well-defined and relatively limited spaces, the Agency did not attempt to limit notification to areas to which workers would have access, as in the case of farms, forests, and nurseries. Any area in the greenhouse which is treated with pesticides would be subject to notification if at least one worker is present during application or during the subsequent reentry interval.

Due to generally smaller space and the aisle/bench format of greenhouses, reliance on posting is easier, less labor-intensive, and less expensive than for larger agricultural establishments. Therefore, the Agency proposes that all reentry-restricted areas in greenhouses be posted with warning signs, not only areas treated with pesticides having a greater than 48-hour reentry interval (§ 170.64(a)). The Agency believes that this provision will be relatively easy to implement because of the nature of enclosed structures and greenhouse practices. Since the point of access to the treated area is either the door—in case of treatment of the entire structure—or individual benches, rows, or even plants, signs would be posted at the entrances to the greenhouse, at each corner or end of a treated bench, at each end of a row, or in front of a treated plant. In addition, the Agency believes that greenhouses utilize a high proportion of low-toxicity pesticides which have relatively short reentry intervals, i.e., possibly just until sprays have dried, dusts have settled or vapors have dispersed. If treatment occurs at night, these intervals would no longer be in effect by the time workers start the next day, in which case no posting would be required. Mechanical ventilation systems can be used to shorten the reentry time for fumigation by reducing vapor dispersal time.

The Agency proposes that signs be posted immediately (instead of 24 hours) before the actual application of the pesticide and removed within 1 day after the reentry interval has expired, for the reason that this practice would not be burdensome and posting would thereby be tailored to the presence of the reentry hazard. The Agency does not propose a size requirement for warning signs; signs may be small, as long as the lettering and symbol are clearly visible from all points of access.

The Agency proposes that no oral warnings be required for greenhouse workers since all treated areas would be clearly posted. As in the case of farms and forests, pesticide-specific information would be available on request (§ 170.62).

3. *Nurseries.* The Agency believes that the generally smaller growing areas, including presence of benches and even individual ornamental plants, make nurseries on the whole more similar to greenhouses for purposes of notification of workers. The Agency therefore proposes to require posting of all reentry-restricted areas under the same conditions as greenhouse posting (§ 170.54) and not require oral warnings. Pesticide-specific information would be available on request (§ 170.52). As in the case of greenhouses, no size requirement for warning signs is proposed. However, warning signs must be clearly visible from points of access to the area, which in the case of large nursery growing areas may necessitate relatively larger signs in an elevated position, which would not be necessary for nursery benches.

H. Personal Protective Equipment

1. *Proposal and rationale.* The Agency proposes minimum personal protective equipment (PPE) requirements for the protection of pesticide handlers and early reentry workers exposed to agricultural pesticides (§§ 156.215, 156.216, and 156.217), as well as duties related to provision, use, and maintenance of required PPE (§ 170.16).

Any barrier that can be placed between a worker and a pesticide to reduce exposure can reduce the risk of pesticide poisoning. With the exception of enclosed cabs of vehicles with positive-pressure ventilation systems and enclosed cockpits of aircraft, the only significant barrier available to applicators is personal protective equipment (Lunchick et al., 50). For mixers and loaders, closed mixing/loading systems and new types of containers and packaging (such as water soluble bags) have potential, but more work needs to be done to perfect these approaches (Jacobs, 41). Mechanical harvesters and other mechanical techniques are sometimes substituted for hand labor operations in early reentry situations, but their availability and utility are limited. PPE remains the most viable method of reducing occupational exposure to agricultural pesticides.

Under current regulations (§ 170.2(d)), the term "protective clothing" is defined as "at least a hat or other suitable head covering, a long-sleeved shirt and long-legged trousers or a coverall-type garment (all of closely woven fabric covering the body, including arms and legs), shoes and socks." The Agency deems this definition inadequate to protect either handlers or workers reentering treated areas before the expiration of the reentry interval. The Agency has determined that such clothing offers adequate protection for workers only for the lowest toxicity pesticides. In addition, the Agency

believes that this definition of protective clothing has been widely misperceived as the Agency's official definition of protective clothing for all persons occupationally exposed to pesticides and their residues, including not only fieldworkers but also mixers, loaders, and applicators.

The Agency has determined that different types of PPE will be needed to provide adequate protection for workers in different exposure situations. The toxicity of the pesticide, the type of formulation, and the route and degree of anticipated exposure all affect the appropriate level of PPE which should be used to maximize worker protection. In the future, each individual pesticide product label may list specific PPE requirements reflecting the formulation, anticipated exposure route and level, and all forms of toxicity of that product. In the interim, the Agency proposes minimum PPE requirements for all agricultural pesticides based on the acute toxicity either of the formulated product (for handlers) or the active ingredient (for early reenty workers); type of worker activity; time since application; route of worker exposure; and handling technique.

The Agency considered whether to take chronic toxicity into account in establishing PPE requirements. For many of the same reasons cited in the discussion of reentry intervals (see unit III.I.2. below), EPA proposes to continue to assess chronic toxicity in registering and reregistering individual agricultural pesticides and make decisions on appropriate PPE on a case-by-case basis. Consequently, the proposed minimum PPE requirements are based on acute toxicity considerations, although the requirement for normal work attire for handlers exposed to Toxicity III and IV pesticides is in part a reflection of the Agency's concern over routine worker exposure to pesticides with unknown chronic effects.

2. *Minimum PPE requirements*—a. *PPE for pesticide handlers.* Persons mixing, loading, transferring, transporting, applying and disposing of pesticides, as well as individuals involved in repairing, adjusting, or cleaning of mixing, loading, and application equipment, face exposures to potentially dangerous levels of pesticides unless adequate protection is used. This exposure potential is especially high for handlers who perform these tasks on a regular basis.

Research into the dermal and respiratory pesticide exposure of applicators, mixers, and loaders has demonstrated the degree and nature of this exposure (Durham and Wolfe, 23; Wolfe et al., 108; Wolfe., 107; Durham et al., 25; Wolfe et al., 109; Davis, 17). For example, over 97 percent of pesticide exposure during most handling situations, especially spray application, is dermal exposure (Wolfe, 106). While exposure of the various body areas can vary significantly depending on the type of application or mixing and loading task, there is general consensus that hands and forearms usually receive the highest exposure in terms of percentage of total dermal exposure. In one study 87 percent of total dermal exposure to applicators was to the hands and forearms (Leavitt et al., 48). In another study, an average of 76 percent of the total dermal exposure for mixers/loaders handling wettable powders and liquid formulations was to the hands (Maitlen et al., 56).

For both outdoor ground applicators and mixers/loaders, respiratory exposure outdoors is usually less than 3 percent, and sometimes less than 0.1 percent, of an individual's total exposure. However, respiratory hazards cannot be ignored, since almost 100 percent of the material to which the lungs and gastro-intestinal tract are exposed is absorbed into the body (Durham and Wolfe, 23). When fumigants or highly volatile pesticides are handled, respiratory exposure may be significant (Wolfe et al., 109). In greenhouses and in similar enclosed structures, respiratory exposure to pesticides can be even more severe than outdoors (Waldron, 102). The limited volume of air available for dilution of vapors and the lack of air movement during most applications make protection of the respiratory system essential in some greenhouse exposure situations.

Exposure of persons who clean and repair contaminated mixing, loading and application equipment can be similar to exposure of mixer/loaders handling liquid formulations. Dermal exposure to concentrated or dilute pesticides may occur from spills, splashes, and leaning on contaminated equipment. Cleaning of equipment often involves hosing down the equipment, resulting in potential contamination from splashing and runoff water (Russell, 80). Respiratory exposure is generally not significant during these activities due to the absence of airborne mists or dusts.

The Agency therefore proposes that pesticide handlers be required to wear minimum PPE based on the acute dermal toxicity or skin irritation potential (whichever is higher), the inhalation toxicity, and the eye irritation potential of the formulated product being handled. These proposed minimum requirements are set forth in the table found at § 156.216(b).

The Agency proposes that these PPE requirements be based on the toxicity of the formulated product. The toxicological characteristics of the formulated product are clearly relevant to handler exposure when the product is sold as "ready to use." The relationship is less firm when the product is sold as a concentrate and diluted by the user, because the resulting diluted product will often have a different toxicity than the concentrate. Because toxicity data on such diluted products are generally not available, the Agency proposes to base handler PPE requirements on formulated product toxicity, while allowing registrants and others to submit data on dilute product toxicity which would enable the Agency to establish product-specific PPE requirements.

b. *PPE for early reentry workers.* Agricultural workers can be exposed to pesticide residues during routine work activities upon reentry into sites previously treated with pesticides. These airborne and surface residues can be gases or particulates suspended in air. The surface residues can be on plants, plant parts, duff, or planting media or in or on water or soil. Some studies indicate that agricultural laborers exposed to dislodgeable foliar residues during a normal work day can receive exposure similar to that of a ground applicator of the pesticide (Zweig et al., 112).

The greatest exposure of agricultural laborers during early reentry activities is before sprays have dried, dusts have settled, or vapors have dispersed. Levels of airborne residues in the form of dusts and vapors are highest immediately following application. Because lung surfaces are highly permeable, the potential for adverse effects from inhalation exposure is significant, especially if the pesticide is highly volatile (Durham and Wolfe, 23). Dermal and ocular exposure to wet sprays can also be significant (Gunther et al., 33). The Agency therefore proposes that workers reentering treated areas during this time be required to wear the same minimum PPE as handlers of the pesticide. These proposed minimum requirements are set forth in the table at § 156.216(b).

For early reentry after sprays have dried, dusts have settled, or vapors have dispersed, the major routes of worker exposure are dermal and ocular (Gunther et al., 33). The greatest exposure hazard is generally to the hands and lower arms. Most of the dermal exposure during reentry activities results from transfer of foliar residues to the workers (Popendorf, 74).

Ocular exposure may result from transfer of foliar residues to the eye via the hands and lower arms. Dermal exposure of hands to residues in soil may be significant during those tasks that require frequent contact with the soil, such as harvesting potatoes, weeding, and thinning. Dermal exposure of feet to residues in soil is likely when workers are on foot rather than in vehicles. Airborne residues at this time will generally be less than 0.2 percent of the total exposure (Popendorf et al., 77). The Agency therefore proposes that workers reentering treated areas after sprays have dried, dusts have settled, or vapors have dispersed be required to wear minimum PPE based on the acute dermal toxicity or skin irritation potential (whichever is higher) and on the eye irritation potential, but not on the inhalation toxicity, of the active ingredient(s) of the pesticide product which was applied. These proposed minimum requirements are set forth in the table at § 156.217(b).

The Agency proposes that the PPE requirements for early reentry workers entering before sprays have dried, dust have settled or vapors have dispersed, as for handlers, be based on the toxicity of the formulated product, and for workers entering after this time on the toxicity of the active ingredients in the product. Workers entering soon after spraying occurs are exposed to pesticide residues most resembling the product applied. However, after spays have dried the remaining residue is toxicologically most similar to the active ingredients.

c. *Types of protective requirements*—(i) *Hands.* Dermal exposure of the hands and forearms represents the most significant route of exposure of hand laborers, applicators, mixers/loaders, and other persons who are occupationally exposed to agricultural pesticides and their residues (see, e.g., Franklin, 29). This is true except for fumigation and use of airborne pesticides in enclosed areas, where inhalation exposure predominates. Studies have shown that wearing gloves may reduce hand and forearm exposure by 97 percent for mixers/loaders (Maitlen et al., 56) and by 98 percent for applicators (Gold et al., 31). Since gloves made of chemical-resistant material can be the single most important barrier to pesticide exposure for agricultural workers, the Agency proposes to require chemical-resistant gloves for all early reentry and pesticide handling situations, with the exception of early reentry workers exposed to Tox III or IV pesticides and handlers exposed to Tox IV pesticides.

Technological advances in recent years have led to the development of a wider variety of chemical-resistant materials suitable for protective gloves. Many of these materials allow great dexterity and comfort; the Agency cites the dexterity that surgical gloves allow. In addition, many gloves are being made of cotton or other fibrous materials which are coated with a chemical resistant outer layer. These coated gloves are sturdy, flexible, and can be washed and reused. While the cloth lining inside coated cloth gloves may be difficult to clean, the Agency believes that if gloves are used, maintained, and decontaminated properly, they are effective in significantly reducing hand exposure.

Leather gloves, uncoated cloth gloves and fingerless gloves are considered unacceptable by the Agency for use as protective gloves. Liquid and particulate pesticides can rapidly penetrate materials that are not chemical-resistant and increase dermal exposure by trapping the residues close to the skin. In addition, once contaminated with pesticide residues, such gloves cannot be adequately cleaned and are too costly to be considered disposable. The Agency considered an exception in the case of early reentry workers pruning roses, because sturdy, yet flexible, glove materials such as leather and cotton are frequently used by such workers to withstand the wear and tear from the thorns while providing sufficient dexterity. However, upon review of the many chemical-resistant glove materials now available, the Agency has determined that chemical-resistant gloves appropriate for use in the pruning of roses, including coated cloth gloves, are available, and that leather and uncoated cloth gloves would be unacceptable.

(ii) *Body.* The Agency has determined that long-sleeved shirts and long-legged pants are insufficient protective barriers to moderately and highly toxic pesticides and their residues, and that protective suits offer substantially more protection. Therefore, the Agency proposes to require that all handlers and early reentry workers exposed to pesticides in Toxicity Category I or II for either dermal toxicity or skin irritation potential wear protective suits, such as fabric coveralls, that at a minimum cover the entire body except for the head, hands, and feet.

Appropriate protective suits can reduce the exposure to workers' trunk area, arms, and legs by 99 percent (Davies et al., 19; Hickey, 38). In one study, 100 percent cotton coveralls reduced the penetration of ethion by 72 percent for mixers and 97 percent for applicators as compared to workers wearing only normal work attire (pants and short-sleeved shirts) (Davies et al., 19). More importantly, no heat stress complaints were mentioned by the workers while wearing full-length cotton coveralls, although the weather was very hot and humid during the study.

A protective suit is more effective as a barrier if worn over another set of clothing (Davies et al., 19). Both the additional set of clothing and the additional air layer are important in resisting the movement of a pesticide through the layers to the skin. However, there are drawbacks to this method of protection. The resulting outfit is somewhat warmer and less comfortable than a single layer of clothing. In addition, if a spill or saturation of the protective suit caused the pesticide to reach the inside clothing, the worker would be left with only contaminated clothing to wear or take home or to work in for the remainder of the shift. Despite these objections, the Agency proposes to require that the protective suit be worn over normal work attire, and seeks comment concerning this proposal.

Protection without comfort is of little value to workers; if workers get too hot, PPE will not be used (Davies et al., 19). The term "protective suit" is therefore not intended to refer to impervious, chemical-resistant, or waterproof suits. A protective suit will most often be a set of coveralls or a lightweight disposable suit. If the toxicity or formulation characteristics of a particular pesticide require the use of a chemical-resistant suit, it will be required on a product-specific basis.

A chemical-resistant apron can significantly reduce exposure due to pesticide spills and splashes and leaning against contaminated equipment during mixing and loading (Russell, 80). If worn over a protective suit, these aprons can also prevent extreme contamination of the suit and prevent the pesticide from penetrating to the skin, where it would be trapped by the shirt or pants, increasing dermal absorption (Wester and Maibach, 104). A suitable apron is most effective when liquid formulations are being handled, but is also useful when handling dry formulations such as wettable powders. The Agency therefore proposes that mixers and loaders of Tox I and II (by dermal exposure) formulations be required to wear a chemical resistant apron, unless a chemical-resistant suit is otherwise required by the labeling (§ 156.216(c)(1)).

While protective suits offer significant protection for mixer/loaders handling dry formulations and applicators

exposed to spray mist, they do not offer much protection against spills and splashes, the most common exposure risk for persons who clean and repair contaminated equipment. The Agency therefore proposes to require a chemical-resistant apron for body protection in these handling situations, but not to require a protective suit (§ 156.216(c)(7)).

The Agency proposes to require that handlers and early reentry workers entering before sprays have dried who are exposed to Tox III and IV pesticides wear normal work attire (defined as long-legged pants and long-sleeved shirt, shoes, and socks) for bodily protection, in effect continuing the present PPE requirements for these pesticides. Such a requirement would afford some protection for workers from pesticide splashes and spills and exposure to wet foliage, while representing little cost to pesticide users.

(iii) *Head.* Pesticide absorption through the skin is not uniform for all areas of the body. Two of the areas which absorb pesticides more readily than other areas are the back of the neck and the temple areas. The Agency proposes to require headgear for handlers in situations where exposure from overhead dusts or sprays is possible, such as in airblast spraying operations and flagging. Plastic hard hats with nonabsorbing liners, hoods, wide-brimmed hats and sou'wester-style hats are considered to afford adequate protection to the head and neck area.

(iv) *Respiratory tract.* The Agency proposes to require handlers and workers entering treated areas before sprays have dried to wear respiratory protection devices approved by the National Institute of Occupational Safety and Health (NIOSH) and the Mine Safety and Health Administration (MSHA) for the intended circumstances of use, if the pesticide is in Toxicity Category I or II for inhalation toxicity. The Agency does not propose to require a respiratory protection device to be used by early reentry workers entering after pesticide vapors have dispersed, or where the pesticide to which any worker is exposed is in Tox III or IV for inhalation toxicity, due to the low inhalation hazard in these situations.

(v) *Face and eyes.* The eyes and face may be exposed to pesticides whenever there is danger of chemical splash or high levels of fumes, vapors, or dusts during mixing, loading and application (Russell, 80). Workers may wipe their eyes and face with hands and forearms during harvesting and other agricultural activities, thus transferring residues to these parts of the body. The face and eyes may also receive pesticide residues when they are dislodged from foliar surfaces above the head of the worker, such as during harvesting of tree fruits.

The Agency therefore proposes to require the use of goggles or a face shield by all handlers and early reentry workers exposed to pesticides with Toxicity Category I and II eye irritation potential. Use of goggles or a face shield would be required during mixing and loading using closed systems only if such systems are pressurized, due to the risk of system failure and subsequent exposure hazard.

(vi) *Feet.* Exposure of feet to pesticides may occur from spills and splashes, from downward spraying of mists, and when walking through ground cover of weeds, grasses and agricultural plants after spray application while sprays are still wet (Russell, 80). The Agency has determined that chemical-resistant footgear (shoes, boots or shoe coverings) provides sufficient protection for feet from pesticide exposure under these circumstances, while leather and canvas footgear (boots or shoes) provides inadequate protection.

The Agency proposes to require chemical-resistant footgear for handlers and early reentry workers exposed to pesticides in Toxicity Category I or II for dermal toxicity or skin irritation potential. The Agency recognizes, however, that some workers, particularly forestry workers, have traditionally used leather boots for durability and breathability in rough terrain, and seeks comment on the impact of such a requirement on these workers.

d. *Modification of minimum requirements*—(i) *Data submission.* Any registrant or other person will be permitted to seek modification of these minimum PPE requirements by submission of appropriate data (§§ 156.216(f) and 156.217(d)). Rebuttals favoring different minimum PPE requirements may be by submission of data such as that required by Subdivision U of the Pesticide Assessment Guidelines, or other medical, epidemiological, or other health effects data, which demonstrate to the Agency's satisfaction that different PPE requirements will sufficiently protect pesticide handlers or early reentry workers from pesticide exposure.

The Agency would specifically allow registrants and other persons to submit acute toxicity data on an end-use product as diluted for use for one or more routes of exposure (§ 156.216(d)). Such data may enable the Agency to modify the PPE requirements for handlers other than mixers and loaders and for early reentry workers entering before sprays have dried, if the data indicate that the toxicity of the end-product as diluted for use is significantly different from that of the formulated product sold to the user.

(ii) *Exposure pattern.* The Agency proposes to modify the minimum PPE requirements for handlers of pesticides in Toxicity Category I or II by dermal toxicity or skin irritation potential, under certain exposure-related circumstances (§ 156.216(c)). Three of these modifications—the chemical-resistant apron requirement, the head protection requirement, and the PPE requirements for cleaning of mixing, loading, and application equipment—have been discussed under types of protection. The other modifications relate to enclosed pesticide handling methods.

The Agency welcomes technological advances which would eliminate or substantially reduce exposure of pesticide handlers, and desires to encourage such advances by reducing the minimum PPE requirements in these situations. The Agency has identified three technologies which can substantially reduce handler exposure: (1) Closed system mixing and loading; (2) application from within an enclosed aircraft cockpit; and (3) application from within an enclosed cab with a positive-pressure ventilation system.

The Agency proposes to allow pesticide handlers using closed mixing/loading systems to wear normal work attire, plus chemical-resistant gloves and an apron. The gloves and apron requirement protects against spills and leaks that may occur in the system. If a closed system is used for handling highly toxic pesticides or large quantities of pesticides, an accidental exposure result in a serious poisoning or injury. In addition, as discussed above, a face shield or goggles would be required if the product is being transferred out of its container through the use of pressure. Without such eye protection, a leak could result in highly toxic concentrated pesticide being squirted into the face and eyes under pressure.

The Agency proposes to allow pesticide applicators in enclosed cockpits of aircraft to wear their normal work attire. However, the Agency is concerned about dermal contamination of the hands and forearms while the pilot is entering or leaving the cockpit where the outside surface of the aircraft contains pesticide residues. Contaminated hands and forearms in the cockpit could contaminate the air and surfaces in the cockpit and negate the benefit of the enclosed cockpit. Therefore, chemical-resistant gloves

would be required for use during such entrances or exits.

The Agency proposes to allow pesticide handlers in enclosed cabs of ground vehicles with positive-pressure ventilation systems to wear their normal work attire. Positive-pressure, charcoal-filtered ventilation systems on enclosed cabs can remove over 99 percent of pesticide vapors and sprays during air intake (Taschenberg et al., 90). While fully enclosed cabs without air filtration have been shown to substantially reduce dermal (but not respiratory) exposure to airblast applicators (Carmen et al., 12), the Agency believes the heat buildup in unventilated enclosed cabs may in practice lead applicators to open windows to maintain comfort, resulting in increased exposure. The Agency seeks comment on this issue. The Agency is also concerned about the possibility of handlers leaving the enclosed cab while still in the area being treated, becoming contaminated and returning to the enclosed cab. In addition to direct exposure of the handler, upon reentry to the vehicle the resultant surface and air contamination could negate the benefits of the enclosed cab and filtration system. Therefore, all PPE required for a ground applicator of the pesticide must be available for use any time the handler leaves the cab while in the treated area.

(iii) *Existing PPE requirements.* In those cases where current pesticide labeling already contains PPE requirements, the Agency proposes to require the interim PPE requirements of Part 156 to supersede the existing requirements for an area of the body if the interim PPE is more protective of that area of the body (§ 156.215(a)). These PPE requirements would be minimum requirements. The one exception proposed is where the label currently prohibits an item of PPE which would be required under this proposal, in which case the existing prohibition will continue in effect.

The following are examples of comparisons of degree of protection between PE items in this proposal and PPE items now on pesticide product labeling:

1. A protective suit is more protective than a long-sleeved shirt and long-legged pants.

2. A chemical-resistant (or liquidproof, waterproof, rubber, etc.) protective suit, rain gear or rain suit is more protective than a protective suit.

