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Presidential Documents

Title 3—

The President

Memorandum of May 23, 1988

Designations of the National Security Agency, the Defense Intelligence Agency, and the Defense Mapping Agency as "Agencies" Under 5 U.S.C. 7531(9)

Memorandum for the Secretary of Defense

I have reviewed the personnel security requirements of the National Security Agency, the Defense Intelligence Agency, and the Defense Mapping Agency and the termination provisions of 5 U.S.C. Section 7532. I have determined that these Agencies are sensitive agencies and that it is in the best interests of national security that they be designated "agencies" within the meaning of that section.

Therefore, pursuant to the authority set forth in 5 U.S.C. Section 7531(9), I hereby designate the National Security Agency, the Defense Intelligence Agency, and the Defense Mapping Agency as "agencies" within the meaning of 5 U.S.C. Section 7532.

You are hereby authorized and directed to report these designations to the Committees on Armed Services of the Congress and to publish this memorandum in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, May 23, 1988.

[FR Doc. 88-15556
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Parts 305 and 310

Recommendations and Statement of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations and statement.

SUMMARY: The Administrative Conference of the United States, at its Thirty-sixth Plenary Session, adopted five recommendations and one statement.

Recommendation 88–1, Presidential Transition Workers' Code of Ethical Conduct, urges the President to issue an executive order that requires presidential transition team members to agree to abide by a code of ethical conduct, as a condition of their access to federal facilities and nonpublic information. The code of conduct covers use of inside information, financial self-dealing, concurrent representation in agency matters during the transition, use of government property, and post-transition activities.

Recommendation 88–2, Federal Government Indemnification of Government Contractors, identifies several factors that agencies should consider when they determine whether to indemnify a particular contractor. The Conference recommends interagency cooperation in situations where an agency is considering indemnification of a contractor but has insufficient technical expertise to assess the hazard or the degree of risk. The recommendation also calls for compilation of information on existing indemnity clauses and any claims under them.

Recommendation 88–3, the Federal Reserve Board's Handling of Applications Under the Bank Holding Company Act, urges the Federal Reserve Board to provide by regulation that its 91-day rule governing action on applications under the Bank Holding Company Act will be delayed only if highly significant information is received that warrants reopening an applicant's file. The Conference also seeks to equalize the bargaining process between applicants and the Board with regard to voluntary commitments and regulatory conditions imposed on applicants, all of which would be made part of final Board orders.

Recommendation 88–4, Deferred Taxation for Conflict-of-Interest Divestitures, calls on Congress to amend the Internal Revenue Code to permit deferred taxation of gains when appointees to high-level government positions are required to divest property to satisfy federal conflict-of-interest requirements. These persons would be permitted to sell property presenting a conflict of interest, reinvest the proceeds in an approved neutral investment fund and maintain their original basis in the divested property. The Conference also recommends that Congress consider, at an appropriate time, extending similar tax treatment to other individuals serving in the executive branch.

Recommendation 88–5, Agency Use of Settlement Judges, focuses on agency adjudicatory processes and calls for agencies to use a separate settlement judge—not the presiding judge in the case—to assist the parties in some cases to reach agreement. The Recommendation is based on the view that, in many cases, a separate settlement judge can exercise greater settlement-inducing authority than the presiding judge. The settlement judge assists by lending structure to the negotiations, controlling their pace, reducing the adversarial nature of the process, and helping the parties to assess objectively both the strengths and weaknesses of the case and to find a reasoned, legally defensible settlement. Recommendation 88–5 suggests procedures for using the settlement judge technique and guidelines that seek to balance potential gains in efficiency against possible abuses that may result from an increasing reliance on settlement in administrative proceedings.

The Conference's Statement, Dispute Resolution Procedure in Reparations and Similar Cases, is based on research into the "reparations" procedures at the Commodity Futures Trading Commission. The Statement offers general advice on approaches to reparations and similar programs that are designed to safeguard consumers. It briefly describes the innovative processes developed by the CFTC and expresses the Conference's view that programs that offer complainants procedural options, like the CFTC's optional three-tiered process, have important benefits. The Statement suggests that agencies administering statutes that recognize a private right of action consider seeking authority to establish a reparations program offering such creative procedures. The Statement also sets forth several factors for agencies to take into account as to management of reparations programs, involving discovery, identity of decisionmakers, hearings, and case tracking.

Recommendations and statements of the Administrative Conference are published in full text in the **Federal Register** upon adoption. Complete lists of recommendations and statements, together with the tests of those deemed to be of continuing interest, are published in the Code of Federal Regulations (1 CFR Parts 305 and 310).

DATES: These recommendations were adopted June 9–10, 1988, and issued July 6, 1988.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Lubbers, Research Director (202–254–7065).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571–576. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 574(1)).

At its Thirty-sixth Plenary Session, held June 9–10, 1988, the Assembly of the Administrative Conference of the United States adopted five recommendations and one statement,

the texts of which are set out below. These texts will be transmitted to the affected agencies and, if so directed, to the Congress of the United States. The Administrative Conference of the United States has advisory powers only, and the decision on whether to implement the recommendations must be made by each body to which the various recommendations are directed.

The transcript of the Plenary Session will be available for public inspection at the Conference's offices at Suite 500, 2120 L Street NW., Washington, DC.

List of Subjects in 1 CFR Parts 305 and 310

Administrative practice and procedure, Ethics in Government, Indemnification of contractors, Alternative dispute resolution, Banking regulation.

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for Part 305 continues to read as follows:

Authority: 5 U.S.C. 571–576.

2. The table of contents to Part 305 of Title 1 CFR is amended to add the following new sections:

Sec.

305.88–1 Presidential Transition Workers' Code of Ethical Conduct (Recommendation No. 88–1).
305.88–2 Federal Government Indemnification of Government Contractors (Recommendation No. 88–2).
305.88–3 The Federal Reserve Board's Handling of Applications Under the Bank Holding Company Act (Recommendation No. 88–3).
305.88–4 Deferred Taxation for Conflict-of-Interest Divestitures (Recommendation No. 88–4).
305.88–5 Agency Use of Settlement Judges (Recommendation No. 88–5).

PART 310—MISCELLANEOUS STATEMENTS

3. The authority citation for Part 310 continues to read as follows:

Authority: 5 U.S.C. 571–576.

4. The table of contents to Part 310 of Title 1 CFR is amended to add the following new section:

Sec.

310.13 Dispute Resolution Procedure in Reparations and Similar Cases.

5. New §§ 305.88–1 through 305.88–5 are added to Part 305, to read as follows:

§ 305.88–1 Presidential Transition Workers' Code of Ethical Conduct (Recommendation No. 88–1).

The orderly and peaceful transfer of governmental authority following presidential elections is a hallmark of American government. The Presidential Transition Act of 1963 recognizes that a smooth transition is necessary to "assure continuity in the faithful execution of the laws and in the conduct of the affairs of the Federal Government, both domestic and foreign," and it directs all officers of the government to take steps to promote the orderly transition of power between the outgoing and incoming administrations.[1]

Since 1933, when Inauguration Day was moved forward from March 4 to January 20, the length of presidential transitions has been moved between 71 and 79 days. However, the size and complexity of the transition task has grown steadily over time, corresponding to the tremendous growth in federal responsibilities. Each new President-elect has required a larger and more sophisticated transition organization than his predecessor.

The President-elect's transition organization must, in this brief period, prepare to provide the new leadership with comprehensive information on the organization and responsibilities of each federal agency; on the resources within each agency, including the budget, legislative initiatives, personnel and grants or contracts; and on the policy questions that will require decision by the new administration. This information is the basis for the President-elect's personnel, budgetary and policy decisions during the critical initial period of the new administration.

A large number of private citizens must be relied upon to accomplish these important tasks. During the 1980–81 presidential transition, over six hundred persons, most serving as volunteers, had active assignments on agency transition teams. Many of these persons were selected because of their substantive knowledge of the agency's mission, acquired either through past service in the government or in private sector jobs that brought them in contact with the agency. The magnitude and importance of the transition tasks, and the limited time available to complete them, suggest that future Presidents-elect will continue to rely upon large numbers of private citizens, some of whom later will be offered government appointments but many of whom will return to their private sector jobs.

The Administrative Conference wishes to encourage the participation of well qualified individuals in presidential transitions, but it recognizes that the presence of large numbers of private transition workers dealing with federal agencies offers the potential for conflicts of interest or abuse of the public trust that accompanies their special access to government information and facilities. The Conference is not acting upon knowledge of serious problems in this regard in recent transitions, but rather upon the need to prevent such problems from occurring in the future.

[1] 78 Stat. 153, section 2; 3 U.S.C. 102 note.

In this recommendation the Conference urges the President to issue an executive order to the heads of all federal agencies (including independent regulatory agencies), conditioning special access to federal agency records and facilities by members of the President-elect's transition team upon their agreement in writing to the standards of conduct set forth in the Appendix to this recommendation. The recommended executive order would cover the activities only of "special transition team members," *i.e.*, transition workers, who are not existing government employees, who serve with or without compensation, and who are authorized by the President-elect's transition organization to seek or obtain access to non-public government information. The Conference believes that private citizens are not, and should not be considered, special government employees and thereby subject to federal conflict-of-interest laws, solely because of their activities as special transition team members.

Two concerns are addressed by this recommendation. First, federal agency officials need to know who actually represents the President-elect before granting special access to information. Second, the public needs assurance that authorized transition workers will not use such information to further their own financial interests or the interests of their present or future employers or other private persons.

The Conference believes that the recommended executive order and transition standards of conduct will alleviate these concerns without reducing the flexibility of the President-elect's transition effort. By urging the President to direct federal agencies affirmatively to cooperate with authorized transition personnel to the extent permitted by law and consistent with their official duties, the recommendation should facilitate the President-elect's transition efforts.

The Conference's recommendation includes requirements contained in pending legislation to amend the Presidential Transition Act of 1963 for minimal disclosure of personal or financial information by transition team workers.[2] The Conference believes that transition team members should supply this limited information to agencies, whether or not the pending legislation is enacted. The Conference also recommends that special transition team members agree not to use non-public government information, or to take any action as transition team members which could further their own financial interests.

Recommendation

1. The Conference recommends that the President issue an executive order that conditions access by special transition team members to government

[2] H.R. 3932, passed by the House of Representatives on March 31, 1988, and S. 2037, passed by the Senate on April 26, 1988, would require disclosure of the names of transition team workers, their most recent employment and the source of funding of their transition activities as a condition of receipt of public funds for transition activities.

facilities or non-public information upon their agreement in writing to the standards of conduct set forth in the Appendix to this recommendation. The term "special transition team member" is used herein to mean a person who is not a government employee, who serves with or without compensation as a member of a transition team, and who is authorized by the President-elect to seek or obtain access to non-public government information or facilities.

2. The executive order should direct the heads of all federal agencies to require the President-elect's transition organization to provide each agency with a list of the special transition team members for that agency, copies of their written agreements to comply with the standards of conduct and copies of information disclosure statements, as a condition of access by such members. The agencies should be required to maintain and make those documents available to the public upon request.

3. The executive order should direct all agency heads, subject to the above conditions, to cooperate with persons named by the President-elect or his designees as special transition team members to the extent permitted by law and consistent with the performance of official duties.

4. The executive order should direct all agency heads to take appropriate action against any person found to have violated the standards of conduct agreement, including, where authorized and in accordance with applicable procedures, barring the person from employment, receipt of contracts, representation of others before the agency, or referral of the matter to appropriate professional disciplinary bodies.

Appendix—Transition Code of Ethical Conduct

Each person who is not an employee or special government employee of the federal government and who assists in the presidential transition, with or without compensation, and who is designated by the President-elect to seek or obtain access to non-public government information or facilities during the transition period (herein referred to as a "special transition team member"), shall agree to comply with the following standards of conduct as a condition of such access.

1. Disclosure of Information

A special transition team member shall supply the agency with a statement as to his or her present employment and the sources of funding which support his or her transition activities.

2. Misuse of Inside Information

A special transition team member shall not use, permit others to use, or disclose nonpublic information except for the public purposes of the transition.

3. Financial Self-Dealing

During the transition period, a special transition team member shall not knowingly take any action on a particular matter involving the federal agency which could have a direct effect upon a financial interest of the transition team member, his or her spouse, a family member, or any individual with whom the transition team member has a business, professional or close personal relationship.

4. Concurrent Representation in Agency Proceedings

During the transition period, a special transition team member shall not advise or represent, with or without compensation, anyone in any particular matter involving a federal agency to which he or she has had access to non-public information. This restriction does not extend to the special transition team member's firm or organization, but the team member should advise his or her firm or organization to establish procedures to assure that the team member does not participate in any way in any such agency proceeding.

5. Misuse of Government Property

A special transition team member shall conserve and protect federal property entrusted to him or her, and shall not use federal property, including equipment and supplies, other than for purposes directly related to transition activities.

6. Post-Transition Activities

For two years after the transition, a former special transition team member shall not represent, with or without compensation, any person before an agency in any particular matter involving a specific party or parties as to which he or she obtained government information not then available to the public and not made public prior to the request for advice or representation.

7. Definitions

As used in this Appendix [Order], the terms "employee," "special government employee," "particular matter" [3] and "particular matter involving a specific party or parties" shall have the same meaning as in Title 18, United States Code 202–209. The term "transition period" shall extend from the date of the general election in which the identity of the President-elect is established until Inauguration Day, or if the transition organization continues to operate after the inauguration, such later date through which the special transition team member continues to serve in that capacity.

§ 305.88–2 Federal Government Indemnification of Government Contractors (Recommendation No. 88–2).

Indemnification of government contractors for third-party liability involves this issue: Who should bear the risk of liability for injury or damage to a third party caused by products and services supplied by government contractors? This issue is especially significant when the products and services involve high-risk or hazardous governmental activities.

The liability of the government is limited by the doctrine of sovereign immunity, which has been waived only in certain situations, such as the Federal Tort Claims Act. Some courts have recognized a common law immunity for government contractors who have complied with pertinent government specifications and have disclosed all known defects or hazards to the government.* In the absence of insurance or indemnity, government contracts may be exposed to claims based, for example, on alleged failure to follow specifications or adequately warn the government or others about product design defects.

No government-wide legislation provides generally for indemnification of government contractors for third-party liability, although a number of individual departments and agencies are authorized to indemnify contractors.[1] All of the laws authorizing government indemnification of contractors state conditions that must be met before contractual indemnity been met. Thus some statutes restrict indemnification to unusually hazardous governmental activities or activities that may result in catastrophic losses and further require the contractor to obtain such insurance as is available. Indemnification clauses included in contracts usually contain further conditions, some of which are required by agency rule. A common restriction is that the indemnity does not cover claims resulting from the contractor's willful misconduct.

Indemnification clauses are reserved for unusual circumstances, and few contractors are actually provided with indemnity. The Department of Defense, for example, included indemnification clauses in an average of about 70 contracts per year in the five-year period 1980–1984; by way of comparison, during fiscal year 1984 alone, the Department entered into over 14.8 million contract actions.

[3] It is noted that the term "particular matter" has been interpreted to include rulemaking and general policy matters, and extends to all discrete matters that are the subject of agency action, no matter how general the effect.

* Subsequent to adoption of the recommendation, in a case involving military equipment, the Supreme Court accepted this view. See *Boyle v. United Technologies*, 56 U.S.L.W. 4792 (U.S. June 27, 1988).

[1] Examples are the National Defense Contracts Act, 50 U.S.C. 1431, as implemented by Executive Order 10789 (providing for indemnification under national defense contracts for unusually hazardous or nuclear risks); section 2354 of title 10 of the United States Code (providing for indemnification for unusually hazardous defense research and development activities); section 170 of the Atomic Energy Act, as amended by the Price-Anderson Act of 1957, 42 U.S.C. 2210(d) (providing indemnification for activities involving the risk of a substantial nuclear incident); the Federal Aviation Act, as amended, 49 U.S.C. 1531 *et seq.* (providing for indemnification for risks where aircraft operations are necessary to carry out U.S. foreign policy); and the National Aeronautics and Space Act, as amended, 42 U.S.C. 2458b (providing for indemnification for damages related to the launch, operation or recovery of space vehicles).

The Conference's study of contractual indemnification found virtually no evidence of claims made on the basis of indemnification clauses or litigation over such claims. Although there is no indication that the government has incurred significant costs under contractual indemnity provisions in the 30 years that have passed since enactment of the National Defense Contracts Act in 1958 and the Price-Anderson Act in 1957, the space shuttle disaster and the Three Mile Island nuclear incident suggest that contingent liabilities under indemnity agreements are potentially costly.[2]

The Conference's study found that agencies generally do not believe that current practices and limits on indemnities discourage potential contractors from bidding. Federal agencies, with few exceptions, see little need for greater indemnification authority or for broad legislation that would extend indemnities to government contractors generally. However, this view is not shared by many federal contractors. They take the position that the decreasing availability of private insurance for a broad range of hazardous activities is greatly reducing the pool of bidders for contracts involving those activities in the absence of government indemnification. This legislative debate is beyond the scope of the present recommendation.

While the Conference takes no position on the current debate over proposals to expand agency authority to indemnify contractors for hazardous activities, mass injuries, or other special circumstances, the Conference does recommend the compilation of certain information that would provide a better basis in the future for ascertaining the need for and risks associated with broader indemnification.

This recommendation identifies several factors that agencies should consider when they determine whether to grant an indemnity clause to a particular contractor. It is appropriate for agencies to consider the scope of the indemnity proposed to be granted, including the proper mix of self-insurance, private insurance, and government indemnity. The factors listed should also be considered by Congress in deciding whether to grant new authority to an agency to indemnify its contractors.

Decisions to indemnify ordinarily require an assessment of whether the activity in question involves an unacceptable hazard or degree of risk. Sometimes the degree of risk is defined in terms of availability of insurance. Agencies regularly engaged in high-risk activities and able to grant indemnity clauses, such as the Department of Energy, Nuclear Regulatory Commission, or National Aeronautics and Space Administration, would normally have the resources to perform risk assessments. However, other agencies that confront these issues less frequently may not have adequate technical expertise to decide. It has been asserted that there is often great uncertainty, and such decisions may be made inconsistently. The recommendation suggests referral and interagency cooperation as a way of meeting this problem.

[2] In 1982, the Comptroller General issued an opinion (B-201072, May 2, 1982; reconsid. 62 Comp. Gen. 361 (1983)) stating that to comply with the Federal Anti-Deficiency Act, 31 U.S.C. 1341, indemnity clauses in government contracts must specify that the indemnity is available only to the extent of available authorized appropriations. This limitation, however, has limited impact where Congress has set maximum indemnity limits by statute, as in the Price-Anderson Act, or where no ceiling is set, as in the National Defense Contracts Act. The Price-Anderson Act reauthorization is pending as of the date of this recommendation.

Recommendation

1. *Identification of Agency Authority to Indemnify.* Each agency that has, and intends to exercise, the authority to indemnify any of its contractors against liability to third parties should set forth, in a policy statement or regulation, the agency's understanding of the extent and source of its authority to indemnify contractors. The agency should consult with the Department of Justice and the Office of Federal Procurement Policy in drafting the statement or regulation.

2. *Agency Decision Whether to Grant an Indemnity Clause.* Before deciding to grant an indemnity clause to a contractor, an agency should identify the public benefits expected to be gained by such a grant and should take into account:

(a) The nature and magnitude of the risks involved in the covered activities, including the danger inherent in the work to be performed, the adequacy of the state of the art to assess the inherent danger, the aggregate liability that could be incurred, when the liabilities might be incurred, and how current insurance policies would apply to such liabilities;

(b) The scope of the indemnity proposed to be granted;

(c) The source of funds that would be used to pay an award under the indemnity clause, including the possible application of the Federal Anti-Deficiency Act, and the impact, if any, that such an award will have on the programs of the agency or other units of the government;

(d) The incentives that either providing or denying an indemnification clause would give the agency for supervising contractual performance, so as to provide for maximum protection of the public from injury and to protect the government from unwarranted liability in light of the identifiable risks;

(e) The incentives that the contractor would have, assuming indemnification were granted, for performing under the contract in a safe and prudent manner;

(f) The incentives that the contractor would have, assuming indemnification were granted, to defend itself or to help defend the government in any subsequent litigation; and

(g) Any effects, assuming indemnification were granted, on the ability or the willingness of the insurance industry to make available private insurance for the kinds of activities to which the indemnification would apply.

3. *The Need for More Information.* Each agency that has paid out any sum of money or received any claims for payment under a contractual obligation to indemnify a contractor, or on whose behalf such sums have been paid by the federal government, should report all such payments and claims to the Office of Federal Procurement Policy (OFPP) on an annual basis. The OFPP should periodically issue a report summarizing the information received. All such reports should be made available to the public except to the extent that release of any information included is prohibited by law. The OFPP should also obtain from each affected agency a list, updated periodically, of all existing contracts containing indemnity clauses.

4. *Contracting Office Expertise.* Where an agency is considering whether to grant an indemnity clause, but does not have sufficient technical expertise to assess the degree of risk, the extent of the hazard, or the availability of insurance, these questions should be referred to an office of the agency that does have the requisite expertise to assist the contracting office in making such decisions. If the contracting agency as a whole lacks the expertise required to assess these matters adequately (for example, where unusual or newly emerging technological risks are involved), the agency should seek the assistance and cooperation of other agencies. Agencies with pertinent experience or knowledge should cooperate to make available to requesting agencies staff members whose experience in risk assessment may be helpful. It may be appropriate to create a small, highly-qualified risk assessment office to furnish or coordinate such assistance.

§ 305.88-3 The Federal Reserve Board's Handling of Applications Under the Bank Holding Company Act (Recommendation 88-3).

Among the Federal Reserve Board's (FED's) responsibilities is implementation of the Bank Holding Company Act (BHCA) (12 U.S.C. 1841 *et seq.*). The BHCA's principal purposes are to ensure the safe and sound operation of bank holding companies (BHCs), to promote competition within the banking industry, and to separate banking from commerce.

Under the BHCA, the FED has also been authorized to determine the extent to which BHCs may engage in "non-banking" activities in the parent BHC and in non-bank subsidiaries. Because the banking industry has undergone rapid changes in the face of new technologies, the line between banking

and other financial activities has been blurred.

Under section 3 of the BHCA, the FED receives applications for the formation of or acquisition of banks by BHCs. The statutory factors which the Board must apply in acting on section 3 applications include an evaluation of the competitive impact of the transaction, the convenience and needs of the community to be served, and the financial and managerial resources of the applicant.

Under section 4(c)(8) of the Act, the FED receives applications by BHCs to acquire non-banking interests. Such applications are to be approved only when the activities involved are "closely related" to and a "proper incident" to banking. These questions have become of particular significance most recently in applications involving proposed securities and insurance activities of BHCs.

Applications under both sections are generally resolved without the need for an evidentiary hearing, although informal hearings and meetings are sometimes held. Both sections do, however, provide for an overall 91-day time limit on the FED's action on individual applications "beginning on the date of submission to the Board of the complete record on the application." The FED routinely processes well over 90 percent of the applications received by the FED within 60 days of "acceptance" of the application by the Reserve Bank (the Bank is permitted to request information, but otherwise must adhere to a short deadline in accepting the application and fowarding it to the FED). The FED's regulations specifically provide that, in every case in which an application has not been considered by the FED within 60 days of acceptance, the applicant will be notified and provided a written explanation for the delay.

In its regulations, the FED defines when the record on a particular application is complete for purposes of determining when the statutory 91-day period has begun. Under the FED's regulations, the 91-day period begins on the the latest of four dates: (1) The date of acceptance of the application; (2) the last day of the public comment period (which is usually after acceptance of the application, and is the date upon which the 91-day period begins in the majority of cases); (3) the date of receipt of any relevant material information regarding the application; and (4) the date of completion of any hearing or other proceeding regarding the application.

Because the statute provides that the 91-day period does not begin until the complete record has been submitted to the FED, the courts have determined that the 91-day period may be tolled or retriggered after the close of the public comment period if new material information is submitted during the processing of the application. Examples of this type of information include comments or protests from interested parties, changes in the financial condition of the applicant, proposed efforts by the applicant to raise additional capital, or proposed divestiture plans to accommodate competitive problems.

Because there is always the possibility that submission of additional material information may toll or retrigger the 91-day period, the 91-day period is rendered rather uncertain in practice. Therefore, the Conference suggests that the FED's regulations on this issue ensure that there is a point in the application process at which the FED will declare that the applicant's file is deemed to be informationally complete, thus triggering the 91-day rule, unless additional information of a highly significant nature relating to the application is received.

The nature of the regulatory process established under the BHCA encourages a participatory approach to decisionmaking on the part of applicants and the FED. Various kinds of conditional order are used by the FED to tailor its regulatory decisions to the specific applicant before it. These regulatory conditions appear or are referenced in the FED's final order, and such conditions are subject to judicial review. Other decisions, however, reflect voluntary commitments made by the applicant. Such commitments often are the result of a decision by the applicant to expedite processing of a particular application by committing to resolve questions that might otherwise result in denial of the application. These commitments usually do not appear in the FED's order and, while reviewed by the Board in every case, are not subject to judicial review at the instance of the applicant.

The Conference believes that conditions and commitments are important regulatory tools used by the FED that, for the most part, add flexibility to and encourage efficiency in the consideration of applications to individual cases, providing a wide range of regulatory choices between unconditional approval and complete denial of an application.

Recommendation

The Board of Governors of the Federal Reserve System should take the following actions with respect to the FED's handling of applications under the Bank Holding Company Act.

1. *Clarification of the 91-day rule.* When acting on such applications, the Federal Reserve Board should by regulation provide that only receipt of information of a highly significant nature pertaining to the application will be deemed to warrant reopening an applicant's file, thereby deferring the date by which the Fed must act finally on the application.

2. *Conditions and Voluntary Commitments.* Conditions established by the FED regarding applications and voluntary commitments offered by applicants should be unambiguous and reasonably related to an articulated policy of the Federal Reserve Board. Voluntary commitments, when offered by applicants, should, consistent with the Freedom of Information Act, ordinarily be made part of final orders of the Board. Moreover, the Board should, from time to time, summarize the thrust of these commitments and publish and disseminate these summaries.

§ 305.88–4 Deferred Taxation for Conflict-of-Interest Divestitures (Recommendation 88–4).

Individuals appointed to government positions are sometimes required to divest themselves of property to satisfy conflict-of-interest requirements, such as the prohibition in 18 U.S.C. 208 on participation in matters affecting one's financial interest. In other instances, divestiture of property by such appointees would be simpler and serve conflict-of-interest purposes better than the establishment of qualified blind trusts or subsequent and sometimes frequent recusals by an official from participation in particular decisions. In addition, persons serving in the government occasionally are required to divest themselves of property before accepting a new position or as a condition to participating in a particular matter.

Divestiture of property to avoid conflicts of interest will often result, under current law, in financial losses in the form of taxation of the gains realized as a result of divestiture. The Administrative Conference believes that this tax burden is a disincentive to individuals who would otherwise accept a federal appointment, and in the case of present officials, an unnecessary burden resulting from their performance of official responsibilities. The adverse effects of this disincentive to government service are most acute with respect to the most senior positions involving major policymaking roles. Failure to obtain the best people for those positions, or the frequent recusals of people in those positions, may have serious adverse consequences on both the individuals involved and the government.

The Conference accordingly recommends that Congress amend the Internal Revenue Code to permit deferred taxation of gains for presidential appointees subject to Senate confirmation and other individuals entering the government to accept high level executive branch positions, whenever they are requested or ordered by an appropriate authority to divest themselves of property to avoid actual or potential conflicts of interests. The Conference also recommends that Congress consider amending the Code to extend similar tax treatment to persons serving in the executive branch.[1]

The Conference proposes that this defined class of persons be permitted to sell such property and to place the proceeds in a neutral investment vehicle and maintain their original basis in the divested property. Taxation would not be eliminated by this proposal, but only postponed until the individual ultimately disposes of the proceeds of a reinvestment vehicle. The Conference also suggests specific factors and other matters to be taken into account in amending the Code to accomplish these purposes.

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[1] This recommendation is limited to executive branch appointees and employees because the Conference by statute is limited to studying and recommending improvements to administrative procedure, 5 U.S.C. 571–576. The Conference, therefore, takes no position on whether or not similar tax treatment should be accorded to officials of the judicial branch.

The Conference believes that revenue impact of the recommendation will be minimal considering the narrow class of persons that would be eligible for tax deferral.

Recommendation

1. Congress should amend the Internal Revenue Code to permit presidential appointees who are subject to Senate confirmation and other officials entering the government to accept high level executive branch appointments, to divest property, such as securities, and reinvest the proceeds in a neutral investment vehicle and thereby defer realization of taxable gains.

2. Such amendment should take into account the following factors:

(a) The need to assure that the divestiture is undertaken to avoid actual or potential conflicts of interests, by conditioning the deferral on an order or request of the President (or his delegate such as the White House Counsel or the Director of the Office of Government Ethics);

(b) The need for divestiture by spouses, dependent children, and others whose assets may be imputed to the federal official for conflict-of-interest purposes, by making deferral available to them also; and

(c) The need to assure that the reinvestment vehicle avoids conflicts of interests with respect to the position to be held, by having the person ordering or requesting divestiture approve the vehicle.

3. Congress should consider whether the amendment should contain provisions dealing with the following matters:

(a) A minimum period of required government service after divestiture to qualify for deferral;

(b) Requiring the appointee to defer gains or losses for all property within the class of divested property (*e.g.*, all energy stock), in order to prohibit the appointee from recognizing losses and deferring gains;

(c) Permitting the appointee a second deferral on leaving government service (or within a brief period of time thereafter) if the appointee chooses to dispose of the neutral investment held during government service in order to make another investment.

4. The Conference recognizes that other persons serving in the executive branch may be ordered or requested to divest specific property in order for them to perform their duties free of actual or potential conflicts of interest, and believes that Congress should also consider, at the appropriate time, whether to extend similar tax treatment to them.

§ 305.88-5 Agency Use of Settlement Judges (Recommendation 88-5).

Many cases over which administrative law judges, administrative judges, and other agency hearing officers preside do not involve broad regulatory issues and are often appropriately resolved by settlement. Following in the footsteps of several innovative federal judges,[1] some administrative agencies have begun to provide additional mechanisms for resolving these cases. The Federal Energy Regulatory Commission and the Occupational Safety and Health Review Commission have used a "settlement judge"—not the presiding judge in the case—to work with parties to explore possibilities for consensual resolution. Other alternatives that agencies have used include prehearing conferences and summary procedures,[2] and more recently, minitrials, mediation and binding and nonbinding arbitrations.[3]

Agency prehearing conferences have historically been utilized as a means for either settling an entire case or narrowing the issues. Today, some presiding judges are exceptionally effective at using these conferences to promote settlement without overstepping bounds of proprietary. Still, while the presiding judge may be the ideal person to suggest that the parties talk settlement in a reasonable manner, he or she often cannot help the parties' explorations in any comprehensive way without risking the appearance of impropriety. In broad classes of cases, a separate settlement judge, not so limited, can exercise greater settlement-inducing authority than the presiding judge.

The Conference does not intend to suggest that use of settlement judges is a dispute resolution method that is necessarily better or worse than adjudication, arbitration, minitrials, mediation by staff personnel or nongovernment mediators, or settlement by the presiding judge; parties should retain maximum flexibility to use the best procedure for their case. The best solution of all is to settle *before* an action has been instituted, and agencies should also do far more to instill consensual methods of dispute resolution into investigatory, preenforcement, and other stages. The settlement judge technique, nonetheless, is a useful means of facilitating settlements that, in appropriate adjudications, may be of greater value.

The settlement judge can command a degree of deference similar to that of the presiding judge without the need to observe all of the commands that establish and maintain impartiality. A separate settlement judge, once appointed, can engage in ex parte and off-the-record conversations, frank assessments of the merits, and other techniques to aid settlement that the presiding judge is less free to use. The settlement judge is generally knowledgeable about the kind of case and the parties' interests, and is in a position to lend structure to the negotiations, control their pace, reduce the adversarial nature of the process, and help the parties to assess objectively both the strengths and weaknesses of the case and to find reasoned solutions. The settlement judge is familiar with how the presiding judge is likely to handle such cases, how much time and effort they take, how evidence is weighed, and what kind of a reception the legal and factual issues will be given in light of agency precedent and policy. The settlement judge, who carries a judge's power and authority, may greatly reduce the scope of parties' disagreements over likely outcomes. Parties also are less likely to be skeptical about the informal settlement judge process and more likely to view this device as a legitimate and potentially valuable means of reaching an enforceable, legally defensible settlement.

Several other advantages may accrue. Initiating the settlement judge technique may be an excellent way for agencies to introduce the idea of settlement in proceedings in which it is not now frequently pursued but which the presence of other factors seems to make apt candidates. In such circumstances, an agency could make special efforts to make the technique available in the interest of breaking the adversarial mold, perhaps preceded by siminars or other devices to permit its presiding judges to study mediation, negotiation and other settlement-inducing techniques. In individual cases, use of a settlement judge might lead the parties to turn to mediation or other non-adjudicatory means of pursuing a settlement agreement. Presiding judges' experiences as settlement judges, and possible enhanced expertise as mediators, should help them in resolving later cases.

Settlement judges are not a panacea, and their use must take into account caseloads, possible abuses in exteme cases, and likelihood of success. The very potency of the judicial office means that it must be carefully employed to avoid abuse. Even so, the Conference sees great merit in the settlement judge technique and urges that it receive much wider consideration and application as a means of actually settling matters, or convincing the parties to undertake other consensual dispute resolution methods.

These recommendations suggest procedures for using the settlement judge as a final effort to obviate formal proceedings, as well as guidelines that seek to increase potential gains in efficiency while minimizing possible abuses that may result from a

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[1] In addition to settlement conferences, courts have engaged in broad and growing use of other means for facilitating an early disposition of a case including arbitration, special masters, mediators, and the use of summary jury trials. Rule 16(c) of the Federal Rules of Civil Procedure was amended in 1983 to provide that settlement and "extrajudicial procedures" for resolving disputes are desirable and may be a subject at pretrial conferences, while subsection (f) of the rule provides for sanctions for failure to appear at, to be prepared for, and "to participate in good faith" at such conferences.

[2] *See* ACUS Recommendation 70-4(1) (urging presiding officers to hold prehearing conferences on own motion or at the request of the parties) and Recommendation 70-3 (summary decision).

[3] *See* ACUS Recommendation 86-3 (alternative means of dispute resolution) and Recommendation 87-11 (alternative means of dispute resolution in government contract disputes). In both recommendations, use of settlement judges is specifically recommended, 86-3(D), 87-11(d). *See also* Recommendation 72-4(D) (settlement of ratemaking cases).

greater reliance on settlement in agencies' adjudicatory proceedings.

Recommendation

A. *Encouraging Use of Settlement Judges.* 1. As part of efforts to encourage use of consensual means of dispute resolution, federal agencies that decide cases presided over by administrative law judges, administrative judges, or other hearing officers should encourage and facilitate settlement of adjudicatory proceedings by the voluntary use of settlement judges and other consensual methods.

2. Agency offices of administrative law judges, boards of contract appeals, and other hearing offices should adopt rules for appropriate use of settlement judges.

3. In urging regularized and amplified utilization of settlement judges, the Administrative Conference has no intention of discouraging reliance on other methods of dispute resolution without recourse to formal procedures. In many instances, cases of the types deemed suitable for reference to a settlement judge (paragraph B, below) can and should be settled at preliminary stages of disagreement. At times, moreover, early recourse to mediation or arbitration (where authorized) may be appropriate.[4] The Administrative Conference urges constant attention to settlement possibilities long before a controversy has reached the docket of a trial judge.

B. *Appropriate Cases.* In general, the agency use of settlement judges may be appropriate where one, and particularly more than one, of the following factors appear.

1. Crowded dockets with relatively few cases being settled.

2. Presence of a large proportion of factual issues that are not of major precedential importance and do not raise broad policy or legal issues, particularly where the facts are undisputed and the primary issues concern the interpretation or characterization of such facts.

3. Remedies susceptible to gradation and, thus, to compromise. Examples are money claims, rates,[5] and degrees of restrictions or activity.

C. *Administrative Issues.* 1. The chief judge should retain discretion in assigning settlement judges on the basis of the situations, issues, judges' aptitudes and personalities, and so forth. He should also remain free to refuse to appoint a settlement judge.

2. The agency head should ordinarily not suggest use of a settlement judge, since he is much less likely to know when a particular case is suitable for settlement and much more likely to desire a case to be settled to avoid having to decide it.

3. Given the workload of presiding judges and possible limited availability for appointment as a settlement judge, agencies should use, as an alternative source of settlement judges, currently retired ALJs who have notified the Office of Personnel Management that they would accept temporary appointment (pursuant to 5 U.S.C. 3323(b), enacted in 1984), retired administrative judges or hearing officers, or active hearing officers from another agency.

4. Agency presiding judges, and especially chief judges, should regularly review their dockets to identify cases where use of settlement judges may be useful, and consult regularly with experienced mediators to locate cases ripe for settlement.

5. Agencies should give attention to offering training in negotiation, mediation, and other consensual dispute resolution skills to administrative law judges, administrative judges, and other hearing officers. Training courses or seminars should be developed by agencies jointly or in cooperation with the Administrative Conference, Federal Mediation and Conciliation Service, Board of Contract Appeals Judges Association, American Bar Association, or other professional organizations. Agencies should also work with other interested groups to sponsor similar programs or outreach sessions for representatives who regularly appear in agency proceedings.

D. *Procedures.* Agency regulations or guidelines implementing the use of settlement judges should consider the following:

1. *Suggesting use of a settlement judge.* (a) The suggestion that a settlement judge be consulted may be made to the agency's chief judge by any party or by the presiding judge (although the agency head's invocation of the technique should be restrained (see C.2, above)). Because it will usually be difficult to predict at what points in the prehearing process settlement will be possible, the presiding judge and the parties should be free to request appointment of a settlement judge at any time. Any party or the presiding judge may veto such a suggestion.

(b) The chief judge should seek to ensure that all parties who appear *pro se* consent knowingly and voluntarily before he decides to invoke the aid of a settlement judge.

2. *Appointment.* (a) When appointing a settlement judge, the chief judge should issue an order specifying the length of time for such negotiations and confining the scope of any settlement negotiations to specified issues.

(b) When a settlement judge is appointed, the presiding judge may suspend discovery or other proceedings during the time the matter is assigned to the settlement judge.

(c) If settlement negotiations are terminated, the chief judge may subsequently appoint a settlement judge in the same proceeding to conduct further negotiations.

(d) To ensure that proceedings are not unnecessarily interrupted, agency regulations or guidelines should provide that any decision concerning the appointment of a settlement judge or termination of settlement negotiations is not subject to review or rehearing.

3. *Conduct of negotiations.* (a) The regulations should afford the settlement judge broad authority to:

(1) Confer with the parties on the subject of whole or partial settlement,

(2) Suggest privately to a party's representative what concessions be considered by the party,

(3) Assess privately with each representative the reasonableness of the party's case or settlement position,

(4) Facilitate communications between the parties,

(5) Mediate,

(6) Seek resolution of as many issues in the case as is feasible, and

(7) Recommend use of minitrials, mediation, factfinding, or other consensual resolution means, and, if the parties genuinely wish some method of presenting evidence in a settlement context or having the dispute mediated, the settlement judge should be free to refer them to a separate minitrial or mediation process.

(b) To increase the likelihood of settlement, the regulations should:

(1) Provide that the settlement judge may recommend that the representative who is expected to try the case be present at a settlement conference and that the parties, or their agents having full settlement authority, be present.

(2) Set forth specific guidelines for conducting settlement conferences (including by telephone) where appropriate.

(3) Exhort all parties and their representatives to be candid with the settlement judge so that he may properly guide settlement discussions.

(4) Provide the settlement judge with flexibility to impose any additional requirements proper to expedite resolution of the case.

(c) The settlement judge should, within days after appointment, meet or

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[4] *See* Recommendation 86-3 and 87-11, *id.*

[5] *See* Recommendation 72-4, *supra*, note 3.

talk with the parties together and (usually) separately to determine what obstructs settlement. Proceedings before a settlement judge should not ordinarily be lengthy or elaborate.

4. *Confidentiality.* (a) To encourage the candor often necessary to achieve a settlement, the regulations should provide that no evidence of statements or conduct by parties, counsel or settlement judge in the settlement proceedings shall be admissible in any subsequent hearing, except by stipulation of the parties. The regulations should further provide that documents disclosed in a settlement process may not be used in litigation unless obtained by appropriate discovery or subpoena. Agencies should provide sanctions against any violators.

(b) The regulations should prohibit the settlement judge from discussing the merits of the case with the presiding judge or any other person [6] and preclude the settlement judge from being called as a witness in any hearing of the case.

5. *Settlement and reports.* (a) At the conclusion of the settlement procedures, either the parties should tell the presiding judge that they have settled, or the settlement judge should advise the trial judge, without elaboration, that settlement has not been reached. The report should not attribute any view to any party or assess any positions taken. The agency's regulations should describe the method by which the presiding judge is advised that settlement has not been reached.

(b) To protect against unnecessary delay, the settlement judge's first report should be made within a specified period after appointment. The agency head or chief judge should be authorized to order additional reports at any time.

(c) In reporting, the settlement judge may recommend the termination or continuation of settlement negotiations.

(d) A settlement arrived at with the help of a settlement judge should be treated like any other settlement.

6. New § 310.13 is added to Part 310, to read as follows:

§ 310.13 Statement on Dispute Resolution Procedure in Reparations and Similar Cases.

Where Congress has established private rights, effective means of protecting them are crucial. Congress has used a variety of procedures to protect consumers, workers and certain others. In many cases, it has established formal adjudicatory process (e.g., within regulatory agencies like the Federal Trade Commission or review agencies like the Occupational Safety and Health Review Commission). Congress has also recognized that, in many cases, formal agency hearings or court litigation may be unnecessary or too costly. Thus, alternative or supplementary agency procedures or even private-sector procedures have been established to resolve disputes that formerly would have been left to the formal adjudication process.

Agencies' use and oversight of these dispute processes has become even more important in light of recent congressional developments and Supreme Court decisions. The Supreme Court recognized in *Shearson/American Express, Inc. v. McMahon,* 107 Sup. Ct. 2332 (1987), for example, that arbitration processes are often adequate to protect statutory rights, particularly where an agency can oversee their operation to ensure their adequacy. Indeed, that case enforced an arbitration agreement even for a treble damage case brought under the Racketeer Influenced and Corrupt Organizations Act by a plaintiff acting much like a "private attorney general."

Agencies' approaches to "reparations" and similar programs to safeguard consumers reflect the diversity of approaches that are available. The Securities and Exchange Commission, so far at least, has relied on a purely private resolution mechanism—exchange-based arbitration. The Commodity Futures Trading Commission ("CFTC"), has developed, pursuant to statutory mandate, its own distinctive dispute resolution program. Since it was formed in 1974, the CFTC has administered a "reparations" program that adjudicates between commodity futures salespersons (known as "futures commission merchants") and aggrieved customers.[1]

The CFTC's program provides an interesting alternative to civil litigation, formal hearings under the Administrative Procedure Act, and commercial arbitration.[2] Like arbitration (which is also an option available to aggrieved customers), the reparations program uses decisionmakers familiar with the industry from which the disputes arise. But these decisionmakers are CFTC employees, rather than arbitrators drawn from industry—either agency administrative law judges or other specially-designated agency employees known as "judgment officers".

The CFTC has been creative in fashioning procedures for the reparations program. The "formal" procedure, for claims of more than $10,000, is akin to the adjudicatory procedure provided in section 554 of the APA. The "summary" procedure for claims under $10,000 dispenses with several formalities, including the right to an oral hearing. It does permit a telephonic hearing. A third, "voluntary" procedure, is available for claims of any size and must be elected by both parties. It dispenses with a written opinion by the presiding judgment officer and appeal rights. While the CFTC's program had a troubled early history, characterized at times by crippling case backlogs and severe budgetary constraints, recent years have seen enhanced resources and a considerable improvement in case management.

The Administrative Conference has begun exploring these processes with its research into the CFTC's innovative approach to consumer protection. The Conference sees important benefit in programs, like the CFTC's, that offer complainants procedural options. Creation of an agency review process for consumer complaints benefits the regulatory agency because the process provides a valuable pipeline into the problems of the industry; resolving these complaints serves as a constant challenge and impetus to the agency to interpret its statutory mandate. A three-tiered approach like the CFTC's permits added opportunities for procedural tailoring. On the other hand, the parallel private decisional process may be less expensive, faster, and more responsive. Parties benefit from having both a choice of forums and an opportunity to select a dispute resolution procedure that suits their needs.

Much remains to be done in considering the best approach for particular agencies, and this statement is intended as an initial foray. The Administrative Conference suggests that continued experimentation with alternative types of procedures for resolving issues arising in consumer protection programs is justified. Agencies administering statutes that recognize a private right of action should consider establishing, or seeking authority to establish, a reparations program offering creative procedures for "formal," "summary" and "voluntary" dispute resolution, along the lines of the CFTC's where:

[6] This should not prevent judges within the same office from engaging in discussions of settlement or mediation techniques that may aid the settlement judge in resolving particular cases and assist in a judge's professional development.

[1] Other agencies, like the Federal Maritime Commission and the U.S. Department of Agriculture, have reparations programs that differ in significant respects.

[2] Persons with reparations claims may pursue several other avenues of redress (National Futures Association arbitration, private suits), so the entire CFTC program is in essence voluntary.

(1) An agency statute provides for and engenders substantial private litigation and/or arbitration; or

(2) An agency regulatory program centers on a single industry or group of similar industries, such as would permit creation of "expert" decisionmakers.

An agency with both of the characteristics listed above would be a prime candidate for a reparations program. Each program of course would be crafted to meet the special needs of the agency's particular regulatory jurisdiction.

Management of reparations programs should take into account these factors:

(1) Where complaints are to be resolved by summary or voluntary procedures, the discovery process should be streamlined to comport with the goals of less formal procedures. For example, the number of interrogatories and requests for admissions may be substantially limited; and summary information rather than facsimiles could be deemed responsive to requests for the production of documents.

(2) The judgment officers used in summary and voluntary procedures need not always be administrative law judges or even attorneys, so long as they demonstrate sufficient experience in, or knowledge of, the regulated industry or applicable law.

(3) While summary procedures by their nature may not require an in-person hearing, telephone hearings may provide a useful and inexpensive way of allowing the judgment officer to question parties and witnesses. Telephone hearings should be available whenever a judgment officer believes such a hearing is appropriate to the resolution of a dispute.

(4) Since complainants in reparations proceedings frequently appear without a lawyer, agencies should make the dispute resolution process understandable to the lay person. Toward that end, notices and descriptions of the process should avoid whenever possible the use of legal terms (e.g., "pleadings" or "discovery") where a colloquial term will suffice. Where use of a lay term would mislead, or where no appropriate term is available, agencies should make every effort to assure that the legal term of art has been translated for the lay party or even provide a glossary of such terms for the benefit of the lay reader.

(5) Managers should assure that a sufficient number of judgment officers are employed to reduce the overall processing time for summary and voluntary proceedings, and thus to permit those forms of procedure to fulfill their promise.

(6) Case tracking systems for reparations cases should be used, or modernized, so that the location and progress of any case can be quickly identified and bottlenecks eliminated.

Jeffrey S. Lubbers,

Research Director.

Dated: July 6, 1988.

[FR Doc. 88-15458 Filed 7-8-88; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 621]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 621 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 415,000 cartons during the period July 10 through July 16, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 621 (§ 910.921) is effective for the period July 10 through July 16, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

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

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

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on July 6, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by an 8-5 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the demand for lemons is very good in both domestic and export markets.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.921 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.921 Lemon Regulation 621.