3. Chemical-resistant gloves are more protective than cotton, fabric, cloth, paper, or leather gloves.

4. Chemical-resistant gloves are equal in protective capability to liquidproof, waterproof, impermeable, impervious, neoprene, natural rubber, synthetic rubber, rubber, vinyl, plastic, water-resistant, or non-porous gloves. The term "chemical-resistant gloves" would nevertheless be substituted to standardize terminology, unless a particular material or materials has (have) been identified as being chemical-resistant to a particular pesticide product or to a particular pesticide family, in which case that specific material would be listed.

5. Chemical-resistant shoes, shoe coverings, or boots are more protective than shoes and socks.

6. A NIOSH- and MSHA-approved respiratory protection device is more protective than a non-approved, MESA-approved, or U.S. Bureau of Mines-approved respiratory protection device.

7. An air-supplied or self-contained respiratory protection device is more protective than a NIOSH- or MSHA-approved respiratory protection device. However, NIOSH and MSHA approval would be added to the labeling statement.

3. *Duties relating to PPE*—a. *Provision.* Under the proposal all PPE required by the pesticide product labeling for a particular use situation would be provided and maintained for workers (§ 170.16(a)). Surveys of pesticide users, especially agricultural workers, indicate that a significant percentage do not follow any precautionary procedures for the cleanup and maintenance of their contaminated clothing and equipment. If PPE is not cleaned and maintained properly, exposure may be increased by its use over time. Normal work attire (long-sleeved shirt, long-legged pants, shoes, and socks) is not considered to be PPE and would not have to be provided or maintained for the handler or early reentry worker.

b. *Use.* The Agency is requiring that the appropriate PPE be used correctly for its intended purpose and in accordance with any manufacturer's instructions (§ 170.16(b)(1)). Handlers and early reentry workers who choose or are allowed to remove PPE which should be worn would be subject to enforcement action. Studies have shown that not wearing PPE during even a brief portion of the exposure period can result in significantly higher dermal exposure (Maddy et al., 55). Respirator effectiveness can be reduced a full 10 percent when the respirator is removed for only 1 minute during an hour of exposure (U.S. Congress, 93).

c. *Change areas.* Workers who are provided PPE need a place outside of treated areas where they can put on PPE before being exposed to pesticides or their residues, store personal clothing, and change into personal clothing after being exposed. Such a place must be clean enough that personal clothing, PPE, and the worker are not unnecessarily contaminated by pesticides or their residues in the environment. The Agency proposes to require that such a clean place for changing into and out of PPE be provided before and after any exposure period (§ 170.16(b)(3)).

The Agency proposes to require soap, water, and towels to be available at the end of any exposure period so handlers and early-reentry workers can wash themselves. Failure to wash adequately may lead to delayed acute poisoning or to chronic or subchronic poisoning, or may result in exposing others through secondary contact with contaminated skin, especially the hands (Hayes, 35). The water available for washing must be of sufficient quantity to allow thorough washing of the entire body if necessary.

d. *Heat prostration.* While chemical-resistant protective suits are not proposed by this regulation as minimum PPE, they are currently required by the labeling of a few highly toxic pesticides, generally in those use situations where a high level of exposure to a drenching spray or liquid formulation is possible. The Agency believes that under hot and humid environmental conditions, the wearing of such nonbreathable clothing can lead to a rapid buildup of body heat and sudden heat-induced illness, such as heat stroke or heat prostration, which can be fatal. In addition, when workers wearing protective suits get too hot during tasks, the protective suits may not be used, leading to greater exposure (Davies et al., 19).

The Agency proposes to prohibit handling and early reentry activities when a chemical-resistant suit is required by the product labeling and the environmental conditions are such that the activity might lead to heat-induced illness (§ 170.16(b)(2)). Although the onset of these illnesses depends on a variety of factors such as temperature, humidity, length of exposure, individual heat tolerance, and type of work, EPA believes that users can reasonably be expected to anticipate conditions under which work activities might prove dangerous in this way.

e. *Cleaning and maintenance.* Significant levels of some pesticides can remain in clothing or on equipment if they are not correctly laundered or if prescribed maintenance procedures are not followed (Orlando et al., 67; DeJong, 20). Studies have shown the hazards of secondary poisoning through exposure

to contaminated clothing and equipment, including a pesticide fatality in a worker who died after putting on a pair of coveralls later found to be contaminated with parathion (Southwick et al., 81).

Pesticides and their residues can ordinarily be removed from both fabric and nonfabric items of PPE by washing thoroughly—either manually or by machine—with a heavy-duty detergent and hot water, unless some other method of cleaning is specified by the manufacturer's instructions. The proposal would require that all PPE be thoroughly washed with detergent and hot water, or cleaned according to the manufacturer's instructions, after any day when the handler or early-reentry worker wears such equipment and contacts pesticides or their residues (§ 170.16(c)(1)).

After washing, PPE should be dried and stored appropriately to minimize deterioration and mechanical damage. Excessive moisture, heat, cold, or chemical exposure can damage personal protective equipment during storage. Some items may stiffen, crack, or deteriorate during extended storage periods such as over winter or from one season to the next (CMA, 13). The Agency is proposing that PPE be thoroughly dried before being stored or be placed in a well-ventilated place to dry (§ 170.16(c)(1)). Furthermore, the Agency proposes that PPE be stored away from pesticide-contaminated places and separately from personal clothing to avoid contamination of either clean PPE or clean personal clothing (§ 170.16(c)(6)).

f. *Hazards during cleaning of PPE.* Unprotected persons cleaning PPE can be exposed to high levels of pesticide residues remaining on the clothing and equipment (Laughlin et al., 46; Finley, 28). Laundering studies demonstrate that significant cross-contamination may occur when residues removed from the contaminated garment adhere to other garments being laundered in the same batch (Laughlin et al., 46). Pesticide residues may also remain behind in the automatic washer and dryer and cross-contaminate future batches of laundry.

The Agency proposes that workers be required to remove at the work place all PPE that was provided and that they not be allowed to take or wear the clothing or equipment home (§ 170.16(c)(7)). The Agency also proposes that persons responsible for cleaning and decontaminating of PPE be instructed in the appropriate procedures and hazards involved, both to ensure appropriate cleaning and decontamination of the items and to minimize risk to the person performing the job (§ 170.16(c)(2)).

g. *PPE that cannot be cleaned.* Fabric saturated with certain concentrated pesticides cannot be adequately cleaned. Even after being laundered three times, fabrics contaminated with concentrated highly toxic pesticides may still contain significant residues (Laughlin et al., 46). The Agency proposes that any PPE that becomes drenched or heavily contaminated with Tox I or II concentrated pesticides be discarded using procedures approved by Federal, State and local governments (§ 170.16(c)(3)).

h. *Respirator maintenance.* Respirators rely on various types of filtration systems—pads, cartridges, canisters—to remove the contaminants from the air being breathed. These filters must be replaced on a regular basis or the usefulness of the respirator is reduced and finally negated. The Agency proposes that respirator filters be replaced at least as often as recommended by the manufacturer (§ 170.16(c)(4)).

i. *Inspection.* PPE may deteriorate with age, use, or exposure to other factors such as heat, cold, moisture, and chemical contaminants. Any breach in the physical barrier of PPE reduces its effectiveness greatly (CMA, 13). The Agency proposes to require inspection of all PPE before each day's use and repair or replacement of damaged PPE (§ 170.16(c)(5)).

I. Application and Reentry Restrictions

1. *Application restrictions.* Present § 170.3 prohibits the application of any pesticide in such a manner as to directly or through drift expose workers or other persons, except those persons who are knowingly involved in the pesticide application, and requires unprotected persons to vacate the area. The Agency proposes to continue this provision, with some changes (§ 170.36).

The Agency proposes to clarify the requirement of workers to vacate the treated area during application by stating "no worker shall be allowed or directed to enter or remain in a pesticide treated area." The exception for "persons knowingly involved in application" has been changed to "handlers". The reference to "unprotected persons" has been deleted to make clear that only handlers appropriately trained and equipped as required by this Part are permitted during application; other workers, even if protected, are not permitted. Since these regulations apply only to workers, all references to "other persons" have been deleted. The term "contact" has been substituted for the less precise term "expose."

This proposal continues the general prohibition on exposure of workers through drift of pesticides from the site of application. Application may not take place if weather or other conditions are such that pesticides may drift beyond the treated area and contact nearby workers. The Agency is aware of the problems that may result from drift exposure of workers, especially during aerial and airblast applications. Since drift potential is affected by many situational factors—wind speed and direction; nozzle size, type, angle and pressure; release pattern; aircraft type, height and speed; topography; particle size—the Agency considers development of specific regulatory requirements pertaining to drift to be infeasible at this time. One exception is the case of nurseries and greenhouses, where "reentry restricted areas" based in part on drift and overspray potential are proposed. For farms and forests, the Agency will continue to rely on applicator training programs, the encouragement of State regulation of localized drift problems, and pesticide-specific labeling statements where appropriate.

2. *Interim reentry intervals*—a. *Proposal and rationale.* The Agency proposes to establish interim reentry intervals for all pesticide products that are used on agricultural sites (§ 156.210). Such interim intervals would be based on the acute toxicity and chemical class of the active ingredient(s), and would be reevaluated by the Agency upon submission of appropriate data or upon commencement of any Special Review.

The Agency has established approximately sixty reentry intervals to date for pesticide active ingredients. Twelve of these were established by the present Part 170 (§ 170.3(b)(2)), while others have been established upon registration, by Registration Standards, during Special Review, in response to medical or epidemiological data indicating a special problem, or upon review of Part 158 reentry data submitted by registrants. In addition to these intervals, the present Part 170 established a generic "minimum" reentry interval ("until sprays have dried or dusts have settled," § 170.3(b)(1)) for pesticides used on agricultural sites covered by that Part.

Each of the existing intervals is considered interim by the Agency, except for those established for specific products after submission and evaluation of adequate Part 158 data. The most appropriate method for setting reentry intervals is by calculation from test data. The Agency considers these "product-specific" intervals to represent

an accurate assessment of reentry hazards to farmworkers of the particular pesticide. The Agency does not propose to alter product-specific intervals or the process used to determine them.

However, the length of time necessary to generate appropriate reentry data and review that data may be considerable. The vast majority of the approximately 400 active ingredients covered by this Part have neither product-specific nor interim reentry intervals. Until the reregistration process can be completed, the Agency proposal would provide interim protection for workers from hazardous residue levels of all pesticides used on agricultural sites. For this reason, the Agency has determined that it is necessary to establish interim reentry intervals for all pesticides used on agricultural sites.

b. *Minimum reentry interval.* The Agency proposes to retain the generic minimum reentry interval in the present Part 170, while modifying it in one respect (§ 156.210(c)(1)). The Agency proposes to add the phrase "or vapors have dispersed" to cover two major situations of concern. Fumigant applications involve neither sprays nor dusts; the pesticide is applied as a gas or vapor. The minimum reentry interval thus would apply to fumigants under this proposal. Also, during and immediately following certain applications there is an inhalation hazard to workers in the treated area due to the presence of pesticides with a high vapor pressure, which are particularly hazardous by the inhalation route of exposure. After vapors have dispersed, the hazard via the inhalation route is very low.

c. *Specific reentry intervals.* The Agency proposes to establish specific interim reentry intervals for certain pesticide products (§ 156.210(e)). A 48-hour interval would be established for those products containing any organosphosphate or N-methyl carbamate active ingredient in Toxicity Category I for acute dermal toxicity or skin or eye irritation potential, while a 24-hour interval would be established for products containing any other Tox I active ingredient. A 24-hour interval would be established for products containing any Tox II active ingredient that is an organophosphate or N-methyl carbamate. Products containing more than one active ingredient would use the longest of the applicable intervals. Existing reentry intervals would be retained to the extent they are based on adequate Part 158 reentry data, currently subject to an Agency requirement to submit such data which is flagged for expedited review, or are longer than the proposed interim intervals. The interim intervals would be modified if necessary upon submission of reentry data, and would be reevaluated at the beginning of any Special Review.

(i) *Toxicity basis.* In the absence of adequate reentry data on pesticide products, the Agency proposes to establish interim intervals based on available toxicity data. In defining such a toxicity basis for reentry intervals the Agency has examined several aspects of toxicity, including acute versus chronic toxicity, active ingredient versus formulated product, and route of entry.

The Agency currently establishes interim reentry intervals based on chronic toxicity when such data are available and indicate a known or potential chronic toxicity hazard to workers. However, a full set of chronic toxicity data is currently available on only a minority of the many pesticides used in agriculture, whereas acute toxicity data are available on most of these pesticides. The Agency will continue to use available chronic data to set chemical-specific intervals during Registration Standards development and Special Review, and will specifically evaluate chronic toxicity reentry risk at the beginning of Special Review (§ 156.210(f)), but proposes to base generic intervals in Part 170 on acute data only.

If data indicating chronic toxicity concerns are not present, the Agency establishes interim reentry intervals based on the acute toxicity of the technical grade of the active ingredient. Components of the formulated product other than the active ingredient are not usually present in the residue after the sprays have dried (Gunther et al., 33). Some formulated products are designated Toxicity Category I due to the skin and eye irritation potential of a solvent or other inert which would vaporize after application and thus would not be hazardous to reentering workers. In addition, some products are sold in a more diluted form than others. This could render the formulated product less hazardous to the handler of the product, but would not alter the hazard to reentry workers because the total amount of active ingredient applied per acre treated tends to be constant for the same crop and conditions.

Although the dose or amount of active ingredient actually applied per acre (or to another defined surface area) for a given crop or situation is currently considered in determining product-specific reentry intervals, the Agency has determined that such dosages cannot practicably be considered when establishing generic reentry intervals through Part 170. The dosage of active ingredient varies widely depending on the crop, the pest to be controlled, and on other factors such as the timing of the application, the severity of the pest problem, weather conditions, soil types, crop varieties, etc. Therefore, the Agency proposes to base interim reentry intervals solely on the toxicity of the active ingredient rather than on the toxicity of the formulated product or the use rate per acre.

Acute toxicity is usually measured in terms of a particular route of exposure. Dermal, oral, and inhalation toxicity and skin and eye irritation potential data are all currently considered in determining the toxicity category of an active ingredient (§ 162.10(h)(1)). The principal routes of exposure of workers in reentry situations are dermal, inhalation and eye, with dermal the predominant route (Wolfe, 106). The Agency considered using dermal toxicity alone to establish reentry intervals; however, inhalation and ocular exposure may also be significant in reentry situations. Inhalation exposure is generally only significant before vapors have dispersed; since the proposed minimum reentry interval includes this period, the Agency would not consider inhalation toxicity in setting specific reentry intervals. Eye exposure to dislodgeable residues in reentry situations may be significant; in California between 1976 and 1985, there were more than four times as many skin and eye injuries as systemic poisonings among reentry workers (Blondell, 8). Oral exposure in agricultural work is usually related to the worker's personal habits such as not washing hands and face before eating, drinking or smoking (Bohmont, 9), and the Agency has no evidence of the extent of such habits among field workers. However, oral toxicity data are the most widely available data on pesticides, and the Agency would consider oral toxicity data an adequate surrogate for data on other routes of exposure.

The Agency proposes to set interim intervals based on the highest toxicity category indicated by available data on acute dermal toxicity and skin and eye irritation potential, as determined by the criteria of § 162.10(h)(1). If no dermal toxicity data are available, any available oral toxicity data would be used along with other nondermal data in making this determination.

(ii) *Chemical classes of concern.* Of the many chemical classes of pesticides, the organophosphate (OP) insecticides are the most frequent cause of systemic poisonings. During the period 1976–85,

80 percent of all reported systemic poisonings in California that were caused by Toxicity Category I active ingredients involved OP's (Blondell, 8). N-methyl carbamate pesticides, whose primary mechanism of action—inhibition of enzyme cholinesterase—is the same as that of the OP's, were involved in another 10 percent of Tox I poisonings. In addition, these classes accounted for 70 percent of the Tox II poisonings in that State. Based on such poisoning reports, as well as the typically high acute toxicity of OP's and some N-methyl carbamates, the Agency has already established interim reentry intervals for certain pesticides in these two classes. California, Texas, and New Jersey have also established specific intervals for certain pesticides in these classes. EPA estimates that these classes include about half of the Toxicity Category I active ingredients used on agricultural sites and about one-third of the Toxicity Category II active ingredients used on those sites.

While the Agency is aware of poisoning incidents involving pesticides in other chemical classes, it has insufficient evidence on which to extrapolate to all members of those classes. The Agency therefore proposes to establish higher interim reentry intervals for active ingredients belonging to the OP and N-methyl carbamate classes than for other pesticides of similar acute toxicity.

(iii) *Interval options.* The Agency considered a number of time intervals for interim reenty requirements, generally in relation to the various toxicity categories.

An option to establish an interim reentry interval of 24 hours for all Tox I pesticides was not adopted because EPA is convinced that a 24-hour reentry time is not sufficient protection for many Tox I pesticides. Studies indicate that a 48-hour or longer interval is almost always necessary to protect workers from hazardous levels of Tox I organophosphate pesticides (Popendorf, 76).

Other more protective options were considered by the Agency as well. These included a 24-hour interim reentry interval floor for all toxicity categories. At least 40 percent and possibly 50 percent of reported skin and eye injuries to California reentry workers between 1976 and 1985 were caused by pesticides with Tox III or IV active ingredients (Blondell, 8). A minimum reentry interval of 24 hours would reduce the incidence of injuries from these lower acute toxicity pesticides, as well as providing a margin of safety for field workers from unknown chronic effects. It would also be a relatively simple policy for users to understand and EPA to apply. However, the option would result in unwarranted reentry intervals for some pesticides, requiring data generation for rebuttal. Also, the Agency believes that chronic effects are best regulated through the existing pesticide-specific procedures of Registration Standards and Special Review.

The Agency also considered establishing longer reentry intervals for all products in the more toxic toxicity categories, e.g., 72-hour/48-hour/24-hour reentry intervals for, respectively, Tox I, II, and III pesticides, or 48 hours for Tox 1 and 24 hours for Tox II. These options would reflect the varying acute toxicities of each category and promote the use of less toxic chemicals by establishing a shorter time period before unprotected workers could reenter areas treated with those chemicals. However, a preliminary economic impact assessment indicated that the 72/48/24 option would result in a significant disruption of agricultural production. While less disruptive of production, the 48/24 approach would not reflect the actual poisoning incident data that implicates two classes of chemicals with most serious poisonings, the organophosphates and the N-methyl carbamates.

The Agency has some information indicating that 48-hour reentry intervals would have a significant economic impact on greenhouse sites, whereas 24-hour reentry intervals would have very minor economic impact. The first-year, nonincremental cost (including costs already incurred) of the reentry provisions in the Agency's proposal for greenhouse sites is estimated to be $27.5 million ($157 per worker, $2,115 per establishment). While significant impact from generic reentry intervals is more likely in greenhouses than on farms, due to the indoor, closely spaced nature of growing areas and frequent pesticide use, the Agency seeks more particular information on greenhouse pesticide use which would bear on the question of the impact of the proposed reentry intervals. Specifically, such information would concern which pesticides with specific reentry intervals either existing or established by this proposal) are needed for management of which pests on which crops at the same time that hand labor activities (weeding, harvesting, etc.) are required on that crop or in nearby areas of the greenhouse; the type and frequency of the necessary reentry to the treated areas; whether alternative pesticides without reenty intervals are available; and in what ways production practices would have to be altered. Comment is specifically requested on the cost of the proposed reentry intervals for greenhouse establishment, including the cost of any alternative production practices that may be necessary.

The Agency invites comments on the proposed approach and the options described above.

(iv) *Whether reentry intervals should apply only to crops requiring hand labor tasks.* Under present Agency reentry policy, the establishment of interim reentry intervals has generally been limited to those crops which require workers to perform "hand labor operations," defined in PR Notice 83–2 as tasks involving "substantial contact with treated surfaces." However, contact with treated surfaces may result from tasks which are not traditionally considered hand labor practices and yet which are common to virtually all forms of agricultural production. The Agency has considered whether such tasks merit reentry protection.

Agricultural workers may contact treated surfaces through such common practices as IPM scouting, walking through a crop production area to reach work sites, and using areas near work sites for meals, rest breaks, and using the toilet. Children accompanying the workers may contact treated surfaces when using treated areas as play areas. Depending on the pesticide applied, time of entry, nature of the activity and other conditions, adverse effects on workers or their children may result from such activities. Contact with small amounts of highly toxic pesticides can result in worker poisoning. Environmental conditions may significantly increase exposure and rate of absorption into the body. Residues wet from their diluent or from dew or rain may penetrate nonchemical resistant clothing and be deposited on the skin. Wet, clinging clothing may increase dermal penetration by increasing surface area contact with residues.

The Agency has determined that contact with treated surfaces from early reentry activities, other than hand labor tasks, may result in adverse effects on workers, and proposes that interim reentry intervals apply to all reentry activities on all agricultural plants, regardless of the nature of traditional worker activities associated with particular agricultural plants.

(v) *Existing reentry intervals.* Reentry intervals currently exist for 51 active ingredients, including twelve intervals established by the present Part 170. Some of these intervals are "permanent" (based on adequate Part 158 reentry data or a waiver of data submission), while others are interim (not based on adequate data; data submission

generally required). While the Agency does not propose any change to the Part 158 process for establishing "permanent" reentry intervals, this proposal represents a change in current Agency policy for setting interim intervals. Hence, certain of the existing interim intervals would no longer provide adequate interim protection for agricultural workers.

The Agency proposes that the interim reentry intervals in this proposal supersede existing reentry intervals established by the Agency, except in the following cases: (1) Where the existing interval was established on the basis of adequate Part 158 data (§ 156.210(d)); (2) where the existing interval is longer than the interval calculated according to the criteria of this Part (§ 156.210(e)(1)); or (3) where Part 158 reentry data have been required by the Agency and flagged for expedited review (§ 156.210(e)(1)). This proposal would retain all "permanent" intervals, as well as those longer interim intervals generally established on the basis of chronic toxicity or other unique exposure hazards. It would also allow those registrants currently generating reentry data for which the Agency intends to expedite its review to continue to rely on the existing interval.

(vi) *Toxicity data.* The acute toxicity data necessary to ascertain the toxicity category of the technical grade of the active ingredient(s), which would in turn be used to determine as interim reentry interval for an individual product, are readily available for many agricultural pesticides covered by this Part. The Agency has many of these data on file, and registrants or registered technicals should also possess such data.

The Agency considered merely providing acute toxicity criteria in Part 156 and allowing registrants to determine the interval applicable to their products. However, data on active ingredient toxicity may be accessible only with difficulty to those end-use product formulators who are not registrants of the technical products they use. The Agency also considered basing reentry intervals on formulated product toxicity in order to facilitate determination of intervals by registrants, but rejected this approach as inconsistent with its own toxicological assessment of reentry hazards.

The Agency proposes instead to attempt to develop a list of active ingredients used on agricultural sites and their corresponding interim reentry intervals, determined according to the criteria enumerated in this proposal. Such a list would be made available to registrants to serve as a guide in determining applicable reentry intervals. Availability of a list would greatly facilitate consistent reentry interval determination by registrants and the Agency. The list would also include those active ingredients with existing intervals and any revision to the existing interval.

(vii) *Modification.* The Agency proposes to consider modification of the interim reentry intervals in this proposal on a case-by-case basis under certain circumstances.