The quantity of lemons grown in California and Arizona which may be handled during the period July 10, 1988, through July 16, 1988, is established at 415,000 cartons.

Dated: July 7, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 88-15571 Filed 7-8-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS Number: 1116-88]

Powers and Duties of Service Officers; Availability of Service Records; Immigration: Adjudication of Application or Petition

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule revises 8 CFR 103.2(b) to authorize a district director to withhold adjudication of a visa petition or application where it is determined that an investigation is pending and the disclosure of evidence supporting the adjudication would prejudice the investigation. The provisions relating to disclosure of classified material are also revised to require authorization of disclosure by the classifying agency.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Joanna London, Associate General Counsel. Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536. Telephone: (202) 633-2895.

SUPPLEMENTARY INFORMATION: This rule revises § 103.2(b) to allow a district director of the Immigration and Naturalization Service to authorize withholding adjudication of a visa petition or application when a pending investigation would be prejudiced by the disclosure of the evidence on which the adjudication would be based. On May 30, 1986, the Service published a notice of proposed rulemaking in the Federal Register (51 FR 19559). A few commenters were concerned that the proposed regulation permitted adjudication of applications and petitions to be held in abeyance pending investigations into matters not affecting eligibility for the benefit sought. In response to these concerns the Service has modified the rule to permit holding the adjudication in abeyance only when the matter being investigated might affect eligibility or the exercise of discretion, where applicable, in connection with the particular application or petition. Commenters were also concerned that there were no limits to the length of time the adjudication could be held in abeyance pending investigation. In response to this concern the Service has modified the rule to provide for case review at six-month intervals after initial review and for review by higher authority for periods over two years.

When an investigation has been pending for one year, the district director shall review the matter and determine whether adjudication should continue to be held in abeyance for another six months while the investigation continues. If the investigation has not been completed after six months, the matter shall be reviewed again by the district director. The adjudication may, at the discretion of the district director, be withheld for a second six-month period. If the investigation has not been completed by the end of that six-month period the matter shall be referred to the regional commissioner for further review. The regional commissioner may authorize an additional six-month period. Only the Associate Commissioner for Examinations, with the concurrence of the Associate Commissioner for Enforcement, may authorize additional time for the investigation to be completed prior to adjudication.

By this rule, the disclosure of information which would prejudice an ongoing investigation will be avoided and, because the decision on the petition or application will be held in abeyance, the petitioner or applicant will not be prejudiced by a denial based on information not disclosed to him or her (as he/she would have been under the proposed rule published at 50 FR 27289 on July 2, 1985, which would have allowed a district director to deny a visa petition or application and then not disclose the grounds for the denial if a civil or criminal investigation had been undertaken). The purpose of this rule is to prevent the use of visa petition regulations to obtain information regarding criminal investigations which would not be discoverable in the normal course of an ongoing criminal investigation and to protect confidential informants, witnesses, and undercover agents connected with civil and criminal investigations.

Some commenters objected to holding adjudication in abeyance if a determination is made that an investigation "should be" undertaken. In response to this concern the final rule provides for holding adjudication in abeyance only when an investigation has actually been undertaken.

Some commenters objected to allowing the district director to base discretionary decisions on confidential evidence not of record. District directors have this authority under the current regulations. Moreover, the only evidence that the Service will withhold from review in connection with a discretionary decision is information classified in order to protect the national security, which is privileged information. Therefore, despite these objections, the Service has determined that the rule as proposed will not be modified in this regard.

In the proposed rule, language in the current regulation requiring the regional commissioner to make a determination that information is relevant and is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982) was omitted. The language of the current regulation will be retained.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant adverse impact on a substantial number of small entities.

This is not a major rule as defined in section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Immigration, Authority delegation, Archives and records.

For the reasons set out in the preamble, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority for Part 103 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 8 U.S.C. 1101, 1103, 1201, 1303-1305, 1455; 31 U.S.C. 9701; E.O. 12356, 3 CFR, 1982 Comp., p. 166.

2. In § 103.2, paragraph (b)(2) is redesignated as (b)(3) and revised and a new paragraph (b)(2) is added, so that the paragraphs read as follows:

§ 103.2 Applications, petitions, and other documents.

* * * * *

(b) * * *

(2) *Adjudication of application or petition.* A district director may authorize withholding adjudication of a visa petition or other application if the district director determines that an investigation has been undertaken involving a matter relating to eligibility or the exercise of discretion, where applicable, in connection with the application or petition, and that the disclosure of information to the applicant or petitioner in connection with the adjudication of the application or petition would prejudice the ongoing investigation. If an investigation has been undertaken and has not been completed within one year of its inception, the district director shall review the matter and determine whether adjudication of the petition or application should be held in abeyance for six months or until the investigation is completed, whichever comes sooner. If, after six months of the district director's determination, the investigation has not been completed, the matter shall be reviewed again by the district director and, if he/she concludes that more time is needed to complete the investigation, adjudication may be held in abeyance for up to another six months. If the investigation is not completed at the end of that time, the matter shall be referred to the regional commissioner, who may authorize that adjudication be held in abeyance for another six months. Thereafter, if the Associate Commissioner, Examinations, with the concurrence of the Associate Commissioner, Enforcement, determines it is necessary to continue to withhold adjudication pending completion of the investigation, he/she shall review that determination every six months.

(3) *Inspection of evidence.* An applicant or petitioner shall be permitted to inspect the record of proceeding which constitutes the basis for the decision, except as provided in the following paragraphs.

(i) *Derogatory information unknown to petitioner or applicant.* If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(3) (iii) and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

(ii) *Determination of statutory eligibility.* A determination of statutory eligibility shall be based only on information contained in the record of proceeding which is disclosed to the applicant or petitioner.

(iii) *Discretionary determination.* Where an application may be granted or denied in the exercise of discretion, the decision to exercise discretion favorably or unfavorably may be based in whole or in part on classified information not contained in the record and not made available to the applicant, provided the regional commissioner has determined that such information is relevant and is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security.

(iv) *Classified information.* An applicant or petitioner shall not be provided any information contained in the record or outside the record which is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security, unless the classifying authority has agreed in writing to such disclosure. Whenever he/she believes he/she can do so consistently with safeguarding both the information and its source, the regional commissioner should direct that the applicant or petitioner be given notice of the general nature of the information and an opportunity to offer opposing evidence. The regional commissioner's authorization to use such classified information shall be made a part of the record. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

* * * * *

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

Dated: May 25, 1988.

[FR Doc. 88-15461 Filed 7-8-88; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Part 271

[INS Number: 1019-88]

Prevention of Unauthorized Landing of Aliens by Owners and Operators of Railroad Lines, International Bridges, or Toll Roads

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: It has long been the contention of owners of international birdges that sufficient safeguards for fine proceedings were lacking in the statutory language of section 271 (8 U.S.C. 1321) of the Immigration and Nationality Act, as amended. The Immigration Reform and Control Act of 1986, Pub. L. 99-603, Part B at section 114 provides amelioration to some degree of this contention. This regulation provides for an inspection by the Attorney General, at the request of owners and operators, of facilities which provide a means for the unlawful entry of aliens into the United States. If the Attorney General determines that adequate measures have been taken by the owners to prevent such unlawful entry, the owners shall not be liable for the penalty described in section 271(a), so long as the facility remains in the condition in which approved.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Juan Campos, Assistant Chief Inspector, Immigration & Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-2725.

SUPPLEMENTARY INFORMATION: Section 271 of the Immigration and Nationality Act, as amended (8 U.S.C. 1321) provides that the owners, masters, officers and agents of vessels, aircraft, transportation lines, or international bridges or toll roads who fail to prevent the landing of aliens in the United States at a port of entry other than as designated by the Attorney General or at any time or place other than as designated by the immigration officers—shall be liable for a penalty to be imposed by the Attorney General of $1,000 for each such violation. The proposed regulation provided for an inspection by the Attorney General, at the request of owners and operators of facilities which provide a means for the unlawful entry of aliens into the United States. After the Attorney General inspects a facility, or method utilized, and determines that owners or operators or railroad lines, international bridges or toll roads have taken acceptable measures to prevent the unlawful entry of aliens into the United States, such owners or operators shall not be liable for a penalty for a period of one year.

Notice of proposed rulemaking was published in the **Federal Register** on January 16, 1987, at 52 FR 1920 and 1921, with a 30-day comment period ending February 17, 1987. The Service received two comments. One comment dealt with the proposed requirement that bridge owners or operators request an inspection of the facility or method

utilized on an annual basis. The commenter believed that subsequent to the initial inspection conducted by the district director, further requests for inspection need not be made. The Service agrees with this change. This commenter also objected to the proposal that security guards may be required by the district director. Due to the deterrent effect of the presence of security guards, if for no other reason, such requirement will remain if deemed necessary by the district director.

The other commenter was concerned that no appellate process was provided in the proposal. In cases where the owners or operators believe the requirements of the district director to be excessive or unnecessary, the district director's decision may be reviewed, at the request of the owner or operator, by the Regional Commissioner of the Service in whose jurisdiction the facility in question is located.

In accordance with 5 U.S.C. 605(b) the Commissioner of Immigration and Naturalization Service certifies that this rule will not have a significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 271

Aliens, Transportation, Unauthorized landing.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended by adding a new part to read as follows:

PART 271—DILIGENT AND REASONABLE EFFORTS TO PREVENT THE UNAUTHORIZED ENTRY OF ALIENS BY THE OWNERS OF RAILROAD LINES, INTERNATIONAL BRIDGES OR TOLL ROADS

Authority: 8 U.S.C. 1103 and 1321.

§ 271.1 Procedures for inspections.

(a) *Applicability.* The following terms and conditions apply to those owners or operators of railroad lines, international bridges, or toll roads, which provide a means for an alien to come to the United States.

(b) *Inspection of facility.* Based upon a written request by the owners or operators, the INS district director or his designee shall inspect the facility or method utilized in order to ensure that owners and operators have acted diligently in taking adequate steps to prevent the unlawful entry of aliens into the United States. Such measures may include but are not necessarily limited to fencing, barricades, lighting, or security guards. If the district director determines that preventive measures are inadequate, he or she shall advise the owners or operators in writing, citing the reasons for such determination. If the owners or operators believe the requirements of the district director to be excessive or unnecessary, they may request that the Regional Commissioner having jurisdiction over the location where the facility is located, review the district director's requirements. The Regional Commissioner shall advise the owners or operators in writing of the results of his or her review.

(c) *Preventive measures and certification.* Upon a determination by the district director that reasonable and adequate preventive measures have been taken by the owners and operators, he or she shall certify that the owners and operators shall not be liable for the penalty described in section 271(a), so long as the facility or method utilized is maintained in the condition in which approved and certified.

(d) *Revocation of certification.* The District Director having jurisdiction over the location where the facility is located, in his or her discretion, may at any time, conduct an inspection of said facility to determine if any violation is occurring. If the facility is found to be not in compliance, said certification will be revoked.

Dated: May 10, 1988.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 88-15459 Filed 7-8-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-29; Special Conditions No. 25-ANM-19]

Special Conditions; Gates Learjet Model 31

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued pursuant to §§ 21.16 and 21.101 of the Federal Aviation Regulations (FAR) for the Gates Learjet Model 31 airplanes. The airplanes will have novel or unusual design features associated with the installation of the electronic engine control systems for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards for protection from the effects of lightning. These special conditions contain the safety standards which the Administrator finds necessary, because of these added design features, to ensure that the functions of these systems, which are critical or essential, are maintained.

EFFECTIVE DATE: June 22, 1988.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Transport Standards Staff, ANM-110, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168, telephone (206) 431-2114.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 1987, Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas, 67277, made an application to the Federal Aviation Administration for an amended type certificate for the Model 31 airplanes.

Model 31 Design Features

General

The Gates Learjet Model 31 airplane is a twin engine business jet with maximum seating of 13. It has the Model 35 fuselage and horizontal tail, Model 55 wing, Model 28 vertical tail, addition of delta fins on the lower rear fuselage, deletion of stick pusher/puller and Mach trim systems, and as an option, a Model 28 forward fuselage fuel tank. The wing span is 42.18 feet, winglet span is 3.74 feet, fuselage length is 48.58 feet and the cabin and cockpit length is 21.7 feet. It is powered by two Garrett TFE 731-2-3B engines, also used on the Lear 35 and 36. These engines have electronic controls with conventional manual backup. Total thrust of these engines is 7,000 pounds. Fuel capacity is 4,188 pounds with an optional capacity of 4,598 pounds. Maximum takeoff weight is 15,500 pounds (16,500 optional). Maximum ram weight is 15,750 pounds (16,750 optional). The maximum operating altitude will be 51,000 feet. $V_{MO}m/_{MO}$ is 300 KIAS/.78M_I, and V_{DF}/M_{DF} is 375 KCAS/.86M_C.

The regulations incorporated by reference on the type certificate for these airplanes do not include adequate airworthiness standards for lightning protection of the electronic engine controls and, as a result, these special conditions are proposed.

Lightning Protection

The regulations incorporated by reference include standards for protection from ignition of fuel vapor (§ 25.954) and from damage to the structure of the airplane by lightning (§ 25.581). These standards do not, however, provide the level of safety for

the electronic engine control system that is inherently provided by traditional designs which utilize mechanical means to connect the engine to the flight deck.

The Model 31 is being designed with electrical interfaces for critical and essential engine functions such as the start schedule, governing schedule, acceleration schedule, surge schedule and minimum fuel schedule inputs to the engines. These systems, which are designed to perform critical and essential functions, can be susceptible to disruption to both the command/response signals and the operational mode logic as a result of electrical and magnetic interference. This disruption of signals could result in dual engine shutdown due to opening of the engine ultimate overspeed fuel cutoff solenoids. To ensure that a level of safety is achieved equivalent to that of existing operating aircraft, special conditions are being proposed which require that these components be designed and installed to preclude component damage and interruption of function due to both direct and indirect effects of lightning.

Discussion

The following "threat definition" is proposed as a basis to use in demonstrating compliance with the proposed lightning protection special condition. It is based on SAE report AE4L–87–3.

The lightning current waveforms (Components A, D and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analysis need to be conducted in order to obtain the resultant internal threat to the installed systems. The propulsion control systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. First Return Stroke (Severe Strike—Component A, or Restrike—Component D)

This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level is sufficiently below the equipment "hardness" level; then

2. Multiple Stroke Flash (½ Component D)

A lightning strike is often composed of a number of successive strokes, referred to as a multiple-stroke. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of component D (Peak Amplitude of 50,000 amps), all within 2 seconds. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

And,

3. Multiple Burst (Component H)

In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause direct (physical damage) effects, it is possible that indirect effects resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes within a period of 2 seconds. Each set of 20 strokes is made up of 20 "Multiple Burst" waveforms randomly distributed within a period of one millisecond. The individual "Multiple Burst" waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H). These components are defined by the following double exponential polynominal equations:

$i(t) = I_o (e^{-at} - e^{-bt})$

where;

t = time in seconds,

i = current in amperes, and

		Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_o, amp	=	218,810	109,405	54,703	10,572
a, sec^{-1}	=	11,354	22,708	22,708	187,191
b, sec^{-1}	=	647,265	1,294,530	1,294,530	19,105,100
These equations produce the following characteristics;					
i_{peak}	=	200 KA	100 KA	50 KA	10 KA
and					
$(di/dt)_{max}$ (amp/$_{sec}$)	=	1.4 X 10^{11} @t = 0+sec	1.4 X 10^{11} @t = 0+sec	0.7 X 10^{11} @t = 0+sec	2.0 X 10^{11} @t = 0+sec
di/dt, (amp/sec)	=	1.0 X 10^{11} @t = .5 us	1.0 X 10^{11} @t = .25 us	0.5 X 10^{11} @t = .25 us	
Action Integral (amp^2 sec)	=	2.0 X 10^6	0.25 X 10^6	.0625 X 10^6	

Discussion of Comments

Notice of proposed special conditions No. SC–88–3–NM for the Gates Learjet Model 31 airplane was published in the **Federal Register** on May 20, 1988, (53 FR 18097). No comments were received.

Type Certification Basis

The type certification basis for the Gates Learjet Model 31 is as follows: Part 25 of the FAR effective February 1, 1965, as amended by Amendments 25–2 and 25–4. Amendments 25–3, 25–7, 25–10, 25–12, 25–18, 25–21, and 25–30, plus Section 25.955(b)(2) of Amendment 25–11. Section 25.954 of Amendment 25–14. Sections 25.803(e), 25.811(f), 25.853(a), 25.853(b), and 25.855(a) of Amendment 25–15. Section 25.1359 of Amendment 25–17. Section 25.785(c) of Amendment 25–20. Sections 25.25, 25.113, 25.145, 25.251, 25.303, 25.305(b), 25.307(d), 25.331(a)(3), 25.335(b), 25.335(f), 25.337(b), 25.349(b), 25.351(a), 25.363, 25.395(a), 25.395(b), 25.471(a)(1), 25.471(a)(2), 25.473, 25.493(b), 25.499(b), 25.499(c), 25.499(d), 25.509(a)(3), 25.561(b)(3), 25.581, 25.607, 25.615, 25.619, 25.625, 25.629, 25.677, 25.697, 25.699, 25.701, 25.721, 25.723, 25.725, 25.727, 25.729, 25.733, 25.735, 25.865, 25.867, 25.871, 25.903(d), 25.934, 25.994, 25.1103(d), 25.1143(e), 25.1303, 25.1307, 25.1331 and 25.1585(c) of Amendment 25–23. Sections 25.1013(e), 25.1305(c)(4), and 25.1305(c)(6) of Amendment 25–36. Sections 25.45 thru 25.75 *deleted,* 25.101, 25.161, 25.815, 25.1322 and 25.1403 of Amendment 25–38. Sections 25.903(e), 25.939, and 25.943 of Amendment 25–40. Sections 25.29, 25.143, 25.147, 25.149, 25.177, 25.181, 25.201, 25.207, 25.233, 25.237, 25.255 and 25.703 of Amendment 25–42. Section 25.1326 of Amendment 25–43. Section 25.253 of Amendment 25–54. Sections 25.33 and 25.961 of Amendment 25–57. Part 36 of the FAR effective December 1, 1969, as amended by Amendment 36–12. SFAR 27 effective February 1, 1974, as amended through Amendment SFAR 27–5. Special Conditions for operations to 51,000 ft.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become part of the type certification basis in accordance with § 21.101.

Under standard practice, the effective date of these final special conditions would be 30 days after publication in the **Federal Register.** As the intended type certification date for the Gates Learjet Model 31 is July 11, 1988, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Special Conditions

Accordingly, the FAA proposes the following special conditions as part of the type certification basis for the Gates Learjet Model 31 airplane.

PARTS 21 AND 25—[AMENDED]

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. *Lightning Protection.* (a) Each digital electronic engine control system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not affected when the aircraft is exposed to lightning.

(b) Each essential function of the digital electronic engine control system must be protected to ensure that the essential function can be recovered after the airplane has been exposed to lightning. Manual mode reversion is considered an acceptable method of retaining the essential functions.

(c) For the purposes of the above, the following definitions apply:

(1) *Critical Functions.* Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

(2) *Essential Functions.* Functions whose failure would contribute to or cause a failure condition which would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Seattle, Washington, on June 22, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–15437 Filed 7–8–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–NM–07–AD; Amdt. 39–5965]

Airworthiness Directives; Aerospatiale Model ATR–42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Aerospatiale Model ATR–42 series airplanes, which requires repetitive inspections of the trim system, and repair or parts replacement, if necessary; a preflight procedure check of the trim system; a modification of the crew warning system; installation of a spike suppression modification in the air conditioning system; and installation of an elevator monitoring and alarm system. This amendment is prompted by reports of several cases of pitch trim motor failures and a re-evaluation of the flight control system. This condition, if not corrected, could result in excessive loads in the fixed vertical stabilizer from dual hidden failures in the elevator trim system, which could jeopardize safe flight and landing of the airplane.

EFFECTIVE DATE: August 11, 1988.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 310 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

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

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, applicable to Model ATR–42 series airplanes, to require repetitive inspection of the trim system, and repair or parts replacement, if necessary; a preflight procedure check of the trim system; a modification of the crew warning system; installation of a spike suppression modification in the air conditioning system; and installation of an elevator monitoring and alarm system, was published in the **Federal Register** on March 30, 1988 (53 FR 10252).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the one comment received.

The commenter supported adoption of the AD as proposed. However, this commenter did ask if there could be a connection between the trim tab failures and an elevator disconnect. The manufacturer has indicated to FAA that all possible problems were considered when the control system was reviewed and re-evaluated; there is no evidence to indicate any association between elevator disconnect occurrences and the trim tab system problems.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 23 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $103,040.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model ATR-42 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR-42 series airplanes, certificated in any category, as listed in the following Aerospatiale Service Bulletins: ATR42-27-0010, dated March 20, 1987; Operational Engineering Bulletin Number 17, dated January 26, 1987; ATR42-27-0015, Revision 3, dated February 29, 1988; ATR42-30-0010, Revision 2, dated July 7, 1987; and ATR42-21-0009, Revision 4, dated February 22, 1988. Compliance is required as indicated, unless previously accomplished.

To prevent excessive loads on the vertical stabilizer in the event of dual hidden failures in the elevator trim system, accomplish the following:

A. For airplanes listed in Aerospatiale Service Bulletin ATR42-27-0010, dated March 20, 1987, within 100 hours time-in-service after the effective date of this AD, accomplish the following:

1. Inspect the trim system in accordance with Aerospatiale Service Bulletin ATR42-27-0010, dated March 20, 1987. Repeat this inspection thereafter at intervals not to exceed 200 hours time-in-service. If defective parts are identified during this inspection, repair or replace with airworthy parts prior to further flight, in accordance with the service bulletin.

2. Insert the following in the Model ATR-42 Airplane Flight Manual, Limitations Section: "Prior to each taxi, perform the following procedure check: Prior to setting takeoff trim adjustment, run elevator trim to full up stop and full down stop to detect trim malfunction described in Operations Engineering Bulletin Number 17, dated January 26, 1987."

B. Within 1,500 hours time-in-service after the effective date of this AD:

1. For airplanes listed in Service Bulletin ATR42-21-0009, Revision 4, dated February 22, 1988: Install spike suppression circuits in the air conditioning system, in accordance with this service bulletin.

2. For airplanes listed in Aerospatiale Service Bulletin ATR42-27-0015, Revision 3, dated February 29, 1988: Subsequent to the installation of the spike suppression circuits required by paragraph B.1., above, install an elevator trim dissymmetry monitoring system and associated alarm, in accordance with this service bulletin.

3. For airplanes listed in Aerospatiale Service Bulletin ATR42-30-0010, Revision 2, dated July 7, 1987: Modify the crew warning system, in accordance with this service bulletin.

C. The accomplishment of the requirements of paragraph B., above, constitutes terminating action for the requirements of paragraph A., above.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 11, 1988.

Issued in Seattle, Washington, on June 23, 1988.

Thomas J. Howard,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-15428 Filed 7-8-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-33-AD; Amdt. 39-5968]

Airworthiness Directives; CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to CASA Model C-212 series airplanes, which currently requires replacement of the power quadrant cover with a cover incorporating slot protection. That action was prompted by reports that additional protection was needed to prevent foreign objects from dropping in to the pedestal which could jam or interfere with the power or trim control system, and cause partial loss of controllability of the airplane. This amendment expands the applicability of the existing AD to include additional U.S.-registered airplanes.

EFFECTIVE DATE: August 11, 1988.

ADDRESSES: The applicable service information may be obtained from

Contrucciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

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

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by revising AD 87-05-05-R1, Amendment 39-5738 (52 FR 38745; October 19, 1987), applicable to certain CASA Model C-212 series airplanes, to expand the applicability of the existing AD to include additional U.S.-registered airplanes, was published in the **Federal Register** on May 6, 1988 (53 FR 16289).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 8 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Modification parts are estimated at $553 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,384.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because of the minimal cost of compliance per airplane ($673). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By revising AD 87-05-05-R1, Amendment 39-5738 (52 FR 38745; October 19, 1987), by revising the applicability statement and paragraph A., as follows:

CASA: Applies to all Model C-212 series airplanes, certificated in any category. Compliance is required within 3 months after the effective date of this AD, unless previously accomplished.

To prevent the entry of foreign objects into the power and trim controls in the pedestal, accomplish the following:

A. Replace the power quadrant cover with a cover incorporating slot protection, in accordance with CASA Service Bulletin 212-76-05, Revision 1A, dated August 7, 1986, or Revision 1, dated July 20, 1987.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Contrucciones Aeronauticas S.A., Getafe, Madrid, Spain. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

The Amendment amends AD 87-05-05-R1, Amendment 39-5738.

This Amendment becomes effective August 11, 1988.

Issued in Seattle, Washington, on June 23, 1988.

Thomas J. Howard,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-15436 Filed 7-8-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-126-AD; Amdt. 39-5969]

Airworthiness Directives; The de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Model DHC-8 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to de Havilland Model DHC-8 series airplanes, which currently requires deactivation of the ground spoilers and roll control spoilers in the ground mode. That action was necessary to prevent an uncommanded deployment of ground spoilers and roll control spoilers in the ground mode, and to preclude a hazardous loss of lift in a critical phase of flight. This action requires the installation of certain modifications which will permit removal of the operational limitations established by the existing AD and re-establish normal use of all spoilers in the ground mode.

EFFECTIVE DATE: August 11, 1988.

ADDRESSES: The applicable service information may be obtained from The de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. C. Kallis, Systems Branch, ANE-173, FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6427.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to revise AD 86–14–51, Amendment 39–5423 (51 FR 33031; September 18, 1986), applicable to certain de Havilland Model DHC–8–101 series airplanes, to require installation of certain modifications that will permit removal of the operational limitations established by the existing AD, and re-establish normal use of all spoilers in the ground mode, was published in the Federal Register on February 8, 1988 (53 FR 3604).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters stated that the proposed compliance time of 20 days for installation of the modifications was unreasonable and would create a hardship on, and possible grounding of, their fleets, since the modified parts required for compliance would not be available within that time period. A third commenter, de Havilland, stated that "the modification of the parts can be performed only at a limited rate and is not expected to start before August 1988." All three commenters requested that paragraph C. of the proposal be revised either to expand the compliance period to a time when parts would be available, or to make the modification an optional terminating action for the operational requirements of the existing AD.

In light of this information, the FAA concurs that a revision of the final rule is necessary. The FAA disagrees with the suggestion that the modifications be made optional terminating action. Although the airplane flight manual (AFM) procedures currently required by AD 86–14–51 may adequately address the unsafe condition, the FAA has determined that installation of the subject modifications will eliminate the potential for the unsafe condition and will bring these model airplanes into their original operating configuration. Both de Havilland and Eldec [the manufacturer of the Proximity Switch Electronic Unit (PSEU) and the PSEU Built-In Test Equipment (BITE) Power Circuit] have confirmed that there is presently limited availability of parts and a limited return rate schedule for the modified fleet units; under these circumstances, fleet retrofit could not begin until August 1988 at the earliest. Therefore, the FAA has determined that the compliance time for installation of the modifications may be extended to 6 months after the effective date of the final rule, and paragraph C. has been revised accordingly. This time period is considered to be adequate so as to accomplish modification of the U.S. fleet in a timely manner. The FAA has determined that this revision will not increase the economic burden on any operator, nor will it adversely affect the safety of flight.

Additionally, paragraph C. of the final rule has been revised to reflect the latest revision of the applicable service bulletins.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the changes previously discussed.

It is estimated that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 manhours per airplane to accomplish the required modifications, and that the average labor cost will be $40 per manhour. Modification kits will be available from the manufacturer at no charge. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $800 per airplane.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because of the minimal cost of compliance per airplane ($800). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By amending AD 86–14–51, Amendment 39–5423 (51 FR 33031; September 18, 1986), by revising paragraph A. and B. to include the specific compliance time in each paragraph, adding a new paragraph C., and redesignating the existing paragraph C. as paragraph D., as follows:

The de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd.: Applies to the Model DHC–8–101 series airplanes, Serial Number 003 and subsequent, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To preclude the uncommanded deployment of ground spoilers and roll control spoilers in the ground mode, accomplish the following:

A. Prior to further flight, lockout circuit breaker ROLL SPLRS CONT, location F6, right essential bus, and circuit breaker GND SPLRS CONT, location C7, left main bus, in accordance with Section A of de Havilland Alert Service Bulletin AB–27–25, dated July 3, 1986. Install a placard in the flight compartment, on the glareshield under the flight/taxi switch, to state the following: "GROUND SPOILERS AND ROLL CONTROL SPOILERS IN GROUND MODE ARE INOPERATIVE."

B. Prior to further flight, insert a copy of this AD in the Airplane Flight Manual (AFM) Limitations Section. The elimination of all spoiler functions in ground mode increases landing distance and landing field length required by 15 percent when using flaps at 35 degrees (AFM, Figure 5.8.4.), and 10 percent when using flaps at 15 degrees (AFM Supplement #9, Figure 5.8.7.). With all spoiler functions in ground mode inoperative, there is negligible increase in the takeoff distance required and the takeoff run required.

C. Within 6 months after the effective date of this amendment, re-establish normal use of all spoilers in the ground mode configuration and remove the operating limitations of paragraphs A. and B., above, by accomplishing the following:

1. Modify the Landing Gear Proximity Switch Electronic Unit (PSEU) in accordance with de Havilland Service Bulletin 8–32–54, Revision B, dated November 20, 1987.

2. Modify the electrical power phase supply for the PSEU BITE Power Circuit, in accordance with de Havilland Service Bulletin 8–32–55, Revision A, dated November 20, 1987.

3. Remove the placard required by paragraph A., above, and reinstate the equipment required to be deactivated by paragraphs A. and B., above, in accordance with the instructions of de Havilland Service Bulletin 8–27–34, Revision C, dated January 8, 1988.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer, may obtain copies upon request to The de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amends AD 86-14-51, Amendment 39-5423.

This amendment becomes effective August 11, 1988.

Issued in Seattle, Washington, on June 23, 1988.

Thomas J. Howard,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-15427 Filed 7-8-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-ASW-29, Amdt. 39-5974]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Model SA 330 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which establishes a service life for Part Numbers (P/N) 330A31-1122-09 and -10 and 220A31-1782-00 and -01 main rotor head spindles on Aerospatiale Model SA 330 series helicopters. The AD is needed to prevent failure of a main rotor head spindle which could result in loss of control of the helicopter.

EFFECTIVE DATE: July 21, 1988.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service documents may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, ATTN: Customer Support.

A copy of each of the service documents is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. John Varoli, Manager, Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, APO NY 09667, telephone 513.38.30 or Mr. R.T. Weaver, Rotorcraft Standards Staff, ASW-110, Federal Aviation Administration, Fort Worth, Texas 76193-0111, telephone (817) 624-5122.

SUPPLEMENTARY INFORMATION: The Direction Generale l'Aviation Civile (DGAC), in accordance with existing provisions of the bilateral airworthiness agreement, has notified the FAA of an unsafe condition on certain Aerospatiale Model SA 330 helicopters. It has been determined that a service life must be established for main rotor head spindles.

Aerospatiale has issued Service Bulletin No. 01.41, dated March 25, 1988, which establishes a service life of 4,500 hours for main rotor head spindles, P/N's 330A31-1122-09 and -10 and 330A31-1782-00 and -01. The DGAC has classified this bulletin as mandatory.

The main rotor spindles, P/N's 330A31-1122-03, -06, -07, and -08, have previously been limited to a service life of 2,400 hours when installed on Models SA 330F, G, and J (the only U.S. certificated SA 330 series helicopters.) This AD does not change the service life of spindles with dash number -03, -06, -07, and -08.

The Model SA 330 series helicopter is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (FAR).

Since this condition is likely to exit or develop on other helicopters of the same type design registered in the United States, and airworthiness directive is being issued which requires establishment of a service life for the main rotor spindles on Aerospatiale Model SA 330 series helicopters.

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

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Societe Nationale Industrielle Aerospatiale (SNIAS): Applies to all Aerospatiale Model SA 330 series helicopters certificated in any category.

Compliance is required as indicated (unless already accomplished).

To prevent failure of the main rotor head spindles, accomplish the following:

(a) Replace main rotor head spindles (P/N's 330A31-1122-09 and -10 and 330A31-1782-00 and -01) as follows—

(1) For spindles which have 4,400 or more hours' time in service on the effective date of this AD, replace the spindles within the next 100 hours' time in service; and

(2) For spindles which have less than 4,400 hours' time in service on the effective date of this AD, replace the spindles before they reach 4,500 hours' time in service.

(b) An alternate method of compliance with this AD, which provides an equivalent level of safety, may be used when approved by the Manager, Rotorcraft Standards Staff.

Federal Aviation Administration, Fort Worth, Texas 76193-0110, or by the Manager, Aircraft Certification Office, AEU-100, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium.

Note: Aerospatiale Service Bulletin No. 01.41 pertains to this subject.

Issued in Forth Worth, Texas, on June 23, 1988.

This amendment becomes effective July 21, 1988.

Don. P. Watson,

Acting Director, Southwest Region.

[FR Doc. 88-15438 Filed 7-8-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket Number 88-ANE-02; Amdt. 39-5957]

Airworthiness Directives; Pratt & Whitney (PW) PW2037 and PW2040 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of PW2037 and PW2040 turbofan engines installed in Boeing 757 aircraft by individual telegrams. The AD requires replacement or modification of certain fuel tube assemblies on the engines. The compliance schedules are dependent upon the Boeing 757 aircraft status under the Master Minimum Equipment List (MMEL) and aircraft operational constraints. The AD is needed to prevent cracking of the fuel tubes that can result in fuel leaks with substantial fuel quantity loss and possible engine fire.

DATES: *Effective* July 13, 1988, as to all persons except those to whom it was made immediately effective by individual Telegraphic AD (TAD) T88-03-52, issued January 29, 1988, which contained this amendment.

Compliance Schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register as of July 13, 1988.

ADDRESSES: The applicable engine manufacturer's alert service bulletins (ASB's) may be obtained from Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457.

A copy of the ASB's is contained in Rules Docket Number 88-ANE-02, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Chung Hsieh, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7091.

SUPPLEMENTARY INFORMATION: The FAA has determined that there have been thirty-four fuel leak events involving the 2.5 bleed valve actuator tubes, and the compressor and turbine case cooling air valve tubes. In one of those events, a substantial fuel loss occurred in flight. Three of the events resulted in fires. The fuel leaks occurred as a result of fatigue cracking caused by a vibratory excitation which initiates cracks in stress concentration areas on the tubes. Excitation occurs due to wear between the clamp and the tube, resulting in inadequate tube support. The manufacturer has redesigned the 2.5 bleed valve actuator tubes to eliminate a stress concentration area and has incorporated an additional bracket for proper support of the assembly. As an alternate to the above mentioned redesign, an additional bracket may be installed on the bleed supply tube which connects to the original design 2.5 bleed valve actuator tube to reduce the vibration level and prevent tube fracture. The manufacturer also has identified a compressor and turbine case cooling air valve tube clamping arrangement which reduces the vibratory stress to an acceptable level.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make TAD T88-03-52 effective 24 hours after receipt by individual telegrams issued January 29, 1988, to all known owners and operators of PW2037 and PW2040 series engines installed in Boeing 757 aircraft. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The AD requires replacement of the support hardware for the 2.5 bleed valve actuator tubes and manifold, with redesigned support hardware including an additional bracket to support the adjacent bleed supply tube; or installation of an additional bracket to support the adjacent bleed supply tube on the original design 2.5 bleed valve actuator tubes and manifold assembly. The AD also requires removal of a loop clamp bracket assembly from the compressor and turbine case cooling air valve tubes, and clamping of the tubes to a bracket spanning the pressure and return tubes.

The compliance schedules are dependent upon the aircraft status under the Boeing 757 aircraft MMEL and aircraft operational constraints which impact the flight crew's ability to identify fuel losses due to leaks in the fuel system.

Conclusion

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Pratt & Whitney: Applies to Pratt & Whitney (PW) PW2037 and PW2040 turbofan engines.

Compliance is required as indicated, unless already accomplished. To prevent compressor and turbine case cooling air valve tube and 2.5 bleed valve actuator tube cracking that can lead to fuel leaks, substantial fuel quantity loss and possible engine fire, accomplish the following:

(a) For the engines operated in any of the following configurations: (1) with the Fuel Quantity Indication System (FQIS) inoperative under the provisions specified in the Boeing 757 aircraft Master Minimum Equipment List (MMEL), Item 28-41-1; (2) with one of the Fuel Quantity Processor (FQP) Channels inoperative under the provisions specified in the MMEL, Item 28-41-2; (3) with both Flight Management Computer (FMC) Systems inoperative under the provisions specified in the MMEL, Item 34-61-1; or (4) with the FQIS functional, both FQP Channels functional, and at least one FMC System functional, but operating without the provisions of Boeing Operations Manual Bulletin (OMB) Number 87-7, Revision 1, dated October 28, 1987, accomplish the following prior to further flight:

(a)(i) Compressor and turbine case cooling air valve tube clamping configuration:

Remove loop clamp bracket assembly Part Number (P/N) 1B2224-01 from compressor and turbine case cooling air valve tubes, and install a clamping configuration that clamps the tubes to a bracket spanning the pressure and return tubes in accordance with Accomplishment Instructions contained in PW Alert Service Bulletin (ASB) Number PW2000 A75-36, dated October 28, 1987.

(a)(ii) 2.5 bleed valve actuator tubes and manifold assembly clamping configuration:

Install a new bracket and clamp configuration in accordance with the applicable part of the Accomplishment Instructions contained in PW ASB Number PW2000 A75-38, dated December 21, 1987.

(b) For engines operated with the FQIS functional, both FQP Channels functional, at least one FMC System functional, and in accordance with the provisions of Boeing OMB Number 87-7, Revision 1, dated October 28, 1987, accomplish items (a)(i) and (a)(ii) above within 250 hours in service from the effective date of this AD.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

(e) Upon submission of substantiating data by an owner or operator through an FAA airworthiness inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

Pratt & Whitney ASB's No. PW2000 A75-36, dated October 28, 1987, and NO. PW2000 A75-38, dated December 21, 1987, identified and described in this document are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received the engine manufacturer's ASB's may obtain copies upon request to Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457.

These documents may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket Number 88-ANE-02, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on July 13, 1988, as to all persons except those persons to whom it was made effective 24 hours after receipt by individual Telegraphic AD T88-03-52, issued January 29, 1988, which contained this amendment.

Issued in Burlington, Massachusetts, on June 7, 1988.

Timothy P. Forte,

Acting Director, New England Region.

[FR Doc. 88-15431 Filed 7-8-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-ANE-15; Amdt. 39-5959]

Airworthiness Directives; Pratt & Whitney Canada (PWC) JT15D-1, -1A, -1B, -4, -4B, and -4D Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain PWC JT15D-1, -1A, -1B, -4, -4B, and -4D turbofan engines by individual priority letter AD Number 87-10-01. The AD requires visual inspection of the fan blade root fillet radius for surface finish and removal from service of those fan blades which exhibit machining striations. The AD is needed to prevent failure of certain fan blades.

DATES: *Effective* July 15, 1988, as to all persons except those persons to whom it was made immediately effective by priority letter AD 87-10-01, issued May 7, 1987, which contained this amendment.

Compliance Schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register as of July 15, 1988.

ADDRESSES: The applicable service bulletin (SB) may be obtained from Pratt & Whitney Canada, Box 10 Longueuil, Quebec, Canada J4K 4X9.

A copy of the SB is contained in the Rules Docket Number 87-ANE-15, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Diane Kirk, Engine Certification Branch, ANE-142, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7082.

SUPPLEMENTARY INFORMATION: On May 7, 1987, Priority Letter AD 87-10-01, was issued and made effective immediately as to all known U.S. owners and operators of PWC JT15D-1, -1A, -1B, -4, -4B, and -4D turbofan engines. The priority letter AD requires visual inspection of the fan blade root fillet for surface finish and removal from service of fan blades which exhibit machining striations. The FAA has determined that certain fan blades may be non-conforming in fan blade root fillet radius surface finish. One fan blade has failed near the fan blade root fillet radius where machining striations were found in the area of the failure.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by priority letter issued May 7, 1987, to all known U.S. owners and operators of PWC JT15D-1, -1A, -1B, -4, -4B, and -4D turbofan engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal

Aviation Regulations to make it effective as to all persons.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Pratt & Whitney Canada: Applies to Pratt & Whitney Canada (PWC) JT15D–1, –1A, –1B, –4, –4B, and –4D turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent failure of certain fan blades, accomplish the following within the next 15 calendar days or within the next 25 hours time in service from the effecitve date of this AD, whichever occurs first, and thereafter prior to the installation of any non-inspected fan blades:

(a) Visually inspect the fan blade root fillet radius, including the area on the airfoil one-half inch above the radius runout, for surface finish in accordance with the accomplishment instructions of PWC Service Bulletin (SB) Number 7257, Revision Number 2, dated July 2, 1987.

Note: Prior compliance with the accomplishment instructions of PWC SB Number 7257, dated April 23, 1987, is an equivalent means of compliance.

(b) Remove from service, fan blades which exhibit machining striations and replace with a serviceable part, prior to further flight.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

(e) Upon submission of substantiating data by an owner or operator, through an FAA airworthiness inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance times specified in this AD.

PWC SB Number 7257, Revision Number 2, dated July 2, 1987, identified and described in this document is incorporated herein and made part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Pratt & Whitney Canada, Box 10, Longueuil, Quebec, Canada J4K 4X9. This document may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Rules Docket Number 87–ANE–15, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective July 15, 1988, as to all persons except those persons to whom it was made immediately effective by priority letter AD Number 87–10–01, issued May 7, 1987, which contained this amendment.

Issued in Burlington, Massachusetts, on June 9, 1988.

Timothy P. Forte,

Acting Director, New England Region.

[FR Doc. 88–15432 Filed 7–8–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–ANE–26; Amdt. 39–5958]

Airworthiness Directives; Valentin GmbH Model Taifun 17E Powered Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires installation of a stall warning system on Valentin GmbH Model Taifun 17E powered sailplanes. This AD is needed to provide clear and distinctive warning of impending stall conditions, which, if not corrected, could result in an unsafe stall/spin of the aircraft.

DATES: *Effective*—July 14, 1988.

Compliance required within the next 30 hours time-in-service, after the effective date of this AD, or by September 15, 1988, whichever comes first, unless already accomplished.

Incorporation by Reference—Approved by the Director of the Federal Register as of July 14, 1988.

ADDRESSES: The applicable Technical Note (TN), instructions, and drawings may be obtained from either: Valentin-Flugzeugbau GmbH, Flugplatzstrassa 18, D–8728 Hassfurt, Federal Republic of Germany, telephone 0 95 21/47 30; or Morris Aviation, Ltd., P.O. Box 718, Statesboro, Georgia, 30458; telephone (912) 489–8161

A copy of the TN is contained in the Rules Docket, Docket Number 88–ANE–26, Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined weekdays between the hours of 8:00 a.m. and 4:30 p.m., except federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Munro Dearing, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 15 Rue de la Loi B–1040, Brussels, Belgium; telephone 513.38.30 ext. 2710; or Mr. Peter Cuneo, ANE–173, New York Aircraft Certification Office, Aircraft Certification Divison, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6427.

SUPPLEMENTARY INFORMATION: Valentin GmbH, the Taifun 17E manufacturer, determined that some of the Taifun 17E powered sailplanes do not provide clear and distinctive warning of an impending stall through inherent aerodynamic

qualities, and issued TN No. 8/818, dated December 10, 1985, providing instructions for installation of a stall warning kit (lift detector and horn). Clear and distinctive warning of impending stall is necessary to prevent an unsafe stall/spin. Subsequently, the Luftahrt-Bundesamt (LBA) issued an AD dated December 12, 1985, requiring compliance with TN No. 8/818.

The FAA relies upon the certification of the LBA, combined with FAA review of pertinent documentation, in finding compliance of these German manufactured aircraft with the applicable United States airworthiness requirements, and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Valentin GmbH Technical Note No. 8/818 and the issuance of Valentin AD No. 85–263 by the LBA. Based on the foregoing, the FAA has determined that the condition addressed by the LBA AD is an unsafe condition that may exist on other products of the same type design certificated for operations in the United States. Therefore, an AD is being issued to require installation of a stall warning system on Valentin GmbH Model Taifun 17E powered sailplanes.

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

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Valentin GmbH: Applies to Model Taifun 17E powered sailplanes (all serial numbers) certificated in any category.

Compliance is required as indicated, unless already accomplished.

To prevent the possibility of inadequate warning of an impending stall which could result in the loss of control of the powered sailplane, accomplish the following:

(a) Within the next 30 hours time-in-service after the effective date of this AD or by September 15, 1988, whichever occurs first, install a stall warning system in accordance with the installation instructions of Valentin Technical Note (TN) No. 8/818, dated December 10, 1985.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(c) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Brussels Aircraft Certification Office, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 15 Rue de la Loi B–1040 Brussels, Belgium; telephone 513.38.30 Ext. 2710; or the Manager, New York Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6680.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Brussels Aircraft Certification Office, or the Manager, New York Aircraft Certification Office, may adjust the compliance time specified in this AD.

Valentin-Flugzeugbau GmbH TN No. 8/818, dated December 10, 1985, and associated installation instructions, identified and described in this document, are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents may obtain copies upon request from Valentin-Flugzeugbau GmbH, Flugplatzstrasse 18, D–8728 Hassfurt, Federal Republic of Germany; telephone 0 95 21/47 30; or Morris Aviation, Ltd., P.O. Box 718, Statesboro, Georgia, 30458; telephone (912) 489–8161. These documents may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket 88–ANE–26, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on July 14, 1988.

Issued in Burlington, Massachusetts, on June 8, 1988.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 88–15430 Filed 7–8–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 87–ACE–1]

Alteration of VOR Federal Airways and Establishment of the Columbia Low Altitude Reporting Point; Missouri

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of Federal Airways V–12 and V–44; revokes V–504; and establishes the Columbia, MO, Low Altitude Reporting Point located in the vicinity of Jefferson City, MO. The Jefferson City very high frequency omni-directional radio range and distance measuring equipment (VOR/DME) has been decommissioned and the Tiger, MO, VOR/DME has been relocated to the Columbia Regional Airport, MO. This action alters the descriptions of all airways affected by the decommissioning and relocation of these navigational aids (NAVAID).

EFFECTIVE DATE: 0901 U.t.c., August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On May 20, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of V–12 and V–44; to revoke V–504; and to establish the Columbia, MO, Low Altitude Reporting Point located in the vicinity of Jefferson City, MO, (52 FR 18920). The Jefferson City VOR/DME has been decommissioned and the Tiger, MO, VOR/DME has been relocated to the Columbia Regional Airport, MO (lat. 38°48'38" N., long. 92°13'05" W.) due to nonrenewal of the lease. The notice proposed to alter the descriptions of all airways affected by the decommissioning and relocation of these NAVAID's. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.123 and 71.203 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of Federal Airways V–12 and V–44; revokes V–504; and establishes the Columbia, MO, Low Altitude Reporting Point located in the vicinity of Jefferson City, MO. The Jefferson City VOR/DME has been decommissioned and the Tiger, MO, VOR/DME has been relocated to the Columbia Regional Airport, MO. This action alters the descriptions of all airways affected by the decommissioning and relocation of these NAVAID's.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways, Low altitude reporting point.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–12 [Amended]

By removing the words "TIGER, MO;" Foristell, MO; and by substituting the words "INT Napoleon 095° and Columbia, MO, 292° radials; Columbia; Foristell, MO;"

V–44 [Amended]

By removing the words "From Jefferson City, MO, via Foristell, MO;" and by substituting the words "From Columbia, MO; INT Columbia 131° and Foristell, MO, 262° radials; Foristell;"

V–504 [Removed]

§ 71.203 [Amended]

3. Section 71.203 is amended as follows: Columbia, MO [Added].

Issued in Washington, DC, on June 29, 1988.