The Agency recognizes that certain products which are highly toxic in concentrated form, but which are used with very low application rates, may not present a reentry hazard because their exposure potential for workers is very low. Certain formulations are designed to be applied at rates of a few ounces per acre. Other aspects of the pesticide product and its use may also affect the appropriate interval length or even the need for a specific interval. These aspects may include use patterns which make penetration into the human system unlikely, and properties which bind the residue to the treated surface or otherwise prevent the residue from transferring to humans.

The Agency also recognizes that particular reentry intervals may not be sufficiently protective of workers for specific pesticide products, pesticide uses, or worker exposure scenarios. Established reentry intervals may not be long enough, for example, when skin sensitivity and other nonquantifiable effects are observed.

Under proposed § 156.210(g), registrants and other persons could submit data demonstrating that exposure levels resulting from the application of a pesticide product warrant a shorter or longer reentry interval. Data may be in accordance with Part 158 requirements and Subpart K of the Pesticide Assessment Guidelines, or may be other data enabling the Agency to make a determination of potential risk to workers from use of the product. Such data would be used to evaluate a proposal to modify a specific reentry interval, but it is unlikely that the Agency would eliminate the "minimum" reentry interval for a product.

The Agency would also consider modification of interim reentry intervals under proposed § 156.210(f), whereby the Agency would reevaluate the reentry interval established for any pesticide entering Special Review for human health effects. The Agency will evaluate the reentry interval at the beginning of any Special Review in light of all available data, which will enable a more pesticide-specific reentry interval to be set.

3. *Other reentry restrictions*—a. *Basic requirement.* EPA proposes to clarify the language of the present Part 170 concerning reentry restrictions, but does not intend to alter the basic requirements it sets forth. No worker may reenter a treated area during a reentry interval, unless the worker is wearing appropriate PPE and has received other appropriate protections, or unless the worker is performing tasks that do not involve contact with pesticide-treated surfaces. EPA proposes similar language for farm, forest, nursery and greenhouse reentry in this regard (§§ 170.46, 170.56, 170.66).

b. *Early reentry without contact with treated surfaces.* The present Part 170 allows workers to reenter a treated area without protective clothing before the expiration of the reentry interval if they are performing tasks which are not hand labor tasks. PR Notice 83–2, implementing the present Part 170, listed those food and feed crops which were determined by the Agency to use hand labor tasks, including: Recognized crop production activities as harvesting, detasseling, thinning, weeding, topping, planting, sucker removal, pruning, disbudding, and roguing. California, Texas and North Carolina regulations permit reentry without protective clothing if there is no "substantial and prolonged contact" with treated surfaces.

The Agency believes that tasks such as scouting and working with irrigation equipment, which are not ordinarily considered to be "hand labor tasks" but which are common to virtually all types of agricultural production, may result in substantial contact with treated surfaces and adverse effects on workers. Therefore, the Agency proposes to allow early reentry into pesticide-treated areas without appropriate protective measures only when there will be no contact with pesticide-treated surfaces (§ 170.46(a)(1)).

Immediately after application and until pesticide sprays and dusts have settled, pesticide residues would be in the air and would contact entering workers under most circumstances. An example of permissible reentry at this time without protective measures would be activities performed while in enclosed vehicles. After sprays and dusts have settled, early reentry activities would be permitted without the use of PPE depending on where the pesticide residues were located. If soil incorporation were the application technique, any activity which did not involve worker contact with the soil subsurface would be allowed, whereas hand hoeing, planting, transplanting,

weeding, thinning, and harvesting of root crops would not be permissible. When the application is to the soil or planting media surface, or if the agricultural plant is very short (less than a few inches tall), workers walking through the area or performing activities which do not involve hand contact with the soil, planting media, or plant can avoid contact with the residue by wearing chemical-resistant boots, shoe coverings, or shoes.

Workers in vehicles such as tractors, which place them away from the pesticide residues, would be allowed unprotected reentry after sprays and dusts have settled. However, if the crop is tall and dense and could brush against the vehicle operator, or if trees or other tall plants might drop pesticide residues on the operator from overhead, then protective measures would be required.

In greenhouses and nurseries, unprotected reentry to walk between benches and to perform tasks at adjoining benches or even on adjoining plants would be permissible as soon as pesticide sprays and dusts have settled or pesticide vapors have dispersed. At that time the specific reentry interval (prohibiting unprotected contact for a period of hours or days) would apply to the plant(s) or planting media to which the pesticide application was directed.

c. *Early reentry with contact with treated surfaces.* California considers that wearing PPE for long periods of time in conditions which are commonly hot and humid is impractical and often results in the workers removing the PPE. California therefore prohibits reentry to perform tasks involving substantial and prolonged contact with treated surfaces until the reentry interval has expired. EPA has concluded that many situations arise during the production of agricultural plants which require worker reentry into pesticide-treated areas before the expiration of the reentry interval, particularly when the reentry interval extends longer than 24 hours, and therefore proposes to permit such early reentry (§ 170.46(a)(2)). However, the Agency proposes to impose certain conditions on early reentry to ensure that early reentry workers are adequately protected.

Before sprays have dried, dusts have settled, or vapors have dispersed, conditions are essentially similar to application conditions. Even when wearing PPE, hand laborers reentering during this time for a typical 8 to 10 hour work day will encounter prolonged and substantial contact with pesticides that may constitute an unacceptable level of exposure. Therefore, the Agency is proposing to prohibit entirely reentry to perform hand labor tasks such as weeding or harvesting before sprays have dried, dusts have settled, or vapors have dispersed (§ 170.46(b)). Short-term application, irrigation, or emergency crop management practices are allowable because these activities involve less contact with treated surfaces. These may include: Traversing the area; IPM scouting; minor adjustments to, repairing of, or turning on and off irrigation or application equipment; actions to prevent crop loss from frost, wind, or other weather damage; and checking for appropriate pesticide dispersal and distribution patterns. These short-term tasks are permitted only if certain protective measures are taken (§ 170.46(a)(2) (i) through (v), discussed below).

After sprays have dried, dusts have settled, or vapors have dispersed, worker reentry to perform any tasks (hand labor or other) in an area that is still under a specific interval would be permissible if the same protective measures are taken (§ 170.46(a)(2) (i) through (v)).

The Agency considers the risk of exposure for early reentry workers, whether entering before or after expiration of the minimum reentry interval, to be comparable to the risk for pesticide handlers. In some instances, early reentry workers may receive greater exposure than that encountered by an applicator of the pesticide, e.g., where foliage is drenched or where a diluent has evaporated. The Agency proposes to require that early reentry workers receive protections similar to those required for handlers (§ 170.46(a)(2) (i) through (v)). They must be provided with the same PPE, training, and decontamination facilities, with the exception of workers entering after the minimum reentry interval, for whom different PPE requirements apply (see unit III.H.2.b. above for further discussion).

The Agency anticipates that agricultural producers will seldom require workers to reenter treated areas before the reentry interval has expired, because of the increased risk to the workers; the cost of providing personal protective equipment, decontamination water, and training; and the problems related to heat-induced illnesses. Since most agricultural management practices can be carried out after the reentry interval expires, few workers will need these protective measures.

d. *Reentry after the expiration of the reentry interval.* When product-specific reentry intervals are established by the Agency after review of Part 158 reentry data, those reentry intervals are usually based on a no-observable-effect level (NOEL), such that PPE and other protective measures are not necessary after the reentry interval has lapsed. Similarly, EPA believes the proposed interim reentry intervals are of sufficient length to allow workers to reenter the pesticide-treated area without protective clothing after the interval has expired. No PPE requirements or other protective measures are proposed for workers reentering after expiration of the reentry interval, other than the availability of water for routine decontamination (§ 170.38).

e. *Multiple reentry intervals.* If two or more pesticide products are applied in combination the Agency proposes to require that the longest of the applicable reentry intervals be observed (§ 170.46(c)). The Agency considered a requirement such as is found in California, whereby in case of multiple applications the reentry interval is increased by 50 percent of the longest of the applicable intervals. This requirement is apparently based on the possibility of increased toxicity due to synergistic effects. The Agency is not aware of synergistic effects of pesticide combinations that would justify such a requirement and does not propose a similar requirement.

Under normal circumstances, sprays will have dried, dusts will have settled, or vapors will have dispersed long before any additional specific reentry interval has expired. However, in special circumstances of high humidity, extremely dense crop stands, or oil formulations, the pesticide sprays may not have dried before the specific reentry interval expires. The Agency intends that the reentry-restricted period extend until both the specific (period listed in the product label) and the minimum (until sprays have dried, dusts have settled, and vapors have dispersed) reentry intervals have expired, and has made this explicit in this proposal (§ 170.46(c)).

f. *Greenhouses.* Greenhouses present an exposure scenario where activities of many workers may occur in quite close proximity. At the same time, the volume and direction of air movement can usually be controlled by means of ventilation during and after application of pesticides, unlike in outdoor exposure situations. The Agency has attempted to provide for access to nontreated areas in greenhouses as soon as can be safely accomplished following application. EPA proposes to accomplish this by defining "reentry-restricted areas" on the basis of particular application techniques and pesticide formulations used in greenhouses (§ 170.66(b)). The Agency is proposing three types of

"reentry restricted areas": (1) Where fumigants are used; (2) when applications are "bench-directed"; or (3) when applications are "plant-directed".

The use of fumigants (pesticides in a gaseous state) in greenhouses is widespread because they offer a method of controlling virtually all of the insect and mite pests in one application. Fumigants are applied so as to totally fill the enclosed space. The Agency proposes to restrict reentry to the entire greenhouse, regardless of where the fumigant is released within the structure, until all fumigant vapors have dispersed (§ 170.66(b)(1)), and has defined ventilation criteria for determining safe dispersal times based on the few data that exist in this area (Waldron, 102). While the Agency is aware that such structures vary widely in ventilation capacity and techniques, the Agency has defined dispersal times in terms of two principal methods of ventilation, mechanical (fans) and passive (windows and doors). The Agency has also taken into account the common greenhouse practice of fumigation at the end of the work day followed by slow vapor dispersal overnight; in this case less ventilation is required the following day, whether mechanical or passive. If no mechanical or passive ventilation is used, as would be the case, for example, when cold outside air would injure plants inside the greenhouse, then a mimimum vapor dispersal period of 24 hours following fumigation must be observed before unprotected reentry is allowed. Finally, if the fumigant product label indicates a Permissible Exposure Level (PEL), compliance with the PEL by measuring pesticide vapor levels would meet the vapor dispersal requirement.

Airborne pesticides other than fumigants, such as aerosols, fogs, smoke bombs, and thermal fogs are used in greenhouses. These products move through the air and disperse evenly throughout an enclosed area. However, unlike fumigants, which dissipate entirely in the air, these applications leave residues on plant and soil surfaces which may be a reentry hazard to workers. Therefore, as with fumigants, the Agency proposes that the reentry-restricted area be the entire enclosed area (§ 170.66(b)(2)). Unlike fumigants, if these pesticides have a reentry interval listed on the pesticide label requiring a longer reentry restriction than "until vapors have dispersed", it must be observed.

Other applications in greenhouses may involve soil-incorporation or application to the soil or base of plants, using low pressure and coarse spray droplets. These applications tend to remain in the area to which they are directed and usually present a low hazard to workers at nearby benches or walkways. The Agency proposes a reentry-restricted area for such "soil-directed" application limited to the bench or area to which the pesticide is directed (§ 170.66(b)(3)). However, if the pesticide labeling requires the use of a respirator for ground applicators of the pesticide, then the pesticide is toxic by the inhalation route of entry and often highly volatile. Workers nearby may be at risk if the vapors move off the target area. Therefore, these pesticides, even if they meet the other criteria for "soil-directed" applications, must meet reentry requirements for the "plant-directed" category.

All other applications in greenhouses are categorized as "plant-directed" applications. These are usually spray or dust applications. These pesticide applications tend to move off-target during application and may pose a hazard to workers at nearby benches or walkways; however, they do not necessitate vacating unprotected workers from an entire greenhouse, which may cover an area of an acre of more. The Agency proposes two options by which unprotected workers can be protected without vacating the entire greenhouse: (1) A nonporous subenclosure, such as a curtain system, can be formed around the area to be treated and left in place until the sprays or dusts have settled; or (2) the ventilation can be turned off during application and until the pesticide sprays or dusts have settled (§ 170.66(b)(4)). In the first case the reentry-restricted area is the pesticide-treated area; in the second case it is an area 25 feet in all directions from the border of the treated area. With little air movement, airborne spray and particulate matter will not drift far from the application site.

When "plant-directed" application techniques are used, the reentry-restricted area would be larger than the treated area due to concern over airborne particulates and spray drift posing an inhalation hazard to nearby workers. After sprays or dusts have settled, the inhalation hazard from drift is removed. Between the time when the pesticide sprays or dusts have settled and the end of the specific reentry interval (if any exists for that pesticide), the reentry-restricted area would consist of the treated area only. Unprotected workers can resume work at nearby benches or use walkways between benches.

g. *Nurseries.* The Agency proposes that reentry in nurseries be governed in a manner similar to reentry in greenhouses, with certain exceptions (§ 170.56(b)). Nurseries generally are not able to control drift hazards through control of ventilation and partitioning. While adequate data on pesticide drift during application in nurseries are lacking, the Agency believes that pesticide drift during application represents a significant hazard to nearby nursery workers. This is due to production areas which are closely spaced, and often of small, even single-plant, size.

The Agency therefore proposes to establish reentry-restricted areas in nurseries as in greenhouses, determined by the method of application. For soil-directed applications the reentry-restricted area would be the pesticide-treated area, except for inhalation hazard pesticides. For "downward-directed" (as defined) applications the restricted area would extend 10 feet on all sides and 25 feet downwind. For all other applications, including aerial, high-pressure, and "upward-directed" application, the restricted area would include any areas outside the treated area that are moistened or dusted under the particular conditions of application. The Agency believes such reentry-restricted areas are a reasonable approach to reducing drift hazards in nurseries.

J. Decontamination

1. *Proposal and rationale.* The Agency proposes that workers be provided with water, soap, and single-use towels for purposes of decontamination after exposure to pesticides or pesticide residues (§§ 170.18 and 170.38). The Agency believes that the proposed decontamination provisions would reduce the incidence of eye injuries and skin irritation in workers, as well as reducing the risk of chronic effects from routine exposure to pesticides.

Workers entering pesticide-treated areas after reentry intervals have expired may be routinely exposed to pesticide residues. Exposure is primarily dermal, but may be oral or ocular through hand-to-mouth and hand-to-eye transfer. Acute pesticide poisioning risk under these circumstances is generally expected to be low; however, routine occupational exposure to low levels of dislodgeable residues may present significant chronic risks to workers.

Handling and early reentry activities present a much higher risk of accidental exposure and acute injury than does entry into treated areas only after the reentry interval has expired. The

Agency has identified two types of emergency exposure scenarios which are applicable during handling and early reentry tasks: Eye contamination and whole-body contamination. Accidental eye contact with a pesticide with high eye irritation potential may result in eye damage. Large spills of the pesticide being mixed or loaded may contaminate much of the body, and flaggers may be directly sprayed during application. There is also potential for "hot spots" in fields following application which would expose early reentry workers to higher concentrations of residues than would otherwise be expected.

Washing is a generally accepted practice for reducing dermal exposure to pesticides and pesticide residues. Washing before eating, drinking, or using tobacco can reduce oral exposure as well, which can occur if pesticide residues are transferred from hands to mouth. Washing before using the toilet is also important, since the scrotal skin absorbs pesticides approximately 12 times more efficiently than the skin of the forearm.

Immediate flushing with water is the commonly accepted emergency response for direct eye and dermal exposure to pesticides. If significant delay occurs, permanent eye damage, severe skin irritation, or significant dermal absorption can result. The Agency is aware of at least one instance in which washing appeared to be lifesaving (Hayes, 35). Two workers were splashed with parathion. One worker, who bathed and changed clothes, showed no symptoms. The other worker, who did not bathe or change clothes, died in less than 24 hours.

2. *When required.* Water, soap, and single-use towels would be made available during any work activity where there is potential worker contact with concentrated or diluted pesticides or with surfaces that have been treated with pesticides, including duff, soil, other planting media, standing water, or agricultural plants themselves. For pesticide handlers and early reentry workers, decontamination provisions would be required at all times since these activities harbor the greatest potential for adverse effects. For persons working in treated areas after the reentry interval has expired, the Agency proposes to limit the requirement to activities in areas that have been treated during the current growing season. While reentry intervals are established by the Agency in an attempt to limit entry when adverse effects are most likely, residues of concern have been known to persist long after such intervals under certain climatic conditions. For example, a recently reported poisoning incident in California occurred following worker reentry at least 90 days after application. These provisions will ensure that field workers may routinely wash when pesticides are being used where they work, yet not impose a decontamination requirement where pesticides are never used or have only been used in previous years or growing seasons. This proposal appears to strike a reasonable balance between the concern for dissipation of residues and avoiding needless costs.

3. *Water quality.* The Agency proposes to require potable water for decontamination. The Occupational Safety and Health Administration's Field Sanitation Standard (29 CFR 1928.110) requires potable water in the fields for hand laborers, intended not only for washing but also for drinking purposes. Even though EPA's proposed requirement is intended to provide water only for washing, in practice the water may be used by workers for drinking as well. In addition, only "potable" water can be defined in such a way that noncompliance can be clearly ascertained. Potability can be determined when necessary by testing of concentrations of specific contaminants. Either State or local drinking water standards or the Federal interim standards (40 CFR Part 141) would be acceptable measures of potability.

4. *Water temperature.* The Agency proposes that water be provided at a temperature that will not injure the eyes. Extreme temperatures may injure the eyes, and would in any case discourage worker use, rendering the provision ineffective. The Agency also considered two other options: First, no temperature requirement, which would be consistent with the OSHA Field Sanitation Standard; second, requiring the water to be within a specific temperature range, such as not greater than 100 or less than 40 degrees F. Comment is solicited on this water temperature proposal.

5. *Exception for short-term exposure.* The Agency considered the option of an exception from the decontamination requirements for workers who are exposed to pesticides for less than three hours, or some other time interval. Contamination levels may increase with time of exposure; in addition, the use of a three hour exception would be consistent with the OSHA Field Sanitation Standard. Comment is solicited on this option.

6. *Water quantity.* Water must be made available in sufficient quantities for normal hand and face washing by all workers using the water, and for emergency whole-body decontamination when such accidental exposure is possible, as in the case of handlers and early reentry workers. The Agency considered requiring minimum starting volumes of water based on the type of work activity along with a replenishment requirement. While such specification standards may be easier to enforce, actual water needs are expected to vary widely with circumstances such as weather and number of workers. The Agency proposes to require "an adequate supply" of water, allowing flexibility according to the particular circumstances. Any available supply of potable running water will meet the quantity requirement. It is anticipated that most greenhouses, many nurseries, and some farms and forests will have running water available. The Agency solicits comment on this water quantity proposal.

7. *Water storage.* Water tanks can be contaminated due to backflow from mix containers and application equipment during mixing/loading. Therefore, this proposal requires separate water sources for mixing of pesticides and for decontamination, unless the water source is equipped with valves to prevent backflow during mixing operations, or unless a source of running water is used.

8. *Water location.* The Agency proposes that the water be reasonably accessible from each worker's place of work. The Agency considered requiring a specific maximum distance from each worker within which the water must be located. Such an approach is taken by the OSHA Field Sanitation Standard. However, the Agency believes that "accessibility" will vary widely with the particular establishment, depending on the location of access roads by which water supplies must be transported and the movement of workers through the fields. The Agency intends that water be located as near to workers as is practicable under the circumstances, so that workers would not be discouraged from routine washing by the distance they must travel to the facilities. The water may not be located within a pesticide-treated area before expiration of its reentry interval. The Agency solicits comment on this water location proposal.

9. *Eye flushing.* The Agency proposes that an eye flush dispenser be provided during handling and early reentry situations involving a product which is a potentially significant eye irritant, i.e., Toxicity Category I or II for eye irritation, signified to the user by a

goggles or face shield requirement on the labeling (§ 170.18(c)). The dispenser would be immediately available for emergency use, e.g., it would be carried by the handler on his person or vehicle. Since such dispensers deliver a slow, constant stream of water, the quantity of water need not be large to achieve adequate flushing; a minimum of 1 pint is proposed. The United States Forest Service has a similar dispenser requirement for pesticide applicators in the Southeastern U.S. The Agency solicits comment on whether the dispenser needs to be available during all activities or only certain ones, whether each worker should carry a dispenser, and whether carrying a one pint dispenser on one's person represents a health hazard from possible heat stress due to the extra weight.

10. *Other requirements.* For efficient pesticide removal, the surfactant qualities of soap are necessary during washing. The agency therefore proposes to require that soap be made available. The Agency also proposes to require single-use drying materials, such as paper towels, which would lessen the likelihood of washed hands being recontaminated by workers wiping them on their clothing. However, the Agency has received comments that workers may tend to incompletely wipe off residues with the towels rather than washing, and that vigorous rubbing could cause an abrasion of the skin and actually increase absorption of pesticide residues.

In addition, a change of clean clothing, such as a "one size fits all" coverall, would be available at each decontamination location for handlers and early reentry workers for use if clothing becomes saturated by a large spill or direct spraying. This would encourage workers whose clothing has been penetrated by a pesticide to remove it immediately to avoid or limit dermal absorption.

11. *Other Federal and state regulation related to the proposed decontamination requirements.* The OSHA Field Sanitation Standard includes requirements for water for handwashing, and some States have created requirements of this type which differ slightly from the OSHA standard. While such general sanitation requirements would provide for adequate pesticide decontamination under many circumstances, they do not cover many workers the Agency proposes to protect nor provide for adequate protection from certain hazards.

For example, coverage of the Field Sanitation Standard is limited to agricultural establishments where eleven or more employees are engaged on any given day in hand-labor operations in the field. However, the Agency believes that persons who handle pesticides, as well as workers in greenhouses, nurseries, and forests, and on small farms, may face an unreasonable risk of pesticide exposure which a decontamination water requirement would help to reduce. EPA also proposes a backflow valve requirement to address the problem of backsiphoning, a water temperature requirement to preclude eye injuries, and a prohibition on locating the water within a pesticide treated area. These requirements are not found in OSHA's standard, yet the Agency believes they are necessary to reduce the risk of specific pesticide hazards. OSHA exempts workers who are in the field less than three hours from its requirements, whereas the Agency believes that significant pesticide exposures requiring decontamination could occur during this time. Finally, OSHA specifies a maximum distance of the facilities from the worker's place of work. EPA believes that accessibility will vary by geography and layout of establishment and cannot be universally defined; however, a location within the one quarter mile OSHA standard would be considered reasonably accessible by EPA.

Beyond these difference, EPA has employed the regulatory wording in OSHA's standard whenever possible to avoid any inference on the part of responsible parties of the need for duplicative facilities. While interpretation of the Field Sanitation Standard clearly rests with OSHA and the courts, the Agency believes that an employer in compliance with EPA's decontamination requirements would to a great extent be assured of compliance with OSHA's handwashing requirements, such that more than one facility would not be necessary.

For the foregoing reasons, the Agency believes it is necessary to include decontamination requirements in this proposal despite some overlap with OSHA and state regulations. However, the Agency does not intend to preempt these other general sanitation requirements for agricultural workers whose purpose and provisions may be similar to those in this proposal. Toilet and drinking water facilities for agricultural workers, such as are contained in the OSHA standard, are entirely outside of the purview of this proposal. EPA solicits comment on any of the issues raised here.