Temple H. Johnson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–15435 Filed 7–8–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 371 and 399

[Docket No. 80502–8102]

Clarifications to the Export Administration Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule, which neither expands nor limits the provisions of the Export Administration Regulations, makes the following clarifications:

1. The definition of "net value for (general license) GLV shipments" is amended for the sake of clarity;

2. Other entries on the CCL are amended to clarify that special controls on exports to South Africa may apply.

EFFECTIVE DATE: This rule is effective July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Because this rule does not impose a new control, it is not subject to the requirements of 13(b) of the EAA. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 533), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule mentions a collection of information requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and has been cleared under OMB control number 0625–0001.

5. The rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 371 and 399

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

PART 371—[AMENDED]

1. The authority citation for 15 CFR Parts 371 and 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*) E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 USC 5001 *et seq.*); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. The heading and first sentence of § 371.5(b)(1) are revised to read as follows:

§ 371.5 General License GLV; Shipments of Limited Value.

(a) * * *

(b) *Definitions.*

(1) "Net Value for GLV Shipments." The actual selling price of the commodity included in a single entry on the Commodity Control List, less shipping charges, or the current market price of the commodity to the same type of purchaser in the United States, whichever is larger. * * *

* * * * *

PART 399—[AMENDED]

§ 399.1 [Amended]

3. In Supplement No. 1 to § 399.1 (the Commodity Control List) the entries listed below are amended by revising the *Validated License Required* paragraph to read: "Country Groups SZ and as required by Special South Africa policy below."

Commodity Group 0 (Metal-Working Machinery), ECCN 6099G;

Commodity Group 1 (Chemical and Petroleum Equipment), ECCN 6199G;

Commodity Group 2 (Electrical and Power-Generating Equipment), ECCN 6299G;

Commodity Group 3 (General Industrial Equipment), ECCN 6398G and ECCN 6399G;

Commodity Group 4 (Transportation Equipment), ECCN 6490F and ECCN 6499G;

Commodity Group 5 (Electronics and Precision Instruments), ECCN 6565G and 6599G;

Commodity Group 6 (Metals, Minerals and their Manufacturers) ECCN 4699G and ECCN 6699G;

Commodity Group 8 (Rubber and Rubber Products), ECCN 6899G; and

Commodity Group 9 (Miscellaneous), ECCN 6999G.

4. In Supplement No. 1 to § 399.1 (the Commodity Control List) the entries below are amended by revising the *Validated License Required* paragraph to read: "Country Groups QSWYZ, Afghanistan, the People's Republic of China and as required by Special South Africa policy below."

Commodity Group 3 (General Industrial Equipment), ECCN 5399C;

Commodity Group 4 (Transportation Equipment), ECCN 5431C; and

Commodity Group 5 (Electronics and Precision Instruments), ECCN 5510C, ECCN 5568C, ECCN 5585C, ECCN 5595 and ECCN 5596C.

5. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 5799C is amended by revising the first sentence only of the *Validated License Required* paragraph to read: "Country Groups QSWYZ, Afghanistan, the People's Republic of China and as required by Special South Africa policy below."

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 6799G is amended by revising the first sentence only of the *Validated License Required* paragraph to read: "Country Groups SZ, and as required by Special South Africa policy below, except that a validated license is not required for exports to Libya (Country Group S) of medicines and medical products."

Dated: June 21, 1988.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 88–15475 Filed 7–8–88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Commissioner of Food and Drugs, et al.

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority by adding a new delegation to the Commissioner of Food and Drugs from the Assistant Secretary for Health and by adding new authorities for the Associate Commissioner for Regulatory Affairs and for Center Directors. The authorities pertain to technology transfer functions, including entering into cooperative research and development agreements and licensing agreements, under the Stevenson-Wydler Technology Innovation Act of 1980, as amended by the Federal Technology Transfer Act of 1986.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Melissa M. Moncavage, Office of Management and Operations (HFA–340), Food and Drug Administration, 5600 Fishes Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 19, 1988 (53 FR 5046), the Public Health Service published a notice of a delegation of authority, effective February 4, 1988, from the Assistant Secretary for Health to Public Health Service agency heads, including the Commissioner of Food and Drugs, under the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.) (the Act), as amended by the Federal Technology Transfer Act of 1986 (Pub. L. 99–502), and under Executive Order No. 12591 of April 10, 1987, as amended hereafter. The Secretary and the Assistant Secretary for Health retained certain authorities under the Act and limited redelegation of certain other authorities. The authorities were delegated to the Public Health Service agency heads in their dual capacity under the Act as heads of Federal agencies and heads of Federal laboratories. FDA is amending § 5.10 *Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials* (21 CFR 5.10) to add to FDA's regulations a new paragraph (a)(29) concerning these authorities delegated to the

Commissioner of Food and Drugs. Paragraphs (a)(29)(i) and (ii) of § 5.10 describe the limits on the authority of the Commissioner of Food and Drugs to redelegate the authorities under the Act.

FDA is adding a new § 5.24 *Authority relating to technology transfer* (21 CFR 5.24) to redelegate certain of these new authorities of the Commissioner of Food and Drugs. This new section delegates in § 5.24(a) authority as requested by the Commissioner to the Associate Commissioner for Regulatory Affairs to disapprove or require modification of cooperative research and development agreements and licensing agreements and to transmit written explanation of such disapproval or modification to the head of the laboratory concerned. It also delegates in § 5.24(b) to the Associate Commissioner for Regulatory Affairs and to the Directors of the Center for Biologics Evaluation and Research, the Center for Devices and Radiological Health, the Center for Drug Evaluation and Research, the Center for Food Safety and Applied Nutrition, the Center for Veterinary Medicine, and the National Center for Toxicological Research, the authority as requested by the Commissioner to perform the functions of the Commissioner under the Act as they pertain to the functions of their respective organizations. This includes the authority to perform the functions of laboratory directors under the Act subject to the limitations in § 5.10(a)(29) on redelegation of the Commissioner's authority and subject to the discretion of the Commissioner to require, under section 11(c)(5)(A) of the Act (15 U.S.C. 3710a(c)(5)(A)), an opportunity to disapprove or require modification of cooperative research and development agreements and licensing agreements.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.), Executive Order No. 12591 of April 10, 1987, and the authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 is revised to read as follows:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 *et seq.*, 3701 *et seq.*; 21 U.S.C. 41 *et seq.*, 61–63, 141 *et seq.*, 301–392, 467f(b), 679(b), 801 *et seq.*, 823(f), 1031 *et seq.*; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 242l, 242o, 243, 262, 263, 263b through 263m, 264, 265, 300u *et seq.*, 1395y and 1396y note, 3246b(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Federal Advisory Committee Act (Pub. L. 92–463); E.O. 11490, 11921, 12591.

2. Section 5.10 is amended by adding a new paragraph (a)(29) to read as follows:

§ 5.10 Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials.

(a) * * *

(29) Functions vested in the Secretary under the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.) (the Act), as amended, and under Executive Order No. 12591 of April 10, 1987, as they pertain to the functions of the Food and Drug Administration. The delegation excludes the authority to promulgate regulations and submit reports to Congress; under section 11(a)(2) of the Act (15 U.S.C. 3710a(a)(2)) to approve agreements and contracts with invention management organizations; and under section 11(c)(3)(B) of the Act (15 U.S.C. 3710a(c)(3)(B)) to propose necessary statutory changes regarding conflict of interest.

(i) The authorities under sections 11(c)(5) (A) and (B) of the Act (15 U.S.C. 3710a(c)(5) (A) and (B)) to disapprove or require the modification of cooperative research and development agreements and licensing agreements after the agreement is presented to the Commissioner of Food and Drugs by the head of the laboratory concerned, and to transmit written explanation of such disapproval or modification to the head of the laboratory concerned, may be redelegated only to a senior official in the immediate office of the Commissioner.

(ii) The following authorities may not be redelegated: authority under section 11(b)(3) of the Act (15 U.S.C. 3710a(b)(3)) to waive a right of ownership which the Federal Government may have to on an invention made under a cooperative research and development agreement; the authority under section 11(b)(4) of the Act (15 U.S.C. 3710a(b)(4)) to permit employees or former employees to participate in efforts to commercialize inventions they made while in the service of the United States; the authority under section 11(c)(3)(A) of the Act (15 U.S.C. 3710a(c)(3)(A)) to review employee standards of conduct for resolving potential conflicts of interest; the authority under section 13(a)(1) of the Act (15 U.S.C. 3710c(a)(1)) to retain any royalties or other income, except as provided in section 13(a)(2) of the Act (15 U.S.C. 3710c(a)2)); and the authority under section 13(a)(1)(A)(i) of the Act (15 U.S.C. 3710c(a)(1)(A)(i)) to pay royalties or other income the agency receives on account of an invention to the inventor if the inventor was an employee of the agency at the time the invention was made.

(iii) Any authorities under paragraph (a)(29) of this section delegated by the Commissioner of Food and Drugs may not be further redelegated.

* * * * *

3. Part 5 is amended by adding a new § 5.24 to read as follows:

§ 5.24 Authority relating to technology transfer.

(a) The Associate Commissioner for Regulatory Affairs is authorized to perform the functions of the Commissioner of Food and Drugs as requested by the Commissioner regarding the authority to disapprove or require modification of cooperative research and development agreements and licensing agreements and transmit written explanation of such approval or disapproval to the head of the laboratory concerned under sections 11(c)(5) (A) and (B) of the Stevenson-Wydler Technology Innovation Act of 1980 (the Act) (15 U.S.C. 3710a(c)(5) (A) and (B)), as amended.

(b) The following officials are authorized to perform the functions of the Commissioner of Food and Drugs as requested by the Commissioner under the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.), as amended, and Executive Order 12591 of April 10, 1987, except to the extent that redelegation of those functions is specifically limited in § 5.10(a)(29) of this part, as they pertain to the functions of their respective organizations, including the authority to perform the functions of laboratory directors under the Act as the heads of their respective Federal laboratories, subject to the discretion of the Commissioner of Food and Drugs to require that agreements entered into under section 11(a) of the Act (15 U.S.C. 3710a(a)) include provisions in accordance with section 11(c)(5)(A) of the Act (15 U.S.C. 3710a(c)(5)(A):

(1) The Director, Center for Biologics Evaluation and Research.

(2) The Director, Center for Devices and Radiological Health.
(3) The Director, Center for Drug Evaluation and Research.
(4) The Director, Center for Food Safety and Applied Nutrition.
(5) The Director, Center for Veterinary Medicine.
(6) The Director, National Center for Toxicological Research.
(7) The Associate Commissioner for Regulatory Affairs.

Dated: June 29, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 88-15481 Filed 7-8-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8212]

Limitations on Availability of Benefits

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to certain restrictions on an employee's right to receive forms of benefit protected by section 411(d)(6) of the Internal Revenue Code under qualified plans and to nondiscrimination requirements with respect to the availability of optional forms of benefit. They generally reflect changes made by the Retirement Equity Act of 1984 (REA). The regulations will generally affect sponsors of, and participants in, pension, profit-sharing and stock bonus plans, and they provide plan sponsors with guidance necessary to comply with the law.

DATES: These regulations generally would apply July 11, 1988, except as otherwise specified in these regulations.

FOR FURTHER INFORMATION CONTACT: Nancy J. Marks of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone 202-566-3938 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 30, 1986, the Federal Register (51 FR 3798) published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 401 and 411 of the Internal Revenue Code of 1954 (Code). Generally, these proposed regulations under section 401(a)(4) clarified existing law. In addition, the proposed regulations under sections 401 and 411 conformed the regulations to section 301 of the Retirement Equity Act of 1984 (REA). A public hearing on the proposed regulations was announced in 51 FR 12341 and held on May 22, 1986. After consideration of all comments regarding the proposed regulations, such proposed regulations are adopted as revised by this Treasury Decision.

Nondiscrimination Requirements

Section 401(a)(4) of the Code provides that a qualified plan must provide either contributions or benefits that do not discriminate in favor of employees who are officers, shareholders or highly compensated (the prohibited group). The regulations provide that the availability of an optional form of benefit (as defined in these regulations) under a pension, profit-sharing or stock bonus plan may not discriminate in form or operation in favor of the prohibited group or, generally for plan years after December 31, 1988, highly compensated employees. This position affirms the position taken in Rev. Rul. 85-59, 1985-1 CB 135, which was discussed in the preamble to the proposed regulations. These regulations provide guidance on the applicability of section 401(a)(4) to the availability of optional forms of benefits.

The final regulations provide that an optional form of benefit is discriminatory under section 401(a)(4) if such optional form is not currently available to a group of employees that satisfies the minimum coverage requirement of section 410(b) and effectively available to a group of employees that, based on all the facts and circumstances, does not substantially favor employees in the highly compensated group. Generally, an optional form of benefit under a plan is discriminatory if the group of employees to whom the benefit is currently available fails to satisfy one or more of the applicable section 410(b) tests enumerated in § 1.401(a)-4 Q&A-2. Finally, the final regulations reflect the amendment to section 401(a)(4) incorporating the new section 414(q) definition of highly compensated employees in whose favor discrimination is prohibited as of the applicable effective date under the Tax Reform Act of 1986 (section 1114(a) of the Tax Reform Act of 1986, 100 Stat. 2448 (TRA '86)).

With respect to an optional form of benefit that is contingent on satisfaction of specified eligibility conditions, the fact that an employee may subsequently satisfy the conditions is generally not sufficient to demonstrate nondiscrimination. For example, if a plan provides that a single sum distribution option is available only to an employee with a net worth of at least $100,000, the fact that an employee may, in the future, have a net worth of at least $100,000 does not support treating this optional form of benefit as currently available to such employee. However, in making a determination of current availability, the regulations provide that an employer may disregard certain enumerated conditions such as conditions requiring termination of employment, disability or hardship. In addition, in making this determination, the employer generally may disregard conditions based on years of service and/or age.

The final regulations further provide that in determining whether an optional form of benefit under a plan is discriminatory under section 401(a)(4), the term "plan" has the meaning that such term has for other purposes under section 401(a)(4). Future regulations under section 401(a)(4) will amplify this definition of "plan".

The final regulations also provide that the Commissioner may provide such additional tests and safe harbors as may be necessary or appropriate for determining whether an optional form of benefit is discriminatory under section 401(a)(4). The Commissioner may exercise this authority only through the publication of revenue rulings, notices, and other documents of general applicability, rather than on an individual basis. This limitation on the Commissioner's authority, and similar limitation on the Commissioner's authority, and similar limitations set forth elsewheree in this regulation, should not be read as raising any inferences with respect to the Commissioner's exercise of authority where there is a delegation of authority without similar limiting language in this regulation or in other regulations pursuant to sections of the Internal Revenue Code.

The final regulations make revisions to § 1.401(a)-4 to reflect changes made to section 401(a)(4) by TRA '86. Other changes in style and organization have been made in order to improve clarity and resolve areas that commentators have noted as being ambiguous.

REA and TRA '86 Requirements

Section 401(a)(25) of the Code, added by section 301 of REA, affirms the positions taken by the Service in Rev. Rul. 79-90, 1979-1 CB 155, and Rev. Rul. 81-12, 1981-1 CB 228, and provides that

a defined benefit plan shall not be treated as providing definitely determinable benefits unless the actuarial assumptions used to determine the amount of any benefit are specified in the plan in a way that precludes employer discretion. Rev. Ruls. 79–90 and 81–12 are discussed in greater length in the preamble to the proposed regulations.

Section 411(d)(6) of the Code, as amended by section 301(a)(1) of REA, provides that, in general, a plan will not satisfy the requirements of section 411 if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(c)(8) or section 4281 of the Employee Retirement Income Security Act of 1974 (ERISA). Section 411(d)(6) also provides that a plan amendment that has the effect of eliminating or reducing an early retirement benefit, a retirement-type subsidy or an optional form of benefit, with respect to benefits accrued before the later of the amendment's adoption date or effective date (including benefits accrued prior to such date during the year in which such date occurs), shall be treated as impermissibly reducing accrued benefits. An exception is provided to the extent that such amendments are permitted under regulations promulgated by the Secretary. Also, section 411(d)(6)(C) contains an exception applicable to certain employee stock ownership plans added by section 1898(f)(1)(A) of TRA '86.

Many commentators requested guidance as to which benefits, rights and features are protected under section 411(d)(6). In response, the final regulations provide general guidance with respect to those benefits that are protected under section 411(d)(6) ("section 411(d)(6) protected benefits" as defined in these regulations). With one exception, the regulations do not provide specific guidance with respect to the benefits described in section 411(d)(6)(A), early retirement benefits, or retirement-type subsidies. Thus, for example, the regulations do not address the extent to which a plant closing or shutdown benefit under a plan constitutes an early retirement benefit or a retirement-type subsidy. The exception is contained in Q&A–3 of § 1.411(d)–4 and provides that the defined benefit feature of a benefit under a defined benefit plan and the separate account feature of a benefit under a defined contribution plan are protected under section 411(d)(6)(A). Also, the regulations clarify that some benefits may be covered by more than one category of section 411(d)(6) protected benefits. Thus, the same benefit may be a benefit described in section 411(d)(6)(A) and an early retirement benefit or retirement-type subsidy described in section 411(d)(6)(B)(i)).

The final regulations provide detailed guidance describing "optional forms of benefit." (The term "alternative forms of benefit", which was used in the proposed regulation, has been replaced, as appropriate, by the terms "optional forms of benefit" and "section 411(d)(6) protected benefit.") Generally, each separate benefit distribution form under a plan is treated as a separate optional form of benefit protected under section 411(d)(6). Accordingly, any differences with respect to the timing, payment schedule, medium of benefit distribution, and election rights with respect to such distributions are generally treated as creating separate optional forms of benefit.

This regulation creates no inference with respect to whether, before an employee has satisfied the applicable eligibility conditions, a contingent benefit (e.g. subsidized early retirement benefit) is or is not taken into account for purposes of determining the Pension Benefit Guarantee Corporation variable rate premium imposed by the Omnibus Budget Reconciliation Act of 1987.

Several commentators requested clarification regarding the application of section 411(d)(6) to certain plan amendments providing a particular optional form of benefit, e.g., a single sum distribution form for limited periods of time. Q&A–1 of § 1.411(d)–4 is revised to address an issue raised by such amendments under section 411(d)(6). In particular, Q&A–1 notes that certain patterns of such plan amendments may result in section 411(d)(6) protected benefits.

In addition, in response to several commentators, new Q&As–2 and 3 are included to provide guidance for situations in which certain section 411(d)(6) protected benefits may be eliminated outside the scope of the transitional rule provided in these regulations. Q&A–2 provides general guidance on the elimination or reduction of such benefits and specifically addresses certain situations, including mergers, transfers, benefit annuitization and similar situations; distribution options in cash or employer stock; amendments to conform to statutory requirements; amendments to eliminate certain optional survivor payment percentages provided in joint and survivor annuity distribution options; and certain other amendments eliminating or reducing particular optional forms of benefit in specific circumstances. Q&A–2 also addresses the effect of the selection of a particular optional form of benefit and provides an example of this concept in the context of a terminating plan in paragraph (a)(2). It is anticipated that similar concepts will be applied in interpreting the requirements of section 401(a)(2). In addition, Q&A–2 addresses the extent to which employee stock ownership plans (ESOPS) and non-ESOP stock bonus plans are excepted from the section 411(d)(6) prohibitions against the elimination or reduction of protected benefits. In this context, to assure that the ESOP exception cannot be used to eliminate optional forms of benefit with respect to non-ESOP benefits, Q&A–2 requires, in general, that the benefits to which this exception is applied be held in an ESOP for a five year period prior to any amendment with respect to such benefits pursuant to this exception. It further provides that the Commissioner may provide additional rules and exceptions with respect to this ESOP continuity requirement. The Commissioner may exercise this authority only through the publication of revenue rulings, notices, and other documents of general applicability, rather than on an individual basis. Comments are solicited with respect to necessary or appropriate rules and exceptions. In particular, comments are solicited with respect to the appropriateness of applying the rules and exceptions provided in Q&A–18 of Notice 88–56 (with respect to the continuity of investment requirement for purposes of section 72(t)(2)(C)) for purposes of the ESOP continuity requirement for the ESOP exception in § 1.411(d)–6 Q&A–2.

Q&A–3 provides guidance on situations involving the transfer (or any other transaction having a similar effect, such as the amendment of a defined benefit plan into a defined contribution plan) of benefits between and among defined benefit plans and defined contribution plans. This Q&A clarifies that the defined benefit feature of an employee's benefit under a defined benefit plan and the separate account feature of an employee's benefit under a defined contribution plan are section 411(d)(6) protected benefits. Thus, such features may not be eliminated with respect to benefits already accrued. However, the Q&A clarifies that a plan may permit an employee to elect to have his benefit transferred if the plan is permitted at such time to make benefits available for distribution to such individual. Of course, in such case, the employer may not require a transfer, but

must permit an employee to reject the transfer option and to preserve all of his section 411(d)(6) protected benefits accrued under the plan. This regulation does not address the transition rule requirements of section 1112 of TRA '86 which provisions may restrict the amount of benefits that may be transferred from a plan that would fail to satisfy the requirements of section 401(a)(26).

With the publication of these regulations, the suspension imposed in determination and examination cases which involve transfers from defined benefit plans to defined contribution plans will be lifted to the extent such transfers involve transactions addressed by these regulations that do not include a transfer of excess assets. These cases will be processed in accordance with the relevant positions of these regulations and plan sponsors will be provided the opportunity, if applicable, to make timely plan amendments. No inference is intended as to the implications of these transactions under Title I or IV of ERISA. Plan administrators who have a ruling request in suspension due to the study of transfer issues but believe that their request should now be released from suspense should contact the appropriate Key District Office.

Both Q&A–2 and Q&A–3 include a delegation of authority to the Commissioner to permit the elimination of certain optional forms of benefit without the plan being treated as violating section 411(d)(6). The Commissioner may exercise this authority only through the publication of revenue rulings, notices, and other documents of general applicability, rather than on an individual basis.

The final regulations continue to provide that a pension plan does not satisfy the definitely determinable requirement of section 401(a), including section 401(a)(25), if any section 411(d)(6) protected benefit is conditioned on employer discretion. (The term "discretion" refers to both consent and other forms of discretion.) Of course, the definitely determinable requirement is not limited to section 411(d)(6) protected benefits under pension plans. The final regulations also continue to provide that section 411(d)(6) prohibits any qualified plan, including any profit-sharing or stock bonus plan that is not subject to the definitely determinable benefit requirement, from containing such employer discretion provisions with respect to section 411(d)(6) protected benefits. Not only do such provisions raise concerns about discrimination under section 401(a)(4), but these provisions effectively enable an employer to eliminate or reduce a section 411(d)(6) protected benefit. Of course, a one-time increase in the normal retirement benefit, that is contingent on an event with independent and substantial business significance (for example, the cessation of operations at a particular facility), is not treated as violative of section 411(d)(6) merely because the event is within the control of the employer.

The final regulations clarify that a qualified plan may condition the availability of a section 411(d)(6) protected benefit on satisfaction of objective, nondiscretionary, and clearly ascertainable criteria specifically set forth in the plan. For example, a plan may limit the availability of a particular section 411(d)(6) protected benefit to those employees who meet objective standards, consistently applied, with respect to the insurability of the employee or the existence of extreme financial need. The prohibition against the exercise of employer discretion is not violated where the employer reasonably and consistently applies such objective and clearly ascertainable criteria.

Q&A–6 (formerly Q&A–5) of § 1.411(d)–4 is revised to state affirmatively that any objective criteria imposed upon the availability of an optional form of benefit must not be discriminatory in form or operation.

Other changes in style and organization have been made in order to improve clarity and resolve areas that commentators have noted as being ambiguous.

Plan Amendments

Employers with plans that condition the availability of section 411(d)(6) protected benefits on employer discretion or on a discriminatory condition must eliminate (a) employer discretion provisions applicable to the availability of section 411(d)(6) protected benefits, and (b) other conditions that discriminate impermissibly with respect to optional forms of benefit. Alternatively, prior to the transitional period effective date with respect to such plan, and employer may eliminate optional forms of benefit (including early or late retirement benefits) and retirement-type subsidies that are subject to discretion provisions or other conditions that discriminate. In addition, existing plans that contain conditions applicable to an optional form of benefit that may reasonably be expected to discriminate may be amended to eliminate either such conditions or the optional form of benefit subject to such conditions. For purposes of these regulations, a condition may reasonably be expected to discriminate if it results in a significant possibility that discrimination will result in operation. Thus, this rule does not require a determination that the condition does or is more likely than not to result in discrimination. The determination of whether a condition may reasonably be expected to discriminate for purposes of these plan amendment rules must be made on the basis of the seventy percent test of section 410(b)(1)(A) or the nondiscriminatory classification test of section 410(b)(1)(B) as such tests exist prior to the effective date of the amendments made to section 410(b) by section 1112(a) of TRA '86. Thus, a condition may not reasonably be expected to discriminate for purposes of these rules merely because it results in a significant possibility that discrimination will result because of the amendments made to section 410(b) by section 1112(a) of TRA '86. A condition that may be disregarded in determining the availability of optional forms of benefit, such as a condition requiring termination of employment or disability, may not reasonably be expected to discriminate. Similarly, conditions imposing age or service requirements may not reasonably be expected to discriminate. Plans may not be amended to add conditions that result in a restriction of the availability of an optional form of benefit provided under the plan with respect to benefits accrued prior to such amendment.

In response to comments, the final regulations also provide that, in lieu of eliminating the particular optional form of benefit or retirement-type subsidy, the employer may substitute nondiscriminatory objective criteria meeting the standards set forth in Q&A–6 of § 1.411(d)–4 for employer discretion or a discriminatory condition to which such benefit is subject.

Effective Dates of This Regulation

Many commentators requested that the effective dates for compliance with these regulations be extended and, in particular, that the time period for making any necessary amendment to plans affected by these regulations be amended to conform to the dates for making plan amendments required by section 1140 of TRA '86. In response to these comments, the effective date provisions of these regulations have been amended in four primary respects.

First, the effective dates for compliance with these regulations have been revised. The revised effective date

rules applicable to section 401(a)(4) are set forth in § 1.401(a)–4 Q&A–6 and those applicable to section 411(d)(6) are set forth in § 1.411(d)–4 Q&A–9. With respect to existing plans (as defined in these regulations), the revised effective dates include an extension providing that the applicable effective date is the first day of the first plan year commencing on or after January 1, 1989.

Second, the effective date is extended for new plans (as defined in these regulations) that contain provisions with respect to the availability of benefits that violate the requirements of these regulations, which plans receive a favorable determination letter pursuant to an application filed before July 11, 1988. Such new plans are treated as existing plans in determining the applicable effective date.

Third, these regulations have been amended to provide that, subject to certain conditions, existing plans and certain new plans that are treated as existing pans may defer plan amendments until the date for amending plans to comply with the requirements of section 410(b) as amended by TRA '86 (in general the first plan year commencing on or after January 1, 1989). The availability of this delayed amendment date is conditioned on compliance with the following requirements: (1) selection by the plan sponsor of one of the amendment alternatives permitted under the transitional rules set forth in these regulations by no later than the effective date for the plan as set forth in these regulations; (2) operational compliance with such selected amendment alternatives commencing as of such effective date; and (3) amendment by the delayed amendment date that, when made, is both consistent with the selected amendment as evidenced by plan practice and retroactive to the date by which the plan is required to comply with these regulations in operation.

The provisions of Notice 87–57, 1987–35 I.R.B. 10, with respect to the application of the section 1140 effective date for TRA '86 amendments to certain terminated plans are applicable to plans otherwise eligible for a deferred effective date for amendments under these sections. Thus, a plan terminating on or after the first day of the first plan year beginning after December 31, 1988, which plan is an existing plan or a new plan treated as an existing plan, and which plan is eligible to defer amendments required by this regulation to the date for making amendments required by TRA '86, must be amended no later than plan termination to comply with the provisions of these sections. However, such a plan is not required to be amended to comply with the provisions of these sections in the event that termination occurs on or before the first day of the 1989 plan year.

Finally, the effective dates have been extended for certain plans that are adoptions of master and prototype plans.

Title I of ERISA

The regulations under section 411 are also applicable to provisions of Title I. Thus, these requirements also apply to employee plans subject to Title I of ERISA. Under section 101 of Reorganization Plan No. 4 of 1978 [43 FR 47713], the Secretary of the Treasury has jurisdiction over the subject matter addressed in these regulations. Therefore, under section 104 of the Reorganization Plan, these regulations apply when the Secretary of Labor exercises authority under Title I of ERISA.

Special Analyses

The Commissioner of Internal Revenue has determined that this is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although a notice of proposed rulemaking was issued, the Internal Revenue Service concluded that the notice and public procedure requirements of 5 U.S.C. 533 did not apply because the rules provided herein are interpretative. Accordingly, these final regulations do not constitute regulation's subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Nancy J. Marks of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

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List of Subjects in 26 CFR 1.401–1–1.425–1

Income taxes, Employee benefit plans, Pensions, Stock options, Individual retirement accounts, Employee stock ownership plans.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

Authority: 26 U.S.C. 7805. * * * Section 1.411(d)–4 also issued under 26 U.S.C. 411(d)(6).

Par. 2. A new § 1.401(a)–4 is added immediately after § 1.401(a)–2 to read as follows:

§ 1.401(a)–4 Optional forms of benefit.

Q–1: How does section 401(a)(4) apply to optional forms of benefits?

A–1: (a) *In general.*—(1) *Scope.* The nondiscrimination requirements of section 401(a)(4) apply to the amount of contributions or benefits, optional forms of benefit, and other benefits, rights and features (e.g., actuarial assumptions, methods of benefit calculation, loans, social security supplements, and disability benefits) under a plan. This section addresses the application of section 401(a)(4) only to optional forms of benefit under a plan. Generally, the determination of whether an optional form is nondiscriminatory under section 401(a)(4) is made by reference to the availability of such optional form, and not by reference to the utilization or actual receipt of such optional form. See Q&A–2 of this section. Even though an optional form of benefit under a plan may be nondiscriminatory under section 401(a)(4) and this § 1.401(a)–4 because the availability of such optional form does not impermissibly favor employees in the highly compensated group, such plan may fail to satisfy section 401(a)(4) with respect to the amount of contributions or benefits or with respect to other benefits, rights and features if, for example, the method of calculation or the amount or value of benefits payable under such optional form impermissibly favors the highly compensated group. See § 1.411(d)–4, Q&A–1 for the definition of "optional form of benefit."

(2) *Nondiscrimination requirements.* Each optional form of benefit provided under a plan is subject to the nondiscrimination requirement of section 401(a)(4) and thus the availability of each optional form of benefit must not discriminate in favor of the employees described in section 401(a)(4) in whose favor discrimination is prohibited (the "highly compensated group"). See paragraph (b) of this Q&A–1 for a description of the employees included in such group. This is true without regard to whether a particular optional form of benefit is the actuarial equivalent of any other optional form of benefit under the plan. Thus, for example, a plan may not condition, or otherwise limit, the availability of a single sum distribution of an employee's benefit in a manner that impermissibly favors the highly compensated group.

(b) *Highly compensated group.* For plan years commencing prior to the applicable effective date for the amendment made to section 401(a)(4) by section 1114 of the Tax Reform Act of 1986 (TRA '86), the highly compensated group consists of those employees who are officers, shareholders, or highly compensated. For plan years beginning on or after the applicable effective date of the amendments to section 401(a)(4) made by TRA '86, the highly compensated group consists of those employees who are highly compensated within the meaning of section 414(q). The amendment to section 401(a)(4) made by section 1114 of TRA '86 is generally effective for plan years commencing after December 31, 1988. See section 1114(a) of TRA '86.

Q–2: How is it determined whether an optional form of benefit satisfies the nondiscrimination requirements of section 401(a)(4)?

A–2: (a) *Nondiscrimination requirement.*—(1) *In general.* An optional form of benefit under a plan is nondiscriminatory under section 401(a)(4) only if the requirements of paragraphs (a)(2) and (a)(3) of this Q&A–2 are satisfied with respect to such optional form. The determination of whether an optional form of benefit satisfies these requirements is made by reference to the availability of the optional form, and not by reference to the utilization or actual receipt of such optional form. Thus, an optional form of benefit that satisfies the requirements of paragraphs (a)(2) and (a)(3) of this Q&A–2 is nondiscriminatory under section 401(a)(2) even though the highly compensated group disproportionately utilizes such optional form. However, the composition of the group of employees who actually receive benefits in an optional form may be relevant in determining whether such optional form satisfies the requirement of paragraph (a)(3) of this Q&A–2 with respect to effective availability.

(2) *Current availability*—(i) *Plan years prior to TRA '86 effective date.* Except as provided in paragraph (a)(2)(iii) of this Q&A–2, for plan years prior to the effective date of the amendments made to section 401(b) by section 1112(a) of TRA '86, the requirement of this paragraph (a)(2) is satisfied only if the group of employees to whom the optional form is currently available satisfies either the seventy percent test of section 410(b)(1)(A) or the nondiscriminatory classification test of section 410(b)(1)(B).

(ii) *Plan years commencing on or after TRA '86 effective date*—(A) *In general.* Except as provided in paragraph (a)(2)(iii) of this Q&A–2, for plan years commencing on or after the effective date for the amendments made to section 410(b) by section 1112(a) of TRA '86, the requirement of this paragraph (a)(2) is satisfied only if the group of employees to whom the optional form is currently available satisfies either the percentage test set forth in section 410(b)(1)(A), the ratio test set forth in section 410(b)(1)(B), or the nondiscriminatory classification test set forth in section 410(b)(2)(A)(i) (and, in such case, the average benefit percentage test in section 410(b)(2)(A)(ii) is satisfied with respect to the employer).

(B) *Example.* In 1990, employer X maintains a defined benefit plan and a profit-sharing plan that is a qualified cash or deferred arrangement under section 401(k). Both plans satisfy the percentage test in section 410(b)(1)(A) with respect to coverage. The defined benefit plan provides for a single sum distribution available only to employees in the headquarters office. This group of employees fails the percentage and ratio tests of section 410(b), but satisfies the nondiscriminatory classification test set forth in section 410(b)(2)(A)(i). However, the employer does not satisfy the average benefit percentage test in section 401(b)(2)(A)(ii). Therefore, the current availability of the optional form of benefit does not satisfy the requirement of this paragraph (a)(2).

(iii) *Special rule for certain governmental or church plans.* Plans described in section 410(c) will be treated as satisfying the current availability test of this paragraph (a)(2) if the group of employees with respect to whom the optional form is currently available satisfies the requirements of section 401(a)(3) as in effect on September 1, 1974.

(iv) *Effective data for TRA '86 amendments to section 410(b).* The amendments to section 410(b) made by section 1112(a) of TRA '86 are generally effective for plan years commencing after December 31, 1988. See section 1112(e)(1) of TRA '86.

(v) *Elimination of optional forms*—(A) *In general.* Notwithstanding paragraphs (a)(2)(i) and (a)(2)(ii) of this Q&A–2, in the case of an optional form of benefit that has been eliminated under a plan with respect to specified employees for benefits accrued after the later of the eliminating amendment's adoption date or effective date, the determination of whether such optional form satisfies this paragraph (a)(2) with respect to such employees is to be made immediately

prior to the elimination. Accordingly, if, as of the later of the adoption date or effective date of an amendment eliminating an optional form with respect to future benefit accruals, the current availability of such optional form immediately prior to such amendment satisfies this paragraph (a)(2), then the optional form will be treated as satisfying this paragraph (a)(2) for all subsequent years.

(B) *Example.* A profit-sharing plan that provides for a single sum distribution available to all employees on termination of employment is amended January 1, 1990, to eliminate such single sum optional form of benefit with respect to benefits accrued after January 1, 1991. As of January 1, 1991, the single sum optional form of benefit is available to a group of employees that satisfies the percentage test of section 410(b)(1)(A). As of January 1, 1995, all nonhighly compensated employees who were entitled to the single sum optional form of benefit have terminated from employment with the employer and taken a distribution of their benefits. The only remaining employees who have a right to take a portion of their benefits in the form of a single sum distribution on termination of employment are highly compensated employees. Because the availability of the single sum optional form of benefit satisfied the current availability test as of January 1, 1991, the availability of such optional form of benefit is deemed to continue to satisfy the current availability test of this paragraph (a)(2).

(3) *Effective availability*—(i) *In general.* The requirement of this paragraph (a)(3) is satisfied only if, based on the facts and circumstances, the group of employees to whom the optional form is effectively available does not substantially favor the highly compensated group. This is the case even if the optional form is, or has been, currently available to a group of employees that satisfies the applicable requirements in paragraph (a)(2) (i) or (ii) of this Q&A–2.

(ii) *Examples.* The provisions of paragraph (a)(3)(i) of this Q&A–2 can be illustrated by the following examples:

Example 1. Employer X maintains a defined benefit plan that covers both of the 2 highly compensated employees of the employer and 8 of the twelve nonhighly compensated employees of the employer. Plan X provides for a normal retirement benefit payable as an annuity and based on a normal retirement age of 65, and an early retirement benefit payable upon termination in the form of an annuity to employees who terminate from service with the employer on or after age 55 with 30 or more years of service. Each of the 2 employees of employer X who are in the highly compensated group currently meet the age and service requirement, or will have 30 years of service by the time they reach age 55. All but 2 of the 8 nonhighly compensated employees of employer X who are covered by the plan were hired on or after age 35 and thus, cannot qualify for the early retirement benefit provision. Even though the group of employees to whom the early retirement benefit is currently available does not impermissibly favor the highly compensated group by reason of disregarding age and service, these facts and circumstances indicate that the effective availability of the early retirement benefit in plan X substantially favors the highly compensated group.

Example 2. Assume the same facts as in *Example 1* except that the early retirement benefit is added by a plan amendment first adopted, announced and effective December 1, 1991, and is available only to employees who terminate from employment with the employer prior to December 15, 1991. Further assume that all employees were hired prior to attaining age 25, and that the group of employees who have, or will have attained age 55 with 30 years of service, by December 15, 1991, satisfies the ratio test of section 410(b)(1)(B). Finally, assume that the only employees who terminate from employment with the employer during the two week period in which the early retirement benefit is available are employees in the highly compensated group. These facts and circumstances indicate that the effective availability of the early retirement benefit substantially favors the highly compensated group. This is the case even though the limitation of the early retirement benefit to a specified period satisfies section 411(d)(6).

Example 3. Employer Y amends plan Y on June 30, 1990, to provide for a single sum distribution for employees who terminate from employment with the employer after June 30, 1990, and prior to January 1, 1991. The availability of this single sum distribution is conditioned on the employee having a particular disability at the time of termination of employment. The only employee of the employer who meets this disability requirement at the time of the amendment and thereafter through December 31, 1990, is a highly compensated employee. Generally, a disability condition with respect to the availability of a single sum distribution may be disregarded in determining whether the current availability of such optional form of benefit is discriminatory. However, these facts and circumstances indicate that the effective availability of the optional form of benefit substantially favors the highly compensated group.

Example 4. Employer Z maintains a money purchase pension plan that covers all employees of the employer. The plan provides for distribution in the form of a joint and survivor annuity, a life annuity, or equal installments over 10 years. During the 1992 calendar year the employer winds up his business. In December of 1992, only two employees remain in the employment of the employer, both of whom are highly compensated. Employer Z then amends the plan to provide for a single sum distribution to employees who terminate from employment on or after the date of the amendment. Both highly compensated employees terminate from employment on December 31, 1992, taking a single sum distribution of their benefits. These facts and circumstances indicate that the effective availability of the single sum optional form of benefit substantially favors the highly compensated group.

(b) *Application of tests*—(1) *Current availability*—(i) *In general.* Except as otherwise provided in this paragraph (b), in determining whether an optional form of benefit that is subject to specified eligibility conditions is currently available to an employee for purposes of paragraph (a) of this Q&A–2, the determination of current availability generally is to be based on the current facts and circumstances with respect to the employee (e.g., the employee's current compensation or the employee's current net worth). Thus, for example, the fact that an employee may, in the future, satisfy an eligibility condition generally does not cause an optional form of benefit to be treated as currently available to such employee.

(ii) *Exceptions for age, service, employment termination and certain other conditions*—(A) *Age and service conditions.* For purposes of applying paragraph (a)(2) of this Q&A–2, except as provided in paragraph (b)(1)(ii)(B) of this Q&A–2, an age condition, a service condition, or both are to be disregarded. For example, an employer that maintains a plan that provides for an early retirement benefit payable as an annuity for employees in division A, subject to a requirement that the employee has attained his or her 55th birthday and has at least twenty years of service with the employer, is to disregard the age and service conditions in determining the group of employees to whom the early retirement annuity benefit is currently available. Thus, the early retirement annuity benefit is treated as currently available to all employees of division A, without regard to their ages or years of service and without regard to whether they could potentially meet the age and service conditions prior to attaining the plan's normal retirement age.

(B) *Exception for certain age and service conditions.* Age and service conditions that must be satisfied within a specified period of time may not be disregarded pursuant to paragraph (b)(1)(ii)(A) of this Q&A–2. However, in determining the current availability of an optional form of benefit subject to such an age condition, service condition, or both, an employer may project the age and service of employees to the last date on which the optional form of benefit subject to the age condition or service condition (or both) is available under the plan. An employer's ability to protect age and service to the last date on which the optional form of benefit is

available under the plan is not cut off by a plan termination occurring prior to that date. Thus, for example, assume that an employer maintaining a plan that permits employees terminating from employment on or after age 55 between June 1, 1991 to May 31, 1992, to elect a single sum distribution, decides to terminate the plan on December 31, 1991. In determining the group of employees to whom the single sum optional form of benefit is currently available, this employer may project employees' ages through May 31, 1992.

(C) *Certain other conditions disregarded.* Conditions on the availability of optional forms of benefit requiring termination of employment, death, satisfaction of a specified health condition (or failure to meet such condition), disability, hardship, marital status, default on a plan loan secured by a participant's account balance, or execution of a covenant not to compete may be disregarded in determining the group of employees to whom an optional form of benefit is currently available.

(2) *Employees taken into account.* For purposes of applying paragraph (a) of this Q&A–2, the tests are to be applied on the basis of the employer's nonexcludable employees (whether or not they are participants in the plan) in the same manner as such tests would be applied in determining whether the plan providing the optional form of benefit satisfies the tests under section 410(b).

(3) *Definition of "plan".* For purposes of applying paragraph (a) of this Q&A–2, the term "plan" has the meaning that such term has for purposes of determining whether the amount of contributions or benefits and whether other benefits, rights, and features are nondiscriminatory under section 401(a)(4).

(4) *Restructuring optional forms of benefit*—(i) *In general.* For purposes of applying paragraph (a) of this Q&A–2, the availability of two or more optional forms of benefit under a plan may be tested by restructuring such benefits into two or more restructured optional forms of benefit and testing the availability of such restructured optional forms of benefit. If two or more optional forms of benefit under a plan contain both common and distinct components, such optional forms of benefit may be restructured as a single optional form of benefit comprising the common component, and one or more optional forms of benefit comprising each distinct component. Components of optional forms of benefit may be treated as common only if they are identical with respect to all characteristics taken into account under Q&A–1(b) of § 1.411(d)–4. The availability of each restructured optional form of benefit must satisfy the applicable nondiscrimination requirements of paragraph (a) of this Q&A–2.

(ii) *Example.* A profit-sharing plan covering all the employees of an employer provides a single sum distribution option upon termination from employment for all employees earning less than $50,000 and a single sum distribution option upon termination from employment after the attainment of age 55 for all employees earning $50,000 or more. These distribution options are identical in all other respects. For purposes of applying section 401(a)(4), such optional forms of benefit may be restructured into two different optional forms of benefit: (A) a single sum distribution option upon termination from employment after the attainment of age 55 for all employees (i.e., the common component), and (B) a single sum distribution option upon termination from employment before the attainment of age 55 for all employees earning less than $50,000. The availability of each of these restructured optional forms of benefit must satisfy section 401(a)(4).

(c) *Commissioner may provide additional tests.* The Commissioner may provide such additional factors, tests, and safe harbors as are necessary or appropriate for purposes of determining whether the availability of an optional form of benefit is discriminatory under section 401(a)(4). In addition, the Commissioner may provide that additional eligibility conditions not related directly or indirectly to compensation or wealth may be disregarded under paragraph (b)(1)(ii)(C) of this Q&A–2 in determining the current availability of an optional form of benefit. The Commissioner may provide such additional guidance only through the publication of revenue rulings, notices or other documents of general applicability.

Q–3: May a plan condition the availability of an optional form of benefit on employer discretion?

A–3: No. Even if the availability of an optional form of benefit that is conditioned on employer discretion satisfies the nondiscrimination requirements of section 401(a)(4), the plan providing the optional form of benefit will fail to satisfy certain other requirements of section 401(a), including, in applicable circumstances, the definitely determinable requirement of section 401(a) and the requirements of section 401(a)(25) and section 411(d)(6). See § 1.411(d)–4.

Q–4: Will a plan provision violate section 401(a)(4) merely because it requires that an employee who terminates from service with the employer receive a single sum distribution in the event that the present value of the employee's benefit is not more than $3,500, as permitted by sections 411(a)(11) and 417(e)?

A–4: No. A plan will not be treated as discriminatory under section 401(a)(4) merely because the plan mandates a single sum distribution when the present value of an employee's benefit is not more than $3,500, as permitted by sections 411(a)(11) and 417(e). This is an exception to the general principles of this section. (No similar provision exists excepting such single sum distributions from the limits on employer discretion under section 411(d)(6). See § 1.411(d)–4 Q&A–4.)

Q–5: If the availability of an optional form of benefit discriminates, or may reasonably be expected to discriminate, in favor of the highly compensated group, what acceptable alternatives exist for amending the plan without violating section 411(d)(6)?

A–5: (a) *Transitional rules*—(1) *In general.* The following rules apply for purposes of making necessary amendments to existing plans (as defined in Q&A–6 of this section) under which the availability of an optional form of benefit violates the nondiscrimination requirements of section 401(a)(4) or may reasonably be expected to violate such requirements. These transitional rules are provided under the authority of section 411(d)(6), which allows the elimination of certain optional forms of benefit if permitted by regulations, and section 7805(b).

(2) *Nondiscrimination*—(i) *In general.* The determination of whether the availability of an optional form of benefit violates section 401(a)(4) is to be made in accordance with Q&A–2 of this section. In addition, the availability of a particular optional form of benefit may reasonably be expected to violate the nondiscrimination requirements of section 401(a)(4) if, under the applicable facts and circumstances, there is a significant possibility that the current availability of such optional form of benefit will impermissibly favor the highly compensated group. This determination must be made on the basis of the seventy percent test of section 410(b)(1)(A) or the nondiscriminatory classification test of section 410(b)(1)(B) as such tests existed prior to the effective date of the amendments made to section 410(b) by section 1112(a) of TRA '86. Thus, a condition may not reasonably be expected to discriminate for purposes of these rules merely because it results in a significant possibility that discrimination will result because of the amendments made to section 410(b) by section 1112(a) of TRA '86. In addition,

the availability of an optional form of benefit may not reasonably be expected to discriminate merely because of an age or service condition that may be disregarded in determining the current availability of such optional form of benefit under paragraph (b)(1)(ii)(A) of Q&A–2 of this section. Similarly, the availability of an optional form of benefit may not reasonably be expected to discriminate merely because of an age or service condition that, after permitted projection, does not cause such optional form to fail to satisfy the requirement of this paragraph (a)(2).