K. Emergency Duties

1. *General.* Although the Agency believes that precautions such as reentry restrictions, PPE, decontamination procedures, and training will decrease the frequency of acute pesticide poisoning or injury incidents, medical emergencies involving agricultural workers and handlers may still arise. In such cases prompt medical treatment is a necessity to mitigate the extent and intensity of the injury or poisoning. Many agricultural laborers migrate throughout the year and may not be familiar with a physician or treatment center in each place they work. EPA proposes that all workers be informed of the name, address, and telephone number of the nearest physician, clinic, or hospital equipped to provide medical care in a pesticide poisoning or injury emergency. This information would be required to be displayed in a prominent location on the agricultural establishment at all times (§ 170.32(f)(1)).

2. *Emergency transportation.* In a pesticide poisoning or injury emergency, the victims may be unable to transport themselves to the nearest medical facility with private or public transportation. EPA proposes that prompt transportation to an appropriate medical facility be made available to workers and handlers who have grounds to suspect pesticide poisoning or injury, or when a pesticide exposure has occurred which might reasonably be expected to result in pesticide poisoning or injury (§ 170.34(a)).

3. *Emergency information.* In a suspected pesticide poisoning or injury, effective medical care can be provided only through a correct diagnosis and prompt administration of the appropriate antidote or treatment. A doctor must know the name of the product or active ingredient to which the worker or handler has been exposed. Information can then be located about the common signs and symptoms of pesticide poisoning or injury specific to that pesticide, diagnostic procedures, and appropriate treatment programs, including the antidote if one exists. EPA proposes that in an emergency, workers and handlers be provided, if available, the product name, registration number, active ingredient(s), and first aid or antidote information for any agricultural pesticide product which has been used on the property (§ 170.34(b)). Pesticide users must likewise provide any other available information relating to pesticide use which may be useful for treatment. This information would be required to be provided to workers who

have grounds for suspecting pesticide poisoning or injury to themselves or to another worker, and to medical treatment personnel, upon the request of those persons. EPA believes that this information normally is available to pesticide users from the label of the product, although the requirement to provide information would not specifically require that the user maintain records or keep pesticide labels or containers.

L. Cholinesterase Monitoring

1. *Proposal and rationale.* EPA proposes testing of cholinesterase levels in commercial pesticide handlers who are exposed to Toxicity Category I or II organophosphate pesticides for 3 consecutive days or for any 6 days in a 21-year period (§ 170.20).

Significant or prolonged exposure of workers to organophosphate pesticides can result in significant cholinesterase inhibition, leading to systemic illness and other adverse health effects (Maddy and Edmiston, 54; Coye, 14; Morgan, 61; Hayes, 36). A worker's cholinesterase level may drop below a safe level because of excessive exposure due to poor work practices or the occurrence of an accident (Coye et al., 15). A variety of biological tests, including blood and urinary metabolite testing, can be used to detect an individual's pesticide exposure. However, many of these tests are relatively difficult and expensive to perform. Measurement of the level of the enzyme cholinesterase in the blood has been demonstrated to be a satisfactory biological index of excessive organophosphate exposure (Coye, 14) and is widely and inexpensively used for this purpose. Cholinesterase monitoring would accomplish a twofold purpose: (1) It would detect significant organophosphate pesticide exposure that would warrant worker removal from exposure, and (2) it would serve as a surveillance mechanism to identify workplace situations which require modification to minimize exposure to organophosphate pesticides.

California, at least one national lawn-care company, and at least two major Florida agricultural producers have had cholinesterase monitoring programs in operation for 8 to 12 years. Experts associated with these programs believe that cholinesterase monitoring has been successful in reducing worker exposure to pesticides and identifying workplace situations which require modification (Yeary, 110; Maddy, 52; Ames, 114). Some commercial applicator firms find cholinesterase monitoring an effective means for improved supervision and education of employees who handle pesticides and as a result employees are less likely to experience adverse effects from exposure (Yeary, 110; Mengle, 58).

Major agricultural producers with cholinesterase monitoring programs have reported that monitoring of their field workers and handlers has been significant from a profit and loss standpoint. They claim that the cost of their liability insurance premiums (purchasing high deductible policies), plus the cost of their payouts for accidents not covered by insurance (deductible not reached), plus the cost of cholinesterase monitoring, is less than the cost of the liability insurance with low deductible policies.

The deficiencies of cholinesterase monitoring as a regulatory tool include: (1) Cholinesterase depression and the symptoms associated with it can also be caused by illness other than organophosphate poisoning, and by excessive consumption of alcohol (Morgan, 61); (2) there is variability in the plasma cholinesterase tests results; (3) normal cholinesterase levels vary markedly among individuals; and (4) there is variability in quality control among laboratories. The Agency believes that these drawbacks can be overcome if appropriate guidelines are followed.

2. *Workers to be monitored.* The Agency considered whether to include in the cholinesterase monitoring provisions: (1) All workers, including field workers, (2) pesticide handlers only, or (3) commercial pesticide handlers only. The Agency proposes to require monitoring of commercial pesticide handlers. Pesticide handlers are at greatest risk from acute effects of organophosphate pesticides because they are exposed to cholinesterase-inhibiting pesticides themselves rather than their residues. Commercial handlers tend to be at greater risk than private handlers due to greater frequency of handling activities; in addition, cholinesterase monitoring would impose significant costs on private handlers. EPA anticipates that reentry intervals will significantly reduce the exposure of field workers to organophosphate pesticides. The Agency solicits comment on the proposed types of workers to be monitored, including whether the requirement should be extended to private handlers.

3. *Pesticides to be monitored.* The Agency proposes to require cholinesterase monitoring based on a handler's frequency of exposure to Toxicity Category I or II organophosphate pesticides. While it is recognized that N-methyl carbamate pesticides can also depress cholinesterase levels, the cholinesterase test is not a useful indicator in this case because it generally shows normal levels within a few minutes or hours after carbamate exposure (Morgan, 61). This is due to the relatively rapid regeneration of cholinesterase after N-methyl carbamate exposure. However, the Agency proposes that both classes of cholinesterase inhibiting pesticides be labeled so that users would be aware of possible cholinesterase inhibition from their use. Such labeling could be especially important if the worker's cholinesterase levels are already depressed from earlier exposure.

The Agency is aware that California has undertaken an evaluation of its cholinesterase monitoring program (Ames et al., 114). It indicated among other things that certain pesticides, primarily organophosphates in Toxicity Category I, may cause more poisoning incidents in that State than other pesticides. The Agency considered whether the proposed monitoring requirement should therefore be limited to a smaller subset of pesticides. It would be possible based on this data to identify a "top 5" or "top 10" incident-causing pesticides. Alternatively, the Agency could limit the exposure trigger for monitoring to organophosphates in Toxicity Category I. The Agency solicits comment on these monitoring options, and any available data on incidents of cholinesterase inhibition among pesticide handlers.

4. *Exposure trigger.* States and companies have set different exposure triggers for when a worker must receive cholinesterase monitoring. California requires any worker exposed for 30 hours in a 30-day period to receive such monitoring. The concern with this hour-based trigger is the complexity of determining which workers need to receive cholinesterase monitoring. The Agency selected a day-based exposure trigger (3 consecutive days or any 6 days in a 21-day period) because it would be relatively easy to identify workers who meet the trigger. Exposure on a given day is intended to mean exposure for any part of the work day. This trigger excludes handlers receiving less frequent organophosphate exposure because cholinesterase levels regenerate at a rate of approximately 1 percent per day and are less likely to reach dangerously low levels with less frequent exposure (Coye, 14). The Agency seeks comment on whether a more sensitive trigger (with fewer days of exposure) would be more appropriate in identifying persons for whom monitoring would be useful.

The Agency considered the option that early symptoms of exposure should trigger the monitoring requirements instead of a day-based trigger. As another option, a symptom-based trigger may be useful to bring individuals into a monitoring program who are not covered by the day-based trigger, yet who may be more sensitive to cholinesterase inhibition than the average person. The Agency believes that the usefulness of monitoring is as a preventative requirement. A symptom-based trigger would necessarily allow the first cholinesterase inhibition effects to occur in the hope of preventing future, more severe effects. Initial cholinesterase inhibition symptoms are often difficult to distinguish from some other common illnesses. The Agency solicits comment on the difficulty, costs, and advantages of both day-based and symptom-based approaches.

5. *Employer responsibilities and benefits.* Responsibility for cholinesterase monitoring of pesticide handlers rests specifically with the employer of the handler. The Agency proposes to require the employer to contract with a licensed physician to provide cholinesterase monitoring services. This agreement must provide that the physician use Agency guidelines or other equivalent standardized procedures. The agreement must also require the physician to notify the employer under three circumstances: When the handler's cholinesterase has decreased to a level of concern, so that improvements in work practices are needed to reduce organophosphate exposure and raise cholinesterase levels; when dangerous levels have been reached that warrant immediate removal from exposure; and when cholinesterase has regenerated enough to allow the handler to return to work involving cholinesterase inhibitor exposure. This proposal would require the employer to follow all recommendations of the physician concerning handler monitoring, including frequency of testing and recommendations for removal from and return to work involving cholinesterase inhibitor exposure.

In order for the persons being monitored to understand that they may have been over-exposed to cholinesterase inhibitors and that they should reduce or eliminate exposure in order to protect themselves, the Agency proposes that the employer assure that handlers being monitored be informed when a physician has recommended either modifications to work practices or removal from exposure due to excessive cholinesterase inhibition. This information would permit such handlers to protect themselves form further exposure, both on the job at which they are monitored and at other times.

The Agency proposes that employers of commercial pesticide handlers maintain a record of any monitoring agreement, as well as exposure records for all employees who handle organophosphate pesticides with the signal word DANGER or WARNING on the label, including the date of handling and name of the pesticide handled (§ 170.20(c)). These records would be used for enforcement purposes to determine if the employer has a mechanism for cholinesterase monitoring of employees in place, and if employees handle organophosphate pesticides frequently enough to require monitoring.

Based on information provided by state enforcement officials, EPA expects that most commercial handler employers can readily identify their workers who frequently handle pesticides and who would be covered by this provision, so that extensive recordkeeping rquirements should not be necessary to enforce this provision. Employers generally maintain similar records for the day-to-day operation of their businesses. Basing the trigger on the number of days exposed rather than the number of hours exposed would further minimize the recordkeeping requirements.

The employer of the pesticide handler most likely would bear the cost of cholinesterase monitoring as part of the cost of doing business. Cholinesterase monitoring indicates to workers there is a concern about their health and safety, improves employer supervision of work practices, and educates the worker and the supervisor about the toxic effects of pesticides. These factors may reduce the extent and severity of accidents at the workplace which can lead to reduced insurance costs and reduced medical expenses.

6. *Monitoring personnel.* California requires the employer to contract with a physician for monitoring services. Some companies use computerized laboratory equipment under the supervision of a technician for the same purpose. The Agency proposes that employers be required to employ or contract with a licensed physician to supervise monitoring. A physician is necessary to interpret cholinesterase test results and recommend appropriate action in accordance with guidelines for cholinesterase monitoring.

7. *State activities.* Some States and companies currently have adequate cholinesterase monitoring programs in place. In order to minimize disruptions to these programs, the Agency proposes that States have discretionary authority to approve cholinesterase monitoring programs that are substantially equivalent to this proposal. Employers in States not exercising this oversight of monitoring must meet the minimum requirements in this proposal.

States may assist in implementing these provisions in other ways. They may reproduce and make the guidelines for cholinesterase monitoring produced by EPA available upon request to pesticide handlers, employers of pesticide handlers, and physicians. They may also require physicians to report removals, such as California does, and recommend modifications of agricultural pesticide handling practices to avoid excessive exposure.

8. *Guidelines from EPA.* The Agency considered including requirements for specific cholinesterase monitoring procedures, such as frequency of testing and removal levels, in this proposal. While some data are available on which to base such requirements, the Agency believes this would intrude into the area of professional medical judgment, as well as be difficult to enforce against persons who are so indirectly connected with actual pesticide use. The Agency proposes instead to furnish States with guidelines for the cholinesterase monitoring program. These guidelines will cover areas such as: (1) Appropriate test methods for performing cholinesterase determinations, (2) establishing baseline levels, (3) considerations in determining the frequency of testing, (4) recommendations that the same laboratory and method be used for repeated testing, (5) laboratory quality control procedures, and (6) recommendations for when a worker should be removed from organophosphate pesticides based on the cholinesterase measurements.

9. *Availability and certification of laboratories.* Presently, very few laboratories are performing cholinesterase testing. However, the Agency believes that an adequate number of laboratories have the technical capacity to perform the tests, and that the clinical laboratory market is very competitive and would respond to the need. The California State Department of Health approves the laboratories performing cholinesterase testing in that State. While the Agency does not propose to require certification at the Federal level or through the States, States may undertake to certify the laboratories.

10. *Reevaluation of cholinesterase monitoring.* The Agency proposes to reevaluate the proposed cholinesterase monitoring requirements after three years to determine the effectiveness of the program. Over this time period sufficient experience would be gained to enable a well-designed study to determine whether cholinesterase monitoring on a nationwide basis should be continued, perhaps with modifications, or eliminated.

M. Juvenile Workers

The present Part 170 contains no requirements uniquely applicable to juvenile workers or handlers. The Agency has considered the risk of pesticide exposure to such workers and has concluded that the information available at this time does not provide an adequate basis for proposing special requirements based on age. Therefore, juvenile and adult workers are treated alike under this proposal.

IV. Proposed Labeling Requirements

A. Background

It is a violation of FIFRA section 12(a)(2)(G) to use a pesticide in a manner inconsistent with its labeling. This provision of FIFRA requiring users to abide by the pesticide label is the primary (but not the sole) means of conveying and enforcing use restrictions designed to protect human health and the environment. Although EPA has authority under FIFRA section 3(d)(1)(C)(ii) to promulgate regulations governing pesticide use, it has not chosen to do so here because of the practical difficulties of disseminating the regulatory requirements without reliance on the pesticide label. The pesticide labeling system, popularly recognized as the definitive source of regulatory requirements, has been used almost exclusively for this purpose. The Agency thus believes that the requirements of Part 170 should be incorporated into the labeling of pesticide products.

Moreover, FIFRA section 2(q)(1) provides that pesticide labeling must contain both necessary directions for use and warnings or caution statements which, if complied with, are adequate to protect health and the environment. The Agency proposes to find that worker protection standards are necessary to protect health of agricultural workers and pesticide handlers, and therefore should be required to be placed on pesticide labeling.

In 1984 the Agency issued a proposal (49 FR 37967) to revise and consolidate pesticide labeling requirements, now found in 40 CFR Part 162, in a separate Part 156 for each reference. The Agency proposed to require essentially the same labeling statements as had been imposed by PR Notice 83-2. In the preamble to the proposal, EPA stated that the Agency was in the process of reevaluating Part 170, and that it intended to propose new worker protection standards in the future. EPA stated that if this reevaluation resulted in new or different labeling requirements than proposed, the regulation would be revised. In May, 1988, the Agency issued the final rule creating Part 156 (53 FR 15952).

B. Proposed Approach

Part 170 will be implemented and enforced through the inclusion of its provisions as part of product labeling. Therefore, the Agency proposes to create a new Subpart K of Part 156 to contain required worker protection labeling statements (§§ 156.200 through 156.217). The distinction between label and labeling in FIFRA section 2(p) allows the Agency some flexibility in implementation. EPA could elect to make the provisions part of the "label," which would require that they appear on the material actually attached to the container. Alternatively, EPA could impose the requirements as part of "labeling," in one of two ways: by requiring that material actually accompany the product during distribution and sale, or by requiring that it be referenced on the label but not accompany the product. Each of these alternatives is legally sufficient to bring the requirements under the FIFRA misuse provisions for enforcement purposes.

In deciding among three principal options for implementing the requirements, EPA therefore considered the type and extent of information being required by Part 170, and the need for such information to actually accompany the product in commerce.

The Agency considered and rejected the option of requiring that the entire text of Part 170 accompany each product in sale and distribution, on the label or in supplemental labeling. Although this would convey the requirements legally, and in the most direct manner inform users of their obligations, the Agency believes it to be a cumbersome, expensive, and unnecessary implementation approach. Not only is the regulatory language long and relatively complex, the regulation includes a number of pesticide-specific provisions that are not applicable to all products.

EPA also considered and rejected an approach at the opposite end of the spectrum, that of simply referencing Part 170 on the label and not requiring that it accompany the product in sale and distribution. This would accomplish the necessary legal connection between the pesticide label and the worker protection standards, while not burdening registrants with the expense of preparing and distributing large volumes of supplemental labeling. On the other hand, this approach would place the burden on the pesticide user to obtain a copy of Part 170 himself, and translate its provisions to each specific pesticide product used.

Obtaining Part 170 would not generally be difficult. The Agency would make copies widely available through a variety of user sources, such as the USDA Cooperative Extension Service, State pesticide and agricultural agencies, user associations and farmworker groups. However, application of its provisions to individual pesticides could be complicated for a user, particularly one who uses pesticides infrequently.

The proposed approach is a compromise between these two extremes. The Agency proposes to incorporate by reference on the label the majority of Part 170 requirements. However, some requirements that are product-specific, such as reentry intervals and PPE, will be required to be on the labeling of each individual product. In this way, EPA hopes to gain the best tradeoff among the needs of registrants, the cost of extensive new labeling materials, the problems of label clutter, complexity and readability, and the needs of users to have essential information available.

C. Applicability

Because the proposed Subpart K labeling requirements are intended to implement the worker protection standards of proposed Part 170, their applicability (§ 156.200) is defined by the applicability requirements of that Part (§ 170.3). The registrant must determine whether the labeling requirements of Subpart K apply to a particular product. The difficulty facing registrants is that product labels often do not make the fine distinctions as to intended use or user so that the Agency can clearly determine that the labeling requirements do not apply. The result is that all products which are intended generally for agricultural use on plants would be required to be labeled with worker protection statements. Similarly, the requirements will apply to products bearing multiple uses, some of which may be exempt from worker protection statements.

Some products will clearly fall within the exceptions given in § 170.3. Products applied solely by injection methods, attractants, repellents, disinfectants, and vertebrate control products are by their very nature product types that can be determined to be exempt. Registrants of products labeled only for such uses should not be required to modify their labeling in any way to comply with the requirements of Subpart K.

On the other hand, the Agency's experience is that registrants do not always register separate products in order to distinguish, for example, public mosquito control and private mosquito control uses; commercial and noncommercial uses in greenhouses and forests; weed control in agricultural fields and the same weed control on rights-of-way; or golf course turf use and other turf use. More likely is the registration of a single product for the entire spectrum of turf use or weed control.

In order to determine that a product is clearly exempt from the requirements of Subpart K, a registrant may be required to obtain a new registration by "splitting" his registration administratively to segregate the exempted uses. Under § 152.130(b), the Agency permits a registrant to market a single product bearing differing subsets of registered uses without requiring separate registration, provided that in splitting the uses, the precautionary labeling and use directions would not vary. Because splitting the uses for Subpart K purposes would result in labeling variations between the products, the split cannot be accomplished under single registration. The Agency would accept applications for amended registration for this purpose.

D. Reference Statement

Section 156.205 proposes that a statement referring to Part 170 appear on the label of each product to which Part 170 applies. The statement in § 156.205, the wording of which would be used exactly, briefly identifies the subject matter and scope of Part 170, draws the reader's attention to the fact that the regulations are considered to be labeling, and notes that State requirements may be more restrictive than Part 170.

The reference statement would be required to appear on the label of the pesticide, that is, attached to or printed on the immediate container of the pesticide. It could not be placed solely in supplemental labeling that accompanies the product, although it may also appear there at the registrant's discretion.

E. General Statements

Section 156.206 proposes a number of general labeling requirements, which are identical or similar to those contained in PR Notice 83–2, including the following: (1) The general statement that a pesticide not be applied so as to contact unprotected workers (minor wording changes in the statement required by the PR Notice are proposed); (2) the requirement that the signal word appear in Spanish as well as English for products in Toxicity Categories I and II; and (3) the Spanish language statement warning non-English-speaking workers to obtain assistance in understanding the pesticide label before handling the product.

The Agency is further proposing in § 156.206(c) that the label of a product specifically identify products that are organophosphates, N-methyl carbamates, or fumigants.

Organophosphates and N-methyl carbamates can cause cholinesterase inhibition. Identification on the label of these chemical classes is necessary so that users who are employers of pesticide handlers will be aware that (1) use of the product if it is an organophosphate may trigger a requirement for cholinesterase monitoring, and (2) a monitored worker who has been removed from exposure to cholinesterase inhibitors, including N-methyl carbamates, should not be exposed to the product.

Similarly, greenhouse users must be aware that a product is a fumigant in order to comply with the reentry restrictions applicable to fumigants (§ 170.66(b)(1)). Also, because of the intensive hand labor work in greenhouse cultivation, the fact that reentry is restricted for a certain period of time may be critical to a decision about whether or when to use a fumigant. Under this proposal, a product would be identified clearly as a fumigant, providing the user with the means to make an informed decision.

Statements identifying a product as an organophosphate, N-methyl carbamate or fumigant would be permitted to appear in any of several ways, but would be required to be placed on the label itself, not just in supplemental labeling. The statement is directed to pesticide handlers and supervisors of workers, who are responsible for the reentry or monitoring requirements arising from use of the pesticide. For this reason it is important that the statement be placed where such persons will readily observe it. Currently, pesticides that inhibit cholinesterase are identified on the label in a "Note to Physician," generally located on a side or back panel, and may be overlooked by users. Because the statement relates to requirements for which the user can be held responsible, greater prominence than the "Note to Physician" is needed.

The Agency also proposes that the labeling of highly toxic pesticides bear statements requiring frequent contact with handlers of those products (§ 156.206(d) and (e)). Most pesticide poisonings and injuries result from handling the most highly toxic pesticides, which under certain circumstances can cause loss of consciousness in a short period of time. Thus, a person working alone might not be able to summon help in a poisoning emergency. Frequent contact with other persons would increase the chances that a worker would receive prompt medical treatment in case of an accident and would thereby lessen the chance of a fatality.

The Agency proposes to require contact only for those pesticides with the signal word DANGER and the word POISON printed in red and the skull and crossbones symbol on the front panel of the pesticide label (those in Toxicity Category I for oral, dermal, or inhalation toxicity). Pesticides in Toxicity Category I for skin and eye irritation, while causing severe effects, are seldom life-threatening. However, fumigant pesticides are of such high toxicity when used in greenhouses, that all fumigant formulations for use in such enclosed structures would have these requirements for contact.

The Agency proposes that the handler of a fumigant in an enclosed structure remain in the direct line of vision of an observer at all times during the handling operation. In addition, the observer must have available all of the PPE required on the fumigant product labeling for handling the fumigant in an enclosed area. The observer must be able to immediately rescue a handler who has been overcome by the fumigant because the emergency response time is very short for these hazardous pesticides. There have been cases reported where rescue workers who were not adequately protected have also been poisoned.

Highly toxic pesticides being handled outdoors require fast, but not necessarily immediate, emergency response time. The Agency has determined that maintaining verbal or visual contact at intervals not exceeding 2 hours is sufficient contact for such uses.

F. Reentry Statements

The Agency is proposing generic interim reentry intervals that would

offer substantial protection to workers until the Agency is able to prescribe product-specific intervals based on actual data. The Agency proposes to incorporate a phased approach to reentry, with decreasing requirements for personal protective equipment (PPE) at longer intervals after application, coupled with increasing types of permitted work in treated fields. At the shortest time after application, hand labor tasks would be prohibited altogether, and other tasks permitted only when wearing the most protective PPE. Later, all types of tasks could be performed by workers wearing certain PPE. Finally, after a further period, no PPE would be required.

In translating these requirements into pesticide labeling statements, the Agency proposes in § 156.210 to include statements of three types covering the three time periods after application: before a minimum reentry interval (sprays have dried, etc.); between the minimum reentry interval and the numerical reentry interval for the product; and after the reentry interval, after which task restrictions and PPE are no longer necessary. This proposal does not attempt to address the "no contact" situation (see, e.g., § 170.46(a)(1)) through a labeling statement, because a decision about whether a worker will have "no contact" is not product-dependent but relates to particular circumstances of use.

In order to determine which reentry labeling statements are required, the registrant of a typical product would first determine whether the product is subject to a numerical reentry interval under § 156.210(d) (product-specific) or § 156.210(e) (interim). If the product is not subject to a numerical interval, only the statement pertaining to the minimum reentry interval (§ 156.210(c)(1)) would be required, which would appear in the use directions. If on the other hand a numerical interval is applicable to the product, the statement pertaining to the time between the minimum and the numerical intervals (§ 156.210(c)(2)) would be required as well on labeling. This is needed to determine the PPE for early reentry workers, since the PPE may differ for these two reentry periods (§ 156.217).

In order to determine whether or not a product has a numerical reentry interval, the registrant would consult a list of active ingredients and corresponding reentry intervals which the Agency proposes to prepare to facilitate this process. The list would be based on an assessment of available toxicity data on these active ingredients as applied to the interim and product-specific reentry interval criteria proposed in § 156.210 (d) and (e). The list would be maintained by the Agency as a reference for registrants and others.

Section 156.210(f) proposes to allow registrants and others to propose to modify numerical reentry intervals established by this regulation by submission of appropriate data, including Part 158 data or other medical, epidemiological or health effects studies. Based on such submitted data, the Agency would review the reentry interval of the product in question and would establish a shorter or longer interval if appropriate. The Agency would also reevaluate the reentry interval of a pesticide product upon entry into Special Review (§ 156.210(e)), taking account any available data, including indication of chronic effects, relevant to assessing reentry hazards.

G. Posting Statement

The Agency is proposing in Part 170 that some treated areas be posted. For farms and forests, posting would be required only if the pesticide has a reentry interval greater than 48 hours. On the other hand, all applications in nurseries and greenhouses would require posting, regardless of the length of the reentry interval. The Agency proposes in § 156.212 to require that affected product bear a statement instructing the user to post the treated area.

Since product labeling does not generally distinguish between nursery, greenhouse, and non-greenhouse/nursery uses, and the Agency does not expect registrants to amend their registrations to do so, the wording of the alternate posting statements in proposed § 156.212 has been crafted to make the necessary distinctions between farm/forest use and nursery/greenhouse use and between reentry intervals.

H. Personal Protective Equipment Statements

Section 156.215 proposes that all products to which Subpart K applies bear appropriate minimum personal protective equipment (PPE) statements. These statements would apply to all handling (mixing, loading, application etc.) activities (§ 156.216) and early reentry activities (§ 156.217) by workers involving the product.

In order to determine minimum PPE requirements to be placed on labeling, registrants would consult the tables found at §156.216(b) for required PPE for handlers and § 156.217(b) for required PPE for early reentry workers. Registrants would use toxicity data on the formulated product (in the case of handler PPE) or active ingredients (in the case of early reentry worker PPE) by route of exposure. If toxicity data by a route of exposure were lacking, the overall toxicity of the formulated product or active ingredients, as appropriate, would be used. Where a product has existing PPE requirements on labeling, the most protective of the requirements for each area of the body would be used (see unit III.H.2.d for further discussion).

Section 156.216(c) proposes certain modifications to the minimum handler PPE based on exposure pattern; registrants would also consult this section for applicable modifications to PPE wording. Section 156.216(d) proposes to allow registrants of products which will be diluted by the user to submit data on the product as diluted for use in order to have the handler PPE requirements modified for handlers other than mixer/loaders, since such handlers will be exposed only to the diluted product.

Section 156.216(f) and 156.217(d) would allow registrants and others to propose to modify the minimum PPE requirements established by this regulation by submission of appropriate data, including Part 158 data or other medical, epidemiological or health effects studies. Based on such submitted data, the Agency would review PPE requirements for the product in question and could establish different PPE if appropriate. The Agency would also reevaluate PPE for a product upon entry into Special Review (§§ 156.216(e) and 156.217(c)), taking account any available data, including indication of chronic effects, relevant to assessing reentry hazards.

I. Implementation of Labeling Changes

Implementation and enforcement of this Part depend upon the misuse provision of FIFRA section 12(a)(2)(G), which in turn depends upon the labeling of the pesticide. The Agency believes it essential to make the standards effective as soon as possible after promulgation of a final rule and will implement the labeling requirements of Subpart K rapidly, recognizing that a large number of products will be affected by the new requirements. To balance the needs of the Agency to rapidly implement the protective measures contained in Part 170, and the needs of registrants for an orderly labeling process, the Agency proposes the following labeling compliance policy.

1. *New products.* As of the effective date of the final rule, labels submitted with applications for new registration must be in compliance with Subpart K at

the time of registration. The Agency will review and approve labeling for new products under normal Agency procedures.

2. *Existing products.* Registrants of products that are currently registered as of the effective date of Subpart K will be required to amend product labeling to bring it into compliance with the new requirements. Because of the large number of products affected, and the Agency's limited resources for review, EPA proposes to require a certification statement for existing products rather than applications for amended registration. This will save resources in the Agency review time, and will permit faster introduction of properly labeled products into commerce since registrants will not have to await Agency approval of the amended language. Mindful of the scheduling of registrants' labeling operations, of the variable number of products for individual registrants and the large number of total products affected, the Agency proposes to develop a schedule for submission of certification statements. To assist in determining the most equitable and efficient implementation schedule, EPA requests comments and relevant information on the number of products potentially affected, details of labeling operations and critical path elements for accomplishing relabeling, both for products released for shipment and products in channels of trade, and any other factors that EPA should consider in developing a suitable and expeditious compliance schedule.

3. *Certification statement.* For each affected product, the registrant must submit to the Agency, by a date to be announced in the preamble to the final rule, a certification statement that all products being released for shipment after the date of the certification statement are in compliance with the labeling requirements of Subpart K. The certification statement would be similar to that used for other regulatory purposes, such as the PR Notice, would acknowledge the registrant's knowledge of the requirements, and would require certification by an authorized representative of the company that all products being released for shipment meet those requirements. The wording of an acceptable or required certification statement will be set out in the preamble to the final rule.

4. *Submission of labeling.* The Agency proposes to require the registrant to attach to his certification a copy of the product's final printed labeling bearing the revised labeling statements. The Agency may choose to review this labeling as a check on the correctness of the registrant's compliance with Subpart K, but such reviews would be selective, and the Agency does not expect to routinely approve or disapprove the submitted labeling or notify the registrant.

5. *Time frames.* The Agency will announce in the final rule the time frames by which certification statements must be submitted to the Agency. EPA will also set time frames, after the certification submission date for compliance by products in channels of trade. EPA will consider permitting the use of interim measures such as stickering to meet the channels of trade compliance date.

6. *Failure to comply.* If a certification statement is not submitted by the date specified in the final rule, the Agency may issue a "Notice of Intent to Cancel" under FIFRA section 6(b). If, after certification to the Agency of compliance with Subpart K, the Agency determinates that the product is not in compliance, or that the registrant has incorrectly labeled the product, the product may be deemed to be misbranded in violation of FIFRA section 12(a)(1)(E) or the Agency may issue a "Notice of Intent to Cancel" under FIFRA section 6(b).

7. *Amended registration.* Applications for amended registration for the purpose of modifying the required statements would be permitted. However, the Agency notes that it is specifying precise wording or exact requirements so that registrants will be able to comply more easily within the time frames to be established. EPA cannot assure that amendments for minor wording changes would be approved with sufficient time to incorporate the revised language. As stated previously, the Agency intends that the standards and implementing label statements be put in place as quickly as possible, and therefore EPA is unlikely to grant an extension of time merely because a label amendment has been proposed. This policy would not preclude registrants from submitting amendments to registration; registrants would, however, be required to meet applicable deadlines for label changes regardless of the status of any amendment to registration.

V. Relationship to States

Existing Part 170 includes a provision which authorizes the States to set and enforce "more restrictive standards for workers in fields treated with pesticides" (§ 170.4(a)). This approach is consistent with FIFRA section 24(a), which authorizes the States to regulate the sale or use of pesticides, but only to the extent their regulations do not permit any sale or use prohibited by FIFRA.

The Agency considered relying upon the States to establish their own regulations on farmworkers pesticide protection. Despite recent initiatives in certain States, including California, Texas, New Jersey, Ohio, Arizona, Oregon and Washington, farmworker protection has been uneven among States and nonexistent in many States. The Agency acknowledges that there are advantages to relying upon State governments to regulate certain farmworker protection matters stemming from particular local conditions. However, under the existing national minimum standard approach, States are able to address such local needs as long as State requirements are not less stringent than the Federal standards.

The Agency proposes to retain the national minimum standards approach. Under this approach, EPA would set national minimum standards in Part 170 which could be made more stringent by EPA or the States on a State, regional or product-specific basis. The Agency is aware that such minimum standards might not provide the full measure of needed protection for some workers. However, it views as important the establishment of minimum protection for all workers and considers the proposed approach to be capable of accomplishing that goal effectively and efficiently.

The Agency believes that the reference to more restrictive state standards found in the current Part is unnecessary, in view of the specific authorization in FIFRA section 24(a) of more stringent State regulation of pesticide use. The proposed rule therefore omits any general statement concerning more stringent State regulation, although the agency intends the revised Part 170 to be a national minimum standard, as indicated above.

VI. Implementation of Regulation

In order for the workers protection standards proposed in this Part to be maximally effective, the Agency believes they must be communicated to the regulated community in a clear and concise manner. The rule proposes a number of requirements that have not been required of pesticide users before. Also, the rule requires training to be provided to handlers, which is less common among protection measures required by the Agency than, for example, protective clothing. The Agency therefore requests comment on various methods of communicating the rule to the regulated community.

At this time the Agency believes that the preparation of a user guide explaining the rule in an easy-to-follow manner will be the most effective approach. There may be more than one version of the user guide prepared in order to tailor the guide to each of the major user groups served. The user guides could be distributed through the Cooperative Extension Service to pesticide users.

VII. Statutory Review

A. U.S. Department of Agriculture

As required by FIFRA section 25(a), a copy of this proposal was provided to the Secretary of Agriculture. On March 7, 1988, the Secretary provided written comments on this proposal. Following is a summary of each comment by the Secretary, together with the Agency's response.

Comment #1: Appropriate reentry intervals for pesticides will vary by crop and by geographic region. National reentry intervals, based on a worst case exposure level, would be inappropriate and burdensome to growers in many situations.

Response: The Agency acknowledges that the interval following application of a pesticide during which unprotected worker reentry is "unsafe" will vary by geographic region and crop, and also by climate, presence or absence of rainfall, stage of crop development, application rate, and worker activity. Information on all or even some of these variables is rarely available. When full Subpart K reentry and exposure data are not available, the Agency has traditionally established interim reentry intervals using an analysis that may involve acute toxicity data, surrogate reentry data on pesticides similar in chemical structure or use pattern, or poisoning incident reports, usually resulting in a single national reentry interval for a pesticide active ingredient. As a stopgap measure until reregistration is completed, this proposal continues the general national minimum approach based on the rough surrogate criterion of acute toxicity data. At the same time, this proposal allows registrants and user groups to submit data that would enable the Agency to modify interim reentry intervals as appropriate, for example on a geographic or crop basis.

Comment #2: The use of pesticides in the commercial production of wood fiber and timber products should be exempt from worker protection standards. Commercial forests are unlike traditional agricultural settings in that pesticide use is less frequent.

Response: The Agency has been unable to identify any fundamental differences between forestry and other agricultural settings meriting exemption from these proposed standards. While frequency of pesticide use in a particular forest area may be low compared to the average farm, nursery, or greenhouse operation, this may not be true of frequency of use by particular crew members. Forestry mixing, loading, and application techniques appear to be substantially similar to other agricultural handling techniques, with similar risks of exposure to forestry handlers and corresponding risk reduction measures. While worker reentry to treated areas appears to be very rare in forestry, when it occurs the worker protection measures in this proposal—notification, decontamination water, emergency provisions, etc.—appears appropriate. The Agency is seeking comment on the applicability of this proposal to forestry.

Comment #3: Wide-area spray programs sponsored by the USDA, such as the Mediterranean Fruit Fly eradication program, create difficulties in that both agricultural and non-agricultural areas may be covered by such programs.

Response: The Agency agrees with this comment. In addition, the governmental entity usually has no employment or contractual relationship with owners of treated areas, making observation of reentry and notification requirements impractical. The Agency proposes to exempt public pest control programs sponsored by governmental entities, such as the Mediterranean Fruit Fly eradication program, from the worker protection standards. However, this would not include pest control programs sponsored by governmental entities which take place on property owned or leased by such entities, such as routine use of pesticides in National Forests by the U.S. Forest Service.

Comment #4: Applicators certified under Federal certification programs should be qualified to be trainers of handlers.

Response: The Agency agrees that applicators who become certified under a federally sponsored certification program in accordance with 40 CFR Part 171 would be qualified to be trainers of handlers, and has amended the proposed trainer qualifications to include such persons.

Comment #5: The decontamination water quantity and location requirements are satisfactory.

Response: None.

Comment #6: Eye wash dispensers need not be immediately available to each applicator and could be dispersed throughout the crew, one for every two or three workers, because carrying excessive weight can cause heat and health problems.

Response: The Agency believes that in the case of application equipment failure where the applicator is sprayed or splashed in the face, the eye wash dispenser would need to be immediately available to be of any value. The Agency does not believe that carrying a cone pint dispenser (the proposed minimum volume) would present a heat or health problem. The Agency is soliciting further comment on this issue in the preamble to this Notice.

Comment #7: Chemical resistant footwear should not be required for forestry workers, because workers will not walk through treated vegetation under typical forestry application conditions, and because chemical resistant boots do not breathe, creating foot problems.

Response: In the case of higher toxicity pesticides, forestry workers would require foot protection from spills during mixing and loading of liquid formulations. While walking through treated vegetation may be uncommon, foot protection during application would be necessary, for example, in the case of spills due to equipment failure. The Agency believes that breathability should not be a problem since use of chemical resistant shoe covers, which may be worn over breathable boots, is permitted under this proposal. The Agency is soliciting further comment on this issue in the preamble to this Notice.

B. Congressional Committees

As required by FIFRA section 25(a), a copy of this proposal was provided to the Committee on Agriculture, Nutrition, and Forestry of the U.S. Senate and the Committee on Agriculture of the U.S. House of Representatives. Comments were provided by Representative George E. Brown, Jr. and Senator Patrick J. Leahy. Following is a summary of each comment by Representative Brown and Senator Leahy, together with the Agency's response.

1. Comments of Representative Brown

Comment #1: Supports expanding coverage of the standards to greenhouse, nursery, and forestry workers.

Response: None.

Comment #2: Supports the increased availability of emergency health services.

Response: None.

Comment #3: Supports the availability of washing facilities.

Response: None.

Comment #4: Personal protective equipment (PPE) requirements should be

subject to monitoring of actual field use for effectiveness, with formal reevaluation after one or two seasons.

Response: As discussed in unit III.H. of this Notice, considerable exposure monitoring data is available on the effectiveness of PPE during various types of outdoor mixing, loading, and application activities for various pesticides, whereas somewhat less data is available for PPE effectiveness under indoor (e.g. greenhouse) exposure and outdoor early reentry exposure conditions. This data is being compiled from various sources, including registrant responses to data call-ins and studies funded by research and development efforts, through the Agency's exposure assessment data base. The Agency proposes to continue compilation of exposure monitoring data with special emphasis on PPE effectiveness under indoor and early reentry conditions. This data base will be reexamined after sufficient new data are available from the point of view of the adequacy of PPE in protecting workers under these conditions.

Comment #5: Supports the increased stringency of reentry standards.

Response: None.

Comment #6: The toxicity basis for interim reentry intervals should not be limited to acute toxicity, but should include chronic and subchronic effects and the effects of metabolites.

Response: The Agency agrees that reentry intervals should consider chronic and subchronic effects of pesticides and the effects of metabolites when sufficient toxicity, exposure, and benefits data are available to make such determinations. The Agency believes that intervals to control risks due to chronic or subchronic toxicity should be determined on a case-by-case rather than a generic basis, due to the difficulty of assessing the nature and level of chronic risks. The Agency proposes to continue its policy of case-by-case evaluation of reentry exposure, and in particular proposes to formally reevaluate reentry exposure, and set intervals as needed, if a pesticide enters Special Review (see § 156.210(f)). The interim reentry intervals in this proposal, based on acute toxicity, are intended to serve as a stop-gap measure until the Agency's reregistration program can cause the generation of more complete toxicity data and evaluate the need for reentry intervals for each agricultural pesticide.

Comment #7: The proposed notification requirements should be reexamined in light of "real world conditions in the fields," such as proximity of labor camps to treated areas.

Response: The Agency agrees that if a labor camp is located in proximity to a treated area of an agricultural establishment, notification of workers who live at the camp would be effective in preventing accidental reentry. The Agency has clarified its intent in this Notice to propose that treated areas adjacent to any labor camps be posted with warning signs at the boundary of such camps when posting is required, and that workers who live in adjacent labor camps be orally warned of applications, whether or not they will actually work in or near the treated area. Public comment is being solicited on this issue.

Comment #8: The cholinesterase monitoring requirements are a "good first step," but the comments of the Scientific Advisory Panel on this topic should be addressed.

Response: The Agency refers to its response to SAP comments #11–13.

Comment #9: A comprehensive survey and health monitoring effort for the agricultural sector is needed, in cooperation with other state and Federal agencies.

Response: The Agency believes that such a comprehensive effort is beyond the scope of this proposal. The Agency notes that one such farmworker health monitoring project is being undertaken based on a recent Congressional appropriation to EPA.

Comment #10: EPA should take steps to deal with possible conflict between EPA and OSHA in enforcement actions.

Response: The Agency acknowledges that concurrent jurisdiction exists over the agricultural sector with regard to responsibility for health and safety. The Agency has consulted with OSHA in an attempt to ensure that no duplication or conflict among regulations will occur, especially with regard to EPA's proposed decontamination requirements and the OSHA Field Sanitation Standard. The Agency agrees that coordination of the agencies' enforcement efforts in the agricultural sector would be desirable. EPA plans to continue its consultations with OSHA to clarify these matters.

Comment #11: The Subcommittee on Departmental Operations, Research, and Foreign Agriculture should be provided with information on the costs of implementation and enforcement of the proposal, to be used for Congressional funding deliberations.

Response: The Agency notes that while the proposed regulations would elaborate on previous definitions of pesticide misuse, it does not increase the number of establishments subject to misuse enforcement. Any farm, forest, nursery or greenhouse using registered pesticides is already within the scope of state and Federal enforcement activities. In that sense, implementation of the proposal may not require additional resources for enforcement. On the other hand, the Agency recognizes that it will be necessary to mount an effort to disseminate information on the new requirements to the agricultural community, and has already begun the preparations for this effort, in cooperation with several other organizations. As the proposal moves toward a final rule, the Agency will examine resource issues associated with implementation and consider those in preparation of the President's budget.

Comment #12: The Agency should address the concern of the SAP regarding EPA's philosophy of establishing only minimum standards, since health and safety requirements of workers do not vary geographically or by economic sector.

Response: The Agency referes to its response to SAP comment#1.

2. *Comments of Senator Leahy*

Comment #1: Supports extending protections to pesticide applicators as well as to nersery, greenhouse, and forestry workers.

Response: None.

Comment #2: Supports emergency transportation requirement in the case of suspected pesticide poisoning or injury.

Response: None.

Comment #3: Interim reentry intervals should take into account potential chronic and subchronic effects and effects of inert ingredients.

Response: Currently, available chronic and subchronic data are in fact used in setting reentry intervals on a case by case basis. The Agency proposes to continue this policy and refers to its respone to Representative Brown's comment #6 for further discussion. Concerning inerts, the Agency believes that it will be rare for significant residues of toxic inerts to remain in fields after sprays have dried. Reentry concerns are principally due to residues of active ingredients or their metabolites or degradation products.

Comment #4: No data is provided to support the Agency's contention that the 72/48/24 hour interim reentry interval option is not economically feasible.

Response: More detailed economic impact projections are found in the Regulatory Impact Assessment (RIA) for this proposal. The RIA concluded that the total first-year non-incremental cost of the 72/48/24 hour reentry option would be $222.2 million, attributable largely to fruit, vegetable, and

greenhouse sector impacts, compared to an estimated $33.7 million under this proposal.

Comment #5: Displaying a pesticide safety information poster is inadequate training for non-handler workers, who should be given the same training as handlers.

Response: The Agency considered whether handler-type training, or some other form of training, would be appropriate and practicable for all fieldworkers. The Agency believes that adequate delivery mechanisms would not be available if handler training (similar to certification) were required for all fieldworkers. In addition, this level of training is not necessary for workers whose primary need is to protect themselves from pesticide exposure and who are generally not in a position to cause exposure to others. The Agency seeks comment on these issues.

Comment #6: Workers should be given the name and the common signs and symptoms of pesticides to which they are exposed, without the need for a request.

Response: The Agency carefully considered which pesticide-specific information would be most useful to workers and what methods of communication of that information would be most effective. While the Agency proposes that the worker be provided with the brand name, the registration number, and the name of all active ingredients of any product to which the worker is exposed, the common signs and symptoms of poisoning for the product would not be available to the employer because this information is only rarely required on pesticide labeling. The Agency is soliciting comment on whether information about the general (rather than product-specific) signs and symptoms of pesticide poisoning should be required as part of the pesticide safety information display. As to communication method, the Agency believes that information such as chemical names would be ignored or not recalled by workers if given during an oral warning, and it would be burdensome on employers for it to be routinely marked on warning signs or displayed at a central location such as a notice board. In addition, not all workers would want this more detailed information. While there may be some inhibition among some workers in making a request, this appears to be the most reasonable and effective method of making the information available to those workers who want it. The Agency notes that it is concerned more generally with how toxicity and safety information about pesticides should best be communicated to the public, and is pursuing this as a separate matter.

Comment #7: Treated areas should be posted for pesticides with reentry intervals of 24 hours or longer, because too many highly toxic pesticides would otherwise not be included and oral warnings are not adequate.

Response: The Agency refers to its response to SAP comment #5.

Comment #8: Warning signs should be posted at labor camps when they are located in or near treated areas.

Response: The Agency refers to its response to Representative Brown's comment #7.

Comment #9: Any symbol for use on warning signs other than the skull and crossbones should be pilot tested for worker understandability.

Response: The Agency agrees that pilot testing under field conditions of any proposed warning sign symbol would help to establish its relative effectiveness, and has invited comment on how this could best be accomplished.