(ii) *Examples.* The provisions of paragraph (a)(2)(i) of this Q&A–5 can be illustrated by the following examples:

Example (1). A plan provides that a single sum distribution option is available only to (A) employees earning $50,000 or more in the final year of employment, (B) employees who furnish evidence that they have a net worth above a certain specified amount, and (C) employees who present a letter from an accountant or attorney declaring that it is in the employee's best interest to receive a single sum distribution. Whether the availability of such optional form of benefit discriminates depends on whether it meets the requirements of Q&A–2 of this § 1.401(a)–4. However, each of the specified conditions limiting the availability of the optional form of benefit may reasonably be expected to discriminate in favor of the highly compensated group in operation because of the likelihood of a significant positive correlation between the ability to meet any of the specified conditions and membership in the highly compensated group.

Example (2). A plan limits the availability of a single sum distribution option to employees employed in one particular division of the employer's company. All the employees of the company are participants in the plan. During the 1988 plan year, the division employs individuals who represent a nondiscriminatory classification of that company's employees (under section 410(b)(1)(B) prior to the effective date of the amendments made to section 410(b) by section 1112(a) of TRA '86) and is unlikely to cease employing such a nondiscriminatory classification in the future. The availability of a single sum distribution under this plan does not result in discrimination during the 1988 plan year and may not reasonably be expected to do so.

(b) *Transitional alternatives.* If the availability of an optional form of benefit under an existing plan is discriminatory under section 401(a)(4), the plan must be amended either to eliminate the optional form of benefit or to make the availability of the optional form of benefit nondiscriminatory. For example, the availability of an optional form of benefit may be made nondiscriminatory by making such benefit available to sufficient additional employees who are not in the highly compensated group or by imposing nondiscriminatory objective criteria on its availability such that the group of employees to whom the benefit is available is nondiscriminatory. See Q&A–6 of § 1.411(d)–4 for requirements with respect to such objective criteria. If, under an exisitng plan, the availability of an optional form of benefit may reasonably be expected to discriminate, the plan may be amended in the same manner permitted where the availability of an optional form of benefit is discriminatory. See paragraph (d) of this Q&A–5 for rules limiting the period during which the availability of optional forms of benefit may be eliminated or reduced under this paragraph.

(c) *Compliance and amendment date provisions*—(1) *Operational compliance requirement.* On or before the applicable effective date for the plan (see Q&A–6 of this section), the plan sponsor must select one of the alternatives permitted under paragraph (b) of this Q&A–5 with respect to each affected optional form of benefit and the plan must be operated in accordance with this selection. This is an operational requirement and does not require a plan amendment prior to the period set forth in paragraph (c)(2) of this Q&A–5. There is no special reporting requirement under the Code or this section with respect to this selection.

(2) *Deferred amendment date.* If paragraph (c)(1) of this Q&A–5 is satisfied, a plan amendment conforming the plan to the particular alternative selected under paragraph (b) of this Q&A–5 must be adopted within the time period permitted for amending plans in order to meet the requirements of section 410(b) as amended by TRA '86. Such conforming amendment must be consistent with the sponsor's selection as reflected by plan practice during the period from the effective date to the date the amendment is adopted. Thus, for example, if an existing calendar year noncollectively bargained defined benefit plan has a single sum distribution form subject to a discriminatory condition, that was available as of January 30, 1986 (subject to such condition), and such employer makes one or more single sum distributions available on or after the first day of the first plan year commencing on or after January 1, 1989, and before the plan amendment, then such employer may not adopt a plan amendment eliminating the single sum distribution form. Instead, such employer must adopt an amendment making the distribution form available to a nondiscriminatory group of employees while retaining the availability of such distribution form with respect to the group of employees to whom the benefit is already available. Similarly, any objective criteria that are adopted as part of such amendment must be consistent with the plan practice for the applicable period prior to the amendment. A conforming amendment under this paragraph (c)(2) must be made with respect to each optional form of benefit for which such amendment is required and must be retroactive to the applicable effective date.

(d) *Limitation on transitional alternatives.* The transitional alternatives permitting the elimination or reduction of optional forms of benefit will not violate section 411(d)(6) during the period prior to the applicable effective date for the plan (see Q&A–6 of this section). After the applicable effective date, any amendment (other than one described in paragraph (c)(2) of this Q&A–5) that eliminates or reduces an optional form of benefit or imposes new objective criteria restricting the availability of such optional form of benefit will fail to qualify for the exception to section 411(d)(6) provided in this Q&A–5. This is the case without regard to whether the availability of the optional form of benefit is discriminatory or may reasonably be expected to be discriminatory.

Q–6: What are the effective dates for the rules in this section?

A–6: (a) *General effective date.* Except as otherwise provided in this section, the provisions of this section are effective January 30, 1986.

(b) *New plans*—(1) *In general.* Unless otherwise provided in paragraph (b)(2) of this Q&A–6, plans that are either adopted or made effective on or after January 30, 1986, are "new plans". With respect to such new plans, this section is effective January 30, 1986. This effective date is applicable to such plans whether or not they are collectively bargained.

(2) *Exception with respect to certain new plans.* Plans that are new plans as defined in paragraph (b)(1) of this Q&A–6, under which the availability of an optional form of benefit is discriminatory or may reasonably be expected to be discriminatory, and that receive a favorable determination letter that covered such plan provisions with respect to an application submitted prior to July 11, 1988, will be treated as existing plans with respect to such optional form of benefit for purposes of the transitional rules of this section. Thus, such plans are eligible for the compliance and amendment alternatives set forth in the transitional rule in Q&A–5 of this section.

(c) *Existing plans*—(1) *In general.* Plans that are both adopted and in effect prior to January 30, 1986, are "existing plans". In addition, new plans described in paragraph (b)(2) of this Q&A–6 are treated as existing plans with respect to certain forms of benefit. Subject to the limitations in paragraph (d) of this Q&A–6, the effective dates set forth in paragraphs (c)(2) and (c)(3) of this Q&A–6 apply to these existing plans for purposes of this section.

(2) *Existing noncollectively bargained plans.* With respect to existing noncollectively bargained plans, this section is effective for the first day of the first plan year commencing on or after January 1, 1989.

(3) *Existing collectively bargained plans.* With respect to existing collectively bargained plans, this section is effective for the later of the first day of the first plan year commencing on or after January 1, 1989, or the first day of the first plan year that the requirements of section 410(b) as amended by TRA '86 apply to such plan.

(d) *Delayed effective dates not applicable to new optional forms of benefit or conditions*—(1) *In general.* The delayed effective dates in paragraph (c) (2) and (3) of this Q&A–6 for existing plans are applicable with respect to an optional form of benefit only if both the optional form of benefit and any applicable condition either causing the availability of such optional form of benefit to be discriminatory or making it reasonable to expect that the availability of such optional form will be discriminatory were both adopted and in effect prior to January 30, 1986. If the preceding sentence is not satisfied with respect to an optional form of benefit, this section is effective with respect to such optional form of benefit as if the plan were a new plan.

(2) *Exception for certain amendments covered by a favorable determination letter.* If a condition causing the availability of an optional form of benefit to be discriminatory, or to be reasonably expected to discriminate, was adopted or made effective on or after January 30, 1986, and a favorable determination letter that covered such plan provision is or was received with respect to an application submitted before July 11, 1988, the effective date of this section with respect to such provision is the applicable effective date determined under the rules with respect to existing plans, as though such provision had been adopted and in effect prior to January 30, 1986.

(e) *Transitional rule effective date.* The transitional rule provided in Q&A–5 of this section is effective January 30, 1986.

Par. 3. A new § 1.411(d)–4 is added immediately after § 1.411(d)–3T to read as follows:

§ 1.411(d)–4 Section 411(d)(6) protected benefits.

Q–1: What are "section 411(d)(6) protected benefits"?

A–1: (a) *In general.* The term "section 411(d)(6) protected benefit" includes any benefit that is described in one or more of the following categories:

(1) Benefits described in section 411(d)(6)(A),

(2) Early retirement benefits and retirement-type subsidies described in section 411(d)(6)(B)(i), and

(3) Optional forms of benefit described in section 411(d)(6)(B)(ii).

Such benefits, to the extent they have accrued, are subject to the protection of section 411(d)(6) and, where applicable, the definitely determinable requirement of section 401(a) (including section 401(a)(25)) and cannot, therefore, be reduced, eliminated or made subject to employer discretion except to the extent permitted by regulations.

(b) *Optional forms of benefit*—(1) *In general.* An "optional form of benefit" is a distribution form with respect to an employee's benefit (described in paragraph (a)(1) and/or (a)(2) of this Q&A–1) that is available under the plan and is identical with respect to all features relating to the distribution form, including the payment schedule, timing, commencement, medium of distribution (e.g., in cash or in-kind), the portion of the benefit to which such distribution features apply and the election rights with respect to such optional forms. To the extent there are any differences in such features, the plan provides separate optional forms of benefit. Differences in amounts of benefits, methods of calculation, or values of distribution forms do not result in optional forms of benefit for purposes of this rule. However, such amounts, methods of calculation, or values may be protected benefits within section 411(d)(6)(A) and/or section 411(d)(6)(B)(i). See § 1.401(a)–4 for further discussion and examples relating to optional forms of benefits.

(2) *Examples.* The following examples illustrate the meaning of the term "optional form of benefit." Other issues, such as the requirement that the optional forms satisfy section 401(a)(4), are not addressed in these examples and no inferences are intended with respect to such requirements. Assume that the distribution forms, including those not described in these examples, provided under the plan in each of the following examples are identical in all respects not described.

Example 1. A plan permits each participant to receive his benefit under the plan as a single sum distribution; a level monthly distribution schedule over 15 years; a single life annuity; a joint and 50 percent survivor annuity; a joint and 75 percent survivor annuity; a joint and 50 percent survivor annuity with a benefit increase for the participant if the beneficiary dies before a specified date; and joint and 50 percent survivor annuity with a 10 year certain feature. Each of these benefit distribution options is an optional form of benefit (without regard to whether the values of these options are actuarially equivalent).

Example 2. A plan permits each participant to receive his benefit under the plan as a single life annuity commencing at termination from employment; a joint and 50 percent survivor annuity commencing at termination from employment; a single sum distribution that is actuarially equivalent to the single life annuity determined by using a specified interest rate (X percent) for the employees of division A; and a single sum distributions that is actuarially equivalent to the single life annuity determined by using an interst rate that is 80 percent of X percent for employees of Division B. This plan provides three optional forms of benefit. While the interest rates used to determine the single sum distributions available to the employees of Divisions A and the employees of Division B respectively differ, this difference does not result in two single sum optional forms of benefit.

Example 3. A plan permits each participant who is employed by division A to receive his benefit in a single sum distribution payable upon termination from employment and each participant who is employed by division B in a single sum distribution payable upon termination from employment on or after the attainment of age 50. This plan provides two single sum optional forms of benefit.

Example 4. A plan permits each participant to receive his benefit in a single life annuity that commences in the month after the participant's termination from employment or in a single life annuity that commences upon the completion of five consecutive one year breaks in service. These are two optional forms of benefit.

Example 5. A profit-sharing plan permits each participant who is employed by division A to receive an in-service distribution upon the satisfaction of objective criteria set forth in the plan designed to determine whether the participant has a heavy and immediate financial need, and each participant who is employed by division B to receive an in-service distribution upon the satisfaction of objective criteria set forth in the plan designed to determine whether the participant has a heavy and immediate financial need attributable to extraordinary medical expenses. These in-service distribution options are two optional forms of benefits.

Example 6. A profit-sharing plan permits each participant who is employed by division A to receive an in-service distribution up to $5,000 and each participant who is employed by division B to receive an in-service distribution of up to his total benefit. These

in-service distribution options differ as to the portion of the accrued benefit that may be distributed in a particular form and are, therefore, two optional forms of benefit.

Example 7. A profit-sharing plan provides for a single sum distribution on termination of employment. The plan is amended in 1991 to eliminate the single sum optional form of benefit with respect to benefits accrued after the date of amendment. This single sum optional form of benefit continues to be a single optional form of benefit although, over time, the percentage of various employees' accrued benefits that are potentially payable under this single sum may vary because the form is only available with respect to benefits accrued up to and including the date of the amendment.

Example 8. A profit-sharing plan permits each participant to receive a single sum distribution of his benefit in cash or in the form of a specified class of employer stock. This plan provides two single sum distribution optinal forms of benefit.

Example 9. A stock bonus plan permits each participant to receive a single sum distribution of his benefit in cash or in the form of the property in which such participant's benefit was invested prior to the distribution. This plan's single sum distribution option provides two optional forms of benefit.

Example 10. A defined benefit plan provides for an early retirement benefit payable upon termination of employment after attainment of age 55 and either after ten years of service or, if earlier, upon plan termination to employees of Division A and provides for an identical early retirement benefit payable on the same terms with the exception of payment on plan termination to employees of Division B. The plan provides for two optional forms of benefit.

Example 11. A profit-sharing plan provides for loans secured by an employee's account balance. In the event of default on such a loan, there is an execution on such account balances. Such execution is a distribution of the employee's accrued benefits under the plan. A distribution of an accrued benefit contingent on default under a plan loan secured by such accrued benefits is an optional form of benefit under the plan.

(c) *Plan terms*—(1) *General rule.* Generally, benefits described in section 411(d)(6)(A), early retirement benefits, retirement-type subsidies, and optional forms of benefit are section 411(d)(6) protected benefits only if they are provided under the terms of a plan. However, if an employer establishes a pattern of repeated plan amendments providing for similar benefits in similar situations for substantially consecutive, limited periods of time, such benefits will be treated as provided under the terms of the plan, without regard to the limited periods of time, to the extent necessary to carry out the purposes of section 411(d)(6) and, where applicable, the definitely determinable requirement of section 401(a), including section 401(a)(25). A pattern of repeated plan amendments providing that a particular optional form of benefit is available to certain named employees for a limited period of time is within the scope of this rule and may result in such optional form of benefit being treated as provided under the terms of the plan to all employees covered under the plan without regard to the limited period of time and the limited group of named employees.

(2) *Effective date.* The provisions of paragraph (c)(1)of this Q&A-1 are effective as of July 11, 1988. Thus, patterns or repeated plan amendments adopted and effective before July 11, 1988 will be disregarded in determining whether such amendments have created an ongoing optional form of benefit under the plan.

(d) *Benefits that are not section 411(d)(6) protected benefits.* the following benefits are examples of items that are not section 411(d)(6) protected benefits: (1) ancillary life insurance protection; (2) accident or health insurance benefits; (3) social security supplements described in section 411(a)(9); (4) the availability of loans (other than the distribution of an employee's accrued benefit upon default under a loan); (5) the right to make after-tax employee contributions or elective deferrals described in section 402(g)(3); (6) the right to direct investments; (7) the right to a particular form of investment (e.g., investment in employer stock or securites or investment in certain types of securities, commercial paper, or other investment media); (8) the allocation dates for contributions, forefeitures and earnings, the time for making contributions (but not the conditions for receiving an allocation of contributions or forfeitures for a plan year after such conditions have been satisfied), and the valuation dates for account balances; (9) administrative procedures for distributing benefits, such as provisions relating to the particular dates on which notices are given and by which election must be made; and (10 rights that derive from administrative and operational provisions, such as mechanical procedures for allocating investment experience among accounts in defined contribution plans.

Q–2: To what extent may section 411(d)(6) protected benefits under a plan be reduced or eliminated?

A–2: (a) *Reduction or elimination of section 411(d)(6) protected benefits*—(1) *In general.* A plan may not be amended to eliminate or reduce a section 411(d)(6) protected benefit that has already accrued, except as provided in sections 412(c)(8) and 4281, and in paragraph (b) of this Q&A–2. This is generally the case even if such elimination or reduction is contingent upon the employee's consent. However, a plan may be amended to eliminate or reduce section 411(d)(6) protected benefits with respect to benefits not yet accrued as of the later of the amendment's adoption date or effective date without violating section 411(d)(6).

(2) *Selection of optional forms of benefit*—(i) *General rule.* A plan may treat a participant as receiving his entire nonforfeitable accrued benefit under the plan if the participant receives his benefit in an optional form of benefit in an amount determined under the plan that is at least the actuarial equivalent of the employee's nonforfeitable accrued benefit payable at normal retirement age under the plan. This is true even though the participant could have elected to receive an optional form of benefit with a greater actuarial value than the value of the optional form received, such as an optional form including retirement-type subsidies, and without regard to whether such other, more valuable optional form could have commenced immediately or could have become available only upon the employee's future satisfaction of specified eligibility conditions.

(ii) *Election of an optional form.* Except as provided in paragraph (a)(2)(iii) of this Q&A–2, a plan does not violate section 411(d)(6) merely because an employee's election to receive a portion of his nonforfeitable accrued benefit in one optional form of benefit precludes the employee from receiving that portion of his benefit in another optional form of benefit. Such employee retains all 411(d)(6) protected rights with respect to the entire portion of such employee's nonforfeitable accrued benefit for which no distribution election was made. For purposes of this rule, an elective transfer of an otherwise distributable benefit is treated as the selection of an optional form of benefit. See Q&A–3 of this section.

(iii) *Buy-back rule.* Notwithstanding paragraph (a)(2)(ii) of this Q&A–2, an employee who received a distribution of his nonforfeitable benefit from a plan that is required to provide a repayment opportunity to such employee if he returns to service within the applicable period pursuant to the requirements of section 411(a)(7) and who, upon subsequent reemployment, repays the full amount of such distribution in accordance with section 411(a)(7)(C) must be reinstated in the full array of section 411(d)(6) protected benefits that existed with respect to such benefit prior to distribution.

(iv) *Examples.* The rules in this paragraph (a)(2) can be illustrated by the following examples:

Example 1. Defined benefit plan X provides, among its optional forms of benefit, for a subsidized early retirement benefit payable in the form of an annuity and available to employees who terminate from employment on or after their 55th birthdays. In addition plan X provides for a single sum distribution available on termination from employment or termination of the plan. The single sum distribution is determined on the basis of the present value of the accrued normal retirement benefit and does not take the early retirement subsidy into account. Plan X is terminated December 31, 1991. Employees U, age 47, V, age 55, and W, age 47, all continue in the service of the employer. Employees X, age 47, Y, age 55 and Z, age 47, terminate from employment with the employer during 1991. Employees U and V elect to take the single sum optional form of distribution at the time of plan termination. Employees X and Y elect to take the single sum distribution on termination from employment with the employer. The elimination of the subsidized early retirement benefit with respect to employees U, V, X and Y does not result in a violation of section 411(d)(6). This is the result even though employees U and X had not yet satisfied the conditions for the subsidized early retirement benefit. Because employees W and Z have not selected an optional form of benefit, they continue to have a 411(d)(6) protected right to the full array of section 411(d)(6) protected benefits provided under the plan, including the single sum distribution form and the subsidized early retirement benefit.

Example 2. A partially vested employee receives a single sum distribution of the present value of his entire nonforfeitable benefit on account of separation from service under a defined benefit plan providing for a repayment provision. Upon reemployment with the employer such employee makes repayment in the required amount in accordance with section 411(a)(7). Such employee may, upon subsequent termination of employment, elect to take such repaid benefits in any optional form provided under the plan as of the time of the employee's initial separation from service. If the plan was amended prior to such repayment, to eliminate the single sum optional form of benefit with respect to benefits accrued after the date of the amendment, such participant has a 411(d)(6) protected right to take distribution of the repaid benefit in the form of a single sum distribution.

(3) *Certain transactions*—(i) *Plan mergers and benefit transfers.* The prohibition against the reduction or elimination of section 411(d)(6) protected benefits already accrued applies to plan mergers, spinoffs, transfers, and transactions amending or having the effect of amending a plan or plans to transfer plan benefits. Thus, for example, if plan A, a profit-sharing plan that provides for distribution of plan benefits in annual installments over ten or twenty years, is merged with plan B, a profit-sharing plan that provides for distribution of plan benefits in annual installments over life expectancy at time of retirement, the merged plan must retain the ten or twenty year installment option for participants with respect to benefits already accrued under plan A as of the merger and the installments over life expectancy for participants with benefits already accrued under plan B. Similarly, for example, if an employee's benefit under a defined contribution plan is transferred to another defined contribution plan (whether or not of the same employer), the optional forms of benefit available with respect to the employee's benefit accrued under the transferor plan may not be eliminated or reduced except as otherwise permitted under this regulation. See Q&A–3 of this section with respect to the transfer of benefits between and among defined benefit and defined contribution plans.

(ii) *Annuity contracts*—(A) *General rule.* The protection provided by section 411(d)(6) may not be avoided by the use of annuity contracts. Thus, section 411(d)(6) protected benefits already accrued may not be eliminated or reduced merely because a plan uses annuity contracts to provide such benefits, without regard to whether the plan, a participant, or a beneficiary of a participant holds the contract or whether such annuity contracts are purchased as a result of the termination of the plan. However, to the extent that an annuity contract constitutes payment of benefits in a particular optional form elected by the participant, the plan does not violate section 411(d)(6) merely because it provides that other optional forms are no longer available with respect to such participant. See paragraph (a)(2) of this Q&A–2.

(B) *Examples.* The provisions of this paragraph (a)(3)(ii) can be illustrated by the following examples:

Example 1. A profit-sharing plan that is being terminated satisfies section 411(d)(6) only if the plan makes available to participants annuity contracts that provide for all section 411(d)(6) protected benefits under the plan that may not otherwise be reduced or eliminated pursuant to this Q&A–2. Thus, if such a plan provided for a single sum distribution upon attainment of early retirement age, and a provision for payment in the form of 10 equal annual installments, the plan would satisfy section 411(d)(6) only if the participants had the opportunity to elect to have their benefits provided under an annuity contract that provided for the same single sum distribution upon the attainment of the participant's early retirement age and the same 10 year installment optional form of benefit.

Example 2. A defined benefit plan permits each participant who separates from service on or after age 62 to receive a qualified joint and survivor annuity or a single life annuity commencing 45 days after termination from employment. For a participant who separates from service before age 62, payments under these optional forms of benefit commence 45 days after the participant's 62nd birthday. Under the plan, a participant is to elect among these optional forms of benefit during the 90-day period preceding the annuity starting date. However, during such period, a participant may defer both benefit commencement and the election of a particular benefit form to any later date, subject to section 401(a)(9). In January 1990, the employer decides to terminate the plan as of July 1, 1990. The plan will fail to satisfy section 411(d)(6) unless the optional forms of benefit provided under the plan are preserved under the annuity contract purchased on plan termination. Thus, such annuity contract must provide a participant the same optional benefit commencement rights that the plan provided. In addition, such contract must provide the same election rights with respect to such benefit options. This is the case even if, for example, in conjunction with the termination, the employer amended the plan to permit participants to elect a qualified joint and survivor annuity, single life annuity, or single sum distribution commencing on July 1, 1990.

(4) *Benefits payable to a spouse or beneficiary.* Section 411(d)(6) protected benefits may not be eliminated merely because they are payable with respect to a spouse or other beneficiary.

(b) *Section 411(d)(6) protected benefits that may be eliminated or reduced only as permitted by the Commissioner*—(1) *In general.* The Commissioner may, consistent with the provisions of this section, provide for the elimination or reduction of section 411(d)(6) protected benefits that have already accrued only to the extent that such elimination or reduction does not result in the loss to plan participants of either a valuable right or an employer-subsidized optional form of benefit where a similar optional form of benefit with a comparable subsidy is not provided or to the extent such elimination or reduction is necessary to permit compliance with other requirements of section 401(a) (e.g., sections 401(a)(4), 401(a)(9) and 415). The Commissioner may exercise this authority only through the publication of revenue rulings, notices, and other documents of general applicability.

(2) *Section 411(d)(6) protected benefits that may be eliminated or reduced.* The elimination or reduction of certain section 411(d)(6) protected benefits that have already accrued in the following situations does not violate section 411(d)(6). The rules with respect to permissible eliminations and reductions provided in this paragraph (b)(2) are effective January 30, 1986. These exceptions create no inference with respect to whether any other applicable requirements are satisfied

(for example, requirements imposed by section 401(a)(9) and section 401(a)(14)).

(i) *Change in statutory requirement.* A plan may be amended to eliminate or reduce a section 411(d)(6) protected benefit if the following three requirements are met: the amendment constitutes timely compliance with a change in law affecting plan qualification; there is an exercise of section 7805(b) relief by the Commissioner; and the elimination or reduction is made only to the extent necessary to enable the plan to continue to satisfy the requirements for qualified plans. In general, the elimination or reduction of a section 411(d)(6) protected benefit will not be treated as necessary if it is possible through other modifications to the plan (e.g., by expanding the availability of an optional form of benefit to additional employees) to satisfy the applicable qualification requirement.

(ii) *Joint and survivor annuity.* A plan that provides a range of three or more actuarially equivalent joint and survivor annuity options may be amended to eliminate any of such options, other than the options with the largest and smallest optional survivor payment percentages, even if the effect of such amendment is to change which of the options is the qualified joint and survivor annuity under section 417. Thus, for example, if a money purchase pension plan provides three joint and survivor annuity options with survivor payments of 50%, 75% and 100%, respectively, that are uniform with respect to age and are actuarially equivalent, then the employer may eliminate the option with the 75% survivor payment, even if this option had been the qualified joint and survivor annuity under the plan.

(iii) *In-kind distributions after plan termination*—(A) *In general.* If a plan includes an optional form of benefit under which benefits are distributed in specified property (other than cash), such optional form of benefit may be modified for distributions after plan termination by substituting cash for the specified property to the extent that, on plan termination, an employee has the opportunity to receive the optional form of benefit in the specified property. This exception is not available, however, if the employer that maintains the terminating plan also maintains another plan that provides an optional form of benefit in the specified property.

(B) *Example.* This paragraph (b)(2)(iii) can be illustrated by the following example:

Example. An employer maintains a stock bonus plan under which a participant, upon termination from employment, may elect to receive his benefits in a single sum distribution in employer stock. This is the only plan maintained by the employer under which distributions in employer stock are available. The employer decides to terminate the stock bonus plan. If such plan is amended to make available a single sum distribution in employer stock on plan termination, the plan will not fail section 411(d)(6) solely because the optional form of benefit providing a single sum distribution in employer stock on termination from employment is modified to provide that such distribution is available only in cash.

(iv) *Coordination with diversification requirement.* A tax credit employee stock ownership plan (as defined in section 409(a)) or an employee stock ownership plan (as defined in section 4975(e)(7)) may be amended to provide that a distribution is not available in employer securities to the extent that an employee elects to diversify benefits pursuant to section 401(a)(28).

(v) *Involuntary distributions.* A plan may be amended to provide for the involuntary distribution of an employee's benefit to the extent such involuntary distribution is permitted under sections 411(a)(11) and 417(e). Thus, for example, an involuntary distribution provision may be amended to require that an employee who terminates from employment with the employer receive a single sum distribution in the event that the present value of the employee's benefit is not more than $1,750, by substituting $3,500 for $1,750, without violating section 411(d)(6). In addition, for example, the employer may amend the plan to reduce the involuntary distribution threshold from $3,500 to any lower amount and to eliminate the involuntary single sum option for employees with benefits between $3,500 and such lower amount without violating section 411(d)(6). This rule does not permit a plan provision permitting employer discretion with respect to optional forms of benefit for employees the present value of whose benefit is less than $3,500.

(vi) *Distribution exception for certain profit-sharing plans*—(A) *In general.* If a defined contribution plan that is not subject to section 412 and does not provide for an annuity option is terminated, the plan may be amended to provide for the distribution of a participant's accrued benefit upon termination in a single sum optional form without the participant's consent. The preceding sentence does not apply if the employer maintains any other defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).

(B) *Examples.* The provisions of this paragraph (b)(2)(vi) can be illustrated by the following examples:

Example 1. Employer X maintains a defined contribution plan that is not subject to section 412. The plan provides for distribution in the form of equal installments over five years or equal installments over twenty years. X maintains no other defined contribution plans. X terminates its defined contribution plan after amending the plan to provide for the distribution of all participants' accrued benefits in the form of single sum distributions, without obtaining participant consent. Pursuant to the rule in this paragraph (b)(2)(iv), this amendment does not violate the requirements of section 411(d)(6).

Example 2. Corporations X and Y are members of controlled group employer XY. Both X and Y maintain defined contribution plans. X's plan, which is not subject to section 412, covers only employees working for X. Y's plan, which is subject to section 412, covers only employees working for Y. X terminates its defined contribution plan. Because employer XY maintains another defined contribution plan, plan X may not provide for the distribution of participants' accrued benefits upon termination without a participants' consent.

(vii) *Distribution of benefits on default of loans.* Notwithstanding that the distribution of benefits arising from an execution on an account balance used to secure a loan on which there has been a default is an optional form of benefit, a plan may be amended to eliminate or change a provision for loans, even if such loans would be secured by an employee's account balance.

(viii) *Provisions for transfer of benefits between and among defined contribution plans and defined benefit plans of the employer.* A plan may be amended to eliminate provisions permitting the transfer of benefits between and among defined contribution plans and defined benefit plans of the employer.

(ix) *De minimis change in the timing of an optional form of benefit.* A plan may be amended to modify an optional form of benefit by changing the timing of the availability of such optional form if, after the change, the optional form is available at a time that is within two months of the time such optional form was available before the amendment. To the extent the optional form of benefit is available prior to termination of employment, six months may be substituted for two months in the prior sentence. Thus, for example, a plan that makes in-service distributions available to employees once every month may be amended to make such in-service distributions available only once every six months. This exception to section 411(d)(6) relates only to the timing of the availability of the optional form of benefit. Other aspects of an optional form of benefit may not be modified and

the value of such optional form may not be reduced merely because of an amendment permitted by this exception.

(c) *Serial amendments.* A plan amendment that modifies an optional form of benefit with respect to benefits already accrued will be evaluated in light of previous amendments. Thus, for example, amendments made at different times that, when taken together, constitute the elimination or reduction of a valuable right, will be treated as the impermissible elimination or reduction of an optional form of benefit even though each amendment, considered alone, may otherwise be permissible.

(d) *ESOP and stock bonus plan exception*—(1) *In general.* Subject to the limitations in paragraph (d)(2) of this Q&A–5, a tax credit employee stock ownership plan (as defined in section 409(a)) or an employee stock ownership plan (as defined in section 4975(e)(7)) will not be treated as violating the requirements of section 411(d)(6) merely because of any of the circumstances described in paragraphs (d)(1)(i) through (d)(1)(iv) of this Q&A–2. In addition, a stock bonus plan that is not an employee stock ownership plan will not be treated as violating the requirements of section 411(d)(6) merely because of any of the circumstances described in paragraphs (d)(1)(ii) and (d)(1)(iv) of this Q&A–2.

(i) *Single sum or installment optional forms of benefit.* The employer eliminates, or retains the discretion to eliminate, with respect to all participants, a single sum optional form or installment optional form with respect to benefits that are subject to section 409(h)(1)(B), provided such elimination or retention of discretion is consistent with the distribution and payment requirements otherwise applicable to such plans (e.g., those required by section 409).

(ii) *Employer becomes substantially employee-owned.* The employer eliminates, or retains the discretion to eliminate, with respect to all participants, in cases in which the employer becomes substantially employee-owned, optional forms of benefit by substituting cash distributions for distributions in the form of employer stock with respect to benefits subject to section 409(h). This exception is available only if the employer otherwise meets the requirements of section 409(h)(2) with respect to restrictions on the ownership of outstanding employer stock.

(iii) *Employer securities become readily tradable.* The employer eliminates, or retains the discretion to eliminate, with respect to all participants, in cases in which the employer securities become readily tradable, optional forms of benefit by substituting distributions in the form of employer securities for distributions in cash with respect to benefits that are subject to section 409(h).

(iv) *Employer securities cease to be readily tradable or certain sales.* The employer eliminates, or retains the discretion to eliminate, with respect to all participants, optional forms of benefit by substituting cash distributions for distributions in the form of employer stock with respect to benefits that are subject to section 409(h) in the following circumstances:

(A) The employer stock ceases to be readily tradable;

(B) The employer stock continues to be readily tradable but there is a sale of substantially all of the stock of the employer or a sale of substantially all of the assets of a trade or business of the employer and, in either situation, the purchasing employer continues to maintain the plan.

In the situation described in paragraph (d)(1)(iv)(B) of this Q&A–2, the employer may also substitute distributions in the purchasing employer's stock for distributions in the form of employer stock of the predecessor employer.

(2) *Limitations on ESOP and stock bonus plan exceptions*—(i) *Nondiscrimination requirement.* Plan amendments and the retention and exercise of discretion permitted under the exceptions in paragraph (d)(1) must meet the nondiscrimination requirements of section 401(a)(4).

(ii) *ESOP investment requirement.* Except as provided in paragraph (d)(2)(iii) of this Q&A–2, benefits provided by employee stock ownership plans will not be eligible for the exceptions in paragraph (d)(1) of this Q&A–2 unless the benefits have been held in a tax credit employee stock ownership plan (as defined in section 409(a)) or an employee stock ownership plan (as defined in section 4975(e)(7)) subject to section 409(h) for the five-year period prior to the exercise of employer discretion or any amendment affecting such benefits and permitted under paragraph (d)(1) of this Q&A–2. For purposes of the preceding sentence, if benefits held under an employee stock ownership plan are transferred to a plan that is an employee stock ownership plan at the time of the transfer, then the consecutive periods under the transferor and transferee employee stock ownership plans may be aggregated for purposes of meeting the five-year requirement. If the benefits are held in an employer stock ownership plan throughout the entire period of their existence, and such total period of existence is less than five years, then such lesser period may be substituted for the five year requirement.

(3) *Effective date.* The provisions of this paragraph (d) are effective beginning with the first day of the first plan year commencing on or after January 1, 1989. Prior to this effective date the reduction or elimination of a section 411(d)(6) protected benefit by a tax credit employee stock ownership plan (as defined in section 409(a)) or an employee stock ownership plan (as defined in section 4975(e)(7)) will not be treated as violating the requirements of section 411(d)(6) if such reduction or elimination reflects a reasonable interpretation of the statutory language of section 411(d)(6)(C).

(4) *Additional exceptions and requirements.* The Commissioner may, in revenue rulings, notices or other documents of general applicability, prescribe such additional rules and exceptions, consistent with the purposes of this section, as may be necessary or appropriate.

Q–3 Does the transfer of benefits between and among defined benefit plans and defined contribution plans (or similar transactions) violate the requirements of section 411(d)(6)?

A–3 (a) *Transfers and similar transactions*—(1) *General rule.* Section 411(d)(6) protected benefits may not be eliminated by reason of transfer or any transaction amending or having the effect of amending a plan or plans to transfer benefits. Thus, for example, except as otherwise provided in this section, an employer who maintains a money purchase pension plan that provides for a single sum optional form of benefit may not establish another plan that does not provide for this optional form of benefit and transfer participants' account balances to such new plan.

(2) *Defined benefit feature and separate account feature.* The defined benefit feature of an employee's benefit under a defined benefit plan and the separate account feature of an employee's benefit under a defined contribution plan are section 411(d)(6) protected benefits. Thus, for example, the elimination of the defined benefit feature of an employee's benefit under a defined benefit plan, through transfer of benefits from a defined benefit plan to a defined contribution plan or plans, will violate section 411(d)(6).

(3) *Waiver prohibition.* In general, an employee may not elect to waive section 411(d)(6) protected benefits. Thus, for example, the elimination of the defined benefit feature of an employee's benefit

under a defined plan by reason of a transfer of such benefits to a defined contribution plan pursuant to an employee election, at a time when the benefit is not distributable to the employee, violates section 411(d)(6).

(b) *Elective transfers of benefits between plans*—(1) *Elective transfer.* A transfer of a participant's benefits between qualified plans that results in the elimination or reduction of section 411(d)(6) protected benefits does not violate section 411(d)(6) if the transfer meets the requirements of section 411(l) and the following requirements are met:

(i) *Voluntary election*—(A) *Participant election.* The plan from which the benefits are transferred must provide that the transfer is conditioned upon a voluntary, fully informed election by the participant to transfer such participant's benefit to another plan maintained by the employer.

(B) *Benefit retention alternative.* In making the voluntary election provided for in paragraph (b)(1)(i)(A) of this Q&A–3, the participant must have an alternative that retains such employee's section 411(d)(6) protected benefits (including all optional forms of benefit) under the plan. Thus, either of the following two requirements must be met:

(*1*) If the plan from which the benefits are transferred is terminating, the terminating plan must satisfy the requirements of section 401(a)(2) and section 411(d)(6), or

(*2*) If the plan from which the benefits are transferred is not terminating, the participant must be given the option of leaving his benefit in the ongoing plan to the extent required by section 411(a)(11) and section 417(e);

(C) *Spousal election.* If sections 401(a)(11) and 417 apply to the plan from which the benefits are transferred, the spousal consent requirements of such section must be met with respect to the transfer of benefits.

(D) *Notice requirement.* The notice requirements under section 417, requiring a written explanation with respect to an election not to receive benefits in the form of a qualified joint and survivor annuity, must be met with respect to the participant and spousal transfer election.

(ii) *Distributability of benefits.* The participant whose benefits are transferred must be eligible, under the terms of the plan from which the benefits are transferred, to receive an immediate distribution from such plan under provisions in the plan not inconsistent with section 401(a).

(iii) *Amount of benefit transferred.* The amount of the benefit transferred must equal the entire nonforfeitable accrued benefit under the plan of the participant whose benefit is being transferred, calculated to be at least the greater of the single sum distribution provided for under the plan for which the participant is eligible (if any) or the present value of the participant's accrued payable at normal retirement age and calculated by using an interest rate subject to the restrictions of section 417(e) and subject to the overall limitations imposed by section 415.

(iv) *Benefit under the transferee plan.* The participant must be fully vested in the transferred benefit in the transferee plan. In a transfer from a defined contribution plan to a defined benefit plan, the defined benefit plan must provide a minimum benefit, for each participant whose benefits are transferred, equal to the benefit, expressed as an annuity payable at normal retirement age, that is derived solely on the basis of the amount transferred with respect to such participant.

(2) *Status of elective transfer as distribution.* The transfer of benefits pursuant to the elective transfer rules of this paragraph (b) generally is to be treated as a distribution of a participant's accrued benefit under a plan for purposes of section 401(a). For example, a transfer option is an optional form of benefit under section 411(d)(6); the availability of such optional form of benefit is subject to the nondiscrimination requirements of section 401(a)(4); and the transfer is treated as a distribution subject to the cash-out rules in section 411(a)(7), the early termination requirements of section 411(d)(2) and the requirements of sections 401(a)(11) and 417. However, the transfer is not treated as a distribution for purposes of the minimum distribution requirements of section 401(a)(9).

(3) *Effective date.* The rules with respect to transfers are generally effective January 30, 1986. However, with respect to transfers from defined benefit plans to defined contribution plans and from defined contribution plans to defined benefit plans, the rules of this paragraph (b) are effective beginning August 10, 1988. On or after January 30, 1986, and prior to August 10, 1988 the transitional rules provided in paragraph (c) of this Q&A–3 are effective with respect to such transfers.

(c) *Transitional rule.* Prior to the effective date in paragraph (b)(3) of this Q&A–3, the transfer of benefits from a defined contribution plan to a defined benefit plan, or a defined benefit plan to a defined contribution plan, does not violate section 411(d)(6) solely by reason of the elimination of section 411(d)(6) protected benefits, if the benefits transferred were distributable under the plan or could have been distributable under section 401(a) and either of the following requirements are met:

(1) *Transfer exception.* The transfer satisfies the rules in paragraph (b) of this Q&A–3, or

(2) *Direct transfer.* The plan to which the benefits are to be transferred provides, or is amended to provide, for all section 411(d)(6) protected benefits provided under the transferor plan with respect to the benefits transferred (with the sole exception of the defined benefit feature of the benefit under a defined benefit plan and the defined contribution feature under a defined contribution plan); the transferred benefits are treated as held under a transferee plan for purposes of the requirements of sections 401(a)(11) and 417; the transferred amounts meet the requirements of section 414(l) with respect to the transfer of assets and liabilities, and the benefits transferred do not exceed the limitations imposed by section 415. Amendments required for purposes of satisfying this rule must be made by the date for making any amendments required for purposes of conforming the plan to the requirements of section 410(b) as amended by TRA '86. However, plans covered by this rule must comply with these requirements in operation and any required amendments must be retroactive to the date on which the benefits were transferred.

(d) *Examples.* If a transfer complying with the elective transfer rules of paragraph (b) of this Q&A–3 is made from a defined benefit plan to a profit-sharing plan that does not provide for a life annuity distribution form, the profit-sharing plan to which the benefits are transferred would not be required to provide for a qualified joint and survivor annuity with respect to the transferred benefits. If the same transfer is made under the direct transfer transitional rule of paragraph (c)(2) of this Q&A–3, the defined contribution plan is treated as a transferee plan with respect to the transferred benefits for purposes of the requirements of section 401(a)(11) and section 417. Thus, for example, if such benefits are transferred without spousal consent to a profit-sharing plan that did not previously provide for a life annuity distribution form, such plan would be required to provide for a qualified joint and survivor annuity for the participants whose benefits were transferred with respect to the transferred benefits.

Q–4: May a plan provide that the employer may, through the exercise of discretion, deny a participant a section 411(d)(6) protected benefit for which the participant is otherwise eligible?

A–4: (a) *In general.* Except as provided in paragraph (d) of Q&A–2 of this section with respect to certain employee stock ownership plans, a plan that permits the employer, either directly or indirectly, through the exercise of discretion, to deny a participant a section 411(d)(6) protected benefit provided under the plan for which the participant is otherwise eligible (but for the employer's exercise of discretion) violates the requirements of section 411(d)(6). A plan provision that makes a section 411(d)(6) protected benefit available only to those employees as the employer may designate is within the scope of this prohibition. Thus, for example, a plan provision under which only employees who are designated by the employer are eligible to receive a subsidized early retirement benefit constitutes an impermissible provision under section 411(d)(6). In addition, a pension plan that permits employer discretion to deny the availability of a section 411(d)(6) protected benefit violates the definitely determinable requirement of section 401(a), including section 401(a)(25). See § 1.401–1(b)(1)(i). This is the result even if the plan specifically limits the employer's discretion to choosing among section 411(d)(6) protected benefits, including optional forms of benefit, that are actuarially equivalent. In addition, the provisions of sections 411(a)(11) and 417(e) that allow a plan to make involuntary distributions of certain amounts are not excepted from this limitation on employer discretion. Thus, for example, a plan may not permit employer discretion with respect to whether benefits will be distributed involuntarily in the event that the present value of the employee's benefit is not more than $3,500 within the meaning of sections 411(a)(11) and 417(e). (An exception is provided for such provisions with respect to the nondiscrimination requirements of section 401(a)(4). See § 1.401(a)–4 Q&A–4.)

(b) *Exception for administrative discretion.* A plan may permit limited discretion with respect to the ministerial or mechanical administration of the plan, including the application of objective plan criteria specifically set forth in the plan. Such plan provisions do not violate the requirements of section 411(d)(6) or the definitely determinable requirement of section 401(a), including section 401(a)(25). For example, these requirements are not violated by the following provisions that permit limited administrative discretion:

(1) Commencement of benefit payments as soon as administratively feasible after a stated date or event;

(2) Employer authority to determine whether objective criteria specified in the plan (e.g., objective criteria designed to identify those employees with a heavy and immediate financial need or objective criteria designed to determine whether an employee has a permanent and total disability) have been satisfied; and

(3) Employer authority to determine, pursuant to specific guidelines set forth in the plan, whether the participant or spouse is dead or cannot be located.

Q–5: When will the exercise of discretion by some person or persons, other than the employer, be treated as employer discretion?

A–5: For purposes of applying the rules of this section and § 1.401(a)–4, the term "employer" includes plan administrator, fiduciary, trustee, actuary, independent third party, and other persons. Thus, if a plan permits any person, other than the participant (and other than the participant's spouse), the discretion to deny or limit the availability of a section 411(d)(6) protected benefit for which the employee is otherwise eligible under the plan (but for the exercise of such discretion), such plan violates the requirements of sections 401(a), including section 411(d)(6) and, where applicable, the definitely determinable requirement of section 401(a), including section 401(a)(25).

Q–6: May a plan condition the availability of a section 411(d)(6) protected benefit on the satisfaction of objective conditions that are specifically set forth in the plan?

A–6: (a) *Certain objective conditions permissible*—(1) *In general.* The availability of a section 411(d)(6) protected benefit may be limited to employees who satisfy certain objective conditions provided the conditions are ascertainable, clearly set forth in the plan and not subject to the employer's discretion except to the extent reasonably necessary to determine whether the objective conditions have been met. Also, the availability of the section 411(d)(6) protected benefit must meet the nondiscrimination requirements of section 401(a)(4). See § 1.401(a)–4.

(2) *Examples of permissible conditions.* The following examples illustrate of permissible objective conditions: a plan may deny a single sum distribution form to employees for whom life insurance is not available at standard rates as defined under the terms of the plan at the time the single sum distribution would otherwise be payable; a plan may provide that a single sum distribution is available only if the employee is in extreme financial need as defined under the terms of the plan at the time the single sum distribution would otherwise be payable; a plan my condition the availability of a single sum distribution on the execution of a covenant not to compete, provided that objective conditions with respect to the terms of such covenant and the employees and circumstances requiring execution of such covenant are set forth in the plan.

(b) *Conditions based on factors within employer's discretion generally impermissible.* A plan may not limit the availability of section 411(d)(6) protected benefits permitted under the plan on objective conditions that are within the employer's discretion. For example, the availability of section 411(d)(6) protected benefits in a plan may not be conditioned on a determination with respect to the level of the plan's funded status, because the amount of plan funding is within the employer's discretion. However, for example, although conditions based on the plan's funded status are impermissible, a plan may limit the availability of a section 411(d)(6) protected benefit (e.g., a single sum distribution) in an objective manner, such as the following:

(1) Single sum distributions of $25,000 and less are available without limit; and

(2) Single sum distributions in excess of $25,000 are available for a year only to the extent that the total amount of such single sum distributions for the year is not greater than $5,000,000; and

(3) An objective and nondiscriminatory method for determining which particular single sum distributions will not be available during a year in order for the $5,000,000 limit to be satisfied is set forth in the plan.

Q–7: May a plan be amended to add employer discretion or conditions restricting the availability of a section 411(d)(6) protected benefit?

A–7: No. The addition of employer discretion or objective conditions with respect to a section 411(d)(6) protected benefit that has already accrued violates section 411(d)(6). Also, the addition of conditions (whether or not objective) or any change to existing conditions with respect to section 411(d)(6) protected benefits that results in any further restriction violates section 411(d)(6). However, the addition of objective conditions to a section 411(d)(6) protected benefit may be made with respect to benefits accrued after the later of the adoption or effective

date of the amendment. In addition, objective conditions may be imposed on section 411(d)(6) protected benefits accrued as of the date of an amendment where permitted under the transitional rules of § 1.401(a)–4 Q&A–5 and Q&A–8 of this section. Finally, objective conditions may be imposed on section 411(d)(6) protected benefits to the extent permitted by the permissible benefit cutback provisions of Q&A–2 of this section.

Q–8: If a plan contains an impermissible employer discretion provision with respect to a section 411(d)(6) protected benefit, what acceptable alternative exist for amending the plan without violating the requirements of section 411(d)(6)?

A–8: (a) *In general.* The following rules apply for purposes of making necessary amendments to existing plans (as defined in Q&A–9 of this section) that contain discretion provisions with respect to the availability of section 411(d)(6) protected benefits that violate the requirements of section 401(a), including sections 401(a)(25) and 411(d)(6), and this section. These transitional rules are provided under the authority of section 411(d)(6) and section 7805(b).