Comment #10: More emphasis should be given to mechanical controls (closed systems) as opposed to personal protective equipment (PPE) in view of uncertainties about the effectiveness of PPE.

Response: While some uncertainties about the efficacy of PPE remain, considerable data is in fact available. The Agency refers to its response to Representative Brown's comment #4 for its proposal to address weaknesses in this data base. The Agency proposes to prohibit work activities altogether when weather conditions are such that the required PPE might cause heat stress. The proposal also includes incentives for the use of closed mixing/loading and application systems in terms of reduced PPE requirements.

C. FIFRA Scientific Advisory Panel

Pursuant to FIFRA section 25(d), a copy of this proposal was provided to the FIFRA Scientific Advisory Panel (SAP). On March 2, 1988, the SAP held an open meeting to review this proposal and submitted written comments to the Agency. Following is a summary of each written comment by the SAP, together with the Agency's response.

Comment #1: Establishing only minimum standards seems inappropriate when more stringent standards have already been proven and accepted in California and Texas without detriment to the agricultural economy.

Response: The Agency believes that this proposal represents the most stringent worker protection standards that are applicable nationwide; the standards are "minimum" only in the sense that no state may have less stringent requirements. This proposal follows FIFRA in allowing any state to develop more stringent regulations if they are warranted by conditions in that state. Moreover, the Agency routinely sets product-specific protective measures on a case-by-case basis, such as personal protective equipment and reentry intervals, that can be more stringent than those required by the proposal. Such measures would be unaffected by the proposal.

Comment #2: The proposal contains ambiguous wording.

Response: One of the primary reasons for revising the existing worker protection regulations was ambiguous wording. The Agency welcomes specific comments as to such wording in this proposal.

Comment #3: All workers applying pesticides should be required to take a training program.

Response: The Agency agrees. The Agency is proposing to require that all pesticide handlers, including applicators, be trained as described in that section or be certified under Part 171.

Comment #4: Names of pesticides used and the common symptoms of toxic exposure to these pesticides should be provided to workers on a routine basis.

Response: The Agency agrees that workers exposed to pesticides should receive information about pesticides to which they are exposed and signs of exposure. The Agency is proposing that handlers be provided labeling information on request, while other workers be given oral or posted warnings before pesticide applications and provided certain other information about the pesticide on request. In addition, the proposed handler training must include common signs and symptoms of pesticide poisoning. The Agency is soliciting comment on whether similar information about poisoning symptoms should be included in the pesticide safety information that must be displayed in a prominent location.

Comment #5: Posting of treated areas on farms should be required following application of pesticides having reentry intervals of 24 hours or greater (instead of greater than 48 hours).

Response: While the option of additional posting would probably decrease the risk of accidental early reentry poisonings, it would also increase the economic cost to growers. The Agency believes that the increased benefits under this option would probably not outweigh the increased costs, especially considering that under

this proposal daily oral warnings would be required for all pesticide applications. The Agency is soliciting comment on this issue.

Comment #6: All communications should be in the language the workers understand.

Response: The Agency agrees that providing information is of little value if the information cannot be understood. The Agency is proposing that oral warnings be given in a language the worker can understand; that treated area warning signs display a standard symbol clearly indicating that entry is forbidden; and that the pesticide safety information that must be displayed contain a statement in the language of each non-English speaking worker that the information on the poster is important and should be explained to him.

Comment #7: Acute toxicity data should be used for establishing interim reentry intervals, in addition to other indications of toxicity where appropriate, especially dermal and respiratory toxicity.

Response: The Agency proposes to use acute dermal, skin irration, and eye irration toxicity in establishing interim reentry intervals. The Agency proposes not to consider either acute oral toxicity, since the oral route is not a major route of reentry exposure, or inhalation toxicity, since the inhalation route is not a major route of exposure after sprays have dried. Before sprays have dried inhalation toxicity would be considered in determining personal protective equipment for early reentry workers.

Comment #8: Longer interim reentry intervals should be established which take account of potential chronic and subchronic effects in addition to acute effects.

Response: The Agency considered the option of requiring longer intervals (i.e. 72/48/24 hours by Toxicity Category) but believes that such intervals are not supported on a generic basis by the limited reentry data available on certain pesticides. The Agency agrees that reentry intervals should reflect chronic and subchronic effects of pesticides when data is available, but that appropriate intervals should be determined on a case-by-case basis. The Agency is soliciting comment on these issues.

Comment #9: Meaningful reentry intervals should be established for Toxicity Category III and IV pesticides.

Response: The Agency considered the option of establishing a minimum 24-hour reentry interval for all pesticides. In the case of Toxicity Category III and IV pesticides, this would provide some interim protection for pesticides which are later discovered to have chronic effects, and would probably reduce the incidence of skin and eye poisonings now occurring from pesticides in these categories. However, the Agency rejected this option because it would result in unwarranted reentry intervals for some pesticides, and because chronic effects are best addressed on a pesticide-specific, rather than generic, basis. The Agency is soliciting comment on this issue.

Comment #10: The Agency should provide a list of all agricultural pesticides identifying their toxicity categorization and reentry interval.

Response: Such a list is currently being developed by the Agency and will be made available to registrants and other interested parties.

Comment #11: The Agency should consider a broader range of cholinesterase monitoring, including: A shorter exposure trigger; monitoring of private applicators; and triggering based on early symptoms of exposure.

Response: The Agency believes that a more sensitive exposure trigger (fewer days of exposure) would not extend monitoring to an appreciable number of handlers with routine exposure to organophosphates, but would instead include persons with very short-term or spread-out exposure for which monitoring would not be necessary. Extending monitoring to private handlers would probably not significantly reduce overall risk, because the number of non-commercial handlers meeting the exposure trigger is anticipated to be small. While monitoring handlers with early symptoms of exposure could prevent future poisonings, monitoring could not begin before a considerable period of removal from exposure, in order to establish a baseline. The Agency is soliciting comment on these issues.

Comment #12: A pre-exposure baseline should be required of workers meeting the cholinesterase monitoring trigger.

Response: The Agency believes baseline testing will ordinarily be a necessary part of a cholinesterase monitoring program, and that the timing and methodology of baseline testing would best be addressed in the guidelines for supervising physicians which the Agency plans to develop.

Comment #3: Recognition of cholinesterase inhibitor exposure symptoms should be made a part of a training program.

Response: The Agency agrees that handlers routinely exposed to cholinesterase inhibiting pesticides should be made aware of the symptoms of over-exposure and when it is necessary to reduce or avoid exposure in order to protect themselves. The Agency has modified the proposal to require that the general training of pesticide handlers include information about the signs and symptoms of cholinesterase inhibition. In addition, the employer must notify the commercial handler, at the time the employer is notified by the supervising physician, that changes to work practices may be necessary or that removal from exposure is necessary, in order for the handler to take steps to reduce or avoid exposure. Comment is solicited on this proposal.

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IX Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and must submit its analysis supporting its findings to the Office of Management and Budget (OMB) for review. The Agency has determined that this proposed revision of Part 170 is a major regulation as defined by E.O. 12291. A regulatory impact analysis has been developed and submitted to OMB as required. This document is available for public inspection at the address given at the beginning of this **Federal Register** notice. A summary follows.

EPA proposes to revise 40 CFR Part 170 to specify requirements that would mitigate the risks from exposure to pesticides and their residues by pesticide handlers and agricultural workers. EPA has developed, considered and analyzed many approaches to mitigating these risks and proposes to issue regulations covering reentry intervals, personal protective equipment, training, notification, decontamination, emergency medical duties and cholinesterase monitoring.

The proposed regulations would serve to protect the hired labor force of 2.3 million persons exposed either directly or indirectly to pesticides as a result of their occupations on farms, in forests, in nurseries, or in greenhouses. This workforce includes 1.8 million hired farmworkers, 150 thousand commercial pesticide applicator personnel, 7.2 thousand workers in forestry, 125 thousand workers in nurseries and 175 thousand workers in greenhouses.

The total incremental cost (not including costs already incurred) in the first year of this proposed regulation, given existing regulations at the State and Federal level, is an estimated $170.0 million, representing an average cost per worker protected of $74. Total incremental costs attributable to specific requirements ranged from $6.0 million for emergency medical duties (an average of $2.22 per worker) to $35.4 million for cholinesterase monitoring (an average of $15.39 per worker). These costs would affect sectors of the agricultural economy according to their intensity of pesticide use and types of pesticides used. The estimated first year nonincremental cost by sector ranges from $167 for an average feed/grain farm to $611 for an average vegetable farm to $3,515 for an average greenhouse to $8,910 for an average commercial pesticide application firm.

The benefits that would accrue to pesticide handlers and field workers from the proposed regulation would include reduction in lost time from the workforce, reduced medical expenses and overall increased productivity from having a workforce less affected by pesticide exposure. While these benefits cannot be quantified, the Agency believes that these types of benefits would be substantial

B. Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164; 5 U.S.C. 601–612). The results of that review have been incorporated into the regulatory impact analysis. The proposed regulation was found to affect farms in all size categories. The vast majority of farms are small businesses. The Agency is seeking further information on the impact of this proposal on small agricultural establishments.

Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–A326.

Public reporting burden for this collection of information is estimated to average 6.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Parts 156 and 170

Environmental protection, Labeling, Pesticides and pests, Intergovernmental relations, Occupational safety and health.

Dated: June 28, 1988.

A. James Barnes,

Acting Administrator.

Therefore, it is proposed that Chapter I of Title 40 be amended as follows:

PART 156—LABELING REQUIREMENTS FOR PESTICIDES AND DEVICES

1. In Part 156:

a. The authority citation continues to read as follows:

Authority: 7 U.S.C. 136–136y.

b. By adding new Subpart K, to read as follows:

Subpart K—Agricultural Worker Protection Statements

Sec.

156.200 Scope and applicability.
156.202 Authority of the Agency.
156.205 Reference statement.
156.206 General statements.

Sec.
156.210 Reentry statements.
156.212 Posting statements.
156.215 General personal protective equipment statements.
156.216 Personal protective equipment for handlers.
156.217 Personal protective equipment for early reentry workers.

Subpart K—Agricultural Worker Protection Statements

§ 156.200 Scope and applicability.

(a) *Scope.* This subpart prescribes labeling requirements for the protection of agricultural pesticide handlers and workers in pesticide-treated areas. The statements incorporate by reference the worker protection standards of Part 170 of this chapter. This subpart also prescribes reentry interval and personal protective equipment statements which must be placed on labeling.

(b) *Applicability.* (1) The requirements of this subpart apply to each pesticide product that bears directions for use or whose labeling reasonably permits use in the production of any agricultural plant on or in any farm, forest, nursery, or greenhouse.

(2) The requirements of this subpart do not apply to a product that bears directions solely for uses exempted by § 170.3(b)(2) of this chapter.

§ 156.202 Authority of the Agency.

The Agency, upon its own initiative or upon application by a registrant or other person in accordance with §§ 156.210, 156.216 or 156.217, may modify or waive the requirements of this subpart, or may permit alternative labeling statements to be used.

§ 156.205 Reference statement.

The label of each product shall bear the reference statement: "On or in farms, forests, nurseries, or greenhouses, use only in accordance with Part 170 of Title 40, Code of Federal Regulations, EPA regulations for the protection of agricultural workers and pesticide handlers. These regulations are part of the labeling of this product and should be obtained by the user. Some States have more restrictive worker protection requirements; consult your State agency responsible for pesticide regulation for information on your State's requirements."

§ 156.206 General statements.

(a) The labeling of each product shall bear the statement: "Do not apply this product in a way that will contact unprotected workers, either directly or through drift. Only protected handlers may be in the area during application."

(b) If the product is assigned to Toxicity Category I or II in accordance with § 162.10(h)(1) of this chapter:

(1) The signal word shall appear in Spanish as well as English.

(2) The statement, "Si usted no lee ingles, no use este producto hasta que el etiqueta haya sido explicado ampliamente," shall appear on the label in close proximity to the Spanish signal word. [Translation: If you cannot read English, do not use this product until the label has been fully explained to you.]

(c) If the product contains an organophosphate or N-methyl carbamate, or is a fumigant, the label shall so state. The identification may appear as part of the product name, as part of the product type identification or as a separate statement. It may not appear only within the ingredients statement.

(d) If the product is required to bear the skull and crossbones on the label, the product labeling shall also bear the statement: "Visual or voice contact must be made at least every two hours with any person who is mixing, loading, or applying this product."

(e) If the product is a fumigant, the product labeling shall bear the statement: "Visual contact must be maintained by an observer at all times with any person who is applying this product in a greenhouse or similar structure, or who enters the greenhouse before the reentry interval has expired. The observer must have immediate access to the same personal protective equipment required for an applicator of this product."

§ 156.210 Reentry statements.

(a) *Requirement.* Each product shall bear reentry statements as prescribed by this section. The statements consist of:

(1) The prohibition against immediate reentry specified in paragraph (c)(1) of this section.

(2) The reentry statement specified in paragraph (c)(2) of this section, if applicable.

(3) The interim or product-specific reentry interval in accordance with paragraph (d) or (e) of this section, if applicable.

(b) *Location of reentry statements.* The statements required by paragraph (a) (1) and (2) of this section shall be located in the use directions of the product labeling under the heading "REENTRY." If the statements are not located on the label of the product but are in supplemental labeling accompanying the product during distribution or sale, the human hazard precautionary section of the label shall contain a reference statement to the reentry statements elsewhere. The required statements may be combined to avoid redundancy as long as the requirements and conditions under which they apply are clearly identified. The interim or product specific reentry interval required by paragraph (a)(3) of this section shall be associated on the labeling with each crop or use to which it applies, immediately preceded or followed by the words "Reentry Interval" (or the letters "REI" if previously defined in the labeling). If the same reentry interval applies to all crops and uses, the reentry interval may be listed once together with other statements under the heading "REENTRY."

(c) *General reentry statements.* (1) Each product shall bear the statement, "Do not enter or allow entry into treated areas until [sprays have dried/dusts have settled/vapors have dispersed, as applicable] to perform hand labor tasks. A person may enter the area to perform other tasks only if the person is wearing the personal protective equipment listed on the label for a pesticide handler."

(2) Each product for which an interim or product-specific reentry interval has been established shall bear the statement, "After [sprays have dried/dusts have settled/vapors have dispersed, as applicable] do not enter or allow entry into the treated area until the reentry interval has expired, unless the person entering the treated area is wearing the personal protective equipment listed on the label for early reentry."

(d) *Product specific reentry intervals.* A product-specific reentry interval is established based on reentry protection data submitted in accordance with § 158.140 of this chapter and Subdivision K of the Pesticide Assessment Guidelines. A product specific reentry interval shall supersede any interim reentry interval applicable to the product.

(e) *Interim reentry intervals*—(1) *Existing interval.* An interim reentry interval established by the Agency prior to the effective date of this subpart will continue to apply unless a longer interim reentry interval is required by paragraph (e)(2) of this section. However, if reentry protection data were required at the time of the establishment of the existing interval and flagged for expedited review, the existing interval will continue to apply even if a longer interim reentry interval is required by paragraph (e)(2) of this section.

(2) *Interval based on acute toxicity of the active ingredient.* (i) If there is no existing reentry interval, or if an existing reentry interval is superseded under

paragraph (e)(1) of this section, an interim interval shall be established, based upon the acute toxicity of the active ingredient(s) in the product. The Toxicity Category of each active ingredient in the product shall be determined based upon a comparison of data on the acute dermal toxicity, eye irritation effects, or skin irritation effects of the ingredient to the criteria of § 162.10(h)(1) of this chapter. If no dermal toxicity data are available, data on oral toxicity shall also be considered in this comparison.

(ii) If the product contains a sole active ingredient which is in Toxicity Category I and which belongs to the organophosphate or N-methyl carbamate chemical class, the interim reentry interval shall be 48 hours.

(iii) If the product contains any other sole active ingredient which is in Toxicity Category I, the interim reentry interval shall be 24 hours.

(iv) If the product contains a sole active ingredient which is in Toxicity Category II and which belongs to the organophosphate or N-methyl carbamate chemical class, the interim reentry interval shall be 24 hours.

(v) If the product contains any other sole active ingredient which is in Toxicity Category II, there shall be no interim reentry interval.

(vi) If the product contains only active ingredients which are in Toxicity Category III or IV, there shall be no interim reentry interval.

(vii) If the product contains more than one active ingredient, the interim reentry interval shall be the longest interval among the active ingredients determined by the criteria in paragraphs (e)(2) (ii) through (vi) of this section.

(f) *Modification based upon Special Review.* If the Agency concludes, in accordance with § 154.25(c) of this chapter, that a pesticide should be placed in Special Review because of a determination that it meets or exceeds the criteria of § 154.7(a) (1) or (2) of the chapter for human health effects, the Agency will at that time also determine an appropriate interim reentry interval.

(g) *Modification based upon submission of data.* The Agency may, based upon data submitted by any person demonstrating that exposure levels resulting from the application of a pesticide product warrant a shorter or longer reentry interval than that required by this section, modify the reentry interval on a case-by-case basis. Supporting data may be in accordance with Part 158 of this chapter and Subdivision K of the Pesticide Assessment Guidelines, or other medical, epidemiological, or health effects studies.

§ 156.212 Posting statements.

(a) *Requirement*—(1) Each product that has a reentry interval of greater than 48 hours for any crop or use site shall bear the statement: "Areas treated with this product are subject to posting."

(2) Each product that has a reentry interval of 48 hours or less, and that either bears directions for use in greenhouses or nurseries or whose labeling reasonably permits use in greenhouses or nurseries shall bear the statement: "If this product is used in nurseries or greenhouses, treated areas must be posted before application and must remain posted until the reentry interval has expired."

(b) *Location.* The posting statement required by paragraph (a) (1) or (2) of this section may be located on the product labeling with the specific crops or sites to which it applies or, if it applies to more than one crop or site, may be located in the general use directions.

§ 156.215 General personal protection equipment statements.

(a) *Requirement.* Each product shall bear the personal protective equipment (PPE) statements prescribed by §§ 156.216 and 156.217. PPE requirements for a product established prior to the effective date of this subpart shall use the more protective of the requirements for each area of the body. However, any existing label prohibition on the use of gloves or boots overrides the corresponding requirement of this subpart.

(b) *Location of PPE statements.* PPE statements shall be located in the use directions of the product labeling under the heading "PERSONAL PROTECTIVE EQUIPMENT." If the statements are not located on the label of the product but are in supplemental labeling accompanying the product during distribution or sale, the human hazard precautionary section of the label shall contain a reference statement to the PPE statements elsewhere. The required statements may be combined to avoid redundancy as long as the requirements and conditions under which they apply are clearly identified.

§ 156.216 Personal protective equipment for handlers.

(a) *Minimum PPE requirements.* The table in paragraph (b) of this section sets out the minimum PPE requirements for pesticide handlers and early reentry workers entering treated areas before sprays have dried, dusts have settled, or vapors have dispersed, based upon the acute toxicity of the formulated product by route of exposure. The labeling shall specify the PPE for each route of exposure, based upon data on the acute toxicity of the product by that route of exposure. If data to determine the acute toxicity of the product by an applicable route of exposure are lacking, the Toxicity Category of the formulated product as a whole shall be used to determine PPE required for that route of exposure.

(b) *Table.*

MINIMUM PERSONAL PROTECTIVE EQUIPMENT AND NORMAL WORK ATTIRE FOR PESTICIDE HANDLERS AND WORKERS REENTERING TREATED AREAS BEFORE SPRAYS HAVE DRIED

Route of exposure	Formulated product toxicity category			
	I	II	III	IV
Dermal or skin irritation potential [1].	Protective suit [2]; Chemical-resistant gloves [3]; Chemical-resistant shoes, shoe covers, or boots.	Protective suit; Chemical-resistant gloves; Chemical-resistant shoes, shoe covers, or boots.	Normal work attire [4]; Chemical-resistant gloves.	Normal work attire.
Inhalation	Respiratory protection device [5]	Respiratory protection device	No minimum [6]	No minimum.
Eye irritation potential	Goggles or face shield	Goggles or face shield	No minimum	Do.

[1] If dermal toxicity and skin irritation potential are known to be in different Toxicity Categories, the more toxic of the two shall be used.

[2] A protective suit is a loose-fitting one-or two-piece garment, such as a fabric coverall, that is worn over normal work attire and covers at a minimum the entire body except for the head, hands and feet.

[3] "Chemical-resistant" material allows no measurable movement of pesticide through the material during use.

[4] Normal work attire consists at a minimum of long pants and long sleeved shirt, shoes and socks.

[5] Respiratory protection device approved by the National Institute of Occupational Health and Safety (NIOSH) and the Mine Safety and Health Administration (MSHA) for the intended pesticide use.

[6] Although no minimum PPE is required by this Section for this Toxicity Category and route of exposure, PPE may be required by the Agency under these circumstances on a product-specific basis.

(c) *Modifications based upon exposure pattern.* In addition to the minimum requirements given in paragraph (b) of this section, the following PPE instructions (or substitutions, as applicable) shall be included on the labeling of each product that is in Toxicity Category I or II by dermal toxicity or skin irritation potential.

(1) *Mixing/loading.* Unless a chemical-resistant protective suit is otherwise required, the labeling shall specify that during mixing and loading a chemical-resistant apron shall be worn in addition to other PPE.

(2) *Closed system mixing/loading.* If the product may be mixed or loaded by a closed system that eliminates open atmospheric contact with the pesticide and its rinsate during transfer from the original container to the application equipment, the labeling may specify that under these circumstances:

(i) Normal work attire, chemical-resistant apron and chemical-resistant gloves may be worn in lieu of other PPE;

(ii) If pressure is used during closed system mixing or loading, goggles or a face shield shall be worn in addition to other PPE; and

(iii) All other PPE for a handler shall be available nearby for the mixer/loader's use in case of equipment failure or other emergency.

(3) *Overhead exposure.* If the product may be applied in a manner such that overhead exposure to the pesticide may occur, the labeling shall specify that a chemical-resistant hat with a wide brim or a hood shall be worn in addition to other PPE.

(4) *Enclosed cab application.* If the product may be applied using an enclosed cab with positive pressure ventilation, the labeling may specify that under these conditions normal work attire may be worn in lieu of PPE, which shall be available in the cab for the applicator's use when leaving the cab while still in the treated area.

(5) *Aerial application.* If the product may be aerially applied, the labeling may specify that:

(i) If an enclosed cockpit is used, normal work attire may be worn in lieu of other PPE, and chemical-resistant gloves shall be available in the cockpit for the applicator's use when leaving an aircraft that is contaminated with pesticide residues.

(ii) If a nonenclosed cockpit is used, chemical-resistant shoes, shoe coverings or boots may be omitted and a helmet with a visor may be worn in lieu of a hat and goggles or face shield.

(6) *Equipment cleaning and repair.* The labeling shall specify that during cleaning and repair of mixing, loading and application equipment, a chemical-resistant apron, chemical-resistant gloves and chemical-resistant shoes, shoe coverings or boots shall be worn.

(d) *Modification based upon the toxicity of the product as diluted for use.* If the labeling requires the product to be diluted by the user before application, the registrant may propose to modify the PPE requirements of paragraph (b) or (c) of this section for all handlers except mixer/loaders. In support of such proposal, the registrant shall submit or cite data on the toxicity of the product as diluted for use by the routes of exposure for which modification of PPE is sought. The PPE requirements for all handlers except mixer/loaders may then be based upon the data submitted for the product as diluted for use.