(b) *Transitional alternatives.* If the availability of an optional forms of benefit, early or late retirement benefit, or retirement-type subsidy under an existing plan is conditioned on the exercise of employer discretion, the plan must be amended either to eliminate the optional form of benefit, early or late retirement benefit, or retirement-type subsidy to make such benefit available to all participants without limitation, or to apply objective and nondiscriminatory conditions to the availability of the optional form of benefit, early or later retirement benefit, or retirement-type subsidy. See paragraph (d) of this Q&A–8 for rules limiting the period during which section 411(d)(6) protected benefits may be eliminated or reduced under this paragraph.

(c) *Compliance and amendment date provisions*—(1) *Operational compliance requirement.* On or before the applicable effective date for the plan (as determined under Q&A–9 of this section), the plan sponsor must select one of the alternatives permitted under paragraph (b) of the Q&A–8 with respect to each affected section 411(d)(6) protected benefit and the plan must be operated in accordance with this selection. This is an operational requirement and does not require a plan amendment prior to the period set forth in paragraph (c)(2) of this Q&A–8. There are no special reporting requirements under the Code or this section with respect to this selection.

(2) *Deferred amendment date.* If paragraph (c)(1) of this Q&A–8 is satisfied, a plan amendment conforming the plan to the particular alternative selected under paragraph (b) of this Q&A–8 must be adopted within the time period permitted for amending plans in order to meet the requirements of section 410(b) as amended by TRA '86. The plan amendment to conform the plan to these regulations may be made at an earlier date. Such conforming amendment must be consistent with the sponsor's selection as reflected by plan practice during the period from the effective date to the date the amendment is adopted. Thus, for example, if any existing calendar year noncollectively bargained defined benefit plan has a single sum distribution option that is subject to employer discretion as of August 1, 1986, and such employer makes one or more single sum distributions available on or after January 1, 1989 and before the effective date by which plan amendment is required pursuant to this section, then such employer may not adopt a plan amendment eliminating the single sum distribution, but rather must adopt an amendment eliminating the discretion provision. Any objective conditions that are adopted as part of such amendment must not be inconsistent with the plan practice for the applicable period prior to the amendment. A conforming amendment under this paragraph (c)(2) must be made with respect to each section 411(d)(6) protected benefit for which such amendment is required and must be retroactive to the applicable effective date.

(d) *Limitation on transitional alternatives.* The transitional alternatives permitting the elimination or reduction of section 411(d)(6) protected benefits are only permissible until the applicable effective date for the plan (see Q&A–9 of this section). After the applicable effective date, any amendment (other than one permitted under paragraph (c)(2) of this Q&A–8) that eliminates or reduces a section 411(d)(6) protected benefit or imposes new objective conditions on the availability of such benefit will fail to qualify for the exception to section 411(d)(6) provided in this Q&A–8. This is the case without regard to whether the section 411(d)(6) protected benefit is subject to employer discretion.

Q–9: What are the applicable effective date rules for purposes of this section?

A–9: (a) *General effective date.* Except as otherwise provided in this section, the provisions of this section are effective January 30, 1986.

(b) *New plans*—(1) *In general.* Unless otherwise provided in paragraph (b)(2) of this Q&A–9, plans that are either adopted or made effective on or after August 1, 1986, are "new plans". With respect to such new plans, this section is effective August 1, 1986. This effective date is applicable to such plans whether or not they are collectively bargained.

(2) *Exception with respect to certain new plans.* Plans that are new plans as defined in paragraph (b)(1) of this Q&A–9; under which the availability of a section 411(d)(6) protected benefit is subject to employer discretion; and that receive a favorable determination letter that covered such plan provisions with respect to an application submitted prior to July 11, 1988, will be treated as existing plans with respect to such section 411(d)(6) protected benefit for purposes of the transitional rules of this section. Thus, such plans are eligible for the compliance and amendment alternatives set forth in the transitional rule in Q&A–8 of this section.

(c) *Existing plans*—(1) *In general.* Plans, including plans that are adoptions of master or prototype plans, that are both adopted and in effect prior to August 1, 1986, are "existing plans" for purposes of this section. In addition, a plan that is established after July 31, 1986, but before January 1, 1989, as an initial adoption of a master or prototype plan for which a favorable opinion letter was issued by the Service after July 18, 1985 and before January 1, 1989, will be deemed to be an existing plan for purposes of this section. See sections 4.01 and 4.02 of Rev. Proc. 84–23, 1984–1 C.B. 457, 459, for the definitions of master prototype plans. However, if such plan ceases to be covered under an opinion letter of the type described above, as a result of amendment of the plan or adoption of a new plan, prior to the first day of the first plan year beginning on or after January 1, 1989, then the effective date for such plan will be determined as though the plan were a new plan initially adopted as of the date of such amendment or adoption of a new plan. Finally, new plans described in paragraph (b)(2) of this Q&A–9 are treated as existing plans with respect to certain section 411(d)(6) protected benefits. Subject to the limitations in paragraph (c) of this Q&A–9, the effective dates set forth in paragraphs (c)(2), (c)(3), and (c)(4) of this Q&A–9 apply to these existing plans for purposes of this section:

(2) *Existing noncollectively bargained plans.* With respect to existing plans other than collectively bargained plans this section is effective for the first day

of the first plan year commencing on or after January 1, 1989.

(3) *Existing collectively bargained plans.* With respect to existing collectively bargained plans this section is effective for the later of the first day of the first plan year commencing on or after January 1, 1989, or the first day of the first plan year that the requirements of section 410(b) as amended by TRA '86 apply to such plan.

(4) *Existing master and prototype plans.* With respect to existing plans that are adoptions of master or prototype plans the effective date will be the first day of the first plan year commencing on or after January 1, 1989.

(d) *Delayed effective date not applicable to new alternatives or conditions*—(1) *In general.* The delayed effective dates in paragraphs (c)(2) and (c)(3) of this Q&A–9 for existing plans are only applicable with respect to a section 411(d)(6) protected benefit if both the section 411(d)(6) protected benefit and the condition providing employer discretion as to the availability of such benefit are both adopted and in effect prior to August 1, 1986. If the preceding sentence is not satisfied with respect to a particular section 411(d)(6) protected benefit, this section is effective with respect to such section 411(d)(6) protected benefit as if the plan were a new plan.

(2) *Addition of discretion on or after January 30, 1986.* The delayed effective dates in paragraphs (c)(2) and (c)(3) of this Q&A–9 are not available with respect to any section 411(d)(6) protected benefit if the section 411(d)(6) protected benefit was provided for in the plan prior to January 30, 1986, and the availability of such benefit was made subject to the exercise of employer discretion on or after January 30, 1986. If the conditions set forth in this paragraph are not satisfied with respect to a particular section 411(d)(6) protected benefit, this section is effective with respect to such section 411(d)(6) protected benefit as if the plan were a new plan. A limited exception is provided with respect to existing plans that provided a particular section 411(d)(6) protected benefit prior to January 30, 1986, and then amended the plan after January 30, 1986, and before August 1, 1986, to add a provision for employer discretion with respect to the availability of such benefit. Such plans are required to have been amended retroactively by December 31, 1987, to remove such provision for employer discretion, and, if the benefit made subject to such discretion was subsequently eliminated, the plan is required to have been further amended, by the same date, to retroactively reinstate the benefit.

(3) *Exception for certain amendments covered by a favorable determination letter.* If an amendment adding a section 411(d)(6) protected benefit subject to employer discretion was adopted or made effective after August 1, 1986, and the plan receives a favorable determination letter covering such provision with respect to an application for such letter made prior to July 11, 1988, then the effective date for purposes of amending such provision under the transitional rules is the applicable effective date determined under the rules with respect to existing plans.

(e) *Transitional rule effective date.* The transitional rule provided in Q&A–8 of this section is effective January 30, 1986.

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

Approved: June 14, 1988.

O. Donaldson Chapoton,
Assistant Secretary of the Treasury.

[FR Doc. 88–15482 Filed 7–8–88; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule; correction.

SUMMARY: This Notice is being published to correct inadvertent omissions of part of § 250.135 and several erroneous cross-references in 30 CFR Part 250, the Consolidated Offshore Operating Rules, as published on April 1, 1988 (53 FR 10596).

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards; telephone (703) 648–7816, (FTS) 959–7816.

SUPPLEMENTARY INFORMATION: The Minerals Management Service (MMS) inadvertently omitted a portion of paragraph (d)(2)(iv) and several portions of paragraph (d)(3) of 30 CFR 250.135 from the Consolidated Offshore Operating Rules (COOR) published in the **Federal Register** on April 1, 1988. As a consequence of this inadvertent omission, paragraphs (d)(4) and (d)(5) of § 250.135 were erroneously numbered (d)(3) and (d)(4), respectively. In addition, MMS has identified several erroneous cross-references in the COOR as published. That happened as a result of the reorganization and renumbering of some provisions in the proposed rulemaking as published in the **Federal Register** on March 18, 1986 (51 FR 9316).

The MMS is issuing this corrective amendment of 30 CFR Part 250 as a final rule effective upon publication under the authority of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) for the following reasons:

(1) The changes in the rules (revisions § 250.135 (d)(2)(iv) and (d)(3) and renumbering of paragraphs (d)(3) and (d)(4)) are determined to be "corrections" to the rules published on April 1, 1988.

(2) The revised and added final rules in 30 CFR 250.135 will read the same as they did in the proposed rulemaking (51 FR 9316), and they have already been subject to public review and comment.

(3) There was no intention to change § 250.135(d) in the final version from how it appeared in the proposed rulemaking.

(4) Renumbering paragraphs (d)(3) and (d)(4) to read (d)(4) and (d)(5), respectively, does not change the substance of the regulations.

(5) The correction of cross-references does not change the substance of the regulations in their final version from how it appeared in the proposed rulemaking.

This amendment is not a major rule for the purposes of Executive Order 12291; therefore, a regulatory impact analysis is not required. The Department of the Interior (DOI) has determined that this rule will not have a significant economic effect on small entities since offshore activities are complex undertakings generally engaged in by big enterprises that are not considered small entities.

The DOI has also determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

The information collection contained in this correction was approved by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.*

Author: This document was prepared by Mario Rivero, Offshore Rules and Operations Division, MMS.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Date: June 24, 1988.

William D. Bettenberg,

Director, Minerals Management Service.

For the reasons set forth in the preamble, 30 CFR Part 250 is amended as follows:

PART 250—[AMENDED]

1. The authority citation for Part 250 continues to read as follows:

Authority: Sec. 204, Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

§ 250.30 [Amended]

2. Section 250.30 is amended by replacing "§ 250.34(c)" in the last line with "§ 250.34(d)".

§ 250.33 [Amended]

3. In § 250.33, paragraph (b)(19)(i)(A)(*5*) is amended by replacing "paragraph (b)(18)(iv)" in the last line with "paragraph (b)(19)(iv)".

§ 250.34 [Amended]

4. In § 250.34, paragraph (b)(12)(i)(A)(*5*) is amended by replacing "paragraph (b)(9)(iv)(A)" in the last line with "paragraph (b)(12)(iv)(A)".

§ 250.45 [Amended]

5. In § 250.45, paragraph (b)(2) is amended by replacing "§§ 250.33(a)(22) or 250.34(a)(14)" in the fifth and sixth lines with "§§ 250.33(b)(19) or 250.34(b)(12)".

6. In § 250.45, paragraph (d) is amended by replacing "§§ 250.33(a)(22)(i)(A) or 250.34(a)(14)(i)(A)" in the 9th and 10th lines with "§§ 250.33(b)(19)(i)(A) or 250.34(b)(12)(i)(A)".

§ 250.46 [Amended]

7. In § 250.46, paragraph (a)(6) is amended by replacing "§ 250.33(a)(22) or 250.34(a)(14)" in the 9th and 10th lines with "§ 250.33(b)(19) or 250.34(b)(12)".

8. In § 250.46, paragraph (b) is amended by replacing "§§ 250.33(a)(22)(i)(A) or 250.34(a)(14)(i)(A)" in the seventh line with "§§ 250.33(b)(19)(i)(A) or 250.34(b)(12)(i)(A)".

§ 250.134 [Amended]

9. In § 250.134, paragraph (d)(4)(ii) is amended by replacing "§ 250.138(c)(5)" in the last line with "§ 250.136(c)(5)".

§ 250.135 [Amended]

10. In § 250.135, paragraph (d)(2)(iv) is correctly revised to read:

(iv) Where appropriate, the dynamic effects due to the cyclic nature of gust wind and cyclic loads due to vortex shedding shall be taken into account. Both the drag and lift components of loads due to vortex shedding shall be taken into account.

§ 250.135 [Amended]

11. In § 250.135, the numbering of paragraphs (d)(3) and (d)(4) is corrected to redesignate those paragraphs as (d)(4) and (d)(5), respectively.

12. In § 250.135, paragraph (d)(3) is correctly added to read:

(3) Current load information including the following:

(i) Current-induced loads on immersed members of the platform shall be accounted for by defensible methods or the results of model test or site-specific data,

(ii) The lift and drag coefficients used in the determination of current loads shall be appropriate to the current velocity and structural configuration,

(iii) Current velocity profiles used in design shall be appropriate to the installation site,

(iv) For determination of loads induced by the simultaneous occurrence of wave and current fields, the total velocity field shall be computed by defensible methods before computing the total force, and

(v) Where appropriate, flutter and load amplification due to vortex shedding shall be addressed.

§ 250.136 [Amended]

13. In § 250.136, paragraph (b)(3)(i) is amended by replacing "§ 250.134" in the second sentence with "§ 250.135".

§ 250.137 [Amended]

14. In § 250.137, paragraph (c)(3)(iv) is amended by replacing "§ 250.139(d)(1)(iv)" in the last line with "§ 250.139(d)(1)(ii)".

§ 250.141 [Amended]

15. In § 250.141, paragraph (b)(7)(iii)(D) is amended by replacing "§ 250.139(d)(1)(v)" in the first line with "§ 250.139(d)(1)(iv)".

[FR Doc. 88–15478 Filed 7–8–88; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC–349–F]

Medicare Program; Reasonable Charge Limitations

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

ACTION: Final rule.

SUMMARY: This final rule sets forth the circumstances under which HCFA will consider establishing special reasonable charge payment limits for physicians' services reimbursed under Part B of the Medicare program. The rule describes the factors that HCFA will consider and the procedures it will follow in establishing the limits.

The purpose of this rule is to bring the regulations into conformance with the provisions of section 9333 of the Omnibus Budget Reconciliation Act of 1986. As amended, the law stipulates the specific circumstances under which the Secretary may establish special reasonable charge limits for physicians' services. The rule also responds to the public comments received on the final rule with comment period that set forth the general principles for establishing special reasonable charge limits.

EFFECTIVE DATE: These regulations are effective September 9, 1988.

FOR FURTHER INFORMATION CONTACT: Ronald Wren, (301) 966–4506.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1842(b)(3) of the Social Security Act (the Act) requires that all payments under Part B of the Medicare program must be reasonable.

Reasonable charge determinations under Part B generally are based on customary and prevailing charges derived from historic charge data. The reasonable charge for a service is generally the lowest of (1) the actual charge, (2) the customary charge made by a particular supplier, or (3) the prevailing charge, which is set at the 75th percentile in the range of customary charges for similar services in the locality. For nonphysician medical services, the reasonable charge is the lowest of four factors. These include the three factors cited above and an inflation-indexed charge. An economic index limits the annual increases in prevailing charges for physicians' services.

This standard method of determining the reasonable charge for a service can, in some instances, result in payments that may not be reasonable. This may occur, for example when (1) the marketplace is not truly competitive because of a limited number of suppliers; (2) the Medicare and Medicaid programs are the primary source of payment for a service; (3) the charge involves the use of new, expensive technology for which there is not an extensive charge history; (4) the charges do not reflect changing technology or increased facility with that technology (for example, when first done, a medical procedure may require considerable skill and entail substantial risk, but becomes more routine with additional experience); (5) prevailing charges in a locality are clearly out-of-line with prevailing charges in other localities; or (6) charges are grossly in excess of acquisition or production costs.

In recognition of these circumstances, a new section 1842(b)(8) was added to the Act through the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Pub. L. 99–272, enacted April 7, 1986). Section 1842(b)(8) requires that the Secretary describe in regulations the factors to be used in determining the cases in which the application of the reasonable charge methodology results in a charge that is grossly excessive or grossly deficient. It also requires the Secretary to provide in regulations the factors to be considered in those cases in establishing a reasonable charge that is realistic and equitable.

To implement the statute, we published, on August 11, 1986, a final rule with a 60-day public comment period (51 FR 28710). The final rule amended 42 CFR 405.502 that sets forth the criteria to be used in determining reasonable charges. In accordance with section 1842(b)(8) of the Act, we specified in the final rule the circumstances under which HCFA or its Medicare Part B carriers will consider establishing special reasonable charge payment limits for services (including supplies and equipment) reimbursed under Part B of the Medicare program. The rule also described the factors that HCFA or a carrier will consider and the procedures it will follow in establishing the limits. The limits would be either an upper limit to correct a grossly excessive charge or a lower limit to correct a grossly deficient charge. In either case, the limit would be either a specific dollar amount or a special method to be used in determining the reasonable charges allowed for a particular service or category of service.

Subsequent to the publication of the final rule, section 9333 of the Omnibus Budget Reconciliation Act of 1986 (OBRA) (Pub. L. 99–509) was enacted (October 21, 1986). Section 9333 amended section 1842(b)(8) of the Act and added new paragraphs (9) and (10). As amended, the law specifies the distinct procedures under which the Secretary may establish special reasonable charge limits for physicians' services. It also provides for a limitation to the amount that nonparticipating physicians may charge for a service if a special reasonable charge limit is established for that physician service. This charge limitation is scheduled to expire for services furnished after the earlier of December 31, 1990 or one year after the date that the Secretary reports to Congress on the development of a relative scale for physicians' services.

We believe that the provision concerning special reasonable charge limits for physicians' services requires conforming changes to the regulations and, therefore, we are setting forth these changes below. However, because the regulations follow the law very closely, and we have not exercised our discretion in interpreting the law, we are not publishing a prior notice with opportunity to comment. This is consistent with the Administrative Procedure Act (5 U.S.C. 553(b)) which does not require notice and opportunity for public comment for "interpretative rules". We believe that these rules are interpretative because they merely reiterate the explicit statutory obligations and are grounded firmly in statutory language.

We are not developing implementing regulations on the provision concerning the limitation to the amount that nonparticipating physicians may charge for a service if a special reasonable charge limit is established for that physician service in view of the fact that the provision is time limited, and we consider it to be self-implementing. The methodology for establishing the limitation on nonparticipating physicians' charges set forth in the statute is very precise, and we believe that no regulations are required to interpret the provision.

The provisions of the August 11, 1986, final rule, the comments we received, our responses to those comments, and the changes we are making to conform the regulations to the new provisions of sections 1842(b) (8) and (9) of the Act are discussed below.

II. Provisions of the August 11, 1986, Final Rule

In the August 11, 1986 final rule, we revised § 405.502(a)(7) that describes the use of "other factors", rather than the standard methodology, in making a determination of inherent reasonableness. We clarified that the other factors which may be considered include the special reasonable charge limits that we described in a new paragraph (g) of § 405.502.

Under § 405.502(g), we specified that HCFA or its Medicare Part B carriers may establish reasonable charge limits for a category of service if it determines that the standard procedures for calculating reasonable charges result in grossly deficient or excessive charges.

(Note.—A category of service might contain only one particular service.)

We specified that the special limit on the reasonable charge is an upper limit to correct a grossly excessive charge or a lower limit to correct a grossly deficient charge.

Under paragraph (g), we described examples of the circumstances in which the application of the reasonable charge methodology results in either grossly excessive or deficient charges and under which HCFA or a carrier may determine the need for a special limit. We also specified the factors that HCFA or a carrier will consider in establishing the special limit.

The final rule specified that we will publish any proposed national limit as a notice in the **Federal Register** and provide an opportunity for public comments. Then, we will publish our response to those comments and our final determination in the **Federal Register.** The rule provided that each notice published in the **Federal Register** also will set forth the criteria and circumstances, if any, under which a carrier may grant an exception to the specific limit. Thus, beneficiaries and suppliers may request an exception to the limit if the criteria and circumstances for an exception, issued with the notice of the limit, are met.

We also specified that when carriers propose to use their authority to make inherent reasonableness determinations, they must inform the affected suppliers or physicians of the factors considered in establishing the limit and solicit comments. The rule provided that after evaluating the comments received, the carrier must inform the affected suppliers or physicians of any final limit established. We stated that the limit will be effective for services furnished no fewer than 30 days after the date of the carrier's notification.

III. Discussion of Comments

The August 11 final rule invited comments only on the material that concerns reasonable charge amounts that are deficient and special limits set by carriers. We received 11 timely items of correspondence. The comments were from one individual physician, one national association representing beneficiaries, one Medicare carrier, one State Medicaid agency, and State and national associations representing health care professionals. The specific comments and our responses to these comments follows:

Comment: Several commenters suggested that it was not the intent of Congress to give the Secretary or HCFA legislative authority to set national reasonable charge limits.

Response: As we explained in detail in the August 11, 1986, final rule, we believe that the regulations are completely consistent with HCFA's statutory authority.

Comment: Several commenters expressed concern that the regulation will ultimately reduce the level of care to Medicare beneficiaries.

Response: We do not belive that this regulation, which reflects congressional intent to establish a framework for setting special reasonable charge limits for health care, will constitute a lesser commitment to quality health services. The purpose of this regulation is to assure reasonable charges for physicians' services. We believe the industry will continue to provide needed care as long as Medicare charge screens are reasonable.

Comment: Several commenters expressed concern that the section of the final rule on "grossly deficient charges" is too restrictive and prejudices any determination relative to raising a deficient charge level. Specific concern was expressed about the statement in the preamble to the February 18, 1986, proposed rule (51 FR 5726) that situations in which charges are grossly deficient are virtually non-existent.

Response: This comment has been overcome by subsequent events. Section 9333 of OBRA of 1986 added section 1842(b)(8)(B) to the Act. That section sets forth specific factors to be used in determining cases in which a reasonable charge amount for a physician service is not inherently reasonable by reason of its grossly excessive or grossly deficient amount. In view of the statutory change, which applies the list of factors for grossly excessive and deficient charges, we have modified the August 11, 1986, final rule to provide identical criteria and factors to be considered in determining whether a charge is grossly excessive or grossly deficient and in establishing a limit. We have made this change for physician and nonphysician services, although the statute prescribes these factors only for physician services.

Comment: One commenter recommended that we consider the following additional circumstances in determining whether a charge is grossly deficient:

- Cases in which payment levels do not appropriately reflect the resource requirements (time, complexity, risk, overhead and production costs) required to provide the service.
- Cases in which Medicare's approved amount is at a level that is below, equal to, or nominally above the overhead costs associated with providing a service.

In reference to the first circumstance, the commenter indicated that, unlike most procedural services, time and complexity often are the most important factors in evaluating the appropriateness of payment levels for office and home visits.

The commenter also recommended that the factors to be used in establishing lower limits for grossly deficient charges should be expanded to include:

- Differences in resource requirements—HCFA or a carrier should consider differences between services in resource requirements in establishing lower and upper limits.
- Overhead data—HCFA or a carrier should establish lower prevailing charge limits for services to bring reimbursement up to a level that provides a fair return for services currently priced at a level that is below, equal to, or only nominally above average overhead costs required to perform the service.

Response: This rule implements a provision of the statute that requires consideration of resource requirements and cost data in determining whether a charge is either grossly excessive or grossly deficient and in establishing an actual limit. Furthermore, we have specifically added a "catch-all" category for other relevant factors that would encompass those enumerated by the commenter. Both of these provisions are located in this final rule at § 405.502(h)(4)(ii). Additionally, we are revising this rule at § 405.502(g)(2)(iii) to clarify that in considering costs for the purpose of establishing a limit, HCFA or a carrier may consider resource costs as well as acquisition and production costs.

While we have essentially accepted the comments offered, we want to make it clear that we do not believe that the underlying law was intended to alter any historical imbalance in charging practices that may exist between "cognitive" and "procedural" services, nor do we intend to use these regulations as a means to do so. Achieving this would probably require a major legislative overhaul of payment levels for physician services and would require development of a relative value scale (RVS) reflecting the time, complexity, risk, etc., for various services. We believe that Congress intended for the Secretary to use this authority to establish limits or grossly excessive or grossly deficient charges in a much more selective manner and not as a means of making sweeping and fundamental changes in the reasonable charge payment system. This view is supported by section 1845(e)(3) of the Act that expressly requires the Secretary to develop a resource-cost-based RVS and to report to the Congress on recommendations for the application of the scale by July 1, 1989.

In addition, we have received correspondence indicating that the nature and contents of some services (as described by HCFA's Common Procedure Coding System) has changed over time by the introduction and inclusion of new and/or additional services that previously were billed, coded and reimbursed as separate services or not provided at all. Because of these changes, it was suggested that physicians and other interested individuals be able to produce evidence that a service is paid at a grossly deficient level because it is no longer the same service upon which the historical reasonable charges are based. It is our judgment that this situation is covered by the following circumstances and factors enumerated in these final regulations:

- In making a determination that excessive or deficient charges exist, HCFA or a carrier may consider circumstances in which the charges do not reflect changing technology, increased facility with that technology, or changes in acquisition, production or supplier costs (§ 405.502(g)(1)(iv)).
- In establishing a special limit, HCFA or a carrier may consider resources (overhead, time, acquisition or production costs, complexity) required to produce a service or product (§ 405.502(g)(2)(iii)).
- In making a determination that excessive or deficient charges exist or in establishing a special limit, HCFA may make a comparison between the charges for a service and the resource costs of the service over a period of time (§ 405.502(h)(4)(ii)(B)).

Comment: Another commenter suggested that ambulance services should be excluded from inherent reasonableness determinations because some ambulance companies receive government subsidies that enable them to set charges so low that nonsubsidized companies cannot compete with them.

Response: We believe that the concept of inherent reasonableness is applicable to all services. How special limits are to be applied in a given circumstance can be addressed only in the context of a specific proposal. This is why we structured the regulations to include a notice and comment process for each proposed special limit.

Comment: One State Medicaid agency expressed concern that when Medicare carriers propose special limits, 30 days advance notice and comment period would be provided to affected physicians and suppliers but not to Medicaid agencies or their agents. Since some States use the Medicare reasonable charge in their Medicaid programs, it was suggested that any State Medicaid agency in a carrier's service area be given 30 days advance notice when special reasonable charge limits are proposed.

Response: We are revising the regulations to provide State Medicaid agencies with advance notice and the opportunity to comment on any special limit proposed by a carrier. The regulations also will require the carriers to provide the agencies with advance notice of any final limit established. These changes are found at § 405.502(g)(3) of this final rule.

IV. Provisions of this Final Rule

In order to respond to the public comments received, and to make the August 11, 1986 final rule conform to sections 1842(b) (8) and (9) of the Act, we are making the following additional changes as well as revising the paragraph headings within § 405.502 to more accurately reflect the contents of those paragraphs.

We are revising the regulations so that the list of circumstances that may result in grossly excessive charges will apply to grossly deficient charges as well. Thus, we are deleting the list of circumstances relating to grossly deficient charges at § 405.502(g)(1)(ii) and are setting forth one list at § 405.502(g)(1) that pertains to both grossly deficient and excessive charges.

We are revising § 405.502(g)(1) to specify that HCFA's determination may apply to the services of any suppliers; however, a carrier's determination may apply only to nonphysician services. This is because section 1842(b)(9)(A)(ii) of the Act requires the Secretary to publish in the **Federal Register** a notice of any proposed limit on reasonable charges for physicians' services. Since our Medicare carriers have little experience in this area and there is no procedure in place by which the carriers can publish notices in the **Federal Register**, it would be administratively burdensome for the Department to handle all the proposals for reasonable charge limits from all of Medicare's carriers. Thus, we have decided that HCFA, not the carriers, will be responsible for establishing the limits on reasonable charges for physicians' services. This means that any limit on reasonable charges for physicians' services will be national in scope.

We are revising § 405.502(g)(1) further to incorporate the provisions of section 1842(b)(8)(B)(ii) of the Act, added by OBRA. Section 1842(b)(8)(B)(ii) of the Act specifies factors that the Secretary will use in determining cases in which the standard rules for calculating reasonable charges for physicians' services result in grossly excessive or deficient charges. Although the statute specifies that these factors are to be used in determinations involving physicians' services, the factors are essentially the same as the examples currently listed at § 405.502(g)(1) that could result in a determination of a grossly excessive charge for any supplier. Thus, we decided to continue to apply the factors at paragraph (g)(1) to all suppliers, including physicians. In order to conform the regulations more closely to the statute, we are revising the language of some of the current factors and adding two additional factors specified in the statute. The two new factors that we are adding follow:

- There have been increases in charges for a service that cannot be explained by inflation or technology.
- The prevailing charges for a service are substantially higher or lower than the payments made for the service by other purchasers in the same locality.

We are revising the regulations at § 405.502(g)(2)(iii) to clarify that in considering costs for the purpose of establishing a limit, HCFA or a carrier may consider the resource costs (overhead, time, complexity, etc.) required to produce a service or a supply.

We are redesignating § 405.502(g) (3) and (4), which concern giving public notice for both the national limits set by HCFA and the carrier level limits, as § 405.502(g)(3) (i) and (ii) respectively. We are adding a new § 405.502(h)(5) concerning HCFA's public notice for limits applying to physicians' services.

Carriers will not be establishing limits on the reasonable charges for physicians' services. Thus, we are revising the current § 405.502(g)(4) (which we are redesignating as § 405.502(g)(3)) to delete the references to physicians in the provisions that require the carrier to: (1) Inform any affected suppliers or physicians of the factor considered in establishing a limit and solicit comments; and (2) inform the affected suppliers or physicians of any limit established. Also, we are revising the regulations at § 405.502(g)(4) (§ 405.502(g)(3) of this final rule) to specify that in addition to the affected suppliers, the carrier must inform State Medicaid agencies of any proposed or final special reasonable charge limits. Carriers also will be required to solicit comments from the State agencies on proposed limits.

We also are adding a new § 405.502(h) to set forth special rules that apply to physican services. In accordance with section 1842(b)(8)(C) of the Act, we are including language at § 405.502(h)(1) to specify that in determining whether to set a special reasonable charge limit for a category of physician service, HCFA also will consider the potential impact of the limit. This rule states, as does the statute, that HCFA will consider the potential impact on quality, access, beneficiary liability, assignment rates, reasonable charge reductions on unassigned claims, and participation rates of physicians.

At § 405.502(h)(2), we are adding provisions that reflect section 1842(b)(9)(A) of the Act concerning physician consultation. Under these provisions, HCFA will consult with representatives of the physicians likely to be affected by any change in the reasonable charge before making a determination that a charge is not inherently reasonable by reason of its grossly excessive or deficient amount.

At § 405.502(h)(3), we are adding provisions that reflect section 1842(b)(8)(B)(v) of the Act that requires that if special limits are established based on a comparison of prevailing charges in other localities, an adjustment may be made only if differences in practice costs have been taken into account.

At § 405.502(h)(4), we are including additional factors that must be considered when establishing a limit on physicians' services. Specifically, we are including at § 405.502(h)(4)(i) a paragraph to incorporate the provisions of section 1842(b)(8)(B)(iv) of the Act. As specified in the statute, these revised regulations state that regional differences in fees will be taken into account in establishing a special limit unless there is substantial economic

justification for a uniform fee or a uniform payment limit.

We are adding a new § 405.502(h)(4)(ii) to reflect the provisions of section 1842(b)(8)(B)(iii) of the Act that permit the Secretary to compare certain factors when establishing a limit. Thus, these final regulations provide that, in establishing the specific dollar amount or special method of the limit to be applied, HCFA may compare the charges for a category of service to the—

- Resource costs (for instance, in cases concerning physician services, factors such as the time required to provide a procedure, including pre-procedure evaluation and post-procedure follow-up; the complexity of the procedure; the training required to perform the procedure; and the risk involved in the procedure) for related services;
- Resource costs for the service over a period of time;
- Charges for the service in different geographic areas;
- Payments for the service allowed under Medicare Part B and by other payors; and
- Other relevant factors.

We are adding a new § 405.502(h)(5) and giving it the title, "Publication of national limits", and are incorporating into that paragraph the provisions of sections 1842(b)(9)(A)(ii), (B), (C), and (E) of the Act that concern giving notice when setting a special limit on the reasonble charge for a physician service. Section 1842(b)(9)(A)(ii) of the Act specifically requires the Secretary to publish a notice in the **Federal Register** of any proposal to set a limit on the reasonable charges for physicians' services. Sections 1842(b)(9) (B), (C), and (E) of the Act set forth the procedures for giving that notice.

In accordance with the statute at sections 1842(b)(9)(B) and (C) of the Act, these revised regulations state that the proposed notice that HCFA will publish in the **Federal Register** will—

- Specify the proposed charge or method to be used to determine the charge with respect to a service;
- Explain the factors and data that HCFA took into account in determining the charge or method to be used;
- Explain the potential impacts; and
- Allow no less than 60 days for public comment on the proposal.

The proposed notice, as well as the final notice, also will include the economic justification for a uniform fee or payment limit if it is proposed or established. The requirement that the proposal contain this information is found in the Act at section 1842(b)(8)(B)(iv) and the requirement concerning the final notice is found in section 1842(b)(9)(E) of the Act.

In accordance with section 1842(b)(9)(E) of the Act, these regulations require that the final notice will—

- Explain the factors and data that HCFA took into consideration; and
- Respond to the public comments and any comments made by the Physician Payment Review Commission described in section 1842 of the Act.

V. Regulatory Impact Statement

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

In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all physicians and other suppliers of medical services as small entities.

Since these regulations are required by sections 1842(b) (8) and (9) of the Act, and since the regulations merely establish the framework for determining reasonable charge limits, this rule itself will not have a direct impact on the overall economy or on small entities. As noted in the previously published proposed and final rules (51 FR 5726 and 51 FR 28710 respectively), we will include initial and final impact analyses of the specific effects on the economy and on small entities that we believe would result when we publish any limits under these rules.

For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities. We, therefore, have not prepared a regulatory flexibility analysis.

VI. Paperwork Requirements

This rule contains no information collection requirements. Consequently, it does not need to be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 405, Subpart E is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

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

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1842 (b) and (h), 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886 and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395u (b) and (h), 1395x (b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww and 1395xx).

2. In § 405.502, the introductory text for paragraph (a) is republished, paragraphs (a)(7) and (g) are revised, and a new paragraph (h) is added to read as follows:

§ 405.502 Criteria for determining reasonable charges.

(a) *Criteria.* The law allows for flexibility in the determination of reasonable charges to accommodate reimbursement to the various ways in which health services are furnished and charged for. The criteria for determining what charges are reasonable include:

* * * * *

(7) Other factors that may be found necessary and appropriate with respect to a category of service to use in judging whether the charge is inherently reasonable. This includes special reasonable charge limits (which may be either upper or lower limits) established by HCFA or a carrier if it determines that the standard rules for calculating reasonable charges set forth in this subpart result in the grossly deficient or excessive charges. The determination of these limits is described in paragraphs (g) and (h) of this section.

(g) *Determination of reasonable charges in special circumstances: General.* HCFA or a carrier may establish special reasonable charge limits for a category of service if it determines that the standard rules for calculating reasonable charges set forth in this subpart result in grossly deficient or excessive charges. The limit on the reasonable charge is an upper limit to correct a grossly excessive charge or a lower limit to correct a grossly deficient charge. The limit is either a specific dollar amount, or is based on a special method to be used in determining the reasonable charge.

(1) *Determination of excessive or deficient charges.* HCFA or a carrier may make a determination that the standard rules for calculating reasonable charges set forth in this subpart result in grossly deficient or excessive charges. HCFA's determination may apply to the services of any supplier; however, a carrier's determination may apply only to nonphysician services. Examples of the circumstances which may result in grossly deficient or excessive charges include, but are not limited to the following:

(i) The markeplace is not competitive. This includes circumstances in which the marketplace for a service is not truly competitive because a limited number of physicians perform the service.

(ii) Medicare and Medicaid are the sole or primary sources of payment for a service.

(iii) The charges involve the use of new technology for which an extensive charge history does not exist.

(iv) The charges do not reflect changing technology, increased facility with that technology, or changes in acquisition, production or supplier costs.

(v) The prevailing charges for a service in a particular locality are significantly in excess of or below prevailing charges in other comparable localities, taking into account the relative costs of furnishing the services in the different localities.

(vi) Charges are grossly lower than or in excess of acquisition or production costs.

(vii) There have been increases in charges for a service that cannot be explained by inflation or technology.

(viii) The prevailing charges for a service are substantially higher or lower than the payments made for the service by other purchasers in the same locality.

(2) *Establishing a limit.* In establishing a limit, HCFA or a carrier considers the available information that is relevant to the category of service and establishes a reasonable charge that is realistic and equitable. The factors to be considered in establishing a specific dollar amount or special method may include the following:

(i) *Price markup.* This is the relationship between the retail and wholesale prices or manufacturer's costs of a category of service. If information on a particular category of service is not available, HCFA or a carrier may consider the markup on similar services and information on general industry pricing trends.

(ii) *Differences in charges.* HCFA or a carrier may consider the differences in charges to non-Medicare and Medicare patients or to institutions and other large volume purchasers.

(iii) *Costs.* HCFA or a carrier may consider resources (overhead, time, acquisition costs, production costs, complexity, etc.) required to produce a service or a product.

(iv) *Utilization.* HCFA or a carrier may impute a reasonable rate of use for a category of service and consider unit costs based on efficient utilization.

(v) *Charges in other localities.*

(vi) *Other relevant factors.*

(3) *Notification of limits*—(i) *National limits.* When HCFA makes a determination regarding nonphysicians' services under this section, it publishes in the **Federal Register** proposed and final notices of a special reasonable charge limit before the limit is adopted. The notice sets forth in the **Federal Register** the criteria and circumstances, if any, under which a carrier may grant an exception to the limit.

(ii) *Carrier level limits.* After September 9, 1988, a carrier proposing to establish a generally applicable special reasonable charge limit must inform the affected suppliers and State Medicaid agencies of the factors considered in establishing the limit as described in paragraphs (g) (1) and (2) of this section and solicit comments. After evaluating the comments received, the carrier must inform the affected suppliers and State Medicaid agencies of any final limit established. The limit is effective for services furnished no fewer than 30 days after the date of the carrier's notification.

(h) *Determination of reasonable charges in special circumstances: Physician services.* In establishing special reasonable charge limits for a category of physician services, HCFA applies the general rules under paragraphs (g) (1) and (2) of this section and the following special rules:

(1) *Potential impact of special limit.* In determining whether to set a special reasonable charge limit for a category of physician service, HCFA considers the potential impact on quality, access, beneficiary liability, assignment rates, reasonable charge reductions on unassigned claims, and participation rates of physicians.

(2) *Physician consultation.* Before making a determination that a charge is not inherently reasonable by reason of its grossly excessive or deficient amount, HCFA consults with representatives of the physicians likely to be affected by any change in the reasonable charge.

(3) *Special limits based on comparison of charges in different localities.* HCFA takes into account differences in practice costs before basing a special limit on the comparison of prevailing charges in different localities.

(4) *Factors considered in establishing a special limit.* (i) In establishing the specific dollar amount or special method under paragraph (g)(2) of this section, HCFA takes into account regional differences in fees unless there is substantial economic justification, as described in the proposed and final notices required under paragraphs (h)(5) (i) and (ii) of this section, for a uniform fee or a uniform payment limit.

(ii) In determining that a charge is not inherently reasonable by reason of its grossly excessive or deficient amount, and in establishing the specific dollar amount or special method under paragraphs (g) (1) and (2) of this section, HCFA may compare the charge to the—

(A) Resource costs (that is, factors such as the time required to provide a procedure, including pre-procedure evaluation and post-procedure follow-up; the complexity of the procedure; the training required to perform the procedure; and the risk involved in the procedure) for related services;

(B) Resource costs for the service over a period of time;

(C) Charges for the service in different geographic areas after accounting for differences in practice costs;

(D) Payments for a service allowed under Medicare Part B and by other payors; and

(E) Other relevant factors.

(5) *Publication of national limits.* When HCFA makes a determination under this section, it publishes in the **Federal Register** proposed and final notices of a special reasonable charge limit before the limit is adopted. The notice sets forth in the **Federal Register** the criteria and circumstances, if any, under which a carrier may grant an exception to the limit.

(i) *Proposed notice.* The proposed notice—

(A) Specifies the proposed charge or methodology to be established with respect to a service;

(B) Explains the factors and data that HCFA took into account in determining the charge or methodology, including the economic justification for a uniform fee or payment limit if it is proposed;

(C) Explains the potential impacts of a limit on physicians' services as described in paragraph (h)(1) of this section; and

(D) Allows no less than 60 days for public comment on the proposal.

(ii) *Final notice.* The final notice—

(A) Explains the factors and data that HCFA took into consideration, including the economic justification for any uniform fee or payment limit established; and

(B) Responds to the public comments and any comments made by the Physician Payment Review Commission.

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: May 13, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: June 8, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-15450 Filed 7-8-88; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 85-388; FCC 88-227]

Applications To Serve Rural Service Areas

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: In a *Third Order on Reconsideration,* adopted July 6, 1988, the FCC amends Part 22 of its rules to permit certain 39 dBu contour extensions over the coastline which were previously prohibited. 39 dBu contour extensions into adjacent Rural Service Areas (RSAs), or into adjacent Metropolitan Statistical Areas (MSAs), or into New England County Metropolitan Areas (NECMAs), or into the Gulf of Mexico except to provide cellular service to the Florida Keys, are still prohibited. This action is taken on the Commission's own motion and in response to several formal and informal petitions for reconsideration and/or clarification which have shown that certain coastal areas will be extremely difficult or impossible to cover in compliance with the previous prohibition of all 39 dBu contour extensions beyond the RSA boundaries.

EFFECTIVE DATE: July 11, 1988.

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

FOR FURTHER INFORMATION CONTACT: Sari E. Greenberg, Mobile Services Division, Common Carrier Bureau; (202) 632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Order on Reconsideration* adopted July 6, 1988, and released July 6, 1988. The full text of this Commission decision 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 Services, (202) 857-8300, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Third Order on Reconsideration

1. On May 18, 1988, the Commission released a *Further Order on Reconsideration,* FCC 88-156, in this proceeding ("*Further Order*"), which amended Part 22 of the Commission's Rules governing the filing of Rural Service Area (RSA) applications. In the *Further Order,* the Commission concluded, *inter alia,* that extensions of 39 dBu contours beyond RSA boundaries would not be permitted at the application stage. The Commission concluded that this prohibition would extend to coastal areas, including the Gulf of Mexico. After the issuance of the *Further Order,* several parties filed formal and informal petitions for reconsideration and/or clarification of the Commission's policy barring 39 dBu contour extensions over the coastline. Several petitioners submitted specific engineering evidence that demonstrates that coverage of certain coastal areas in compliance with the existing rules is virtually impossible without either significantly impairing the quality of cellular service to be provided to coastal communities by moving transmitters inland, or increasing capital outlays for construction by millions of dollars. The petitioners demonstrated that certain RSAs, such as the Florida Keys, will be impossible to cover in compliance with the prohibition, even by taking the actions described above. The Commission, after consideration of the facts before it, adopted the *Third order on Reconsideration,* which amended § 22.903(a)(1) to permit 39 dBu contour extensions over the coastline in order to alleviate unnecessary burdens imposed upon applicants by the previous rules and at the same time to contribute to the increased likelihood of improved service to the public.

2. 39 dBu contour extensions over the coastline boundaries of an RSA are now permitted, except that such extensions will not be permitted into other RSAs, or any MSA, or any NECMA; or into the Gulf of Mexico, except to provide service to the Florida Keys.

3. The Commission addressed this issue on an expedited basis to clarify it for rural cellular aplicants preparing their applications for the July 13 filing date. Based on its experience in this proceeding, the Commission does not anticipate any opposition to this action. There were no pleadings opposing the petitions for reconsideration which addressed this issue prior to the *Further Order,* and none in opposition to the petitions now at hand. The absence of opposition and the persuasive evidence before the Commission has led the Commission to conclude that this amendment will eliminate a restriction which placed an undue burden on applicants.

List of Subjects in 47 CFR Part 22

Communications common carriers, Radio, Rural areas.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

Rules Section

Part 22 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for Part 22 continues to read:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303)

2. Section 22.903 is amended by revising paragraph (a)(1) to read as follows:

§ 22.903 Cellular System Service Areas.

(a) * * *

(1) *Rural Service Areas.* At the time of initial application filing, no CGSA or 39 dBu contour may extend beyond the boundaries of the Rural Service Area (RSA) into another RSA or any MSA or NECMA, or beyond the coastline of the Gulf of Mexico except to provide service to the Florida Keys. Any such initial application that has a CGSA or 39 dBu contour that extends into another RSA or MSA or NECMA, or beyond the coastline of the Gulf of Mexico will be returned as defective. An applicant may

propose multiple CGSAs within the RSA. The 75% coverage of either the land area or the population of the MSA or NECMA does not apply to RSAs. The CGSA must be drawn on one or more U.S. Geological Survey map(s) with a scale of 1:250,000. For RSAs the CGSA map need only depict the area(s) encompassed by any CGSA(s) within the RSA (and that portion of the RSA visible on the map) and must clearly depict on the face of the map the longitude, latitude and scale pursuant to § 22.2. Within the CGSA, the applicant must depict each base station site and its respective 39 dBu contour as determined by the methods described in paragraph (c) of this section. An applicant must state that the combined 39 dBu contours of all base stations will cover at least 75% of the total CGSA.

* * * * *

[FR Doc. 88-15557 Filed 7-8-88; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 86-497; DA 88-582]

47 CFR Part 65

Common Carrier Services; Amendment of Part 65 To Prescribe Components of the Rate Base and Net Income of Dominant Carriers; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects the codification and some language in § 65.820 of the Commission's final rule document in this proceeding concerning that rate base components of the dominant carriers.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: John T. Curry, Chief, Accounting Systems Branch, Accounting and Audits Division, Common Carrier Bureau, (202) 634-1861.

SUPPLEMENTARY INFORMATION: The Report and Order in this proceeding was published on January 15, 1988, 53 FR 1027.

PART 65—[CORRECTED]

The Report and Order in the above entitled proceeding (FCC 87-391, mimeo 37242) adopted December 17, 1987, released December 24, 1987, contained an error in Appendix B. The phrases "net of accumulated depreciation and amortization" and "net of accumulated amortization" should be inserted in paragraph (a) as follows (paragraph (a) is correctly added):

§ 65.820 Included items.

(a) *Telecommunications Plant.* The interstate portion of all assets summarized in Account 2001 (Telecommunications Plant in Service), Account 2002 (Property Held for Future Use), net of accumulated depreciation and amortization and Account 2003 (Telecommunication Plant Under Construction—Short Term), and to the extent such inclusions are allowed by this Commission, Account 2005 (Telecommunications Plant Adjustment), net of accumulated amortization.

Federal Communications Commission.

Gerald Brock,

Chief, Common Carrier Bureau.

[FR Doc. 88-13247 Filed 7-8-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-13; DA 88-712]

FM Radio, Television; Amendment to the Commission's Rules Concerning FM Booster Stations and Television Booster Stations

AGENCY: Federal Communication Commission.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error associated with the *Report and Order* in MM Docket No. 87-13 (52 FR 31398, August 20, 1987) as described below.