(e) *Modification based upon Special Review.* If the agency concludes in accordance with § 154.25(c) of this chapter that a pesticide should be placed in Special Review because of a determination that the pesticide meets or exceeds the criteria of § 154.7(a)(1) or (2) of this chapter for human health effects, the Agency will at that time also determine appropriate interim PPE for handlers.

(f) *Modification based upon data submission.* The Agency may, based upon data submitted by any person demonstrating that exposure levels resulting from handler activities warrant different minimum PPE requirements than required by this section, modify the minimum PPE requirements on a case-by-case basis. Supporting data may be either data required by Subdivisions U or K of the Pesticide Assessment Guidelines or other medical, epidemiological, or health effects data.

§ 156.217 Personal protective equipment for early reentry workers.

(a) *Minimum PPE requirements.* The table in paragraph (b) of this section sets out the minimum PPE requirements for early reentry workers entering treated areas after sprays have dried, dusts have settled or vapors have dispersed and before the expiration of the reentry interval, based upon the acute toxicity of the active ingredient by route of exposure. The labeling shall specify the PPE for each route of exposure, based upon data on the acute toxicity of the active ingredient by that route of exposure. If data to determine the acute toxicity of the active ingredient by any route of exposure are lacking, the Toxicity Category of the active ingredient as a whole shall be used to determine PPE required for that route of exposure.

(b) *Table.*

MINIMUM PERSONAL PROTECTIVE EQUIPMENT FOR WORKERS REENTERING TREATED AREAS AFTER SPRAYS HAVE DRIED AND BEFORE THE EXPIRATION OF THE REENTRY INTERVAL

Route of exposure	Active ingredient toxicity category			
	I	II	III	IV
Dermal or skin irritation potential.[1]	Protective suit;[2] Chemical-resistant gloves;[3] Chemical-resistant shoes, shoe covers, or boots.	Protective suit; Chemical-resistant gloves; Chemical-resistant shoes, shoe covers, or boots.	No minimum[4]	No minimum.
Eye irritation potential	Goggles or face shield	Goggles or face shield	No minimum	Do.

[1] If dermal toxicity and skin irritation potential are known to be in different Toxicity Categories, the more toxic of the two shall be used.

[2] A protective suit is a loose-fitting one- or two-piece garment, such as a fabric coverall, that is worn over normal work attire and covers at a minimum the entire body except for the head, hands and feet.

[3] "Chemical-resistant" material allows no measurable movement of pesticide through the material during exposure.

[4] Although no minimum PPE is required by this section for this Toxicity Category and route of exposure, PPE may be required by the Agency under these circumstances on a product-specific basis.

(c) *Modification based upon Special Review.* If the Agency concludes, in accordance with § 154.25(c) of this chapter, that a pesticide should be placed in Special Review because of a determination that the pesticide meets or exceeds the criteria of § 154.7(a)(1) or (2) of this chapter, for human health effects, the Agency will at that time also determine appropriate interim PPE for early reentry workers.

(d) *Modification based upon data submission.* The Agency may, based upon data submitted by any person demonstrating that exposure levels resulting from the early reeentry activities warrant different minimum PPE requirements than required by this section, modify the minimum PPE requirements on a case-by-case basis. Supporting data may be either data required by Subdivisions U or K of the Pesticide Assessment Guidelines or other medical, epidemiological or health effects data.

2. By revising Part 170 to read as follows:

PART 170—WORKER PROTECTION STANDARDS FOR AGRICULTURAL PESTICIDES

Subpart A—General

Sec.

170.1 Purpose and overview.
170.3 Applicability.
170.5 Definitions.
170.7 Duties of persons covered under this part.
170.9 Violations of this part.

Subpart B—Standards for Pesticide Handlers and Early Reentry Workers

170.10 Applicability.
170.12 Training.
170.14 Access to labeling information.
170.16 Duties related to personal protective equipment.
170.18 Decontamination.
170.20 Cholinesterase monitoring.

Subpart C—Common Standards for Workers on or in Farms Forests, Nurseries and Greenhouses

170.30 Applicability.
170.32 General pesticide safety information.
170.34 Emergency duties.
170.36 Precautions during application of pesticides.
170.38 Decontamination

Subpart D—Special Standards for Workers on Farms and in Forests

170.40 Applicability.
170.42 Information about pesticide applications.
170.44 Posting.
170.46 Reentry.

Subpart E—Special Standards for Workers in Nurseries

170.50 Applicability.
170.52 Information about pesticide applications.
170.54 Posting.
170.56 Reentry.

Subpart F—Special Standards for Workers in Greenhouses

170.60 Applicability.
170.62 Information about pesticide applications.
170.64 Posting.
170.66 Reentry.

Authority: 7 U.S.C. 136w.

Subpart A—General

§ 170.1 Purpose and overview.

(a) *Purpose.* The purpose of this part is to set standards, to be incorporated into pesticide labeling, designed to help protect persons who work on or in farms, forests, nurseries, or greenhouses from injury or disease that might result from occupational exposure to pesticides or pesticide residues. This part requires workplace practices designed to lessen the risk of exposure and to deal with exposures that may occur.

(b) *Overview of the organization of this part.* This part consists of six subparts:

(1) Subpart A describes the coverage of this part, defines terms used throughout this part, and describes generally the duties of persons and the conditions under which these persons are subject to penalties for failure to perform the duties.

(2) Supbart B contains standards for the protection of handlers and early reentry workers on all use sites.

(3) Subpart C contains standards for the prorection of all workers on all use sites.

(4) Subpart D contains standards for the protection of all workers on farms and in forests.

(5) Subpart E contains standards for the protection of all workers in nurseries.

(6) Subpart F contains standards for the protection of all workers in greenhouses.

Pesticide labeling requirements that are related to this part are contained in Subpart K of Part 156 of this chapter.

§ 170.3 Applicability.

(a) *General.* The requirements of this part apply if any pesticide to which this part applies (see paragraph (b) of this section) is used on or in any farm, forest, nursery, or greenhouse to which this part applies (see paragraph (c) of this section).

(b) *Pesticides to which this part applies*—(1) *General rule.* This part applies to any pesticide product whose label bears directions for use in the production of any agricultural plant and contains either the reference statement set forth in § 156.205 of this chapter or any other reference to this part.

(2) *Exceptions.* This part does not apply to any pesticide to the extent that it is used or applied only:

(i) For public mosquito abatement or similar public pest control programs sponsored by government entities, not including such programs that take place entirely on property owned or leased by the sponsoring governmental entity;

(ii) On livestock or other animals;

(iii) On golf courses or on turf areas that are not located on turf or sod farms or in greenhouses;

(iv) In such structures as malls, atriums, or office buildings where agricultural plants are present primarily for aesthetic or climatic modifications;

(v) In and around habitations, including, but not limited to, on noncommercial crop or ornamental gardens, in non-commercial greenhouses, or on lawns, shrubs, or trees;

(vi) By injection directly into agricultural plants (however, this part does apply to "hack and squirt", "frill and spray" and other techniques that do not involve direct injection);

(vii) In a manner which is not directly related to the production of agricultural plants, including, but not limited to, structural pest control, control of vegetation along rights-of-way and in other noncrop areas, control of vertebrate pests, and attractants and repellents in containers;

(viii) After harvest on the harvested portions of agricultural plants; or

(ix) For research purposes by any person, if the purpose of the research is primarily to determine the properties or effects of pesticides and if all handling activities and hand labor tasks associated with such research are performed by or under the direct supervision of the person conducting the research.

(c) *Sites to which this part applies.* This part applies to any farm, forest, nursery, or greenhouse on or in which:

(1) Any worker performs any work related to the production of agricultural plants; and

(2) Any pesticide to which this part applies is used in the production of agricultural plants.

(d) *Effect of this part on compliance with pesticide labeling statements by certain persons.* Although an owner of a farm, forest, nursery or greenhouse and immediate family members of an owner are not considered to be workers for purposes of this part, such persons are required to comply with pesticide

labeling statements pertaining to reentry and personal protective equipment.

§ 170.5 Definitions.

Terms used in this part have the same meanings as they do in the Federal Insecticide, Fungicide and Rodenticide Act, as amended. In addition, as used in this part, the following terms shall have the meanings stated below:

"Agricultural plant" means any agricultural, ornamental, or forestry plant, or part thereof. Agricultural plants include, but are not limited to, food, feed and fiber plants, trees, turf, flowers, shrubs, and seedlings.

"Chemical-resistant," when applied to any material, means that there will be no measureable movement of the pesticide product through the material during the period of use.

"Early reentry worker" means any worker who is directed to enter a reentry-restricted area prior to the expiration of any reentry interval that applies to that area.

"Employer" means any person who employs any worker or handler, for any type of compensation, to perform tasks relating to the production of agricultural plants.

"Farm" means any area that is used, in whole or in part, for the production of agricultural plants, that is not a forest, nursery or greenhouse.

"Forest" means any area containing trees and associated vegetation used, in whole or in part, for the commercial production of wood fiber or timber products. The term does not include trees located in any nursery.

"Greenhouse" means any structure or space that is enclosed with nonporous covering, that is of sufficient size to permit worker entry, and that is used, in whole or in part, for the production of agricultural plants. Such structures include greenhouses, polyhouses, mushroom houses, rhubarb houses and similar structures.

"Hand labor tasks" means harvesting, detasseling, thinning, weeding, topping, planting, sucker removal, pruning, disbudding, roguing, or any other task that causes any worker to come into substantial contact with surfaces (such as plants, plant parts or soil) that may contain pesticide residues.

"Handler" or "pesticide handler" means any worker who: mixes, loads, transfers, transports, applies or disposes of pesticides; acts as a flagger; or cleans, adjusts, or repairs contaminated parts of mixing, loading, or application equipment. The term does not include any worker who transports pesticides in containers that have never been opened.

"Normal work attire" means, at a minimum, long pants, long-sleeved shirt, shoes, and socks.

"Nursery" means any property that is not enclosed with nonporous covering and that is used, in whole or in part, for the production of agricultural plants which will be used in their entirety in another location.

"Owner" means any person who has a present possessory interest (fee, leasehold, or other) in land on which a farm, forest, greenhouse or nursery covered by this part is located, by virtue of which interest the person has the legal right to prevent other persons from entering the land or to require them to leave it.

"Person" means any individual, partnership, association, or corporation, or any organized group of persons, whether incorporated or not.

"Personal protective equipment" means devices and clothing that are worn over, in place of, or in addition to normal work attire for the purpose of protecting the human body from contact with pesticides or pesticide residues.

"Pesticide-treated area" means any area to which a pesticide has been directed.

"Potable water" means water that meets the standards for drinking purposes established by State or local authority having jurisdiction or water that meets the National Interim Primary Drinking Water Standards, set forth in Part 141 of this chapter.

"Protective suit" means any loose-fitting, one- or two-piece garment that is worn over normal work attire and covers at a minimum the entire body except for the feet, hands, and head.

"Reentry interval" means the period of time after the end of a pesticide application on, in, or near an area during which entry into the area is restricted, including at a minimum the period of time required for sprays to dry, dusts to settle and vapors to disperse.

"Reentry-restricted area" means the pesticide-treated area and any additional area into which entry is restricted during the reentry interval because of drift or overspray of pesticides beyond the pesticide-treated area.

"Supervisor" means any person who directly or indirectly exercises control and direction over any worker.

"Worker" means any person employed for any type of compensation to perform tasks relating to the production of agricultural plants. The term does not include an owner of a farm, forest, nursery or greenhouse or the immediate family of an owner, the immediate family including only an owner's spouse, children, stepchildren, foster children, parents, stepparents, foster parents, brothers, and sisters.

§ 170.7 Duties of persons covered under this part.

(a) *Duties of owner.* The owner of any farm, forest, nursery or greenhouse shall:

(1) Assure that any pesticide that is used on such property is used in a manner that is consistent with the labeling of the pesticide including the requirements of this part.

(2) Assure that any worker who works on such property receives the protections required by this part.

(3) Provide, to each person who performs or supervises any work on such property, information and directions sufficient to assure that each worker on such property receives the protections required by this part. Such information and directions shall include where and when pesticides will be or have been applied, which areas have restrictions on reentry, and which persons are responsible for actions required to comply with this part:

(4) Require each supervisor of any worker on such property to assure compliance by the worker with the provisions of this part and to assure that the worker receives the protections required by this part.

(b) *Duties of other persons.* Each person who performs or supervises any work related to the production of agricultural plants or the use of any pesticide on or in any farm, forest, nursery or greenhouse shall:

(1) Comply with all instructions and directions given by the owner or other persons acting for the owner, or by the person's employer, that are intended to assure compliance with this part.

(2) Assure that any worker the person supervises receives the protections required by this part.

(3) Assure that any pesticide the person uses or supervises the use of is used in a manner that is consistent with the labeling of the pesticide, including the requirements of this part.

(c) *Prohibited actions.* No owner, employer, or supervisor shall allow or direct a worker to violate any requirement of this part, or take any action intended to prevent or discourage any worker from complying or attempting to comply with any requirement of this part. However, this part does not prohibit an owner, employer, or supervisor from discharging or otherwise disciplining any worker for failure to comply with instructions to take an action required by this part or to refrain from an action prohibited by this part.

§ 170.9 Violations of this part.

(a) Under FIFRA section 12(a)(2)(G) it is unlawful for any person "to use any registered pesticide in a manner inconsistent with its labeling." EPA interprets the term "to use any registered pesticide" as referring to, among other things, application, arranging for or allowing application, making necessary preparations for application, or supervising application of a pesticide, or taking any required postapplication actions. Each person who uses a pesticide must not use it in a manner inconsistent with its labeling, including the requirements of this part.

(b) A person who has a duty under this part (see § 170.7) and who fails to perform that duty violates FIFRA section 12(a)(2)(G) and is subject to a civil or criminal penalty under FIFRA section 14.

(c) FIFRA section 14(b)(4) provides that a person is liable for a penalty under FIFRA if another person employed by or acting for him violates any provision of FIFRA. The term "acting for" includes both employment and contractual relationships.

(d) Notwithstanding paragraphs (a) through (c) of this section, if a person who is under contract to perform services on the property of an owner, or who is the employee of such a contractor, violates any requirement of this part, the owner of the property shall not be considered to have committed an unlawful act solely because of such violation if the violation did not occur on the property of the owner.

(e) The fact that a person covered under this part failed to obey instructions to take an action required by this part (or instructions to refrain from an action prohibited by this part) shall not preclude enforcement action against other persons who have duties under this part. However, any such non-compliance that is directly related to a violation of this part shall be taken into account in administrative decisions concerning initiation of enforcement action and determination of penalties with regard to such violation.

Subpart B—Standards for Pesticide Handlers and Early Reentry Workers

§ 170.10 Applicability.

This subpart contains standards to protect pesticide handlers and early reentry workers for pesticides used on or in farms, forests, nurseries and greenhouses. In this subpart, the word "worker" refers only to pesticide handlers and early reentry workers.

§ 170.12 Training.

(a) *General.* Each worker shall be trained under the provisions of this section, unless such person is a certified commercial or private applicator under Part 171 of this chapter.

(b) *Training programs.* (1) A trainer shall present general information on pesticides to workers orally or audiovisually and shall answer questions that arise. The trainer shall be a certified commercial or private applicator under Part 171 of this chapter or otherwise designated by a State or Federal agency as a trainer of certified applicators.

(2) General information on pesticides shall include at a minimum the following:

(i) Format and meaning of information contained on pesticide labels and in supplementary labeling, including safety information such as human hazard precautionary statements;

(ii) Acute and chronic hazards of pesticides;

(iii) Common signs and symptoms of pesticide poisoning, including signs and symptoms of cholinesterase inhibition;

(iv) Routes through which pesticides can enter the body;

(v) Appropriate use of personal protective equipment;

(vi) Emergency first aid for pesticide injuries or poisonings;

(vii) How to find emergency medical care;

(viii) Safety requirements for handling, transporting, storing, and disposing of pesticides, including procedures for spill cleanup;

(ix) Safety requirements for routine washing of face and hands before eating, drinking, using the toilet, or using gum or tobacco;

(x) Safety requirements for whole body decontamination in an emergency exposure situation and at the end of the handling activities, including instructions not to wear home or take home contaminated personal protective equipment;

(xi) (If applicable) Information that pesticides are applied in irrigation water in some areas. Warnings not to enter such areas when the irrigation system is operating and until foliage has dried and soil surface water has disappeared. Instructions not to drink, bathe in, use, play in, or enter the water in furrows, puddles, ponds, canals, or ditches associated with an irrigation system used to apply pesticides;

(xii) Basic information on the safe and appropriate operation of mixing, loading, and application equipment;

(xiii) Environmental concerns such as drift, runoff, and wildlife hazards.

(c) *State requirements.* (1) A State may impose additional requirements for training consistent with those set forth in this section.

(2) A State shall petition the Agency for approval of any training requirement inconsistent with those set forth in this section.

§ 170.14 Access to labeling information.

Any information from the labeling of any pesticide that is being or is scheduled to be handled, or the labeling itself, shall be provided upon request to any handler of that pesticide.

§ 170.16 Duties related to personal protective equipment.

(a) *Provision.* When personal protective equipment (PPE) is required by the labeling of any pesticide for any worker, such PPE shall be provided in clean and operating condition to such worker.

(b) *Use.* (1) All required PPE shall be used correctly for its intended purpose and in accordance with any manufacturer's instructions.

(2) No worker shall be allowed or directed to perform any task requiring the use of a chemical-resistant protective suit when conditions such as temperature, humidity and length of time required to complete the task might be expected to cause heat prostration or other heat-induced illness.

(3) A clean place away from pesticide storage and pesticide use areas shall be provided where workers may put on PPE at the start of any exposure period, store any personal clothing not in use, and change out of PPE at the end of any exposure period. Soap, towels, and a sufficient amount of potable water for workers to wash after removing PPE shall be available at the end of any exposure period.

(4) When not in use, PPE shall be stored away from pesticide-contaminated areas and separately from personal clothing.

(5) No worker shall be allowed or directed to wear home or take home pesticide-contaminated PPE.

(c) *Cleaning and maintenance.* (1) All PPE shall be thoroughly washed with detergent and hot water, or cleaned according to manufacturer's instructions, after any day on which it is used and before it may be reused. All PPE shall be thoroughly dried before being stored or shall be put in a well ventilated place to dry.

(2) Any person responsible for cleaning the PPE shall be informed that such equipment may be contaminated with pesticides and that it should be

kept and washed separately from any other clothing or laundry.

(3) Any PPE that cannot be properly cleaned shall be disposed of in accordance with any applicable Federal, State, and local regulations. Any nonchemical-resistant protective suit which becomes drenched or heavily contaminated with an undiluted pesticide which has the signal word DANGER or WARNING on the label shall always be disposed of rather than being used.

(4) Respirator filter pads, cartridges, and canisters shall be replaced at least as often as recommended by the manufacturer.

(5) Before each day's use, all PPE shall be inspected for leaks, holes, tears, or worn places and any damaged equipment shall be repaired or discarded.

§ 170.18 Decontamination.

(a) *Requirement.* Water for washing off pesticides and pesticide residues shall be made available to each worker.

(b) *General conditions.* (1) The water shall be potable.

(2) The water shall be at a temperature that will not injure the eyes.

(3) If the water is stored in a tank, the water shall not also be used for mixing of pesticides, unless the tank is equipped with properly functioning valves or other mechanisms which prevent movement of pesticides into the tank.

(4) The water shall be reasonably accessible from each worker's place of work.

(5) The water shall not be located within a reentry-restricted area.

(6) The water shall be made available in adequate supply for routine washing of hands and face by workers as well as for emergency whole-body decontamination.

(7) Soap and single-use towels, in quantities sufficient to meet workers' needs, and a clean change of clothing, such as coveralls, shall be available at each decontamination water location.

(c) *Emergency eye flushing.* An eye flush dispenser containing at least one pint of water shall be made available to each worker who is required by the pesticide labeling to wear goggles or a face shield for the activity being performed. The dispenser shall be either carried by the worker, located on the vehicle which the worker is using, or otherwise immediately accessible.

§ 170.20 Cholinesterase monitoring.

(a) *Requirement.* Any worker who handles, for compensation on property not owned or rented by him or his employer, any pesticide product with the signal word "DANGER" or "WARNING" on the label containing any organophosphate active ingredient, on each of 3 consecutive days, or on any 6 days in a 21-day period, shall be monitored for cholinesterase inhibition.

(b) *Employer duties.* The employer of any commercial pesticide handler covered under paragraph (a) of this section shall:

(1) Engage the services of a licensed physician to supervise the cholinesterase monitoring of the handler. The agreement shall provide that the physician:

(i) Use the guidelines for cholinesterase monitoring provided by the Agency or other equivalent guidelines;

(ii) Advise the employer when changes to work practices may be warranted due to decreased cholinesterase levels;

(iii) Advise the employer when the handler should be removed from further exposure due to significantly decreased cholinesterase levels; and

(iv) Advise the employer when cholinesterase levels have regenerated to a level permitting return to exposure.

(2) Follow all recommendations of the physician concerning matters of cholinesterase monitoring, including frequency of testing and removal from exposure.

(3) Inform the handler that changes to work practices or removal from exposure due to excessive cholinesterase inhibition has been recommended by the physician, upon any such recommendation by the physician to the employer.

(c) *Recordkeeping.* The employer of any commercial pesticide handler, whether or not such handler is covered under paragraph (a) of this section, shall maintain a record for at least 2 years, to be made available upon request to State and Federal enforcement officials, of:

(1) All handling activities involving pesticide products with the signal word DANGER or WARNING on the label containing any organophosphate active ingredient, including date of handling and name of the pesticide product handled, for all handlers in his employ; and

(2) Any agreement made pursuant to paragraph (b)(1) of this section.

(d) *State requirements.* A State shall have the authority to modify the requirements of this section so long as cholinesterase monitoring of commercial pesticide handlers is required under conditions substantially equivalent to those described in this section.

(e) *Guidelines.* The Agency will develop and furnish on request to any individual, organization or State, guidelines for cholinesterase monitoring which will cover as a minimum: appropriate test methods, baseline testing, frequency of testing after exposure begins, and decreases in plasma and red blood cell levels for which work practices should be investigated and those for which medical removal of a worker from exposure should be made.

(Approved by the Office of Management and Budget under Control Number 2070–A326)

Subpart C—Common Standards for Workers on or in Farms, Forests, Nurseries and Greenhouses

§ 170.30 Applicability.

This subpart applies to, and contains standards to protect all workers from, pesticides used on or in farms, forests, nurseries and greenhouses.

§ 170.32 General pesticide safety information.

(a) *Requirement.* The general pesticide safety information specified in paragraph (f) of this section shall be displayed in a prominent location on or in each farm, forest, nursery or greenhouse during the growing season.

(b) *Access.* Each worker shall be informed of the location of the information and allowed reasonable access to it.

(c) *Language.* All information displayed shall be in English. If any worker cannot read English but can read another language, then a translation into that language shall be displayed, either of each item of information or else of the words "THIS INFORMATION IS ABOUT PESTICIDES AND YOUR HEALTH. IF YOU DO NOT UNDERSTAND THE INFORMATION, HAVE SOMEONE EXPLAIN IT TO YOU".