EFFECTIVE DATE: July 11, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rita S. McDonald, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Erratum* in Docket 87-13, released May 24, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857-3800, 1919 M Street NW., Room 246, Washington, DC..

Summary of Erratum

1. The Commission amends the regulatory text of its decision in Docket 87-13, to add paragraph (a)(6) to 47 CFR 73.3522, and to add paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) to 47 CFR 73.3580 as described below.

PART 73—[AMENDED]

2. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

3. 47 CFR 73.3522 is amended by adding paragraph (a)(6) to read as follows:

§ 73.3522 Amendment of applications.

(a) * * *

(6) Subject to the provisions of §§ 73.3525, 73.3573, and 73.3580, applications for non-reserved band FM stations (other than Class D stations) may be amended as a matter of right during the appropriate window filing period pursuant to § 73.3564(d). For a period of 30 days following the FCC's issuance of a Public Notice announcing the acceptance of the application for tender, minor amendments may be filed as a matter of right; provided, however, that such amendments may not correct deficiencies in the tenderability of the underlying application. Subsequent amendments prior to designation for hearing or grant will be considered only upon a showing of good cause for late filing or pursuant to § 1.65 or § 73.3514. Unauthorized or untimely amendments are subject to return by the Commission without consideration. However, an amendment to a non-reserved band application will not be accepted after the close of the appropriate filing window if the effect of such amendment is to alter the proposed facility's coverage area so as to produce a conflict with an applicant who files subsequent to the initial applicant but prior to the amendment application. Similarly, an applicant subject to "first come/first serve" processing will not be permitted to amend its application and retain filing priority if the result of such amendment is to alter the facility's coverage area so as to produce a conflict with an applicant who files subsequent to the initial applicant but prior to the amendment.

* * * * *

4. 47 CFR 73.3580 is amended by adding paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) to read as follows:

§ 73.3580 Local public notice of filing of broadcast applications.

* * * * *

(c) * * *

(1) *Notice requirements for these applicants are as follows.* (i) In a daily newspaper of general circulation published in the community in which the station is located, or proposed to be located, at least twice a week for two consecutive weeks in a three-week period; or,

(ii) If there is no such daily newspaper, in a weekly newspaper of general circulation published in that community, once a week for 3 consecutive weeks in a 4-week period; or,

(iii) If there is no daily or weekly newspaper published in that community, in the daily newspaper from wherever published, which has the greatest general circulation in that community, twice a week for 2 consecutive weeks within a 3-week period.

(2) *Notice requirements for applicants for a permit pursuant to section 325(b) of the Communications Act ("* * * Studios of Foreign Stations") are as follows.* In a daily newspaper of general circulation in the largest city in the principal area to be served in the U.S.A. by the foreign broadcast station, at least twice a week for 2 consecutive weeks within a three-week period.

(3) *Notice requirements for applicants for a change in station location are as follows.* In the community in which the station is located and the one in which it is proposed to be located, in a newspaper with publishing requirements as in paragraphs (c)(1)(i), (ii) or (iii) of this section.

(4) The notice required in paragraphs (c)(1), (2) and (3) of this section shall contain the information described in paragraph (f) of this section

* * * * *

Federal Communication Commission.

Alex D. Felker,

Chief, Mass Media Bureau.

[FR Doc. 88-13248 Filed 7-8-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-521; RM-6006]

Radio Broadcasting Services; Ocean Springs, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 223A to Ocean Springs, Mississippi, in response to a petition filed by Wes Yeager. In response to comments filed by Charles H. Cooper, licensee of Station WOSM(FM), Ocean Springs, we shall impose a site restriction 4.4 kilometers (2.7 miles) west on Channel 223A. The site restriction will allow Station WOSM(FM) the opportunity to upgrade its facilities from Channel 276A to Channel 276C2. The coordinates for Channel 223A are 30-24-34 and 88-52-22. With this action, this proceeding is terminated.

DATES: Effective August 12, 1988; the window period for filing applications will open on August 15, 1988, and close on September 14, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-521, adopted June 10, 1988, and released June 27, 1988. The full text of this Commission decision 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 contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Mississippi is amended by adding Channel 223A at Ocean Springs.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-15442 Filed 7-8-88; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 53, No. 132
Monday, July 11, 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 AGRICULTURE

Office of the Secretary

7 CFR Part 1d

Rural Labor; Immigration Reform and Control Act of 1986

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: Section 302 of the Immigration Reform and Control Act of 1986, Pub. L. No. 99–603, 100 Stat. 3359 (hereinafter referred to as "the Act"), established the Special Agricultural Workers program. This program provides for the adjustment in status of certain aliens who have resided in the United States and performed seasonal agricultural services for at least 90 man-days during the 12-month period ending on May 1, 1986, to that of an alien lawfully admitted for temporary residence. Section 302(a) of the Act states that "seasonal agricultural services" means "the performance of field work relating to planting, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture." This subsection requires the Secretary of Agriculture to publish regulations defining the fruits, the vegetables, and the other perishable commodities in which the field work related to planting, cultural practices, cultivating, growing and harvesting will be considered "seasonal agricultural services" for purposes of the Act. The regulations were published in the **Federal Register** on June 1, 1987, at 52 FR 20372–20376 (codified at 7 CFR Part 1d). This notice proposes to redefine the term "vegetables" and reexamines whether the commodity sugar cane meets the definition of "other perishable commodities" promulgated at 7 CFR 1d.7, in light of the decision and remand of these issues to the Secretary of Agriculture from the United States District Court for the District of Columbia in *Northwest Forest Workers Association et al.* v. *Richard E. Lyng et al.*, Civil Action No. 87–1487 (D.D.C. April 25, 1988).

DATE: Comments must be received no later than July 26, 1988.

ADDRESS: Send comments to Room 227–E, Administration Building, United States Department of Agriculture, 14th and Independence Avenue SW., Washington, DC 20250. Written comments received may be inspected in Room 227–E of the Administration Building, 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Al French, Special Assistant for Agricultural Labor to the Assistant Secretary for Economics, Room 227–E, Administration Building, United States Department of Agriculture, 14th and Independence Avenue SW., Washington, DC 20250; telephone (202) 447–4737.

SUPPLEMENTARY INFORMATION:

Background

Section 302(a) of the Act states that "seasonal agricultural services" means "the performance of field work relating to planting, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture." This subsection requires the Secretary of Agriculture to publish regulations defining the fruits, the vegetables, and the other perishable commodities in which the field work related to planting, cultural practices, cultivating, growing and harvesting will be considered "seasonal agricultural services" for purposes of the Act.

On June 1, 1987, the United States Department of Agriculture (USDA) published its final rule defining the terms "fruits," "vegetables," and "other perishable commodities," as well as several other terms that were necessary to an understanding of the definition of "fruits," "vegetables," and "other perishable commodities."

In the final rule, USDA defined the term "fruits" as "the human edible parts of plants which consist of the mature ovaries and fused other parts or structures, which develop from flowers or inflorescence." 7 CFR 1d.5. The term "vegetables" was defined as "the human edible leaves, stems, roots, or tubers of herbaceous plants." 7 CFR 1d.10. The term "other perishable commodities" was defined as "those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of seasonal field work, and have critical and unpredictable labor demands." 7 CFR 1d.7. "Critical and unpredictable labor demands" was defined to mean "that the period during which field work is to be initiated cannot be predicted with any certainty 60 days in advance of need." 7 CFR 1d.3. An exclusive list of those commodities that were determined to be subject to critical and unpredictable labor demands was provided within the definition of "other perishable commodities," as well as a list of examples of commodities that were determined not to be subject to critical and unpredictable labor demands. 7 CFR 1d.7. Sugar cane was listed as an example of a commodity that was not a fruit or vegetable and was determined to not be subject to critical and unpredictable labor demands. *Id.*

In the explanation to the proposed rule, the Secretary of stated that the terms "fruits" and "vegetables" were "defined in general botanical terms." 52 FR 13247 (April 22, 1987). The Secretary stated that the "[a]doption of a botanical definition is reasonable because of its clear scientific basis." *Id.* The Secretary noted the popular misconceptions regarding the use of the terms fruits and vegetables, quoting a discussion of these misconceptions from a botanical text, C. Wilson and W. Loomis, *Botany* (5th ed. 1971):

> Confusion beclouds the use of the terms fruit and vegetable. Many fruits, such as the tomato, squash, cucumber, corn, and eggplant are popular called vegetables. From a botanical standpoint these are fruits, and they may be distinguished from vegetables if the definition of fruits is kept in mind. A fruit always develops from a flower and is always composed of at least one ripened and mature ovary with which may be fused other parts of structures associated with the flower. Any edible part of the plant that does not conform to this definition of a fruit should be classified as a vegetable.

Id. Then, the Secretary explained that the term "human edible" was incorporated expressly within the definition of "fruits" and "vegetables" because it is clear from the context in which these definitions are discussed in the scientific literature that the reference to their being edible refers to

consumption by humans. *Id.* In addition, the Secretary explained that the human edibility requirement "comports with congressional intent, especially given the distinction drawn by Congress between fruits and vegetables as opposed to other perishable commodities." *Id.*

With respect to sugar cane, the Secretary stated in the explanation to the final rule that:

> Sugar cane is a perennial grass, not a fruit or vegetable, which is normally harvested between one to two years of growth. It is mature during most of this period. The timing of the harvest is not critical, but is scheduled over a period of several months for the efficient operation of the processing mill. On occasion, sugar cane has not been harvested during the current season and has been carried over to be harvested the following year. Harvest dates are quite predictable and may be scheduled several months in advance. Within the context of the Act, from planting to harvesting, sugar cane does not have the critical and unpredictable labor demand concerning its production as do fruits and vegetables, and other perishable commodities.

52 FR 20375 (June 1, 1987). In response to comments concerning the perishability of sugar cane after it is harvested, the Secretary distinguished the perishability of sugar cane after being harvested, noting that Congess intended the perishability of the commodities to be considered up to the point of harvesting only. *Id.* In response to comments that argued that the inclusion of sugar cane as an "other perishable commodity" is required by the legislative history of the Act, the Secretary noted that the only reference to sugar cane in the legislative history indicates that Congress did not consider sugar cane to be a perishable commodity. *Id.*

In *Northwest Forest Workers Association, et al.* v. *Richard E. Lyng, et al.*, Civil Action No. 87–1487 (D.D.C. April 25, 1988) (hereinafter *"NWFWA* v. *Lyng"*), the original plaintiffs, representing certain United States citizen workers, challenged the regulations as overly broad in that they include commodities that Congress did not intend to include in the Special Agricultural Workers program. Plaintiffs challenged the broad scientific definitions of fruits and vegetables, the Secretary's definition of "other perishable commodities" in terms of "critical and unpredictable labor demands," and the Secretary's definition of "field work."

The intervenors in this case, the sugar cane workers, challenged the regulations as being too narrow in their exclusion of sugar cane from the definition of "vegetables" and from "other perishable commodities." The intervenors challenged the inclusion of the "herbaceous" requirement within the definition of "vegetables." In the alternative, the intervenors asserted that sugar cane is herbaceous and, thus, fits within the definition of "vegetables." In addition, the intervenors maintained that sugar cane fits within the definition of "other perishable commodities," asserting that sugar cane has "critical and unpredictable labor demands," as that term is defined in the regulations.

On April 25, 1988, the United States District Court for the District of Columbia denied plaintiffs' motion for summary judgment and entered summary judgment for the defendant Lyng upon a finding that the Secretary did not arbitrarily and capriciously define "other perishable commodities." Specifically, the court found that the Secretary's definition of "other perishable commodities" in terms of "critical and unpredictable labor demands" and his choice of the 60-day bright line rule was reasonable and not arbitrary and capricious. *NWFWA* v. *Lyng*, C.A. No. 87–487, slip op. at 14 (D.D.C. April 25, 1988). The court found also that "the Secretary acted reasonably in defining 'field work'." *Id.* at 28.

The court specifically found that the Secretary was reasonable in defining fruits and vegetables in scientific terms. *Id.* at 19. The court noted that the Secretary incorporated two limiting factors to the broad scientific definition of vegetables—"human edible" and "herbaceous." The court found that the limiting factor of "human edible" was "explained adequately and extensively" in the notice of proposed rulemaking. *Id.* at 16 & n.8. The court, however, did not take note that the USDA definition of vegetables was limited also by the exclusion of fruits from the scope of the definition of "vegetables."

Thus, the court determined that while it was reasonable to adopt broad scientific definitions of fruits and vegetables, it was reasonable to apply reasonable limiting factors to those broad scientific definitions. The court, however, found that the Secretary acted arbitrarily and capriciously in failing to explain adequately the incorporation of the herbaceous requirement in the definition of "vegetables." *Id.* at 18. Therefore, the court remanded the definition of "vegetables" to USDA to conduct further proceedings in accordance with the court's memorandum opinion.

While the court upheld the USDA definition of "other perishable commodities," the court found that the Secretary arbitrarily and capriciously excluded sugar cane from the definition of "other perishable commodities," and remanded the issue to the agency for further proceedings. The court came to this conclusion based on the fact that while the administrative record contained a number of comments advocating the inclusion of sugar cane as an "other perishable commodity," the official delegated primary responsibility by the Secretary for formulating the regulations apparently relied upon his own personal knowledge and a telephone conversation with a sugar cane specialist and cost accountant with the Economic Research Service, USDA, none of which was in the administrative record. *Id.* at 24–25. The court apparently did not take into consideration the role that the USDA inter-agency Task Force played in the formulation of the regulations. The Task Force concluded that sugar cane was not a vegetable and was not an "other perishable commodity" within the meaning of the regulations.

The court has approved explicitly of a limited definition of vegetables with its holding that it was reasonable to define fruits and vegetables in scientific terms and to limit the applicability of those terms by the human edibility criterion. Since it is clear from the court's opinion that the definition of vegetables may be limited, the issue then in formulating a definition is how should it be limited consistently with congressional intent and the direction of the court.

As evident from the discussion below, there is a wide difference of opinion regarding the definition of vegetables. Accordingly, USDA has determined that it is appropriate to propose to redefine the term "vegetables" in order to provide a more established definition of the term and in order to comport with congressional intent.

Given the approval by the court of the USDA definition of "other perishable commodities," USDA will not propose to change the definition. USDA has reexamined the factors that affect labor demands in the production of sugar cane and evaluated whether or not sugar cane falls within the definition of "other perishable commodities."

Vegetable

The USDA review of the scientific literature reveals that there is little clarity regarding the definition of the term "vegetables." This review indicates that USDA erred in describing its previous definition of "vegetables" as a botanical definition. The term "fruits" is clearly a botanical term and can be found defined in virtually identical terms in all scientific literature reviewed by USDA. Likewise, the terms "leaves,"

"stems," "roots," and "tubers," are all true botanical terms. However, the term "vegetables" is not defined in a significant number of bontany texts, botanical dictionaries, scientific dictionaries, and other relevant scientific sources, which indicates that the term is not accepted universally as a botanical term such as the term "fruits." See, for example, S. Blackmore, *The Facts on File Dictionary of Botany* (1984); K. Beckett, *Illustrated Dictionary of Botany* (1977); *G. Usher, A Dictionary of Botany* (1966); *Gray's Manual of Botany* (8th ed. 1950; P. Kaufman, T. Mellicamp, J. Glimn-Lacy & J. LaCroix, *Practical Botany* (1983); T. Weier, C. Stocking, M. Barbour & T. Rost, *Botany: An Introduction to Plant Biology* (6th ed. 1982); P. Raven & R. Everett, *Biology of Plants* (2d ed. 1976); V. Greulach & J. Adams, *Plants: An Introduction to Modern Botany* (1976); O. Tippo & W. Stern, *Humanistic Botany* (1977); H. Fuller, Z. Carothers, W. Payne & M. Balbach, *The Plant World* (5th ed. 1972); E. Uvarov & A. Issaacs, *The Facts on File Dictionary of Science* (6th ed. 1986); Oxford Press *Concise Science Dictionary* (1984); A. Hechtlinger, *Modern Science Dictionary* (1975); T. Collocott & A. Dobson, *Dictionary of Science and Technology* (1974); I. Henderson & W. Henderson, *A Dictionary of Biological Terms* (1964).

Where botany texts and other scientific sources discuss the definition of the term "vegetables," the term may be used as either a noun or an adjective. Some botanical and other scientific sources define vegetables broadly as "any plant" or "any plant part," either as a noun, an adjective, or both:

> Of or pertaining to a plant or plant part. R. Little & C. Jones, *A Dictionary of Botany* (1980). Belonging to or consisting of plant parts. D. Schwartz, *Collegiate Dictionary of Botany* (1971).
>
> Adj., Botany . * * * of plants; having to do with plants: vegetable substances, vegetable life. R. Bernhardt, *Hammond Bernhardt Dictionary of Science* (1st ed. 1986). Used as an adjective, for the plant kingdom; as a noun, any plant or plant organ that is edible (colloquial). J. Langenheim & K. Thimann, *Botany: Plant Biology and its Relation to Human Affairs* (1982).
>
> [Bot] Resembling or relating to plants. S. Parker, *McGraw-Hill Dictionary of Science and Engineering* (1984); S. Parker, *McGraw-Hill Dictionary of Scientific and Technical Terms* (3d ed. 1984); D. Lapedes, *McGraw-Hill Dictionary of Life Sciences* (1976).
>
> Of, pertaining to, or of the nature of a plant. E. Steen, *Everyday Handbooks Dictionary of Biology* (1971).
>
> [B]elonging to or consisting of plants. B. Jackson, *A Glossary of Botanic Terms With Their Derivation and Accent* (4th ed. 1928).

USDA has determined that defining vegetables as "any plant" would be overinclusive and contrary to congressional intent. Since "perishable commodities" necessarily includes fruits and vegetables, the distinction drawn in the Act by Congress between fruits and vegetables as opposed to perishable commodities evidences that Congress did not favor an overinclusive approach; otherwise, Congress could have employed simply the term "perishable commodities." USDA attempted to define fruits and vegetables in scientific terms to be more precise. USDA determined also that the scientific definitions of fruits and vegetables must be qualified by the term "human edible" in order to be more precise and to limit the scope of those terms consistently with congressional intent. The court in *NWFWA* v. *Lyng* has upheld the use of the limiting factor of "human edible" even though it is not contained expressly in the botanical definition of fruits. Therefore, it is reasonable to apply other limiting factors to a broad scientific definition of vegetables when such limiting factors have a reasonable basis in the literature, common sense, and comport with congressional intent.

The Wilson and Loomis text quoted in the explanation to the proposed rule describes a vegetable as any edible plant part that is not a fruit:

> [B]otanically, any edible part of a plant not formed from a mature ovary or from an ovary and associated parts. C. Wilson & W. Loomis, *Botany* (5th ed. 1971).

It is not clear from the discussion in the Wilson and Loomis text whether the term "vegetables" is described as a botanical term or merely discussed in the context of distinguishing botanical fruits from other edible plant parts. Some scientific sources state that the term "vegetables" is not a meaningful term in botany:

> In botany, the word vegetable is accepted only as a descriptive adjective, not as a noun. In popular usage, such parts of plants as heads of lettuce, spinach, potatoes, corn, tomatoes, and string beans are called vegetables. In botany, lettuce and spinach are leaves, potatoes are tubers, and corn, tomatoes, and string beans are fruits (ripened ovaries). R. Bernhardt, *Hammond Bernhardt Dictionary of Science* (1st ed. 1986).
>
> [Many] fruits are referred to as "vegetables," a meaningless term botanically because it is used to describe any plant part that is eaten. These include roots, stems, leaves, flowers, fruits, and seeds. J. Haynes, *Botany: An Introductory Survey of the plant Kingdom* (1975).
>
> The term "vegetable" has only popular significance and is used in this sense to designate plant parts, regardless of their structural nature, which are not sweet and which are usually flavored before they are eaten with salt, pepper and other condiments. H. Fuller & O. Tippo, *College Botany* at 475 (Revised ed. 1957).

Thus, some scientists do not consider "vegetables," when used as a noun, to be a meaningful botanical term. This is reflected in dictionary sources which define "vegetable' as "any plant," but note that the term is not used as a noun in a technical sense:

> "[N]oun: Plant—not used technically." *Webster's Third International Dictionary of the English Language Unabridged.*

As noted above, USDA determined to use scientific terms in order to be precise. The term "fruits" is a precise term that has a botanical definition that is accepted universally in the scientific literature. However, the term "vegetables" is not defined precisely in botany. In fact, it is not clear that the term has any significance in botany. Based on the above-referenced discussion of the relevant scientific literature, USDA has concluded that the term "vegetables" is not a botanical term. The term "vegetables," however, is significant in the science of horticulture.

USDA has determined to continue to define fruits in botanical terms in order to be more precise as to fruits and to resolve the confusion between the classification of fruits and vegetables. However, since vegetables is not a botanical term, USDA has determined that the term should be defined based on a horticultural definition of that term which does not lead to confusion and which does not result in absurdities. This is appropriate for purposes of this rule since horticulture is the science of growing fruits, vegetables, and other plant crops.

A review of various sources indicates that there does appear to be a consensus that the term "vegetables" is a horticultural term:

> In horticultural usage a vegetable is an edible *herbaceous* plant or part thereof that is commonly used for culinary purposes. L. Bailey, *The Standard Cyclopedia of Horticulture* (new ed. 1930) (emphasis added).
>
> [AGR] The edible portion of a usually *herbaceous* plant; *customarily* served with the *main course of a meal.* S. Parker, *McGraw-Hill Dictionary of Science and Engineering* (1984); S. Parker *McGraw-Hill Dictionary of Scientific and Technical Terms* (3d ed. 1984); D. Lapedes, *McGraw-Hill Dictionary of Life Sciences* (1976) (emphasis added).
>
> [A]n edible plant or plant part eaten cooked or raw as a *main part of a meal, side dish, or appetizer;* includes *herbaceous* garden plants and *herbaceous* parts of some woody perennials (e.g., tender shoots or young leaves, inflorescences, or fruits). J. Soule, *Glossary for Horticultural Crops* (1985) (emphasis added).

Generally considered as vegetables are those *herbaceous* plants of which some portion is eaten, either cooked or raw, during the *principal part of the meal.* J. Janick, *Horticultural Science* (2d ed. 1972) (emphasis added).

Any plant part that is eaten either cooked or raw during the *principal part of a meal* rather than as a dessert. J. Winburne, *A Dictionary of Agricultural and Allied Terminology* (1962) (emphasis added).

In horticultural usage a vegetable is an edible *herbaceous* plant or part thereof that is commonly used for culinary purposes. The product may or may not be directly associated, in its development with the flower: the root, stem, leaf, flowerbud, partially developed seed receptacle, or seeds (either immature or mature), may constitute the edible part. Some vegetables are edible only after being cooked, others, (such as cabbage), are eaten either cooked or raw, while others, as melons, are used only in the fresh state, and they are really dessert articles. In some countries, melons and tomatoes are regarded as fruits, though American usage classifies them as vegetables. Although it is difficult to make a general definition that will include all vegetables and exclude none, the use of the term "vegetable" is so well understood that there is little difficulty in making the proper application of it in common speech." L. Bailey, *The Standard Cyclopedia of Horticulture* (1930) (emphasis added).

This horticultural definition is reflected also in dictionary sources:

The edible part of any *herbaceous* plant, raw or cooked, *chiefly* when *served with an entree, or before dessert. Funk & Wagnalls Standard Dictionary of the English Language International Edition Combined With Britannica World Language Dictionary* (emphasis added).

A usually *herbaceous* plant (as the cabbage, potato, bean, or turnip) that is cultivated for the edible part which is used as a table vegetable. (2) An edible part of a plant (as seeds, leaves, or roots) that is used for human food and usually eaten cooked or raw during the *principal part of a meal rather than as a dessert. Webster's Third New International Dictionary of the English Language Unabridged* (emphasis added).

A part or the whole of a [sic] herb used chiefly for culinary purposes, but also frequently for feeding domestic animals. In a comprehensive sense, any living organism not possessed of animal life; a plant of any kind. There is no well-drawn distinction between vegetables and fruits in the popular sense; but it has been held by the courts that all those which, like potatoes, carrots, peas, celery, lettuce, tomatoes, etc., are eaten (whether cooked or raw) during the *principal part of a meal* are to be regarded as 'vegetables,' which those used for dessert are fruits. *State v. Hurst,* 149 Or. 519, 41 P.2d 1079, 1080. *Black's Law Dictionary* (4th ed. 1968) (emphasis added).

USDA notes that in *State v. Hurst,* the court was faced with the issue of what was the proper definition of a vegetable. In that case, the court discerned a definition by looking at various scientific and dictionary definitions and distilling a consensus definition.

USDA has determined that a horticultural definition of the term "vegetables" is the most appropriate because it is apparent from a review of the relevant scientific sources that the term is a horticultural term. Also, a horticultural definition is most appropriate because it has been recognized judicially as the proper definition of the term, and because it comports with congressional intent and common sense. A review of the above quotations evidences that there is no precise, single horticultural definition of vegetables. In view of this, USDA has determined that it is reasonable to distill a consensus definition from the various scientific sources instead of adopting the particular wording of a horticultural definition from any one particular source.

Given that USDA has determined to propose to adopt a horticultural definition of vegetables, the definition, as would any definition, must be modified in order to comport with congressional intent and on the basis of common sense. The court in *NWFWA* v. *Lyng* has approved of the use of the "human edible" limitation on the definition of vegetables, and implicitly has approved of limiting the definition further by the exclusion of fruits from the definition.

USDA has determined that the botanical definition of "fruits" must be kept intact in order to be precise in distinguishing fruits from vegetables. Thus, the definition of vegetables must be modified in order to exclude fruits from the definition of vegetables. USDA has determined that the most precise approach is to describe vegetables in terms of botanical terms of the plant parts, thereby excluding fruits. As with the previous definition of vegetables, the human edibility requirement must be incorporated within the definition. The human edibility requirement is based on the context of the discussion of edibility in the scientific literature, and congressional intent, given the distinction drawn between fruits and vegetables and other perishable commodities.

As indicated above, the "herbaceous" requirement is incorporated in many of the horticultural definitions of the term "vegetables". Although some scientists do not find it necessary to use the term herbaceous in defining vegetables, USDA has found no authority who contends that vegetables are not herbaceous. Thus, USDA has determined that "vegetables" should be limited to herbaceous parts of plants.

The term "herbaceous" is an adjective derived from the noun "herb," which is defined as a non-woody plant. Various definition of herbaceous include:

Plants that do not produce hard, woody tissue. P. Kaufman, T. Mellicamp, J. Glimn-Lacy & J. LaCroix, *Practical Botany* (1983).

[S]oft and green, containing little woody tissue. G. Usher, *A Dictionary of Botany* (1966).

Pertaining to a stem with little or no woody tissue. S. Parker, *McGraw-Hill Dictionary of Science and Engineering* (1984); D. Lapedes, *McGraw-Hill Dictionary of The Life Sciences* (1976).

The distinction between a woody and a non-woody plant is not clear. While some sources define wood as "the xylem," other sources define wood as "the secondary xylem." All vascular plants contain xylem cells, but not all vascular plants are regarded as "woody." However, there are plants that do not produce secondary xylem, but are regarded by scientists as "woody." Also, there are some vegetables that are not "woody," but which are produced by plants that have other woody organs, such as bamboo shoots. However, no vegetables are themselves "woody." Thus, USDA has determined that the term herbaceous should be applied to the specific plant organ that constitutes the commodity.

Therefore, USDA has determined to propose to adopt the following definition of vegetables:

"Vegetables" means the human edible herbaceous leaves, stems, roots, or tubers of plants, which are eaten, either cooked or raw, chiefly as the principal part of a meal, rather than as a dessert.

It is evident that the horticultural definition lacks complete precision. At the same time, USDA has interpreted the congressional intent as to preclude an overinclusive definition of vegetables, and the court did not object to this interpretation. USDA proposes to adopt the qualifier of "chiefly" not only because such a concept is reflected in some of the horticultural definitions of "vegetables," but also because of this interpretation.

This approach also is dictated by common sense. Otherwise, anything that is derived from herbaceous plants that found its way into the principal course of a meal would be considered a vegetable. Such a broad interpretation of the definition would be overinclusive and would lead to a number of anomalies that clearly would exceed congressional intent. Coffee, condiments, flavorings, honey, hops, molasses, oils, spices, sugar, syrup, and teas are all commodities that may be consumed during the main course of a

meal, but are not considered to be vegetables. However, such is the result if common sense is not applied to the application of the definition of the term "vegetables."

It is clear from the context of the discussion in the scientific literature that the discussion of vegetables being eaten primarily as the principal course of the meal indicates that vegetables are eaten as a principal component in a main dish or side dish, not merely as a condiment or flavoring. This does not mean that a vegetable ceases to be a vegetable when used as a condiment or flavoring. It simply means that a commodity does not become a vegetable merely because it may be added to a dish that is eaten during the principal part of a meal.

Sugar Cane

The court in *NWFWA* v. *Lyng* did not address the issue of whether or not sugar cane falls within the scope of the term "vegetables" because the definition of that term was remanded to USDA. Thus, USDA must examine whether sugar cane falls within the scope of the definition of "vegetables" as set forth in this proposed rule. USDA has determined to propose that sugar cane does not fit this definition and, thus, is not a vegetable within the scope of the regulation.

Sugar cane is not eaten (cooked or raw) during the main course of a meal, either as a principal dish or as a side dish.

USDA notes that some people chew on the stems of sugar cane and one commenter during the previous rulemaking noted that sugar cane may be found in the produce section of some food stores. Ad. Rec. Doc. No. 615 (Farmworker Justice Fund, Inc.). Sugar cane marketed by a produce distributor in California and available in some East Coast supermarkets labels its packages of sugar cane with the cautionary notices: "Do not swallow"; "Not recommended for children under 5 or persons with braces." Recipes printed on the packaging suggest the use of sugar cane as a garnish only. While the juice of the sugar cane is digestible, the cane itself is not digestible by humans. USDA is unaware of the use of sugar cane as a vegetable as that term is defined in horticultural science and in this proposed regulation.

At least one court has held that Congress has indicated that sugar cane is not a "fruit or vegetable" for purposes of the Fair Labor Standards Act. *See Wirtz* v. *Osceola Farms Company*, 372 F.2d 584 (5th Cir. 1967). The legislative history of IRCA suggests no congressional intent to the contrary. Thus, USDA believes that Congress did not intend sugar cane to be considered a vegetable for purposes of the IRCA.

Sugar cane is not clearly herbaceous, but falls somewhere between a herbaceous and a woody plant. Some scientific sources describe sugar cane as "woody." *See* J. Langeheim & K. Thimann, *Plant Biology and its Relation to Human Affairs* (1982) (describing sugar cane stalks as "thick and woody"). Other Perishable Commodities:

USDA determined that sugar cane did not meet the definition of "other perishable commodities" because the production of sugar cane does not involve critical and unpredictable labor demands.

Several of the commenters on the previous rulemaking, as well as the intervenors in the context of the litigation, discussed the effects of weather on the maturity of the sugar cane and the need to harvest sugar cane at its optimum maturity to avoid loss of sucrose content. USDA notes that the sucrose level of the sugar cane does not determine the timing of the harvesting operations, except with respect to the months of the year that the processing mills will operate and, thus, the harvesting is scheduled during the optimum period of the year. However, particular fields of sugar cane rarely are harvested at optimum maturity and sucrose content because the delivery must be coordinated with the operation of the mill.

In the explanation to the final rule, USDA stated:

> The timing of the harvest is not critical, but is scheduled over a period of several months for the efficient operation of the processing mill. On occasion, sugar cane has not been harvested during the current season and has been carried over to be harvested the following year. Harvest dates are quite predictable and may be scheduled several months in advance. 52 FR 20375.

USDA has determined that the timing of the harvest may be scheduled generally more than 60 days in advance and that the level of sucrose in the sugar cane does not determine the timing of the harvest. The processing mills determine generally months in advance when the harvest will be and the individual growers cannot select the date of the harvest based on the level of sucrose in the cane. Thus, the labor demand for the harvesting of the sugar cane is not determined generally by the sucrose level in the sugar cane.

In the processing mill, the sugar canes are crushed and a thick, brown syrup is extracted. That extract is concentrated; impurities are precipitated out; the liquid is filtered, evaporated and crystals of raw sugar are formed and centrifuged off; the crystals are washed, redissolved in hot water, filtered, and evaporated to yield white sugar crystals:

> The whole process must be kept moving rapidly, for if the warm sugar solution has been held for more than 24 hours or more in a tank, the polymer-forming bacterium *Leuconostoc dextranicus* grows very rapidly and can convert a large tank of sucrose solution into useless jelly, called dextran, almost overnight. For this reason, once the harvesting has begun the mill is kept running continuously night and day for the three to five months necessary to deal with all the cane in the area. J. Langenheim & K. Thimann, *Botany: Plant Biology and its Relation to Human Affairs* (1982).

Thus, sugar processing mills are run at full capacity during the processing period. The schedule generally cannot be adjusted for variations in the sucrose level of the individual sugar cane fields. Nor can the processing be increased due to a natural disaster, such as a severe storm or an unusual freeze. While the sucrose level in sugar cane deteriorates after a severe freeze, a freeze will not result in a demand for additional workers above the need originally projected because the mills simply cannot grind significantly more cane and the cane cannot be stored. A severe freeze may result in the loss of much of a sugar cane crop, but the loss will not be due to the inability of the producer to obtain additional workers. The harvesting of sugar cane is quite predictable and is scheduled normally months in advance. The demand for labor for harvesting is necessarily quite predictable and is not determined by the effects of weather on the sugar cane.

The court in *NWFWA* v. *Lyng* noted comments received during the previous rulemaking that stated that "sugar cane has long been thought of as a perishable commodity in the context of the H–2 program," "empirical research suggests that sugar cane is a perishable commodity," and that "sugar cane traditionally is considered a perishable commodity." Despite thorough review, USDA has been unable to determine any relevance of perishability to the H–2 program, the suggested empirical research, or tradition. While it is true that it is well documented, and traditionally considered, that sugar cane is a perishable commodity after it is harvested, USDA has been unable to determine any evidence that sugar cane is subject to critical and unpredictable labor demands during the production of sugar cane up to and including harvesting.

USDA defined "critical and unpredictable labor demands" in terms of the 60-day bright line rule based on

the legislative history of the IRCA which indicated that the SAW program was intended to be a supplement to the H–2A program. The court in *NWFWA* v. *Lyng* recognized that this interface between the SAW program and the H–2A program was supported by the legislative history. *NWFWA* v. *Lyng*, C.A. No. 87–487, slip op. at 13 (D.D.C. April 25, 1988). Thus, the court found the 60-day bright line rule was reasonable. *Id.* Sugar cane producers have successfully utilized the H–2 program for decades under certification procedures which required employers to forecast their labor needs 80 days in advance. USDA determined that the use of the H–2 program by sugar cane producers demonstrated that sugar cane did not experience "critical and unpredictable labor demands." The ability of sugar cane producers to forecast their labor requirements 60 days in advance under the current H–2A program demonstrates that sugar cane is not within the scope of "other perishable commodities."

Regulatory Impact

The Assistant Secretary for Economics has reviewed this rule in accordance with Executive Order No. 12291 and has determined that it is not a major rule. Under the framework of the Act, the Immigration and Naturalization Service (INS) will use this proposed rule to assist it in determining which special agricultural workers will be admitted into the United States for temporary residence. Thus, the primary benefits of this proposed rule are internal to the operation of the United States government.

This action, in and of itself, will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individuals, Federal, state, or local government agencies, or geographic regions; or have a significant effect on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This proposed rule redefines the term "vegetables," and reexamines whether sugar cane meets the definition of "other perishable commodities" for purposes of clarifying the term "seasonal agricultural services" as it relates to sugar cane. The proposed rule does not contain any compliance or reporting requirements, or any timetables. The proposed rule will assist the INS in determining the special agricultural workers to be admitted for temporary residence. Thus, the proposed rule, in and of itself, will have no significant effect upon small entities.

Paperwork Reduction Act

This proposed rule does not require additional procedures or paperwork not already required by law. Therefore, the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3502, *et seq.*) are inapplicable.

National Environmental Policy Act

This proposed rule will not have an impact upon the environment.

List of Subjects in 7 CFR Part 1d

Immigration, Rural labor.

Accordingly, it is proposed to amend Part 1d—*Rural Labor—Immigration Reform and Control Act of 1986—Definitions*, as follows:

PART 1d—[AMENDED]

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

Authority: 8 U.S.C. 1160.

2. Section 1d.10 is revised to read as follows:

§ 1d.10 Vegetables.

"Vegetables" means the human edible herbaceous leaves, stems, roots, or tubers of plants, which are eaten, either cooked or raw, chiefly as the principal part of a meal, rather than as a dessert.

Done at Washington, DC, this 6th day of July 1988.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 88–15511 Filed 7–8–88; 8:45 am]

BILLING CODE 3420–01–M

Commodity Credit Corporation

7 CFR Part 1408

Setoff, Withholding and Stop Payment Policies

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends 7 CFR Part 1408, which sets forth the policies of Commodity Credit Corporation (CCC) regarding the setoff of debts owing to CCC or other government agencies against amounts payable by CCC. The intent of this proposed rule is to extend the regulatory period of time allowed for setoff and withholding to ten years. This regulation would then allow a period of time similar to that allowed by regulations issued under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3716).

DATES: Comments must be received by August 10, 1988.

ADDRESSES: Comments concerning this proposed regulation should be addressed to: Director, Fiscal Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All comments submitted in response to this proposed rule will be available for public inspection, in Room 6094, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC, between 8:30 am and 4:00 pm, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Paula Roney, Claims Specialist, (202) 475–4499.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in conformance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs and prices for consumers, individual industries, federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action does not constitute a review as to need, currency, clarity, and effectiveness of these regulations under Departmental Regulation 1512–1. No sunset review date has been set for this regulation because review is ongoing.

This action will not increase the federal paperwork burden for individuals, small businesses, and others. Furthermore, CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking for this action. Therefore this action is exempt from the provision of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

This proposed regulation amends 7 CFR Part 1408 to extend the period of time CCC may exercise its regulatory right to administrative offset against amounts otherwise payable.

Currently, regulations provide that setoff under 7 CFR Part 1408 against a debt owed the Government is barred when no suit has been filed and the applicable statute of limitation for enforcing payment of such a debt expires prior to the date the amount becomes payable to the debtor, except for certain debts due to an overcharge or loss or damage by a carrier. The statutory period for bringing a civil action on a CCC claim is six years.

The Debt Collection Act of 1982 amended the Federal Claims Collection Act of 1966 (31 U.S.C. 3716) to provide a ten-year period of limitation on a federal agency to collect a claim by administrative offset. This ten-year period begins to run from the date the claim becomes outstanding. The Federal Claims Collection Act of 1966 and the Federal Claims Collection Standards (4 CFR Parts 101–105) promulgated thereunder by the Comptroller General and the Attorney General provide standards for the administrative collection of claims by the United States. The Act also provides that nothing therein shall diminish the existing authority of the head of an agency to settle, compromise, or close claims. CCC has authority under section 4(k) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714) to make final and conclusive settlement and adjustment of any claims by or against it irrespective of the amount of issue. CCC is, therefore, not bound by the Federal Claims Collection Act. However, it is CCC policy that any action by CCC to collect a debt by administrative offset should agree, to the extent feasible, with the Federal Claims Collection Standards.

This regulation is necessary to protect the financial integrity of many federal agricultural programs by ensuring the Government will be able to collect debts owed to it, including many on which a civil action to enforce would be ineffectual, not sufficiently cost effective for the Government to pursue, or legally barred.

List of Subjects in 7 CFR Part 1408

Setoff, Withholding and stop payment policies.

Accordingly it is proposed that the regulations at 7 CFR Part 1408 be amended as follows:

PART 1408—[AMENDED]

1. The authority citation is amended to read as follows:

Authority: Sec. 4(b), Pub. L. 80–89, 62 Stat. 1070 as amended, (15 U.S.C. 714b).

2. 7 CFR 1408.4 is amended by revising paragraph (b)(3) to read as follows (b) introductory text is republished):

§ 1408.4 Setoff.

* * * * *

(b) In all other cases, debts due CCC shall be set off, in whole or in part, against amounts payable to debtors by CCC, where the following conditions apply:

* * * * *

(3) The claim has not been outstanding for more than ten years or legal action to enforce the debt has not been barred by an applicable period of limitation, whichever is later. For purposes of this section, a claim is not outstanding until the debt underlying the claim became due and payable and was not paid.

* * * * *

3. 7 CFR 1408.11 is amended by revising paragraph (a) to read as follows (introductory text is republished):

§ 1408.11 Conditions under which setoff, withholding, or stop payment actions will not be taken.

Setoff, withholding, or stop payment actions will be taken in the following cases:

(a) If the claim has been outstanding for more than ten years or legal action to enforce the debt due CCC is barred by an applicable period of limitation, whichever is later. For purposes of this section, a claim is not outstanding until the debt underlying the claim became due and payable and was not paid.

* * * * *

Signed at Washington, DC, on July 1, 1988.

Milt Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88–15330 Filed 7–8–88; 8:45 am]

BILLING CODE 3410–05–M

Packers and Stockyards Administration

9 CFR Parts 201 and 203

Poultry Regulations and Policy Statements

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend certain existing regulations relative to poultry to conform to the Poultry Producers Financial Protection Act of 1987 (PUb. L. 100–173), amending the Packers and Stockyards Act. These proposals will add live poultry dealers to existing payment and accounting, reporting and trust notification regulations, and remove references to "handler(s)" made obsolete by the legislation. It would also remove reference to jurisdiction over dressed poultry trade practices as provided by the legislation. Also proposed for amendment is a regualtion pertaining to the weighing of live poultry. No new regulations or policy statements are being proposed.

DATE: Comments must be received on or before September 9, 1988.

ADDRESS: Comments may be mailed to the Administrator, Packers and Stockyards Administration, Room 3039-South Building, U.S. Department of Agriculture, Washington, DC 20250. Comments received may be inspected during normal business hours in the Office of the Administrator.

FOR FURTHER INFORMATION CONTACT: Kenneth Stricklin, Director, Packer and Poultry Division, Packers and Stockyards Administration, Room 3422-South Building, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7363.

SUPPLEMENTARY INFORMATION: This proposal would amend existing regulations and policy statements as follows:

Regulations	Effect of change
§ 201.43 (9 CFR 201.43)...	Add live poultry dealer to (b)(4) and revoke (d).
§ 201.49(b) (9 CFR 201.49(b)).	Remove "or handler" and "packer or"
§ 201.53 (9 CFR 201.53)...	Remove "or handler" and "or dressed poultry"
§ 201-71 (9 CFR 201.71)...	Remove "or handler"
§ 201.72 (9 CFR 201 72)...	Remove "or handler"
§ 201.73 (9 CFR 201.73)...	Remove "or handlers"
§ 201-76 (9 CFR 201-76)...	Remove "or handlers"
§ 201.82 (9 CFR 201.82)...	Remove "or handler"; revise paragraph (b).
§ 201.94 (9 CFR 201.94)...	Add "live poultry dealer"
§ 201.95 (9 CFR 201.95)...	Remove "or handler"
§ 201.96 (9 CFR 201.96)...	Remove "or handler"
§ 201.97 (9 CFR 201.97)...	Add "live poultry dealer"
§ 201.100 (9 CFR 201.100).	Remove references to "handlers" and "packers," and revoke (a)(3).

Policy statements	Effect of change.
§ 203.4 (9 CFR 203.4.....	Remove "or handlers"
§ 203.15 (9 CFR 203.15)...	Add poultry sellers and growers.

Payment and Accounting.

Regulation 201.43(b)(4) prohibits firms subject to the Packers and Stockyards Act from exercising undue market power in negotiating the terms of a

purchase contract. Paragrpah (d) pertains to payment for live poultry. Accordingly, it is proposed to revise (b)(4) to apply to live poultry dealers with respect to live poultry purchases, and to revoke (d) as obsolete since payment requirements for poultry are now spcecified in the Act.

Regulation 201.100 refers to poultry growout (feeding) contracts and requires at (a)(3) that they shall clearly specify "The time at which final payment to the grower is to be made." Since the amended Packers and Stockyards Act specifies the time in which payment is to be made in Section 410, it is proposed to revoke (a)(3) as obsolete.

Definitions

Section 2 of the act, as amended, defines persons engaged in the business of obtaining live poultry by purchase or under a poultry growing arrangment for slaughter purposes as a live poultry dealer. Therefore, it is proposed that the terms "or hander" and "or handlers" be removed from regulations 201.49, 201.53, 201.71, 201.72, 201.73, 201.76, 201.82, 201.95, 201.96, 201.100, and policy statement 203.4 Also that the term "packer or" be removed from regulations 201.49 and 201.100.

Section 202 of the Act was amended to eliminate jurisdiction as to poultry products. Accordingly, it is also proposed to remove the term "or dressed poultry" from regulation 201.53.

Furnishing Business Information and Annual Reports

Under the Act, as amended, live poultry dealers, as defined, are made subject to various requirements. Thus, live poultry dealers, are clearly within the language of section 402, 7 U.S.C. 222, "any person subject to this Act, whether or not a corporation." Section 402 makes sections 6, 8, 9, and 10 of the Federal Trade Commission Act applicable to any such person. Therefore, it is proposed that regulation 201.97, by virtue of section 6 of the Federal Trade Commission Act, and that regulation 201.94, by virtue of section 9 of the Federal Trade Commission Act, be amended to include "live poultry dealer." This change will require that live poultry dealers file annual reports and furnish business information to the Secretary, as required, to carry out the prompt pay provisions of the 1987 amendments.

Statutory Trust

Statement of general policy 203.15 outlines the recommended format for a seller to use in preserving its interest in the statutory trust. Since unpaid live poultry growers and sellers have the same written notice requirement, it is proposed that policy statement 203.15 be amended to include live poultry growers and sellers.

Weighing

Regulation 201.82 currently requires that every live poultry dealer or handler use reasonable care and promptness with respect to loading, transporting, holding, yarding, feeding, watering, weighing or otherwise handling live poultry to prevent waste of feed, shrinkage, injury, death or other avoidable loss. This regulation also requires that when live poultry is weighed on a vehicle by a packer or live poultry dealer or handler, the gross weight shall be determined on the scale normally used for such purpose as promptly as possible after the poultry is loaded on the vehicle.

The Packers and Stockyards Administration interpreted this regulation to mean that after loading, live poultry is to be transported without undue delay to the plant, holding area or other acceptable scale location and promptly weighed upon arrival.

Based on the results of a recent civil action filed in a United States District Court concerning the time of weighing for poultry obtained by a growout contract, the agency proposes to amend regulation 201.82 to conform with the court's decision.

The court's final judgment ordered defendants, "with regard to any truckload of poultry as to which processing does not begin within 12 hours after the poultry thereon has been taken off feed, to pay the grower based on a net weight taken within 12 hours after said poultry has been taken off feed."

Based on this decision, the Packers and Stockyards Administration proposes to amend and clarify regulation 201.82 by revising paragraph (b) to require that poultry obtained by growout contract be weighed for payment purposes immediately upon arrival at the processing plant or holding yard; *Provided*, That the poultry must be weighed no later than 12 hours from the time the poultry is taken off feed.

Executive Order

Regulatory impact analysis is not required for these amendments because it has been determined that they are not "major" rules as defined by section 1(b) of E.O. 12291. They will not have an annual effect on the economy of $100 million or more, and they will not result in major increases in costs or prices for consumers, individual industries, government agencies or geographic regions. They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that these amendments will not have significant impact on family formation, maintenance and general well-being, per E.O. of September 2, 1987, and will not have substantial direct effects on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, per E.O. of October 23, 1987.

Regulatory Flexibility Act

It has been determined that these amendments will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

The amended information collection requirements contained in this proposal have been submitted to OMB for review under Section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Packers and Stockyards Administration, USDA, Washington, DC 20503.

List of Subjects in 9 CFR Parts 201 and 203

Stockyards, Market agencies, Dealers, Packers, Live poultry dealers.

Done at Washington, DC, this 5th day of July, 1988.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

Accordingly, it is proposed that 9 CFR 201.43(d) be removed; § 201.43(b)(4) and the heading for paragraph (b), 201.49(b), 201.53, 201.71(a), (b), and (d), 201.72(a) and (b), 201.73, 201.76, 201.82, 201.94, 201.95, 201.96, 201.97, 201.100, 203.4(a), (b), (c), and the section heading, and 203.15 be revised to read as set forth below. The authority citation for Part 201 and §§ 203.4 and 203.15 continues to read as follows:

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

Authority: Sec. 202, 407, 407(a), 42 Stat. 168, 169, as amended, 7 U.S.C. 222, 228, 228(a).

§ 201.43 Payment and accounting for livestock and live poultry.

* * * * *

(b) *Prompt payment for livestock and live poultry—terms and conditions.* * * *

(4) No packer, live poultry dealer, market agency, or livestock dealer shall as a condition to its purchase of livestock or poultry, impose, demand, compel or dictate the terms or manner of payment, or attempt to obtain a payment agreement from a seller through any threat of retaliation or other form of intimidation.

* * * * *

§ 201.49 Requirements regarding scale tickets evidencing weighing of livestock and live poultry.

* * * * *

(b) *Poultry.* When live poultry is weighed for the purpose of purchase, sale, acquisition, or settlement by a live poultry dealer, a scale ticket shall be issued which shall show: (1) The name of the agency performing the weighing service; (2) the name of the live poultry dealer; (3) the name and address of the grower, purchaser, or seller; (4) the name or initials of the person who weighed the poultry; (5) the location of the scale; (6) the gross weight, tare weight, and net weight; (7) the date and time gross weight and tare weight are determined; (8) the number of poultry weighed; (9) the weather conditions; (10) whether the driver was on or off the truck at the time of weighing; and (11) the license number of the truck or the truck number; *Provided,* That when live poultry is weighed on a scale other than a vehicle scale, the scale ticket need not show the information specified in paragraphs (b)(9), (10), and (11) of this section. Scale tickets issued under this paragraph shall be at least in duplicate form and shall be serially numbered and used in numerical sequence. One copy shall be furnished to the grower, purchaser, or seller, and one copy shall be furnished to or retained by the live poultry dealer.

§ 201.53 Persons subject to the Act not to circulate misleading reports about market conditions or prices.

No packer, live poultry dealer, stockyard owner, market agency, or dealer shall knowingly make, issue, or circulate any false or misleading reports, records, or representation concerning the market conditions or the prices or sale of any livestock, meat, or live poultry.

§ 201.71 Scales; accurate weights, repairs, adjustment or replacements after inspection.

(a) All scales used by stockyard owners, market agencies, dealers, packers and live poultry dealers to weigh livestock, livestock carcasses or live poultry for the purpose of purchase, sale, acquisition or settlement shall be installed, maintained and operated to insure accurate weights. Such scales shall meet applicable requirements contained in the General Code, Scale Code and Weights Code of the 1983 Edition of National Bureau of Standards Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Commercial Weighing and Measuring Devices", which is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register on October 24, 1984. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register. Handbook 44 is subject to change annually. This handbook is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, DC 20408.

(b) All scales used by stockyard owners, market agencies, dealers, packers, and live poultry dealers to weigh livestock or live poultry for the purpose of purchase, sale, acquisition or settlement shall be equipped with a printing device which shall be used for recording weight values on a scale ticket or other document used for this purpose.

* * * * *

(d) No scales shall be operated or used by any stockyard owner, market agency, dealer, packer, or live poultry dealer to weigh livestock, livestock carcases or live poultry for purposes of purchase, sale, acquisition or settlement unless it has been found upon test and inspection, as specified in § 201.72 of the regulations, to be in a condition to give accurate weight. If a scale is inspected or tested and found incorrect or inaccurate or if any repairs, adjustments or replacements are made to a scale, it shall not be used until it has been inspected and tested and met all accuracy requirements specified in the regulations.

§ 201.72 Scales: testing of.

(a) Each stockyard owner, market agency, dealer, packer, or live poultry dealer who weighs livestock or live poultry for purposes of purchase, sale, acquisition or settlement, or who weighs livestock carcasses for the purpose of purchase on a carcass weight basis, or who furnishes scales for such purposes, shall cause such scales to be tested by competent persons in accordance with the regulations at least twice during each calendar year at intervals of approximately six months. More frequent test will be required in cases where the scale does not maintain accuracy between tests.

(b) Each stockyard owner, market agency, dealer, packer or live poultry dealer who weighs livestock, livestock carcasses or live poultry for purposes of purchase, sale, acquisition or settlement shall furnish reports of such tests and inspections on forms prescribed by the Adminstrator. The stockyard owner, market agency, dealer, packer or live poultry dealer shall retain one copy of the test and inspection report and shall file one copy with the regional office for the region in which the scale is located.

* * * * *

§ 201.73 Scale operators to be qualified.

Stockyard owner, market agencies, dealers, packers and live poultry dealers shall employ qualified persons to operate scales for weighing livestock, livestock carcasses or live poultry for the purpose of purchase, sale, acquisition or settlement, and they shall require such employees to operate the scales in accordance with the regulations.

§ 201.76 Reweighing.

Stockyard owners, market agencies, dealers, packers and live poultry dealers shall reweigh livestock, livestock carcasses or live poultry on request of an authorized representative of the Secretary.

§ 201.82 Care and promptness in weighing and handling livestock and live poultry.

(a) Each stockyard owner, market agency, dealer, packer or live poultry dealer shall exercise reasonable care and promptness with respect to loading, transporting, holding, yarding, feeding, watering, weighing or otherwise handling livestock or live poultry to prevent waste of feed, shrinkage, injury, death or other avoidable loss.

(b) Poultry obtained by growout contract must be weighed for payment purposes immediately upon arrival at the processing plant or holding yard: *Provided,* That the poultry must be weighed no later than 12 hours from the time the poultry is taken off feed.

§ 201.94 Information as to business, furnishing of by packers, live poultry dealers, stockyard owners, market agencies, and dealers.

Each packer, live poultry dealer, stockyard owner, market agency, and dealer, upon proper request, shall give to the Secretary or his duly authorized representatives in writing or otherwise, and under oath or affirmation if requested by such representatives, any

information concerning the business of the packer, live poultry dealer, stockyard owner, market agency, or dealer which may be required in order to carry out the provisions of the Act and regulations in this part within such reasonable time as may be specified in the request for such information.

§ 201.95 Inspection of business records and facilities.

Each stockyard owner, market agency, dealer, packer or live poultry dealer upon proper request, shall permit authorized representatives of the Secretary to enter its place of business during normal business hours and to examine records pertaining to its business subject to the Act, to make copies thereof and to inspect the facilities of such persons subject to the Act. Reasonable accommodations shall be made available to authorized representatives of the Secretary by the stockyard owner, market agency, dealer, packer or live poultry dealer for such examination of records and inspection of facilities.

§ 201.96 Unauthorized disclosure of business information prohibited.

No agent or employee of the United States shall, without the consent of the stockyard owner, market agency, dealer, packer or live poultry dealer concerned, divulge or make known in any manner, any facts or information regarding the business of such person acquired through any examination or inspection of the business or records of the stockyard owner, market agency, dealer, packer or live poultry dealer, or through any information given by the stockyard owner, market agency, dealer, packer or live poultry dealer pursuant to the Act and regulations, except to such other agents or employees of the United States as may be required to have such knowledge in the regular course of their official duties or except insofar as they may be directed by the Administrator or by a court of competent jurisdiction, or except as they may be otherwise required by law.

§ 201.97 Annual reports.

Each packer, live poultry dealer, stockyard owner, market agency, and dealer (except a packer buyer registered to purchase livestock for slaughter only) shall file annually with the Administration a report on prescribed forms not later than April 15 following the calendar year end or, if the records are kept on a fiscal year basis, not later than 90 days after the close of his fiscal year. The Adminsitrator on good cause shown, or on his own motion, may grant a reasonable extension of the filing date or may waive the filing of such reports in particular cases.

§ 201.100 Records to be furnished poultry growers and sellers.

(a) *Contracts; contents.* Each live poultry dealer who enters into a growout (feeding) contract with a poultry grower shall furnish the grower a true written copy of the contract, which shall clearly specify:

(1) The duration of the contract and conditions for the termination of the contract by each of the parties; and

(2) All terms relating to the payment to be made to the poultry grower, including among others, where applicable, the following:

(i) The party liable for condemnations, including those resulting from plant errors;

(ii) The method for figuring feed conversion ratios:

(iii) The formula or method used to convert condemnations to live weight;

(iv) The per unit charges for feed and other inputs furnished by each party; and

(v) The factors to be used when grouping or ranking poultry growers.

(b) *Settlement sheets; contents; supporting documents.* Each live poultry dealer, who acquires poultry pursuant to a contract with a poultry grower, shall prepare a true and accurate settlement sheet (final accounting) and furnish a copy thereof to the poultry grower at the time of settlement. The settlement sheet shall contain all information necessary to compute the payment due the poultry grower. For all such arrangements in which the weight of birds affects payment, the settlement sheet shall show, among other things, the number of live birds marketed, the total weight and the average weight of the birds, and the payment per pound.

(c) *Condemnation and grading certificates.* Each live poultry dealer, who acquires poultry pursuant to a contract with a poultry grower which provides that official U.S. Department of Agriculture condemnations or grades, or both, are a consideration affecting payment to the grower, shall obtain an official U.S. Department of Agriculture condemnation or grading certificate, or both, for the poultry and furnish a copy thereof to the poultry grower prior to or at the time of settlement.

(d) *Grouping or ranking sheets.* Where the contract between the live poultry dealer and the poultry grower provides for payment to the poultry grower based upon the grouping or ranking of poultry growers delivering poultry during a specified period, the live poultry dealer shall furnish the poultry grower, at the time of settlement, a copy of the grouping or ranking sheet which shows the grower's precise position in the grouping or ranking sheet for that period. The grouping or ranking sheet need not show the names of other growers, but shall show the actual figures upon which the grouping or ranking is based for each grower grouped or ranked during the specified period.

(e) *Live poultry purchases.* Each live poultry dealer who purchases live poultry shall prepare and deliver a purchase invoice to the seller at time of settlement. The purchase invoice shall contain all information necessary to compute payment due the seller. When U.S. Department of Agriculture condemnations or U.S. Department of Agriculture grades, or both, of poultry purchased affect final payment, copies of official U.S. Department of Agriculture condemnation certificates or grading certificates, or both, shall be furnished to the seller at or prior to the time of settlement.

PART 203—STATEMENTS OF GENERAL POLICY UNDER THE PACKERS AND STOCKYARDS ACT

Authority: 7 U.S.C. 228, 7 U.S.C. 222, and 15 U.S.C. 46

§ 203.4 Statement with respect to the disposition of records by packers, live poultry dealers, stockyard owners, market agencies and dealers.

(a) *Records to be kept.* Section 401 of the Packers and Stockyards Act (7 U.S.C. 221) provides, in part, that every packer, live poultry dealer, stockyard owner, market agency, and dealer shall keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business, including the true ownership of such business by stockholding or otherwise. In order to properly administer the P&S Act, it is necessary that records be retained for such periods of time as may be required to permit the Packers and Stockyards Administration a reasonable opportunity to examine such records. Section 401 of the Act does not, however, provide for the destruction or disposal of records. Therefore, the Packers and Stockyards Administration has formulated this policy statement to provide guidance as to the periods of time after which records may be disposed of or destroyed.

(b) *Records may be disposed of after two years expect as otherwise provided.* Except as provided in paragraph (c) of this section, each packer, live poultry dealer, stockyard owner, market agency, and dealer may destroy or dispose of

accounts, records, and memoranda which contain, explain, or modify transactions in its business subject to the Act after such accounts, records, and memoranda have been retained for a period of two full years; *Provided*, That the following records made or kept by a packer may be disposed of after one year: cutting tests; departmental transfers; buyers' estimates; drive sheets; scale tickets received from others; inventory and products in storage; receiving records; trial balances; departmental overhead or expense recapitulations; bank statements, reconciliations and deposit slips; production or sale tonnage reports (including recapitulations and summaries of routes, branches, plants etc.); buying or selling pricing instructions and price lists; correspondence; telegrams; teletype communications and memoranda relating to matters other than contracts, agreements, purchase or sales invoices, or claims or credit memoranda; and *Provided further*, That microfilm copies of records may be substituted for and retained in lieu of the actual records.

(c) *Retention for longer periods may be required.* The periods specified in paragraph (b) of this section shall be extended if the packer, live poultry dealer, stockyard owner, market agency, or dealer is notified in writing by the Administrator that specified records should be retained for a longer period pending the completion of any investigations or proceedings under this Act.

* * * * *

Authority: Sec. 401, 42 Stat. 168 (7 U.S.C. 221); sec. 407, 42 Stat. 169 (7 U.S.C. 228); sec. 409, as added by sec. 7, 90 Stat. 1250 (7 U.S.C. 228b); 7 CFR 2.17, 2.54; 42 FR 35625; Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 et seq.); 7 U.S.C. 222 and 228 and 15 U.S.C. 46)

§ 203.15 Trust benefits under sections 206 and 207 of the Act.

(a) Within the times specified under sections 206(b) and 207(d) of the Act, any livestock seller, live poultry seller or grower, to preserve his interest in the statutory trust, must give written notice to the appropriate packer or live poultry dealer and file such notice with the Secretary. One of the ways to satisfy the notification requirement under these provisions is to make certain that notice is given to the packer or live poultry dealer within the prescribed time by letter, mailgram, or telegram stating:

(1) Notification to preserve trust benefits;

(2) Identification of packer or live poultry dealer;

(3) Identification of seller or poultry grower;

(4) Date of the transaction;

(5) Date of seller's or poultry grower's receipt of notice that payment instrument has been dishonored (if applicable); and

(6) Amount of money due; and to make certain that a copy of such letter, mailgram, or telegram is filed with a P&SA Regional Office or with P&SA, USDA, Washington, DC 20250, within the prescribed time.

(b) While the above information is desirable, any written notice which informs the packer or live poultry dealer and the Secretary that the packer or live poultry dealer has failed to pay is sufficient to meet the above-mentioned statutory requirement if it is given within the prescribed time.

[FR Doc. 88-15400 Filed 7-8-88; 8:45 am]
BILLING CODE 3410-20-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-30; Notice No. SC-88-4-NM]

Special Conditions: Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special condition.

SUMMARY: This notice proposes a special condition for Boeing Model 767 series airplanes which incorporate a longitudinal partition in the passenger cabin. The longitudinal partition installation is a novel or unusual design feature for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. This special condition contains the safety standards which the Administrator finds necessary, because of the novel design feature, to establish a level of safety equivalent to that established in the regulations.

DATE: Comments must be received on or before August 1, 1988.

ADDRESSES: Comments on this proposal may be mailed in duplicate to Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-30, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM-30. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Franklin Tiangsing, Regulations Branch, ANM-114, Aircraft Certification Division, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seatle, Washington 98168; telephone (206) 431-2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special condition by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before further rulemaking action is taken on this proposal. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the Rules Docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-30." The postcard will be date/time stamped and returned to the commenter.

Background

On November 3, 1987, The Boeing Company applied for a change to their Type Certificate No. A1NM for installation of a longitudinal partition in their Model 767 series airplanes. The model 767 currently approved under Type Certificate No. A1NM is a pressurized, low wing, transport category airplane powered by two turbofan engines.

Under the provisions of § 21.101(a) of the Federal Aviation Regulations (FAR), The Boeing Company must show that the Model 767, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A1NM, or the applicable regulations in effect on the date of application for the change.

If the Administrator finds that the applicable airworthiness regulations

(i.e., Part 25 as amended) do not contain adequate or appropriate safety standards for the Model 767 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

In addition to the applicable airworthiness regulations and special conditions, the Model 767 must comply with the noise certification requirements of Part 36 and the engine emission requirements of Special Federal Aviation Regulations (SFAR) 27.

Novel or Unusual Design Features

The Model 767-300 will incorporate a novel or unusual design feature associated with the installation of an opaque, longitudinal partition installed in the forward cabin separating two small passenger cabin sections.

The partition is installed near the centerline of the airplane, starting at a lavatory and extending aft for five rows of seats. The partition is the full height of the cabin, and will prevent passenger crossover from one aisle to the other throughout its length. Additionally, there will be some obscuration of visibility of the cabin in the vicinity of the partition.

The 767-300 is currently approved for a maximum capacity of 290 passengers, and The Boeing Company has proposed a passenger capacity of 235 with the longitudinal partition installed.

Due to the novel or unusual design feature associated with the installation of a longitudinal partition, a special condition is considered necessary to provide a level of safety equivalent to that established by the regulations incorporated by reference in the type certificate. Although the initial installation will be in 767-300 series airplanes, the partition may be installed in any series of the Model 767. The special condition proposed would therefore be applicable to any Model 767 series airplane in which this feature is installed.

As the intended type certification date for approval of the 767 with the installation of a longitudinal partition is approximately August 15, 1988, the public comment period is shortened to 20 days in order to make the final special condition effective prior to that date.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability, and it affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983).

The Proposed Special Condition

Accordingly, the Federal Aviation Administration (FAA) proposes the following special condition as part of the type certification basis for Boeing Model 767 series airplanes with longitudinal partitions installed:

In addition to applicable Part 25 requirements, the applicant must show that the longitudinal partition does not have a significant adverse effect on emergency evacuation of the airplane. Evaluation of the installation must specifically consider the degree to which the partition creates a physical obstruction to movement, or impairs the ability of occupants to visually identify and evaluate the availability of exits and escape paths.

Issued in Seattle, Washington on June 30, 1988.

Frederick M. Isaac,

Acting Director Northwest Mountain Region.

[FR Doc. 88-15429 Filed 7-8-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ASW-20]

Proposed Alteration of VOR Federal Airway V-583; Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Federal Airway V-583 located in the vicinity of Leona, TX. The FAA proposes to extend V-583 from Leona very high frequency omni-directional radio range and tactical air navigational air (VORTAC) to Austin, TX, VORTAC via College Station, TX. This action would improve the flow of traffic to/from the Austin terminal area, improve flight planning and reduce controller workload.

DATE: Comments must be received on or before August 15, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southwest Region, Attention: Manager, Air Traffic Division, Docket No. 88-ASW-20, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASW-20." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA

personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of V–583 by extending that airway from Leona VORTAC via College Station VORTAC to Austin VORTAC. Houston ARTCC request this extension be considered for implementation. Currently aircraft inbound to Austin must be given a very detailed and lengthy clearance. This action would provide controlled airspace routing to/from the Austin terminal in an area where radar vectors are now utilized, thereby reducing controller workload and improving flight planning. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–583 [Revised]

From Austin, TX; College Station, TX; Leona, TX; Frankston, TX; to Quitman, TX.

Issued in Washington, DC, on June 21, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–15426 Filed 7–8–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 71

[Notice No. 661]

Requests or Demands for Disclosure of Information in Testimony and in Related Matters

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering an amendment to the regulation governing requests and demands for disclosure of information in court testimony and related matters. The amendment would require an affidavit to be filed whenever the testimony of an ATF officer or employee is sought on behalf of a party other than the Federal Government or a State. The affidavit would indicate the matters about which the officer or employee would testify. The Director or his delegate would use the affidavit to determine whether to allow the officer or employee to testify. In addition, the amendment would require any request or demand for testimony or production of records to be served at least 5 working days before the scheduled date of disclosure, to insure that there will be enough time to properly consider whether to grant the request or demand. Finally, the amendment would specify some of the considerations to be used in determining whether to grant requests or demands for disclosure in testimony and related matters. Due to an increase in requests for ATF officers and employees to testify and/or disclose records, the regulations need to be amended to provide additional guidelines regarding the necessary prior authorizations.

COMMENT DATE: Written comments must be received by September 9, 1988.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 (Notice No. 661). Copies of the proposed regulations and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Simon, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226; (202) 566–7626.

SUPPLEMENTARY INFORMATION: ATF regulations provide that Bureau officers and employees shall not testify or disclose official records, in criminal or civil court cases, without prior authorization from the Director or his delegate (27 CFR 71.27). Due to an increase in requests for ATF officers and employees to testify and/or disclose records, the regulations need to be amended to provide additional guidelines regarding the necessary prior authorization. The amendment would set forth uniform and expeditious procedures for obtaining the prescribed authorization.

The Director is often requested to authorize a court appearance of an ATF official, without an adequate explanation of the nature of the testimony being sought, and without adequate time to determine the ramifications of the testimony from the Government's standpoint. It is important for the Director to have sufficient time and data to ascertain whether the requested testimony would disclose the identity of confidential informants, jeopardize a pending criminal case or investigation by prematurely revealing information about it, or disclose information prohibited by law from disclosure.

The proposed amendment would add three new subparagraphs under

paragraph (e) of § 71.27. Paragraph (e), titled "Procedure in the event of a request or demand for ATF records or information," currently gives procedures for processing and responding to such requests or demands, but not for submitting them or deciding whether to grant them. New subparagraphs (e)(3), (e)(4), and (e)(5) would provide the necessary procedures.

The proposed new subparagraph (e)(3) would require an affidavit to be prepared by the party (or his attorney) who makes a request or demand (including a subpoena *duces tecum*) for the testimony of an ATF officer or employee. This new requirement would not apply to a request or demand from the Federal Government or a State, because § 71.27(e) generally does not apply to such requests or demands. The affidavit would be required to specify the information about which the testimony of the ATF officer or employee is desired. The affidavit would enable the Director or his delegate to make an informed decision whether to authorize the officer or employee to testify. No affidavit is needed in the case of a request or demand for ATF records only (as opposed to testimony), since the request or demand itself would specify the matters sought to be disclosed.

Proposed new subparagraph (e)(4) sets a time limit within which any request or demand for testimony or disclosure of records would have to be served. Service would be required at least 5 working days before the date scheduled for the disclosure of information. This would give ATF time in which to evaluate the request or demand and to decide whether it may be granted. This time requirement, as well as the affidavit requirement of new subparagraph (e)(3), may be waived upon a demonstration that emergency circumstances or other good cause reasons make compliance infeasible or impractical.

Proposed new subparagraph (e)(5) contains a brief discussion of the factors to be considered in determining whether to grant requests or demands made under § 71.27. This new subparagraph would apply both to testimony and to the disclosure of records in testimony-related matters. No attempt is made to present an exhaustive catalog of the determining factors to be considered, since that would be impossible, due to the many variations from case to case. Rather, the proposed subparagraph presents the general principle to be followed, and then a list of the most common reasons for denial of requests or demands for disclosure under §71.27.

Because some of the authorities of the Director under Part 71 (including the authorities under § 71.27) have been redelegated to subordinate officials, it is proposed to amend the definition of "Director" in § 71.11 to add the words "or his delegate." The Director's zip code is added also.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal, because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities. Further, the proposal will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of February 17, 1981, the Bureau has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this Notice, because no requirement to collect information is proposed. An affidavit is excluded from the definition of "information" under regulations of the Office of Management and Budget, 5 CFR 1320.7(j)(1) (revised, May 10, 1988).

Public Participation—Written Comments

ATF requests comments concerning this proposed amendment from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after the date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

AFT will not recognize any material or comments as confidential. Comments may be disclosed to the public.

Any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director, within the 60-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Mr. Steven Simon, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 71

Administrative practice and procedure, Authority delegations, Freedom of information, Privacy.

Issuance

Accordingly, the Director proposes the amendment of 27 CFR Part 71 as follows:

PART 71—STATEMENT OF PROCEDURAL RULES

Paragraph 1. The authority citation for Part 71 continues to read as follows:

Authority: 5 U.S.C. 301, 552.

Par. 2. The definition of "Director" in § 71.11 is revised to read as follows:

§ 71.11 Meaning of terms.

* * * * *

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC 20226, or his delegate.

* * * * *

Par. 3. Section 71.27 is amended to add paragraphs (e)(3), (e)(4), and (e)(5) as follows:

§ 71.27 Requests or demands for disclosure in testimony and in related matters.

* * * * *

(e) * * *

* * * * *

(3) *Affidavit required for testimony.* Whenever a request of demand is made for the testimony of an ATF officer or employee, on behalf of a party other than the Federal Government or a State, the party making the request, or his attorney, shall submit an affidavit. The affidavit shall set forth the information with respect to which the testimomy of the officer or employee is desired. The affidavit must be submitted before permission to testify may be granted. The Director may, upon request and for good cause shown, waive the requirement of this paragraph.

(4) *Time limit for serving request or demand.* The request or demand, together with the affidavit (if required by paragraph (e)(3) of this section), shall be served at least 5 working days prior to the scheduled date of testimony or disclosure of records, in order to insure that the Director has adequate time to consider whether to grant the request or demand. The Director may, upon request and for good cause shown, waive the requirement of this paragraph.

(5) *Factors to be considered in determining whether a request or demand will be granted.* The Director shall consider whether granting the request or demand would be appropriate under the relevant rules of procedure and substantive law concerning privilege. Among the requests or demands that will not be granted are those that would, if granted, result in—

(i) The violation of a statute, such as 26 U.S.C. 6103 or 7213, or a rule of procedure, such as the grand jury secrecy rule (F.R.Cr.P. Rule 6(e)), or a specific regulation;

(ii) The revealing of classified information;

(iii) The revealing of a confidential source or informant, unless the ATF officer or employee and the source or informant have no objection;

(iv) The revealing of investigative records compiled for law enforcement purposes, or investigative techniques and procedures, the effectiveness of which would thereby be impaired;

(v) The revealing of information that may jeopardize or conflict with any criminal investigation or pending criminal case; or

(vi) The revealing of trade secrets without the owner's consent.

* * * * *

Signed: May 26, 1988.

Stephen E. Higgins,

Director.

Approved: June 23, 1988.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 88-15369 Filed 7-8-88; 8:45 am]

BILLING CODE 4810-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[SW-FRL-3406-1]

National Oil and Hazardous Substances Contingency Plan; The National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete sites from the National Priorities List: Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) announces its intent to delete a site from the National Priorities List (NPL). The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and liability Act of 1980 (CERCLA). This action is being taken by EPA, because it has been determined that all Fund financed response under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup is appropriate. The intention of this notice is to request public comment on the intent of EPA to delete a site from the NPL.

DATE: Comments concerning the site may be submitted up to and including August 10, 1988.

ADDRESSES: Comments may be mailed to Richard D. Stonebraker, Chief, Superfund Branch, Waste Management Division, Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365. Comprehensive information on this site is available through the EPA Region IV Docket clerk.

Requests for comprehensive copies of documents should be directed formally to the EPA Region IV Docket Office. Address for the Regional Docket Office is:

Gayle Alston, Region IV, USEPA Library, Room G-8, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404/347-4216.

FOR FURTHER INFORMATION CONTACT: Patrick M. Tobin, Director, Waste Management Division, c/o Nancy Dean, Remedial Project Manager, 345 Courtland Street NE., Atlanta, Georgia 30365.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletions

I. Introduction

The Environmental Protection Agency (EPA) announces its intent to delete a site from the National Priorities List (NPL), Appendix B, of the National Oil and Hazardous Substances Contingency Plan (NCP), and requests comments on the deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund) financed remedial actions. Any sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

The site EPA intends to delete from the NPL is A.L. Taylor Site, Brooks, Kentucky.

The EPA will accept comments on this site for thirty days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Secton III discusses procedures that EPA is using for this action and those the Agency is considering using for future site deletions. Section IV discusses each site and explains how each site meets the deletion criteria.

II. NPL Deletion Criteria

Recent amendments to the NCP establish the criteria the Agency uses to delete sites from the NPL as published in the **Federal Register** on November 20, 1985 (50 FR 47912). Section 300.66(c)(7) on the NCP Provides that sites:

* * * may be deleted from or recategorized on the NPL where no further response is appropriate. In making this determination EPA will consider whether any of the following criteria has been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with

the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA will make a determination that the remedy or decision that no remedy is necessary, is protective of public health, welfare, and the environment. In addition section 121(c) requires State concurrence for deleting a site from the National Priorities List.

Deletion of the site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

III. Deletion Procedures

In the NPL rulemaking published in the **Federal Register** on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on the question of whether the notice and comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments also were received in response to the amendments to the NCP that were proposed in the **Federal Register** on February 12, 1985 (50 FR 5862). Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist agency management. As is mentioned in section II of this notice, § 300.66(c)(8) of the NCP makes clear that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

For the deletion of this site, EPA's Regional Office will accept and evaluate public comments before making the final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community surrounding the sites considered for deletion are likely to be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this site:

1. EPA Region IV recommended deletion and prepared relevant documents.

2. EPA Region IV is providing a 30-day public comment period on the deletion package. The notification is being provided to local residents through local and community newspapers. The Region made all relevant documents available in the Region IV office and local site information repositories.

3. The comments received during the notice and comment period will be evaluated before the tentative decision to delete was made.

4. Comments received during the notice and comment period will be evaluated before the final decision to delete. Region IV will prepare a responsiveness summary that will address the comments given in the public comment period.

A deletion will occur after the Assistant Administrator for Solid Waste and Emergency Response places a notice in the **Federal Register.** The NPL will reflect any deletion. Public notices and copies of the responsiveness summary will be made available to the local residents by Region IV.

IV. Basis for Intended Site Deletions

The following summary provides the Agency's rationale for intending to delete this site from the NPL.

A.L. Taylor Site, Brooks, Kentucky

The A.L. Taylor Site (Valley of the Drums) in Brooks, Kentucky was an uncontrolled industrial waste dump covering 13 acres near Brooks, Kentucky. The paints and coating industries of the Louisville area were the primary waste generators using the A.L. Taylor site. Some drums were emptied into open pits, cleaned and recycled. Other drums were buried on site, and during the later years of operation many drums were stored on the surface.

The A.L. Taylor site was a top priority site in Kentucky and was on the Interim Priority List of 160 sites. The site was ranked based on releases to surface water and to groundwater. In January 1979, the EPA responded to releases of oil and hazardous substances at the site to prevent further releases into nearby Wilson Creek by constructing interceptor trenches and a temporary water treatment system, securing leaking drums and segregating and organizing drums onsite. In 1981 EPA again inspected the site and discovered deteriorating and leaking drums and discharges of pollutants into Wilson Creek. The existing treatment system was upgraded and the remaining drums were removed offsite for disposal.

EPA completed a Feasibility Study of Remedial Alternatives (1982) a Feasibility Study Addendum and Endangerment Assessment Report (1984). The latter report determined that migration of hazardous substances from their original disposal area is minimal and EPA selected a remedy that provides adequate protection of public health, welfare and the environment by onsite containment of waste and control of offsite migration of surface water runoff.

A Record of Decision (ROD) was signed on June 18, 1986. The remedy selected and implemented at the site included removal of ponded water, securing pond sludge from low-lying areas beneath the cap, installing a final cap for containment of the remaining buried waste, instituting a surface water monitoring on Wilson Creek, monitoring groundwater quality, fencing and thirty years of operation and maintenance. An action memorandum dated April 14, 1987 initiated the Remedial Action at the site by Region IV's Emergency Response and Removal Branch. All Remedial Action activities were completed by August 1987.

EPA, with the concurrence of the Commonwealth of Kentucky, has determined that all appropriate Fund-financed response under CERCLA at the A.L. Taylor site has been completed, and has determined that no further clean-up is appropriate. Operation and Maintenance have been assured by the Commonwealth of Kentucky.

Date: June 13, 1988.

Greer C. Tidwell,

Regional Administrator.

[FR Doc. 88-14596 Filed 7-8-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 581

[Docket No. 88-16]

Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; enlargement of time to comment.

SUMMARY: The Commission instituted this proposed rulemaking regarding service contracts by **Federal Register** notice of June 24, 1988, 53 FR 23776, and established July 25, 1988, as the date comments were due. Counsel for the North Europe-U.S. Gulf Freight Association, Gulf-European Freight Association, North Europe-U.S. Atlantic Conference and the U.S. Atlantic-North Europe Conference (collectively, "NEC") has filed a request to extend the time for comments 30 days, i.e. until August 24, 1988. NEC indicates that the additional time is needed to distribute comments and recommendations pertaining to the proposed rule between NEC members in the U.S. and Europe. Therefore, for good cause shown, the request for an

enlargment of time to comment will be granted.

DATES: Comments due on or before August 24, 1988.

ADDRESS: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5796.

Joseph C. Polking,

Secretary.

[FR Doc. 88–15506 Filed 7–8–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[Petition for Rule Making RM 5836, General Docket 88–281, FCC 88–185]

Advisory Labeling of Radio Receivers Communications Receivers in light of the Electronics Communications Privacy Act of 1986

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action responds to a petition by Regency Electronics requesting that the Commission's Rules be amended to require that communications scanning receivers be labeled with an advisory notice informing users that it may be a Federal criminal violations to intercept certain communications protected by the Electronics Communications Privacy Act.

DATES: Interested persons may file comments on or before August 5, 1988 and reply comments on or before August 22, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Paul Marrangoni, telephone (202) 653–8107.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making adopted May 27, 1988, released June 14, 1988.

The full text of this Commission decision 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 Notice

1. On March 31, 1987 Regency Electronics (Regency) submitted a petition for rule making requesting that the Commission amends Part 15 of its rules to require advisory labeling of communications scanning receivers (scanners). Regency's petition stated that the purpose of a rule requiring labeling would be to help educate the public that certain uses of communication scanning receiver could be illegal in light of the passage of the Electronic Communications Privacy Act of 1986 (ECPA). Regency proposed the following wording:

> Improper use of this device may violate the provisions of the Electronic Communications Act of 1986 through intentional unauthorized interception of protected communications.

2. Our review of the comments leads us to conclude that the existence of the ECPA should be brought to the attention of the users of receivers capable of intercepting protected communications. Scanner manufacturers and user groups who commented generally support the use of labeling to alert users that unrestricted reception of all radio communications is no longer permitted. Some commenters suggested that certain frequencies be "blocked" or filtered out. We feel that to do so would go beyond the intent of the law. Although the ECPA prohibits interception of certain classes of communications, the frequencies on which these communications are transmitted can be used for unprotected transmissions as well.

Proposal

3. A label appears to the simplest and least burdensome method of advising scanner users of the ECPA. Comments on the label proposed by the Petitioner or a label with alternative language is requested. A label would be required by all scanning radio receivers and manually tuned radio receivers intended for use by the general public. Excluded from this action are radio receivers which are marketed primarily for use in the licensed radio services, e.g., Industrial Radio Services and receivers used for the reception of broadcast transmissions, e.g., television, FM, AM receivers. We are also seeking comments on the possibility of requiring not only a label but some accompanying instructive material pointing more specifically to communications intended to be protected under the ECPA. The labeling requirement would apply to equipment manufactured some number of months after the effective dates of a Report and Order this Docket. We request comments on an appropriate time interval.

H. Walker Feaster, III,

Secretary.

[FR Doc. 88–15443 Filed 7–8–88; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 542

[GSAR Notice 5–264]

Acquisition Regulation; Novation Agreements

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration invites public comments on a proposal to revise the General Services Administration Acquisition Regulation (GSAR) to add section 542.1203 to establish a policy for processing novation agreements for contracts set-aside for small business. The intended effect is to ensure uniform handling of requests to recognize third party successors in interest to GSA contracts.

DATE: Comments should be submitted to the Office of GSA Acquisition Policy and Regulations at the address shown below on or before August 10, 1988 to be considered in the formulation of the final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets NW., Room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Ida Ustad, Office of GSA Acquisition Policy and Regulations on (202) 566–1224.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this proposed rule. The proposed rule may have an economic effect on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis has been prepared and submitted to the Chief, Counsel for Advocacy of the Small Business Administration. Copies of the initial regulatory flexibility analysis are available for public comment from the

office identified above. The initial regulatory flexibility analysis indicates that when a request to process a novation agreement is processed under FAR 42.12 the rule may effect small business firms that have been awarded contracts under the small business seta-side program and large business firms who are successors in interest to such small businesses. During FY 87, GSA awarded 3,598 contracts valued at $197,004,000 to small businesses under the small business set-aside program. Historical data is not maintained that would identify how many requests to process novation agreements involve a transfer from a small business to a large business. The proposed rule may have a beneficial impact in that it will preserve the integrity of the small business set-aside program. However, the rule may also have a detrimental impact from the perspective of individual small business firms because it would adversely impact them by reducing the value of their assets in the event of a sale of all or part of their assets to a large business conern. The proposed rule does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.).

List of Subjects in 48 CFR Part 542

Government procurement.

PART 542—CONTRACT ADMINISTRATION

1. The authority citation for 48 CFR Part 542 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. The table of contents for part 542 is amended by adding Subpart 542.12 to read as follows:

Subpart 542.12—Novation and Change-of-Name Agreements

Sec.
542.1203 Processing agreements.

3. Subpart 542.12 is added to read as follows:

Subpart 542.12—Novation and Change-of-Name Agreements

542.1203 Processing agreements.

In determining whether it is in the Government's interest to recognize a successor in interest under FAR 42.12 the contracting officer may consider, in addition to information provided by affected contracting and contract administration offices, information provided by the agency small business technical advisor where the contract was awarded to a small business under a small business set-aside and the third party successor is a large business. This circumstance alone does not require the contracting officer to refuse to recognize the successor and nonconcur in the transfer of the contract(s), where it is otherwise in the Government's interest to do so, except where: (a) there is adequate reason to believe that the transaction is intended to circumvent the requirements and objectives of the small business program, or (b) the contract invovled is a multiple award schedule (MAS) contract and other MAS contracts exist for the same special item number(s). If the MAS contract involves both set-aside and non-set-aside special item number, the contracting officer shall cancel the contract in part, and then process the novation request for the non-set-aside items under FAR 42.12.

Dated: July 5, 1988.

Ida M. Ustad,

Director, Office of GSA Acquisition Policy and Regulations.

[FR Doc. 88-15386 Filed 7-8-88; 8:45 am]

BILLING CODE 6820-61-M

Notices

Federal Register
Vol. 53, No. 132
Monday, July 11, 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

Office of the Secretary

Agricultural Biotechnology Research Advisory Committee, Working Groups On Definitions, Biocontainment, and Research Guidelines; Meetings

In accordance with the Federal Advisory Committee Act of October, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the U.S. Department of Agriculture (USDA), Science and Education, announces the following meetings of three working groups of the Agricultural Biotechnology Research Advisory Committee (ABRAC).

The Working Group on Definitions will meet at the U.S. Department of Agriculture, Conference Room 338-C, Aerospace Building, 901 D Street SW., Washington, DC, 20024 on July 28, 1988, from approximately 9:00 a.m. to adjournment at approximately 5:00 p.m. to discuss definitions to be included in the USDA guidelines for agricultural biotechnology research.

The Working Group on Research Guidelines will meet at the U.S. Department of Agriculture in Room 3109, South Building, 14th Street and Independence Avenue SW., Washington, DC, 20250 on July 28-29, 1988 from approximately 1:00 p.m. to 5:00 p.m. on July 28 and from approximately 9:00 a.m. to adjournment at approximately 3:00 p.m. on July 29 to discuss guidelines for agricultural biotechnology research.

The Working Group on Biocontainment will meet at the U.S. Department of Agriculture, Room 104-A (the Williamsburg Room), Administration Building, 14th Street and Independence Avenue SW., Washington, DC, 20250 on August 11-12, 1988, from approximately 9:00 a.m. to 5:00 p.m. on August 11 and approximately 9:00 a.m. to adjournment at approximately 3:00 p.m. on August 12 to discuss biological containment and confinement in agricultural biotechnology research.

These three working group meetings are open to the public. Attendance by the public will be limited to space available.

Further information may be obtained from Dr. Alvin L. Young, Executive Secretary, Agricultural Biotechnology Research Advisory Committee, Office of Agricultural Biotechnology, Room 321-A, Administration Building, 14th Street and Independence Avenue SW., Washington, DC, 20250, telephone (202) 447-9165.

Date: July 5, 1988.

Robert W. Long,

Deputy Assistant Secretary, Science and Education.

[FR Doc. 88-15455 Filed 7-8-88; 8:45 am]

BILLING CODE 3410-22-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 378]

Resolution and Order Approving the Application of the Foreign-Trade Zone of Southeastern Pennsylvania for a Foreign-Trade Zone in Berks County, PA

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders: After consideration of the application of the Foreign-Trade Zone Corporation of Southeastern Pennsylvania, a Pennsylvania non-profit corporation, filed with the Foreign-Trade Zones Board (the Board) on October 20, 1986, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Berks County, Pennsylvania, adjacent to the Philadelphia Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish, Operate, and Maintain a Foreign-Trade Zone in Berks County, PA

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Foreign-Trade Zone Corporation of Southeastern Pennsylvania (the Grantee), a Pennsylvania non-profit corporation, has made application (filed October 20, 1986, Docket 33-86, 51 FR 40239) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Berks County, Pennsylvania, adjacent to the Philadelphia Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 147 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the

provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 28th day of June, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

C. William Verity,

Chairman and Executive Officer.

Attest:

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 88-15493 Filed 7-8-88; 8:45 am]

BILLING CODE 3510-05-M

[Order No. 384]

Resolution and Order Approving the Application of the Industrial Development Board of Blount County, Tennessee, for a Foreign-Trade Zone in the Knoxville Customs Port of Entry Area

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders: After consideration of the application of the Industrial Development Board of Blount County, Tennessee, a Tennessee public corporation, filed with the Foreign-Trade Zones Board (the Board) on May 12, 1987, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone at sites in Knox, Blount, and Anderson Counties, Tennessee, adjacent to the Knoxville Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish, Operate, and Maintain a Foreign-Trade Zone in Knox, Blount, and Anderson Counties, Tennessee, Adjacent to the Knoxville Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Industrial Development Board of Blount County, Tennessee (the Grantee), a Tennessee public corporation, has made application (filed May 12, 1987, FTZ Docket 4–87, 52 FR 19547) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in Knox, Blount, and Anderson Counties, Tennessee, adjacent to the Knoxville Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 148, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 28th day of June, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

C. William Verity,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-15494 Filed 7-8-88; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 385]

Resolution and Order Approving the Application of the Brazos River Harbor Navigation District for a Foreign-Trade Zone in the Freeport, Texas, Area

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders: After consideration of the application of the Brazos River Harbor Navigation District, filed with the Foreign-Trade Zones Board (the Board) on October 22, 1987, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Brazoria County, Texas, within the Freeport Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation, including blending, within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish, Operate, and Maintain a Foreign-Trade Zone in Brazoria County, Texas, Within the Freeport Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, and Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Brazos River Harbor Navigation District (the Grantee) has made application (filed October 22, 1987, FTZ Docket 24–87, 52 FR 42025) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in Brazoria County, Texas, within the Freeport Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 149, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The grant does not include authority for manufacturing operations, including blending, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 28th day of June, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

C. William Verity,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-15495 Filed 7-8-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-475-703]

Final Determination of Sales at Less That Fair Value: Granular Polytetrafluoroethylene Resin From Italy

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that granular polytetrafluoroethylene (PTFE) resin from Italy is being, or is likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Brian H. Nilsson or Michael Ready, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377–5332 or 377–2613.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that granular PTFE resin from Italy is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since our notice of an affirmative preliminary determination (53 FR 12967, April 20, 1988) the following events have occurred. On April 27–29 and May 11–12, 1988, we conducted verification at the Montefluos S.p.A. ("Montefluos") and Ausimont U.S.A. ("Ausimont") offices, respectively.

In accordance with § 353.47 of our regulations (19 CFR 353.47), interested parties were provided an opportunity to comment on our preliminary determination by requesting a public hearing. Interested parties waived their rights to a hearing and submitted comments for the record in briefs dated June 8, 12, and 21, 1988.

Scope of Investigation

In its petition, Du Pont asked the Department to investigate both filled and unfilled granular polytetrafluoroethylene (PTFE) resin as provided for in item 445.54 of the *Tariff Schedules of the United States* (TSUS) and currently classified under Harmonized System (HS) item 3904.61.00. Although Du Pont does not produce filled PTFE, Du Pont asked that filled PTFE be included in the investigation to prevent the possible circumvention of any order on unfilled PTFE. Du Pont did not request that PTFE dispersions in water and fine powders be covered by this investigation; we accordingly have not included these products in our investigation.

The issue of whether filled resin should be included in this investigation depends on whether it is within the same "class or kind" of merchandise as unfilled resins. In our preliminary determination, the Department found that both filled and unfilled resins are within the same class or kind of merchandise. After carefully reviewing this issue, we have found no reasons to alter this decision.

The product under investigation, granular PTFE resin, consists of three types: Pelletized, fine cut, and presintered. Of these three types only fine cut can be filled. In order to understand the class or kind of merchandise analysis which follows, it is necessary to understand that the varous types of granular PTFE share the same production process and that filled granular fine cut PTFE arises from a continuation of this processing.

All three types are produced by the conversion of the tetrafluoroethylene (TFE) monomer into granular resin by suspension polymerization, a process unique to the production of granular, as opposed to other PTFE. This process is designed to enhance the handleability, moldability, physical and electrical properties of all types of granular PTFE resin.

Subsequent to the polymerization process, granular PTFE resin consists of stringy, raw polymers which are wet cut to achieve the desired size, are pelletized (agglomerized), and are dried. If granular fine cut or presintered resin is desired, the pelletized granular PTFE resin can be ground to form fine cut resin or ground and baked to form presintered resin. Once fine cut granular PTFE resin is formed, a producer may mix certain fillers or extenders, such as glass, bronze, carbon, or graphite, with the fine cut resin to strengthen the resin or enhance its mechanical properties. Filler can also be used merely to color the intermediate product in order to identify the product's source or dimension, where the fabricator is unable to mark the product because of the consistency of the granular PTFE.

In deciding that both filled and unfilled granular PTFE resin constitute one class or kind of merchandise, we have considered the following factors: (1) General physical characteristics; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the merchandise in question; (4) the channels of trade in which the product is sold; and (5) the manner in which the product is advertised and displayed.

First, filled and unfilled granular fine cut PTFE have the same general physical characteristics. Filled is simply unfilled fine cut PTFE with filler added. The filler is added to strengthen, color, or extend the unfilled fine cut resin. Adding filler is generally a simple process involving the mechanical mixing or stirring of the unfilled fine cut granular PTFE resin with the filler. According to the ITC preliminary determination report, filled PTFE is comprised on average of 20 percent filler material and 80 percent unfilled PTFE. *See* USITC Publication 2043 at A–3 (December 1987). Therefore, within this subdivision of the product under investigation, the base product, granular fine cut PTFE resin, generally constitutes the major portion of the product in question.

Second, with respect to ultimate use and customer expectations, the filling process produces a filled fine cut granular PTFE resin, similar in processability to unfilled fine cut granular PTFE resin. Most granular PTFE resin (filled and unfilled) is sold to fabricators. Fabricators expect to further process all granular PTFE resin by molding or extruding the resin in order to produce a variety of intermediate molded shapes and mechanical parts.

Third, the vast majority or granular PTFE resin is sold directly to fabricators who use the resin to produce a wide range of intermediate mechanical, chemical, and electrical products.

Finally, we have no evidence that the manner in which the product was advertised and displayed is not the same.

On balance, we concluded that filled and unfilled granular PTFE resins comprise a single class or kind of merchandise. To exclude filled granular fine cut PTFE resin, which is merely a sub-category of granular fine cut PTFE resin, from this investigation would result in an unduly narrow definition of the product subject to this investigation.