(d) *Legibility.* The information shall be displayed in such a manner that it remains legible for the duration of use.

(e) *Updating.* Each worker shall promptly be informed of any change to the information.

(f) *Content.* The information shall include:

(1) The name, address and telephone number of the nearest physician's office, clinic, or hospital that is equipped to provide emergency medical care in case of a pesticide-related poisoning or injury.

(2) A facsimile of the pesticide warning sign used for posting on the property and where the warning signs will be placed.

(3) The following statements concerning pesticide hazards, recommended safety practices, and

duties of persons covered under this part:

(i) Some pesticides can cause death, injury, or disease.

(ii) Some pesticides that get on the skin can cause rashes or sores, and some pesticides that get in the eyes can cause eye injury or irritation.

(iii) Pesticides may enter the body through the mouth, skin, eyes, and lungs.

(iv) Pesticides may remain on surfaces, such as crops or soil, even though they cannot be seen or tasted.

(v) By taking steps to avoid or reduce exposure, you can help protect yourself from pesticide injury.

(vi) If you may have pesticides on your hands or face, you should wash before eating, drinking, using the toilet, or using gum or tobacco.

(vii) You should wash thoroughly and change into clean clothing at the end of each workday if you may have come into contact with pesticides.

(viii) Pesticides can accumulate on work clothing, so clothing worn on a workday involving contact with pesticides should be washed separately from other clothing before being worn again.

(ix) You should not pick, eat, or take home plants or food, without the supervisor's permission, because the food may be unsafe because of pesticides.

(x) You should not take home empty pesticide containers because they are not for home use and could injure you or your family.

(xi) Whether pesticides are applied in irrigation or watering systems on the property, and (if so) the kind of system used, that the worker should not drink, touch, or use water associated with the system, and that the worker should not enter these areas except at the direction of the supervisor.

(xii) Unless you are directed by a supervisor, you should not enter any area that has been treated with a pesticide if the pesticide sprays have not dried, the dusts have not settled, or the vapors have not dispersed, or if a reentry interval is in effect, or if a warning sign is posted.

(xiii) If you are accidentally sprayed directly or through drift, you should wash immediately in the nearest available water and then as soon as possible shower, shampoo and change into clean clothing.

(xiv) You should promptly seek medical attention and inform the supervisor, if you notice signs or symptoms of pesticide poisoning or pesticide injury.

(xv) The following information about pesticide applications will be provided to you upon request: location of the treated area, date or time of application, reentry interval, product name, registration number and active ingredients.

(xvi) Federal law establishes other safety rules for protecting workers from pesticide hazards, and requires workers, supervisors, employers, and owners to comply with those rules.

§ 170.34 Emergency duties.

(a) *Duty to provide transportation to emergency medical care.* When there is reason to believe that a worker has been poisoned or injured by a pesticide, or when an exposure to a pesticide has occurred that might be expected to lead to the poisoning or injury of any worker, prompt transportation to an appropriate medical facility shall be provided to the worker.

(b) *Duty to provide emergency information.* Upon request, the following information shall be provided if available to any worker or treating medical personnel who have grounds to suspect that a worker has been poisoned or injured by a pesticide:

(1) The product name, EPA registration number, and active ingredient(s) of the pesticide.

(2) Antidote or first aid information.

(3) Information about the circumstances of application or use of the pesticide on the property, or about the exposure of the worker to the pesticide.

§ 170.36 Precautions during application of pesticides.

(a) *Presence of workers.* No worker shall be allowed or directed to enter or remain in an area during application of any pesticide to that area, unless the worker is a handler involved in the application of the pesticide.

(b) *Contact with workers.* No pesticide shall be applied so as to contact any worker directly or through drift.

§ 170.38 Decontamination.

(a) *Requirement.* Water for washing off pesticides and pesticide residues shall be provided for any worker during any task which causes the worker to come into contact with any surface that has been treated with a pesticide during the agricultural production cycle in which the task occurs.

(b) *General conditions.* (1) The water shall be potable.

(2) The water shall be at a temperature that will not injure the eyes.

(3) If the water is stored in a tank, the water shall not also be used for mixing of pesticides, unless the tank is equipped with properly functioning valves or other mechanisms which prevent movement of pesticides into the tank.

(4) The water shall be reasonably accessible from each worker's place of work.

(5) The water shall not be located within a reentry-restricted area.

(6) The water shall be made available in adequate supply for routine washing of hands and face by workers.

(7) Soap and single-use towels shall be available at each water location, in quantities sufficient to meet workers' needs.

Subpart D—Special Standards for Workers on Farms and in Forests

§ 170.40 Applicability.

This subpart applies to, and contains standards to protect all workers from, pesticides used on farms and in forests.

§ 170.42 Information about pesticide applications.

(a) *Requirement and exception*—(1) *Requirement.* Information about the application of any pesticide to an area of a farm or forest shall be provided orally to each worker in accordance with paragraph (b) of this section and upon request in accordance with paragraph (c) of this section.

(2) *Exception.* Information need not be provided to a worker if, from the start of application until the end of the reentry interval, the worker will not enter, work in, remain in, or pass through, on foot or in an open vehicle, the pesticide-treated area or any neighboring areas, including growing areas and labor camps that are contiguous or separated only by a roadway from the treated area.

(b) *Information to be provided orally.* Whenever required by paragraph (a) of this section, information about the application of a pesticide shall be provided orally to each worker, in a language the worker can understand. The information shall be provided to each worker on the day of application at the beginning of the work day, and on each subsequent day that any reentry interval for that application is in effect. The information shall include:

(1) The specific location and description of the pesticide-treated area or area to be treated.

(2) The period of the work day during which workers may not enter without direction.

(c) *Information to be provided upon request.* Whenever required by paragraph (a) of this section, any of the following information about the application of a pesticide shall be provided to any worker if requested during the period beginning with the day

of application and ending with the expiration of the reentry interval:

(1) The specific location and description of the pesticide-treated area.

(2) The product name, EPA registration number and active ingredient(s) of the pesticide.

(3) The time or date the pesticide was applied (or the scheduled time or date of application).

(4) The reentry interval for the pesticide.

§ 170.44 Posting.

(a) *Requirement and exception*—(1) *Requirement.* If a pesticide having a reentry interval of greater than 48 hours is applied to an area of a farm or forest, the pesticide-treated area shall be posted with warning signs in accordance with paragraph (b) of this section.

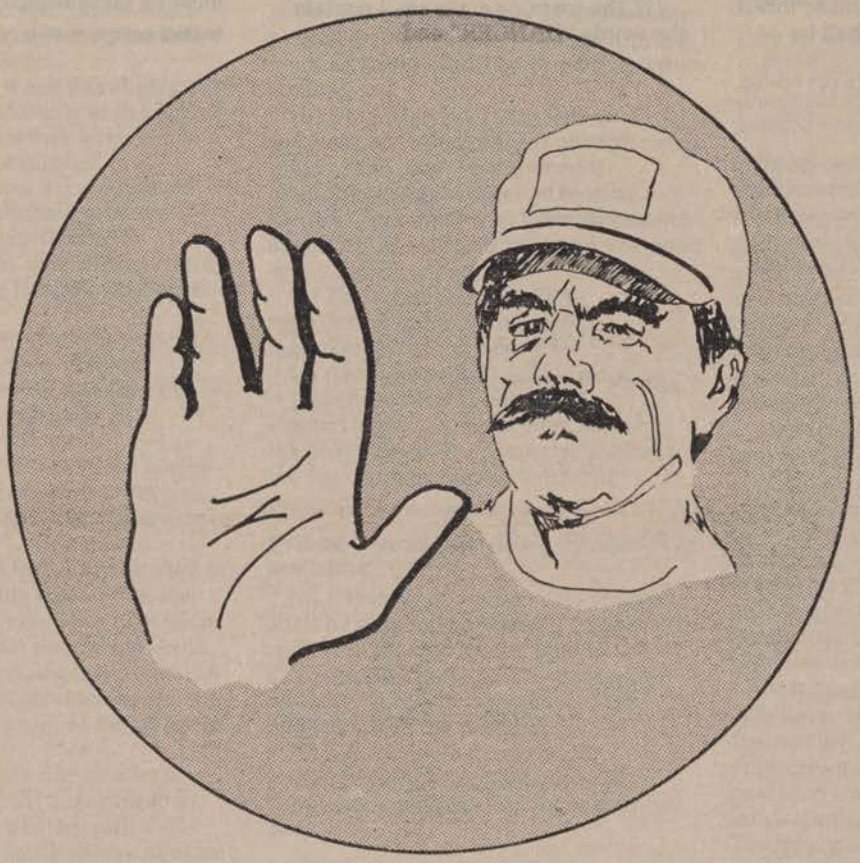
(2) *Exception.* Posting is not required if, from the start of application until the end of the reentry interval, no worker (other than a pesticide handler applying the pesticide) will enter, work in, remain in, or pass through, on foot or in an open vehicle, the pesticide-treated area or any neighboring areas, including growing areas and labor camps that are contiguous or separated only by a roadway from the treated area.

(b) *Warning signs.* The posting of warning signs shall be in accordance with the following criteria:

(1) The warning signs shall contain the words "DANGER" and "PESTICIDES" at the top and "KEEP OUT" at the bottom. Near the center of the sign shall be a circle containing an upraised hand on the left and a stern face on the right. Letters for all the words shall be red and at least 2½ inches high and clearly legible. The background outside the circle shall be white. The hand and a large portion of the face shall be white. The length of the hand shall be at least twice the height of the letters and the length of the face shall be only slightly smaller than the hand. The remainder of the inside of the circle shall be red. A small black-and-white facsimile of a warning sign meeting these requirements follows.

BILLING CODE 6560-50-M

DANGER
PESTICIDES



KEEP OUT

BILLING CODE 6560-50-C

(2) The signs shall be visible from all usual points of worker entry to the pesticide-treated area, including each access road, each border with any labor camp adjacent to the pesticide-treated area, and each footpath and other walking route that enters the pesticide-treated area. When there are no usual points of worker entry, signs shall be posted in the corners of the pesticide-treated area or in any other location affording maximum visibility.

(3) The signs shall:

(i) Be posted no sooner than 24 hours before the scheduled application of the pesticide.

(ii) Remain posted during application and throughout the reentry interval.

(iii) Be removed within 3 days after the expiration of the reentry interval and before worker reentry is permitted, other than reentry authorized by § 170.46.

(4) The signs shall remain legible for the duration of use.

(5) When several contiguous areas are to be treated with pesticides on a rotating or sequential basis, the entire area may be posted. Worker reentry, other than reentry authorized by § 170.46, is prohibited for the entire area while the signs are posted.

§ 170.46 Reentry.

(a) *General restriction and exceptions.* No worker shall be allowed or directed to enter or remain in a pesticide-treated area before the reentry interval specified on the pesticide labeling has expired unless either:

(1) The worker will have no contact with pesticide residues on treated surfaces or in soil, water or air; for example:

(i) Before sprays and dusts have settled and vapors have dispersed, the worker is operating in a closed vehicle with a positive pressure filtration system;

(ii) After sprays and dusts have settled and vapors have dispersed,

(A) The worker is performing activities that do not involve contact with soil subsurface, following a soil incorporated pesticide application,

(B) The worker is wearing chemical resistant shoes, shoe coverings or boots and is performing activities that do not involve hand contact with the soil, planting media or plant, following a soil-directed or basal-directed application,

(C) The worker is operating in an open vehicle such as a tractor, the crop is not tall and dense (would not brush against the worker) and the worker is not in a position where trees and other plants could drop pesticide residues on the worker; or

(2) The following requirements for early reentry workers are met:

(i) Personal protective equipment specified on the pesticide labeling is worn.

(ii) Duties related to personal protective equipment specified in § 170.16 are met.

(iii) Decontamination provisions specified in § 170.18 are available.

(iv) Training specified in § 170.12(b) is given.

(v) Any other requirement regarding early reentry specified on the pesticide labeling is met.

(b) *Prohibited activities.* No worker may enter a pesticide-treated area to perform any hand labor task until all sprays have dried, dusts have settled, or vapors have dispersed.

(c) *Multiple reentry intervals.* When two or more pesticides are applied at the same time, the reentry interval shall be the longest of the applicable intervals. When a pesticide has a reentry interval in addition to the "sprays have dried" interval, both shall be observed.

Subpart E—Special Standards for Workers in Nurseries

§ 170.50 Applicability.

This subpart applies to, and contains standards to protect all workers from, pesticides used in nurseries.

§ 170.52 Information about pesticide applications.

(a) *Requirement.* The following information about the application of any pesticide to an area of a nursery shall be provided to any worker if requested during the period beginning with the day of application and ending with the expiration of the reentry interval:

(1) The specific location and description of the reentry-restricted area.

(2) The product name, EPA registration number and active ingredient(s) of the pesticide.

(3) The time or date the pesticide was applied (or the scheduled time or date of application).

(4) The reentry interval for the pesticide.

(b) *Exception.* Information need not be provided to a worker if, from the start of application until the end of the reentry interval, the worker will not enter, work in, remain in, or pass through, on foot or in an open vehicle, the treated area or any neighboring areas, including growing areas and labor camps that are contiguous or separated only by a roadway from the treated area.

§ 170.54 Posting.

(a) *Requirement.* If a pesticide is applied to an area of a nursery, the reentry-restricted area shall be posted with warning signs in accordance with § 170.64(b). A sign must be of the appropriate size and be placed in a suitable location to meet the requirement of § 170.64(b)(2) for each type of nursery growing area, e.g., benches, pots on the ground and fields of plants growing in the ground.

(b) *Exception.* Posting is not required if, from the start of application until the end of the reentry interval, no worker (other than a pesticide handler applying the pesticide) will enter, work in, remain in, or pass through, on foot or in an open vehicle, the reentry-restricted area or any neighboring areas, including growing areas and labor camps that are contiguous or separated only by a roadway from the treated area.

§ 170.56 Reentry.

(a) *General restriction and exceptions.* No worker shall be allowed or directed to enter or remain in a reentry-restricted area before the reentry interval specified in paragraph (b) of this section has expired, unless:

(1) The worker will have no contact with pesticide residues on treated surfaces or in soil, water, or air; or

(2) The following requirements for early reentry workers are met:

(i) Personal protective equipment specified on the pesticide labeling for early reentry activities is worn.

(ii) Duties related to personal protective equipment specified in § 170.16 are met.

(iii) Decontamination provisions specified in § 170.18 are available.

(iv) Training specified in § 170.12(b) is given.

(v) Any other requirement regarding early reentry specified on the pesticide labeling is met.

(b) *Reentry-restricted areas and intervals*—(1) *Soil-directed applications.* For any pesticide applied from a maximum height of 12 inches from the soil, either using a dry formulation or using coarse spray droplets and pressure less than 40 p.s.i., the reentry-restricted area shall be the pesticide-treated area until the reentry interval specified on the product labeling has expired. However, if the labeling of the pesticide requires the use of a respirator during application, the reentry-restricted area shall be as defined in paragraph (b)(2) of this section.

(2) *Downward-directed applications.* When any pesticide is applied from a height of greater than 12 inches from the soil, applied using fine spray droplets, or

applied using pressure greater than 40 p.s.i. but less than 150 p.s.i., and is directed downward, not including aerial applications, the reentry-restricted area shall be an area extending at least 25 feet beyond the perimeter on the downwind side of the pesticide-treated area and at least 10 feet beyond the perimeter of the pesticide-treated area in all other directions until sprays or dusts have settled. After sprays or dusts have settled and until the reentry interval specified on the pesticide labeling has expired, the reentry-restricted area shall be the pesticide-treated area.

(3) *Other applications.* For any pesticide applied aerially, directed upwards, or applied using pressure greater than 150 p.s.i., the reentry-restricted area shall be the pesticide-treated area and any moistened or dusted areas outside the pesticide-treated area, until spray or dusts have settled. After spray or dusts have settled and until the reentry interval specified on the pesticide labeling has expired, the reentry-restricted area shall be the pesticide-treated area.

(c) *Prohibited activities.* No worker may enter a reentry-restricted area to perform any hand labor task until all sprays have dried, dusts have settled, or vapors have dispersed.

(d) *Multiple reentry intervals.* When two or more pesticides are applied at the same time, the reentry interval shall be the longest of the applicable intervals. When a pesticide has a reentry interval in addition to the "sprays have dried" interval, both shall be observed.

Subpart F—Special Standards for Workers in Greenhouses

§ 170.60 Applicability.

This subpart applies to, and contains standards to protect all workers from, pesticides used in greenhouses.

§ 170.62 Information about pesticide applications.

(a) *Requirement.* The following information about the application of any pesticide to an area of a greenhouse shall be provided to any worker if requested during the period beginning with the day of application and ending with the expiration of the reentry interval:

(1) The specific location and description of the reentry-restricted area.

(2) The product name, EPA registration number and active ingredient(s) of the pesticide.

(3) The time or date the pesticide was applied (or the scheduled time or date of application).

(4) The reentry interval for the pesticide.

(b) *Exception.* Information need not be provided to a worker if, from the start of the application until the end of the reentry interval, the worker will not enter, work in, remain in, or pass through the greenhouse.

§ 170.64 Posting.

(a) *Requirement and exception*—(1) *Requirement.* If a pesticide is applied in a greenhouse, the reentry-restricted area shall be posted with warning signs in accordance with paragraph (b) of this section.

(2) *Exception.* Posting is not required if, from the start of application until the end of the reentry interval, no worker (other than a pesticide handler applying the pesticide) will enter, work in, remain in, or pass through the greenhouse.

(b) *Warning signs.* The posting of warning signs shall be in accordance with the following criteria:

(1) The warning signs shall contain the words "DANGER" and "PESTICIDES" at the top and "KEEP OUT" at the bottom. Near the center of the sign shall be a circle containing the upraised hand on the left and a stern face on the right. Letters for all the words shall be red and legible. The background outside the circle shall be white. The hand and a large portion of the face shall be white. The remainder of the inside of the circle shall be red. The length of the hand shall be at least twice the height of the letters and the length of the face shall be only slightly smaller than the hand. A black-and-white facsimile of a warning sign meeting these requirements is provided in § 170.44.

(2) The warning signs shall be visible from all points of access to the reentry-restricted area.

(3) The warning signs shall:

(i) Be posted immediately before the application of the pesticide.

(ii) Remain posted during application and throughout the reentry interval.

(iii) Be removed within 1 day after the expiration of the reentry interval and before worker reentry other than reentry authorized by § 170.66 is permitted.

(4) The warning signs shall remain legible for the duration of use.

(5) When several contiguous areas are to be treated with pesticides on a rotating or sequential basis, the entire areas may be posted. Worker reentry other than reentry authorized by § 170.66 is prohibited from the entire area while the signs are posted.

§ 170.66 Reentry.

(a) *General restrictions and exceptions.* No worker shall be allowed or directed to enter or remain in a reentry-restricted area before the reentry interval specified in paragraph (b) of this section has expired, unless:

(1) The worker will have no contact with pesticide residues on treated surfaces or in soil, water, or air; or

(2) The following requirements for early reentry workers are met:

(i) Personal protective equipment specified on the pesticide labeling for early reentry activities is worn.

(ii) Duties related to personal protective equipment specified in § 170.16 are met.

(iii) Decontamination provisions specified in § 170.18 are available.

(iv) Training specified in § 170.12(b) is given.

(v) Any other requirement regarding early reentry specified on the pesticide labeling is met.

(b) *Reentry-restricted areas and intervals—(1) Fumigant applications.* For any pesticide identified on the pesticide labeling as a fumigant, the reentry-restricted areas shall be the entire nonporous enclosed area within which the pesticide is applied. The reentry interval shall extend until all vapors have dispersed, as defined by one of the following criteria:

(i) Two hours of ventilation using fans or other mechanical ventilation systems.

(ii) Four hours of ventilation using vents, windows, or other passive ventilation systems.

(iii) Eleven hours with no ventilation, followed by 1 hour of mechanical ventilation.

(iv) Eleven hours with no ventilation, followed by 2 hours of passive ventilation.

(v) Twenty-four hours with no ventilation.

(vi) The air concentration of the fumigant is measured to be less than or equal to the permissible exposure level specified on the product labeling.

(2) *Smoke, mist, fog and aerosol applications.* For any pesticide applied in the form of a smoke, mist, fog, or aerosol, the reentry-restricted area shall be the entire nonporous enclosed areas within which the pesticide is applied until the reentry interval specified on the pesticide labeling has expired.

(3) *Soil-directed applications.* For any pesticide applied from a maximum height of 12 inches from the soil, either using a dry formulation or using coarse spray droplets and pressure less than 40 p.s.i., not including fumigant, smoke, mist, fog or aerosol applications, the reentry-restricted area shall be the

pesticide-treated area until the reentry interval specified on the product labeling has expired. However, if the labeling of the pesticide requires the use of a respirator during application, the reentry-restricted areas shall be as defined in paragraph (b)(4) of this section.

(4) *Plant-directed applications.* For any pesticide applied from the height of more than 12 inches from the soil, applied using fine spray droplets or applied using pressure greater than 40 p.s.i., not including fumigant, smoke, mist, fog or aerosol applications, and ventilation occurs during application or before sprays and dusts have settled, the reentry-restricted area shall be the entire nonporous enclosed areas within which the pesticide is applied until sprays and dusts have settled. However, if no ventilation occurs during this period, the reentry-restricted area shall include an area within the greenhouse extending 25 feet beyond the perimeter of the pesticide-treated area. After sprays and dusts have settled, the reentry-restricted area shall be the pesticide-treated area until any reentry interval specified on the pesticide labeling has expired.

(c) *Prohibited activities.* No worker may enter a reentry-restricted area to perform any hand labor task until all sprays have dried, dusts have settled, or vapors have dispersed.

(d) *Multiple reentry intervals.* When two or more pesticides are applied at the same time, the reentry interval shall be the longest of the applicable intervals. When a pesticide has a reentry interval in addition to the "sprays have dried" interval, both shall be observed.

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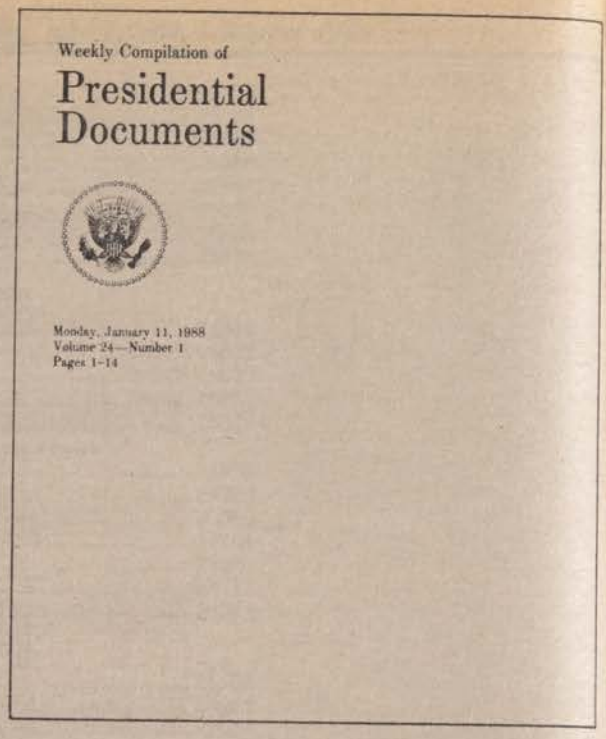

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