Standing

We preliminarily determined that the petitioner, Du Pont, had standing with respect to both filled and unfilled granular PTFE resins, based on the facts that (1) Du Pont filed its petition on behalf of the granular PTFE resin industry; (2) no producer eligible for inclusion under section 771(4)(B) of the Act has objected to the inclusion of filled granular PTFE resin within the scope of the investigation; (3) the ITC preliminarily found that there is one industry producing one like product in the United States; and (4) Du Pont manufactures the product under investigation, granular PTFE resin. Therefore, in accordance with section 771(9)(C) of the Act (19 U.S.C. 1677(9)(C)), we preliminarily found that the petition was brought on behalf of the U.S. industry and that Du Pont is an interested party with respect to the "like" product, granular PTFE resin.

In their June 13, 1988, brief, counsel for respondent Montefluos S.p.A/Ausimont U.S.A. alleged that producers accounting for 87 percent of the domestic production of filled PTFE oppose an investigation of that product, citing only to a March 3, 1988, submission by Asahi Fluoropolymers Co., Ltd. ("Asahi") and ICI-Americas, Inc. ("ICI"), respondents in the companion case involving granular PTFE resin from Japan. However, one week earlier, counsel for Asahi and ICI formally withdrew the March 30, 1988 submission. Therefore, since the only evidence which respondent filed to support the alleged opposition to Du Pont's standing with regard to filled granular PTFE has been withdrawn, we have no basis to find that the petition was not filed on behalf of the U.S. granular PTFE industry.

Moreover, we have continued to find that Du Pont is an interested party with respect to the "like" product, granular PTFE resin, and has standing to bring a

case with respect to filled granular PTFE resin. Although the parties have submitted various arguments on this issue, we have not received sufficient evidence to reach a decision contrary to that in our preliminary determination. Nevertheless, because of the importance we placed in our preliminary determination on the ITC's finding of one "like" product and one industry, we will not consider Du Pont to have standing with respect to filled granular PTFE resins (since, as noted above, Du Pont does not produce the filled product), if the ITC finds in their final detrmination that filled and unfilled are separate like products. As a result, if the ITC finds separate like products, we will rescind the initiation of this investigation as it pertains to filled granular PTFE resin.

Period of Investigation

The period of investigation is June 1, 1987, through November 30, 1987.

Such or Similar Comparisons

We determined that Montefluos had sufficient home market sales of such or similar merchandise to form the basis for calculating foreign market value. Where possible, we compared sales of identical merchandise in the two markets. Where identical merchandise was not sold in both markets, we based our comparisons on the most similar merchandise within each product category, basing our matches on basic properties, average particle size, bulk density, radial shrinkage, and transfroming conditions. Montefluos has claimed, and we verified, that there is no difference in costs between the grades within each of the three types. Therefore, where comparisons of similar merchandise were made, they were done between grades within a given type and no adjustments for differences in merchandise were required.

Fair Value Comparisons

To determine whether sales of granular PTFE resin from Italy to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below. Montefluos failed to report data on sales of filled granular PTFE resins. For purposes of our final determination, the dumping margin for sales or filled resins was based on best information available, to compensate for that percentage of sales not reported, in accordance with section 776(b) of the Act. This statutory provision requires the Department to use best information available "whenever a party or any other person refuses or is unable to produce information requested in a timely manner or in the form required, or otherwise significantly impedes an investigation." Therefore, we have assigned Montefluos, as best information available for its filled granular PTFE sales, the margin provided in the petition. This margin has been factored into Montefluos' weighted-average margin.

United States Price

For all sales by Montefluos of unfilled granular PTFE resin, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act, since the first sale to an unrelated customer was made after importation. We calculated exporter's sales price based on packed c.i.f. duty paid prices to unrelated purchasers in the United States. We made deductions, where appropriate, for brokerage and handling, ocean freight, insurance charges, U.S. duty, U.S. inland freight, credit expenses, and other U.S. selling expenses pursuant to section 772(e) (1) and (2) of the Act.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value for sales of unfilled granular PTFE resin by Montefluos based on packed, c.i.f. delivered prices to unrelated purchasers. We made deductions, where appropriate, for inland freight and insurance, credit, rebates, and warranty expenses. We deducted indirect selling expenses incurred on home market sales up to the amount of such selling expenses incurred on sales in the United States, in accordance with § 353.15(c) of our regulations.

In order to adjust for differences in packing between the two markets, we deducted home market packing costs from the foreign market value and added U.S. packing costs.

Currency Conversion

Since all U.S. sales were exporter's sales price transactions, we used the official exchange rates in effect on the date of sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at rates certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(a) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by the respondent.

Interested Party Comments

Comment 1: The respondent has argued that the Department should not include filled PTFE resins within the scope of the investigation because (1) Du Pont, the sole petitioner and the only company supporting the petition, does not produce filled resins and, therefore, does not have the requisite standing to warrant an investigation of filled PTFE; (2) Du Pont's fear of circumvention, its sole reason for including filled PTFE in the petition, is unfounded, since (a) filled PTFE cannot be reprocessed or converted into unfilled PTFE or marketed as a substitute for unfilled PTFE and (b) the U.S. producers that account for about 90 percent of the U.S. production of filled PTFE make their own unfilled PTFE which is used as an input for the filled product; (3) filled PTFE cannot be substituted for unfilled PTFE since it is a different product in use and composition; and (4) two of the four producers of filled resins in the United States, who hold the vast majority of the U.S. market share for filled resins, oppose the inclusion of filled PTFE within the scope of the investigation.

The petitioner argues that the Department should maintain filled resins within the scope of the investigation because (1) filled resins fall within the same class or kind of merchandise as unfilled resins, according to the criteria normally used by the Department; (2) the possibility of circumvention remains an issue; (3) the ITC found that filled and unfilled resins are within one "like" product category; and (4) one of the two major U.S. producers of filled resins formally withdrew its opposition to the inclusion of filled PTFE within the scope of the investigation.

DOC Position: We agree with the petitioner. We have found that filled and unfilled granular PTFE resins are within the same class or kind of merchandise, as discussed in the "Scope of Investigation" section of this notice. We all conclude that petitioner does have the requisite standing at this time, as discussed in the "Standing" section above.

Comment 2: Respondent contends that in the preliminary determination the Department erroneously adjusted exporter sales prices in the United States for indirect selling expenses relative to U.S. sales that were incurred by Montefluos S.p.A. in Italy. They request that these expenses be deleted from the Department's final determination.

DOC Position: We disagree on two points. First, at the preliminary determination the Department did not make such an adjustment to the U.S. sales prices for these direct selling expenses. Secondly, we reviewed our adjustments to U.S. prices for indirect selling expenses after the preliminary determination and found that this additional adjustment was indeed necessary. When adjusting exporter sales price transactions, the Department deducts all indirect selling expenses related to U.S. sales, regardless of the geographical location where the expenses were incurred. This practice is consistent with 19 U.S.C. 1677a(e)(2) and has been upheld by the Court of International Trade. *See Silver Reed America v. United States*, CIT, Slip Op. 88–5 (January 12, 1988), *rev'd*, Slip Op. 88–37 (March 18, 1988). Accordingly, we have adjusted U.S. sales prices for both the indirect selling expenses incurred by Ausimont U.S.A and those incurred by Montefluos S.p.A. for sales destined to the United States.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of granular PTFE resin from Italy, as defined in the "Scope of Investigation" section of this notice, that are entered or withdrawn from warehouse, for consumption, on or after April 20, 1988, the date of publication of the preliminary determination notice in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of granular PTFE resin from Italy exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Montefluos S.p.A/Ausimont U.S.A.	46.46
All others	46.46

ITC Notification

The accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officers to assess an antidumping duty on granular PTFE resin from Italy entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

The ITC will determine whether these imports are materially injuring, or threaten material injury to, a U.S. industry before the later of 120 days after the date of the preliminary determination or 45 days after final determination, if affirmative.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Jan W. Mares,

Assistant Secretary for Import Administration.

July 5, 1988.

[FR Doc. 88–15496 Filed 7–8–88; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–020]

Titanium Sponge From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by two respondents and the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on titanium sponge from Japan. The review covers two manufacturers and their exporters of this merchandise to the United States, and the period November 1, 1985 through October 31, 1986. The review indicates the existence of no dumping margins for one manufacturer/exporter combination and *de minimis* dumping margins for the second manufacturer/exporter combination during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On February 17, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 4797) the final results of its last administrative review of the antidumping duty order on titanium sponge from Japan (49 FR 47053, November 30, 1984). Two respondents, Toho Titanium Co., Ltd. and Osaka Titanium Co., Ltd., and the petitioner, RMI Corporation, requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on December 18, 1986 (51 FR 45364). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

On May 28, 1987, the Department received a request for revocation of the antidumping duty order from Osaka Titanium.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nonmenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item number with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of unwrought titanium sponge. Titanium sponge is a porous, brittle metal which has a high strength-

to-weight ratio and is highly ductile. It is an intermediate product used to produce titanium ingots, slabs, billets, plates and sheets. Titanium sponge is currently classifiable under item 629.1420 of the TSUSA and under item number 8180.10.50 of the Harmonized System.

The review covers two manufacturers and their exporters of Japanese titanium sponge to the United States, and the period November 1, 1985 through October 31, 1986.

United States Price

In calculating United States price the Department used purchase price or exporter's sale price ("ESP"), as defined in section 772 of the Tariff Act, as appropriate.

For sales which were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we used purchase price as the basis for determining United States price when the following criteria were met:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;

2. This was the customary commercial channel for sales of this merchandise between the parties involved; and

3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling function of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions are done in the United States or abroad does not change the substance of the transactions or the functions themselves.

We used ESP as the basis of U.S. price in instances where the merchandise is ordinarily diverted into inventory by the related U.S. selling agent. The Department regards this factor as an important distinction because it is associated with a materially different type of selling activity than the mere facilitation of a transaction such as occurs on a direct shipment to an unrelated U.S. purchaser. In situations where the related party places the merchandise into inventory, he commonly incurs substantial storage and financial carrying costs and has added flexibility in his marketing. We also use the inventory test because it can be readily understood and applied by respondents who must respond to the Department's questionnaires in a short period of time. It is objective in nature, as the final destination of the goods can be established from normal commercial documents associated with the sale and verified with certainty.

Shipments by Toho to the U.S. during the review period were made pursuant to a long-term contract that predates the review period. Toho contends that, for purposes of comparison to foreign market value as of the date of the U.S. sale, the contract date should be used as date of sale for those shipments. RMI maintains that the dates of sale should be the shipment dates or, at the earliest, the date of the delivery instructions. RMI reasons that the contract is only an options contract, i.e., an open offer by Toho, accepted by the buyer upon scheduling shipment. In order to resolve date of sale issues, the Department is guided primarily by the date when the essential terms of the sale are established, quantity and price in particular, such that the parties have nothing left to negotiate. In this instance, the essential terms were set when the parties entered into the contract. Toho was committed to a price, as well as a total volume, at the contract date. We have evaluated the arguments that the contract constitutes an option and have preliminarily determined that it does not. In addition, since the parties performed in accordance with the contract, we preliminarily determine that the date of sale for these shipments is the contract date.

Purchase price was based on the packed f.o.b. (U.S. port) or delivered price to unrelated purchasers in the United States. Exporter's sales price was based on the packed delivered price to the first unrelated purchaser in the United States.

Where applicable, we made deductions for ocean freight, marine insurance, U.S. and foreign brokerage/handling fees, U.S. and foreign inland freight, foreign inland insurance, and U.S. customs duties. For exporter's sales price, we made further adjustments for the parent's and U.S. subsidiary's selling expenses. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since there were sufficient home market sales of such or similar merchandise at or above the cost of production to provide a basis for comparison.

Home market price was based on the delivered packed price with adjustments, where applicable, for inland freight and insurance, rebates, post-sale warehousing, credit, and differences in the cost of packing. We made further adjustments, where applicable, for indirect selling expenses to offset U.S. commissions and, in the case where U.S. price was exporter's sales price, for U.S. indirect selling expenses.

Revocation

The Department has decided not to grant Osaka Titanium a tentative revocation due to inadequate evidence that dumping is unlikely to be resumed. Contributing factors in reaching this decision are Osaka's large surplus titanium sponge inventories, the decline in purchasing power of the dollar against the yen, and the minimal pricing differential currently existing between the U.S. and domestic markets.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period November 1, 1985 through October 31, 1986:

Manufacturer/exporter	Margin (percent)
Toho Titanium/Mitsui	.00
Osaka Titanium/Sumitomo	.03

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by 19 CFR 353.48(b), because no dumping margin exists for Toho Titanium/Mitsui and the

margin for Osaka Titanium/Sumitomo is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of antidumping duties for these firms. For any shipments from Nippon Soda, the cash deposit will continue to be at the rate published in the antidumping duty order for this firm (49 FR 47053, November 30, 1984). For any future entries of this merchandise from a new exporter, not covered in this or prior reviews, whose first shipments occurred after October 31, 1986 and who is unrelated to any reviewed firm, no cash deposit shall be required. These deposit requirements and waivers are effective for all shipments of Japanese titanium sponge entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: July 1, 1988.

[FR Doc. 88-15497 Filed 7-8-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-002]

Wool From Argentina; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on wool from Argentina. We preliminarily determine the total bounty or grant to be 6.23 percent *ad valorem* during the period January 1, 1986 through December 31, 1986. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 23196) the final results of its last administrative review of the countervailing duty order on wool from Argentina (48 FR 14423), April 4, 1983). On April 28, 1987, an importer, Hart Incorporated, requested in accordance with 19 CFR 355.10 an administrative revew of the order. We published the initiation on May 20, 1987 (52 FR 18937). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to the Harmonized System ("HS"). In view of this, we will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Center Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of Argentine wool. Such merchandise is currently classifiable under items 306.3152, 306.3172, 306.3253, 306.3273, 306.3354, and 306.3374 of the TSUSA. These products are currently classifiable under HS item numbers 510.111.50, 510.121.35 and 510.121.40. We invite comments from all interested parties on these HS classifications.

The review covers the period January 1, 1986 through December 31, 1986 and six programs.

Analysis of Programs

(1) *Incentives for Exports from Southern Ports.* This program provides a payment upon export for goods shipped from the southern ports of Argentina. The payment is an incentive to promote economic development in the regions south of the Rio Colorado and to develop the southern ports as the primary means of transportation from the southern regions of the country.

Law 23.018/83, effective December 21, 1983, provided for payments ranging from 8 to 13 percent, depending on the port, of the f.o.b. price of the exported merchandise. The law also provided for a reduction of one percentage point for each port as of January 1, 1984, and for the rates to remain at the resulting level for a period of eleven years.

The Argentine government did not respond to our questionnaire. Therefore, as the best information available, we preliminarily determine the benefit from this program to be the rate determined in our last review, which was 6.23 percent *ad valorem.*

(2) *Reembolso.* The reembolso is a cash rebate of taxes paid upon exportation and calculated as a percentage of the f.o.b. invoice price. On May 5, 1982, Resolution 437 abolished the 5 percent reembolso for washed wool. It has not been reinstated. There is no reembolso for wool in the grease, the only other merchandise included in the order. Therefore, we preliminarily determine that there is no benefit from this program.

(3) *Preferential Pre-export Financing.* Because exporters of wool are ineligible for this program, we preliminarily determine that there is no benefit from this program.

(4) *Other programs.* In the original investigation, we found that the following programs had been terminated or suspended:

A. Multiple exchange rates;

B. Government assistance to wool growers in Patagonia; and

C. Financial reorganization aids.

We therefore preliminarily determine that there is no benefit from these programs.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 6.23 percent *ad valorem* for the period January 1, 1986 to December 31, 1986. The Department intends to instruct the Customs Service to assess countervailing duties of 6.23 percent of the f.o.b. invoice price on any shipments exported on or after January 1, 1986 and on or before December 31, 1986.

The Department intends to instruct the Customs Service to collect cash deposits of estimated countervailing

duties, as provided by section 751(a)(1) of the Tariff Act, of 6.23 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held within 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Joseph A. Spetrini,

Acting Assistant Secretary, Import Administration.

Date: July 5, 1988.

[FR Doc. 88-15498 Filed 7-8-88; 8:45 am]

BILLING CODE 3510-DS-M

Brown University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-161. Applicant: Brown University, Providence, RI 02912. Instrument: Thermal Ionization Isotope Ratio Mass Spectrometer, 261V. Manufacturer: Finnigan-MAT, West Germany. Intended Use: See notice at 53 FR 17095, May 13, 1988.

Comments: None received. Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (December 28, 1987). Reasons: The foreign instrument provides precise automated variable multicollector thermal ionization of isotopic ratios on small samples (10^{-9} to 10^{-6} grams). This capability is pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with the foreign instrument. Where an applicant, as in this case, received no response to a formal request for quotation sent to the only known domestic manufacturer it is apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-15499 Filed 7-8-88; 8:45 am]

BILLING CODE 3510-DS-M

Rutgers University et al., Consolidated Decision On Applications for Duty-Free Entry of Scientific Accessories

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-151. Applicant: Rutgers University, Piscataway, NJ 08854. Instrument: Scanning Auger System and Accessories for Surface Analysis Instrument. Manufacturer: KRATOS, United Kingdom. Intended Use: See notice at 53 FR 17093, May 13, 1988.

Docket Number: 88-158. Applicant: University of California, Santa Barbara, CA 93106. Instrument: Electron Backscatter Pattern Imaging and Analysis System. Manufacturer: Custom Camera Designs Ltd., United Kingdom. Intended Use: See notice at 53 FR 17094, May 13, 1988.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States. Reasons: These are compatible accessories for instruments previously imported for the use of the applicants. In each case, the instrument and accessory were made by the same manufacturer.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-15500 Filed 7-8-88; 8:45 am]

BILLING CODE 3510-DS-M

University of Oklahoma et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88-084. Applicant: University of Oklahoma, Norman, OK 73019. Instrument: Temperature-jump and Stopped-flow Instrument. Manufacturer: Hi-Tech Scientific, Ltd., United Kingdom. Intended Use: See notice at 53 FR 8483, March 15, 1988. Reasons for this Decision: The foreign instrument is capable of conducting

temperature-jump (temperature rise of 6 °C within 2 μs) on an irreversible reaction or a short lived intermediate and stopped-flow with an 8 millisecond dead time over a 3 mm absorbance pathlength.

Docket Number: 88–153. Applicant: Massachusetts Institute of Technology, Cambridge, MA 02139. Instrument: Imaging, Magnetic Sector Secondary Ion Mass Spectrometer, Model IX70S. Manufacturer: VG Ionex, United Kingdom. Intended Use: See notice at 53 FR 17094, May 13, 1988. Reasons for this Decision: The foreign instrument provides a mass resolution in positive and negative SIMS mode of 10,000 with a mass resolution stability within 30 ppm in 10 min.

Docket Number: 88–156. Applicant: University of California, Lawrence Livermore National Laboratory, Livermore, CA 94550. Instrument: Infrared Charged Sweep Device Camera System, Model IR–5120A. Manufacturer: Mitsubishi Electric Corporation, Japan. Intended Use: See notice at 53 FR 17094, May 13, 1988. Reasons for this Decision: The foreign article provides an infrared charge sweep device allowing a high IR sensitivity resolution (512 x 512 pixels).

Docket Number: 88–159. Applicant: University of California, Santa Cruz, CA 95064. Instrument: Dilution Refrigerator Unit with Accessories, Model MINIFRIDGE. Manufacturer: CryoVac, West Germany. Intended Use: See notice at 53 FR 17094, May 13, 1988. Reasons for this Decision: The foreign article allows studies of materials at temperatures $<1°K$.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–15501 Filed 7–8–88; 8:45 am]

BILLING CODE 3510–DS–M

National Technical Information Service

Intent To Grant Exclusive Patent License; Bio-Rad Laboratories

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Bio-Rad Laboratories, having a place of business at 1414 Harbor Way, Richmond, CA 94804, an exclusive right in the United States and certain foreign countries to practice the invention embodied in U.S. Patent Applications Serial Number 7–142, 978 and Serial Number 7–159,847, "Polyacrylamide Gels for Improved Detection of Proteins". The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license 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 intended license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Robert P. Auber, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglaa J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–15489 Filed 7–8–88; 8:45 am]

BILLING CODE 3510–04–M

Minority Business Development Agency

Business Development Center Applications; Bronx, NY

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $260,000 in Federal funds and a minimum of $45,882 in non-Federal contributions for the budget period December 1, 1988 to November 30, 1989. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Bronx, New York SMSA geograpic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contributed at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is August 15, 1988. Applications must be postmarked on or before August 15, 1988.

ADDRESS: New York Regional Office Minority Business Development Agency,

Jacob K. Javits Federal Building, Room 3720, New York, New York 10278, Area Code/Telephone Number (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director, New York Regional Office, (212) 264–3262.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

William R. Fuller,

Deputy Regional Director, New York Regional Office.

Date: July 1, 1988.

[FR Doc. 88–15448 Filed 7–8–88; 8:45 am]

BILLING CODE 3510–21–M

COMMISSION ON MERCHANT MARINE AND DEFENSE

Notice of Meeting

SUMMARY: The Commission on Merchant Marine and Defense was established by Pub. L. 98–525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the Commission announces the following meeting:

Date and Time: Thursday, July 14, 1988; Beginning 10:00 a.m.

Place: Room 801, Federal Building, 400 West Bay Street, Jacksonville, Florida 32202.

Type of Meeting: Open.

Contact Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22302–0268, Telephone (202) 756–0411.

Purpose of Meeting: The Commission's Chairman, Senator Denton, will receive and consider statements of individuals and groups in Florida and neighboring states about the problems and prospects of the nation's maritime industries, particularly the merchant marine and shipbuilding industries. In particular, the Chairman desires reactions to the Commission's first two reports and its recommendations, views about the contributions of the maritime industries to the national security, and suggestions for actions that would help to address current and projected shortages of merchant marine and shipyard capability to meet defense requirements. Individuals or organizations desiring to present oral testimony must notify the Executive Director in writing or by telephone by July 8, 1988, and are requested to provide two copies of their written statements to the Commission and to have copies available for the press. Witnesses will be allowed a maximum of 15 minutes to summarize their written testimony, may be included on panels, and may be asked to respond to questions. Questions about the nature and content of testimony, scheduling, and related matters should be directed to Colonel Norman A. Mingle, USAF, of the Commission's staff.

SUPPLEMENTARY INFORMATION: Other interested persons are invited to submit written statements about the merchant marine and the shipping required to implement United States defense policy. Written statements should be delivered to the Chairman at the public hearing or received at the Commission's office by the close of business on July 15, 1988. All written submissions will be made available for inspection by interested parties, and may be published as part of the Commission's proceedings. Submissions should be addressed to the Executive Director at the Commission's office in Alexandria, Virginia.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 88–15490 Filed 7–8–88; 8:45 am]

BILLING CODE 3820–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial

ACTION: Notice of proposed amendments.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, 1984, Executive Order No. 12473, as amended by Executive Order Nos. 12484, 12550, and 12586. The proposed changes are part of the annual review required by the Manual for Courts-Martial and DoD Directive 5500.17, "Review of the Manual for Courts-Martial," January 23, 1985.

The proposed changes reflected in this notice would amend the following Rules for Courts-Martial: R.C.M. 405(g)(1)(A), Pretrail Investigation—Production of Witnesses; R.C.M. 405(g)(4)(B), Pretrial Investigation—Alternatives to Testimony; R.C.M. 802, Conferences—Rights of Parties; R.C.M. 908(b)(4), Appeals by the United States—Effect on the Court-Martial; R.C.M. 1004(c)(8), Capital Cases—Aggravating Circumstances; R.C.M. 1010, Advice Concerning Post-Trial and Appellate Rights; R.C.M. 1103(b)(2)(D), Preparation of Record of Trial—Contents; R.C.M. 1107(f)(1), Action by Convening Authority—Contents; R.C.M. 1110, Waiver or Withdrawal of Appellate Review—Time Limit; and, R.C.M. 1113, Execution of Sentences—Dishonorable or Bad-Conduct Discharge. The proposed changes would also amend Paragraph 19, Part IV (Punitive Articles) regarding Article 95—Escape from Confinement.

The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

This notice is provided in accordance with DoD Directive 5500.17, "Review of the Manual for Court-Martial," January 23, 1985. This notice is intended only to improve the internal management of the federal government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

ADDRESS: Copies of the proposed changes, and the accompanying Discussion and Analysis, may be examined at the Office of the Judge Advocate General (DAJA-CL), Department of the Army, Pentagon (Room 2D434), Washington, DC 20310–2213. A copy of the proposed changes and accompanying Discussion and Analysis may be obtained by mail upon request from the foregoing address, ATTN: Major Charles E. Trant.

DATE: Comments on the proposed changes must be received not later than September 26, 1988 for consideration by the Joint-Service Committee on Military Justice.

FOR FURTHER INFORMATION CONTACT:
Major Charles E. Trant, (202) 695–2193.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 6, 1988.

[FR Doc. 88–15491 Filed 7–8–88; 8:45 am]

BILLING CODE 3810–01–M

Defense Logistics Agency

Privacy Act of 1974; Record System Notice

AGENCY: Defense Logistics Agency (DoD), DOD.

SUMMARY: Notice for any public comment on a system of records, subject to the Privacy Act of 1974, being transferred from under the control of the General Services Administration (GSA) to the Defense Logistics Agency (DLA).

DATES: This action is effective July 11, 1988. Nevertheless, any public comments will be considered, provided comments are received on or before August 10, 1988.

ADDRESS: Comments may be submitted to the System Manager identified in the record system notice.

FOR FURTHER INFORMATION CONTACT:
Mr. Dave Henshall, Administrative Management Branch, Headquarters, Defense Logistics Agency, Cameron Station, Alexandria, Virginia 22304–6130. Telephone: (202) 274–9234.

SUPPLEMENTARY INFORMATION: Pursuant to Executive Order 12626 dated February 25, 1988, the management of the National Defense Stockpile Program (NDSP) is transferred from the General Services Administration (GSA) and Federal Emergency Management Agency (FEMA) to the Department of Defense (DoD), with further delegation to the Defense Logistics Agency (DLA). This requires the transfer of an existing Privacy Act System Notice: GSA/FPRS–2 "Hazardous materials exposure history system," (Privacy Act Issuances, 1986 Comp., Volume V, p. 32), from GSA to DLA. GSA/FPRS references have been deleted and replaced by the appropriate DLA activity designations within the system notice. The record system notice is not a new one, but basically being transferred from one agency to another that has assumed the responsibility for its continued operation.

The Defense Logistics Agency system of records notices, subject to the Privacy Act of 1974 (5 U.S.C. 552a), have been published in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22897) May 29, 1985 (DoD Compilation)
FR Doc. 85–30123 (50 FR 51898) December 20, 1985
FR Doc. 86–17259 (51 FR 27443) July 31, 1986
FR Doc. 86–19035 (51 FR 30104) August 22, 1986
FR Doc. 87–21654 (52 FR 35304) September 18, 1987
FR Doc. 87–22481 (52 FR 37495) October 7, 1987
FR Doc. 88–03220 (53 FR 04442) February 16, 1988
FR Doc. 88–06658 (53 FR 09965) March 28, 1988
FR Doc. 88–12863 (53 FR 21511) June 8, 1988

This notice is not within the purview of Subsection (o) of the Privacy Act, 5 U.S.C. 552a, which requires the submission of a new or altered system report.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 5, 1988.

S835.50 DLA–N

SYSTEM NAME:

Hazardous Materials Exposure History System.

SYSTEM LOCATION:

Records are maintained at the DLA/DNSC stockpile depots following locations:

Zone Offices:

Zone 1 Management Office, Room 19–116, 26 Federal Plaza, New York, NY 10278.
Zone 2 Management Office, 3200 Sheffield, Hammond, IN 46327.
Zone 3 Management Office, 819 Taylor Street, Fort Worth, TX 76102.

Stockpile Depots:

Binghamton Depot, Hoyt Avenue Binghamton, NY 13901.
Sommerville Depot, State Highway #206, Sommerville, NJ 08876.
Curtis Bay Depot, Ordance Road, Rt. 710, Baltimore, MD 21226.
Scotia Depot, Scotia, NY 12302.
Point Pleasant Depot, 2601 Madison Avenue, Point Pleasant, WV 25550.
Hammond Depot, 3200 Sheffield Avenue, Hammond, IN 46327.
Casad Depot, New Haven, ID 46774.
Sharonville Depot, P.O. Box 41131, Cincinnati, OH 45241.
Warren Depot, Pine Street Extension, Warren, OH 44482.
Fort Worth Depot, Fort Worth, TX 76102.
Gadsden Depot, P.O. Box 918, Gadsden, AL 35902.
Baton Rouge Depot, 2695 N. Sherwood Forest Drive, Baton Rouge, LA 70814.
Clearfield Depot, P.O. Box 1279, Freeport Station, Clearfield, UT 84016.
Stockton Depot, P.O. Box 6039, Stockton, CA 95206.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel working in or visiting storage areas containing hazardous materials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of the daily dosage of radiation received and hourly exposure to dangerous levels of asbestos. The records are primarily used by officers and employees of the agency who have a need for the records in the performance of their duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Occupational Safety and Health Act of 1970, as amended: 5 U.S.C. 5108, 5314, 5315, 7902; 15 U.S.C. 633, 636; 18 U.S.C. 1114; 29 U.S.C. 553, 651–678; 42 U.S.C. 3142–1; 49 U.S.C. App., 1421; Executive Order 9397 (SSAN).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information on exposure readings is provided to the regulatory agencies charged with the responsibilities for regulating the handling of hazardous materials. The blanket routine use statements set forth at the beginning of the DLA listings of systems of records are also applicable to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper forms.

RETRIEVABILITY:

Filed alphabetically by individual's name.

SAFEGUARDS:

Buildings employ security guards and records are maintained in areas accessible only to authorized personnel of DLA.

RETENTION AND DISPOSAL:

Records are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Directorate of Stockpile Management (DLA–N), Defense Logistics Agency, 18th and F Streets, NW., Washington, D.C. 20405.

NOTIFICATION PROCEDURE:

Individuals may obtain information about whether they are part of this system of records from the director of the applicable activity that the

individual is or was employed with. If not known, general inquiries should be made to the system manager.

RECORD ACCESS PROCEDURES:

Requests from individuals to access records should be addressed to the official cited above. In person requests may also be made during normal business hours at each location listed. For written requests, the individual should provide full name, address, telephone number, period of employment, and the position held to assist the office in locating the record. For personal visits, the individual should be able to provide some acceptable identification such as driver's license or employee identification card. Only general inquiries may be made by telephone.

CONTESTING RECORD PROCEDURES:

DLA rules for access to records and for contesting contents are contained in DLA Regulation 5400.21, 32 CFR Part 1286.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from film badges, dosimeters, other instrumentation, work logs, and medical examinations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88-15473 Filed 7-8-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments of the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 10, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Request for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Peperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Wester at the address specified above.

Dated: July 6, 1988.

Carlos U. Rice,

Director for Information Technology Services.

Office of Planning, Budget and Evaluation

Type of Revied: New
Title: Neglected or Delinquent Program Study
Frequency: One time only
Affected Public: Individuals or households; State or local governments
Reporting Burden:
Responses: 772
Burden Hours: 1,909
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: This study will collect information from State and facility program administrators, instructional staff, and eligible youth in adult and juvenile correctional facilities under Chapter I of the Education Consolidation and Improvement Act, as amended. The Department will use the information for purposes of program improvement and policy development.

Office of Postsecondary Education

Type of Review: Reinstatement
Title: Performance Report for the Talent Search, Upward Bound, and Educational Opportunity Centers Programs
Frequency: Annually
Affected Public: State or local governments, non-profit institutions, small businesses or organizations
Reporting Burden:
Responses: 620
Burden Hours: 3,100
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: Grantees that have participated in the Talent Search, Upward Bound and Educational Opportunity Centers Programs submit this report to the Department. The Department uses the information to determine the program's compliance with regulatory requirements.

Type of Review: New
Title: State Participation Agreement for the Robert C. Byrd Scholarship Program
Frequency: One time only
Affected Public: State or local governments
Reporting Burden:
Responses: 52
Burden Hours: 52
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: States must submit this agreement to participate in the Robert C. Byrd Honors Scholarship Program. The Department of Education will use the information to determine State participation in the program.

[FR Doc. 88-15457 Filed 7-8-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent to Award Grant Agreement to American Council on Energy Efficient Economy

AGENCY: U.S. Department of Energy (DOE).

ACTION: The U.S. DOE announces pursuant to 10 CFR 600.7(b), it is restricting eligibility for award of Grant number DE-FG01-88CE27489 to the American Council on Energy Efficient Economy (ACEEE) for the biennial Summer Study on Energy Efficient Buildings.

SUMMARY: The U.S. DOE Office of Office Buildings and Community Systems, Conservation and Renewable Energy

Branch is preparing a request to cost share an application submitted by ACEEE. The work to be performed is a week-long summer study organized to facilitate the exchange of research results. The conference aims to bring together the foremost researchers, practitioners and policymakers involved in research on energy efficiency in buildings. The 1988 conference has three primary objectives: (1) To facilitate the exchange of research and implementation results and encourage the advancement of knowledge; (2) to publish and distribute the research papers presented at the conference; and (3) to edit and publish follow-up reports on conference topics of special interest.

Eligibility: Award of this effort is restricted to ACEEE, a nonprofit organization because no one else is capable of conducting this study and this cannot be done with any organization except ACEEE. The proposed Grantee has organized a summer study on energy efficiency in buildings biennially since 1980.

FOR FURTHER INFORMATION CONTACT: Lisa G. Tillman, MA–453.2, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20484.

Scott Sheffield,

Acting Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 88–15502 Filed 7–8–88; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[Docket No. PP–87]

Application for a Presidential Permit; Bradfield Electric Inc. and Alaska Power Authority

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application by Bradfield Electric, Inc., and the Alaska Power Authority for a Presidential Permit.

SUMMARY: Bradfield Electric, Inc. (Bradfield), and the Alaska Power Authority (APA) have applied to the Economic Regulatory Administration (ERA) for a Presidential permit to construct, connect, operate, and maintain electric transmission facilities at the international border between the U.S. and Canada. The proposed 69-kilovolt (kV) transmission line would extend from the APA's Tyee Lake Hydroelectric Power Project located near Wrangell, Alaska, to the U.S.-Canadian international border just east of the South Craig River.

FOR FURTHER INFORMATION CONTACT:

Anthony J. Como, Department of Energy, Economic Regulatory Administration (RG–22), 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–5935.

Lise Courtney M. Howe, Department of Energy, Office of General Counsel (GC–41), 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2900.

SUPPLEMENTARY INFORMATION: On June 3, 1988, Bradfield and the APA applied to the ERA for a Presidential permit to construct, connect, operate, and maintain electric transmission facilities at the international border between the U.S. and Canada. This application was made pursuant to the provisions of Executive Order 10485, as amended by Executive Order 12038.

Specifically, Bradfield and APA have proposed to construct a 69-kV transmission line extending approximately 24.5 miles from the APA's Tyee Lake Hydroelectric Power Project, along the North Fork Bradfield and Craig River drainages, to the U.S.-Canadian border. The proposed project also would require expansion of the existing substation at the Tyee Lake project.

The proposed facilities will be used to deliver surplus hydroelectric power from the APA's Tyee Lake project to the Johnny Mountain mine, which is owned by Skyline Exploration, Ltd., of Vancouver, British Columbia. Cominco, another Canadian firm, also is planning the development of a gold mine in the vicinity of Johnny Mountain and is considered an additional potential purchaser of electric power. The combined maximum level of electrical power to be purchased by both mines is projected to be 5 megawatts.

Any person desiring to be heard or to protest this application for a Presidential permit should file a petition to intervene or protest with the ERA, Room GA–093, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, in accordance with Sections 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed on or before August 10, 1988. Protests will be considered by ERA 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 petition to intervene. Copies of this application will be made available, upon request, for public inspection and copying at the Department of Energy's Freedom of Information Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, from 9:00 a.m. to 4:00 p.m., Monday through Friday.

Issued in Washington, DC, on July 1, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–15503 Filed 7–8–88; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 88–21–NG]

Amagas Resources, Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada and Mexico

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada and Mexico.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting AMAGAS Resources, Inc. (AMAGAS), blanket authorization to import natural gas from Canada and Mexico. The order issued in ERA Docket No. 88–21–NG authorizes AMAGAS to import up to an aggregate of 100 Bcf of Canadian or Mexican natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, June 30, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–15504 Filed 7–8–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER88–486–000, et al.]

Pennsylvania Power Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 1, 1988.

Take notice that the following filings have been made with the Commission:

1. Pennsylvania Power Company

[Docket No. ER88-486-000]

Take notice that on June 27, 1988, Pennsylvania Power Company (Penn Power) tendered for filing, pursuant to 18 CFR 35.13, proposed changes in its FPC Electric Service Tariffs Nos. 30, 31, 32, 33 and 34 to the Pennsylvania boroughs of New Wilmington, Wampum, Zelienople, Ellwood City and Grove City, respectively. The filing proposes changes in base rates, fuel adjustment clause and tax adjustment surcharge and seeks to implement two new tariff riders relating to a long-term off-system sale and a base rate phase-in plan. The net revenue effect of the proposed changes would increase revenues from jurisdictional sales and service by $1,374,444 or approximately 27.7% based on the 12-month period ended March 31, 1988. The increase is composed of an increase in base rates of $1,517,457.47 to be phased-in over a 4-year period consisting of increases of $614,558; $725,596; $811,744 and $965,642 on May 4, 1988; May 1, 1989; May 1, 1990 and May 1, 1991, respectively, and a decrease of $1,378,343 on May 1, 1992. The fuel adjustment clause is proposed to be decreased effective May 4, 1988 from .3579¢/kwh to .2399¢/kwh or $143,103.96 on an annual revenue basis. The state tax adjustment surcharge is proposed to be decreased effective May 4, 1988 from 4.04% to 0% with no change in annual revenue because these surcharge revenues are being rolled into base rates. The first new tariff rider is proposed to credit to customers the reduction in revenue requirements due to a long-term sale to another utility. This rider serves to reduce annual revenues by a total of $221,739 ($90,516 on January 1, 1989 and $131,223 on June 1, 1989) coincident with the dates the off-system sales will occur. The second rider implements the four-year phase-in plan and provides for the deferral of revenues in the early years of the phase-in and for the collection of the deferred revenues in later years with interest accruing at a 6% rate. In addition, the late payment charge on bills paid after the due date is proposed to be changed from 1.35%/month to 2%/month.

The five municipal resale customers served by Penny Power entered into settlement agreements effective as of September 1, 1984. These agreements provide that these customers will be charged applicable retail rates as may be in effect during the terms of the agreements. Changes in rates were agreed to become effective as to these resale customers simultaneously with changes approved by the Pennsylvania Public Utility Commission. These settlement agreements were approved by the Federal Energy Regulatory Commission through a Secretarial letter dated December 14, 1984 in Docket Nos. ER77-277-007 and ER81-779-000. Waivers of certain filing requirements have been requested to implement the rate changes in accordance with the settlement agreements.

Copies of the filing were served upon Penn Power's jurisdictional customers and the Pennsylvania Public Utility Commission.

Comment date: July 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. William E. Casebier

[Docket No. ID-2361-000]

Take notice that on June 20, 1988, William E. Casebier tendered for filing an application for authorization under section 305(b) of the Federal Power Act and Part 45 of the Regulations of the Federal Energy Regulatory Commission to hold the following interlocking positions:

Position and Corporation

Vice President; Kentucky Utilities Company
Vice President; Old Dominion Power Company

Comment date: July 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Jackson H. Randolph

[Docket No. ID-2362-000]

Take notice that on June 13, 1988, Jackson H. Randolph tendered for filing an application for authorization under section 305(b) of the Federal Power Act and Part 45 of the Regulations of the Federal Energy Regulatory Commission to hold the following interlocking positions:

Postion and Corporation

Director, President and Chief Executive Officer; The Cincinnati Gas & Electric Comany
Director, President and Chief Executive Officer; The Union Light, Heat & Power Company
Director, President and Chief Executive Officer; Miami Power Corporation

Comment date: July 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. James W. Tipton

[Docket No. ID-2360-000]

Take notice that on June 20, 1988, James W. Tipton tendered for filing an application for authorization under section 305(b) of the Federal Power Act and Part 45 of the Regulations of the Federal Energy Regulatory Commission to hold the following interlocking positions:

Position	Corporation	Classification
Senior Vice President.	Kentucky Utilities Co.	Public utility.
Senior Vice President and Director	Old Dominion Power Co.	Do.
Director	Electric Energy, Inc.	Do.

Comment date: July 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Central Vermont Public Service Corporation

[Docket No. ER88-485-000]

Take notice that on June 24, 1988, Central Vermont Public Service Corporation (Central Vermont) tendered for filing a rate schedule for transmission service to the Vermont Electric Generation and Transmission Cooperative, Inc. and an Actual Cost Report for 1987 Service Year Billings. Central Vermont has included the following in its filing:

Exhibit 1 Revenue Comparison setting forth the forecast and actual revenue for 1987.

Exhibit 2 Cost Report computing the forecast costs for 1987.

Exhibit 3 Cost Report computing the actual costs for 1987.

Comment date: July 18, 1988, in accordance with Standard Paragraph E at the end of this document.

6. Nevada Power Company

[Docket No. EL88-32-000]

Take notice that on June 27, 1988, Nevada Power Company (Company) tendered for filing, in accordance with 18 CFR 385.207(1) and (c) (Rule 207), a petition for relief from CFR 35.14(10), Fuel cost and purchased economic power adjustment clauses, for authority to include in the Fuel cost and purchased economic power adjustment clause certain costs for coal contract analysis, litigation and coal contract buyout. The Company states that it is seeking legal relief to reduce its coal costs from certain of its suppliers and is monitoring the price adjustment clauses in its contracts with all of its suppliers in an effort to keep coal costs as low as possible for the benefit of its customers. The Company also states that it has incurred $1,141,665 of coal contracts analysis and litigation costs from March 1987 through February 1988 and is continuing to incur such costs on an "as required" basis.

Comment date: July 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER88-484-000]

Take notice that on June 24, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing an initial rate schedule consisting of three jurisdictional agreements, which jointly control the operation of, and transmission service from, the Central California Power Agency's (CCPA) Coldwater Creek Geothermal Power Plant (Plant), to the CCPA Member Utilities. These Member Utilities are the Sacramento Municipal Utility District (SMUD), Modesto Irrigation District (MID), and the City of Santa Clara (Santa Clara).

CCPA has constructed, and will operate in parallel with PG&E's system, a 140 mw power plant in Sonoma County, California, in order to sell and provide the output to its Member Utilities. Transmission service from the Plant to the Member Utilities' loads is provided by PG&E. The Member Utilities all have interconnection and transmission agreements with PG&E, and the rates for transmission are the rates provided in those agreements.

PG&E has requested waivers to allow this rate schedule to become effective as soon as possible, notwithstanding the usual requirements for filing.

Copies of this filing have been served upon the Member Utilities and the California Public Utilities Commission. In addition, copies of this filing are available for public inspection in a convenient form and place during normal business hours at PG&E's General Office in San Francisco.

Comment date: July 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Boston Edison Company

[Docket No. ER84-705-010 and ER87-581-000]

Take notice that on June 24, 1988, Boston Edison Company (Boston Edison) tendered for filing in accordance with Opinion No. 299, issued March 25, 1988, as modified by the Notice of Extension of time issued June 7, 1988, revisions to rate schedules FPC Nos. 47, 48 and 51 for service to the Towns of Concord, Norwood and Wellesley, Massachusetts. Boston Edison states that the rate schedule revisions reflect the findings and conclusions of Opinion No. 299 and that the rate schedules are to be effective for the period November 28, 1984 through June 30, 1985 for Concord and Wellesley and for the period November 28, 1984 through November 1, 1985 for Norwood. Boston Edison also states that it has filed revised cost-of-service studies for the period November 28, 1984 through June 30, 1987; the period July 1, 1987 through March 25, 1988; and the period beginning March 26, 1988 in accord with the Commission's Opinion.

Boston Edison also states that it has provided copies of the revised rate filings to the affected customers and to the Massachusetts Department of Public Utilities.

Comment date: July 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

9. Androscoggin Energy Recovery Company

[Docket No. QF88-419-000]

On June 14, 1988, Androscoggin Energy Recovery company, c/o KTI Energy of Maine, Inc., Four City Center, Portland, Maine 04101 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Lewiston, Maine. The facility will consist of two waterwall steam generators and a single condensing turbine generator. The net electric power production capacity will be approximately 33 megawatts. The primary energy source will be biomass in the form of municipal solid waste, whole tree chips and waste woodchips. Natural gas and/or oil will be used for ignition, start-up, testing and other uses specified in section 3(17)(B) of the Federal Power Act, as amended by section 201 of PURPA, however, such fossil fuel uses will not exceed 25% of the total energy input to the facility during any calendar year period.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-15418 Filed 7-8-88; 8:45am]

BILLING CODE 6717-01-M

[Docket No. G-2979-001, et al.]

Sun Exploration and Production Co. et al.; Applications for Certificate, Abandonment Of Service and Amendment Of Certificates [1]

July 6, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 20, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-2979-001, D, June 26, 1988	Sun Exploration and Production Company, P.O. Box 2880, Dallas, TX 75221-2880.	Phillips Petroleum Company, Hugoton Field, Sherman County, Texas.	(1)
G-10739-003, D, June 10, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	Texas Eastern Transmission Corporation, Chicolete Creek, *et al.*, Fields, LaVaca, *et al.*, Counties, Texas.	(2)
G-14800-001, D, June 15, 1988.	Tenneco Oil Company, P.O. Box 2511, Houston, TX 77252.	El Paso Natural Gas Company, Aneth Field, San Juan County, Utah.	(3)
CI61-638-000, D, June 9, 1988	Sohio Petroleum Company, P.O. Box 4587, Houston, TX 77210.	Texas Gas Transmission Corporation, N. Rousseau Field, LaFourche Parish, Louisiana.	(4)
CI65-718-000, D, June 9, 1988	do	do	(4)
CI67-209-002, D, May 20, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	Arkla Energy Resources, a division of Arkla, Inc., Hartshorne Area, LeFlore and Pittsburg Counties, Oklahoma.	(5)
CI88-434-000 (CI80-99), B, April 29, 1988.	GEO Oil and Gas Company, P.O. Box 2511, Houston, TX 77252.	Arkla Energy Resources, a division of Arkla, Inc., Pine Hollow S. Field, Pittsburg County, Oklahoma.	(6)
CI88-435-000 (CI80-87), B, April 29, 1988.	do	Panhandle Eastern Pipe Line Company, Keyes Field, Cimarron County, Oklahoma.	(6)
CI88-482-000 (CI69-729), B, June 10, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	El Paso Natural Gas Company, Azalea Field, Midland County, Texas.	(6)
CI88-486-000 (CI66-1234), B, June 6, 1988.	do	Panhandle Eastern Pipe Line Company, Bishop & Peek Fields, South Area, Ellis County, Oklahoma.	(5)
CI88-488-000, F, June 13, 1988.	Union Pacific Resources Company, P.O. Box 7, M.S. 3202, Forth Worth, TX 76101.	Tennessee Gas Pipeline Company, La Reforma Field, Starr & Hidalgo Counties, Texas.	(7)
CI88-491-000 (CI65-718), (CI61-638), B, June 16, 1988.	Sohio Petroleum Company, P.O. Box 4587, Houston, TX 77210.	Texas Gas Transmission Corporation, N. Rousseau Field, LaFourche Parish, Louisiana.	(8)
CI88-492-000 (G-4684), B, June 3, 1988.	Sun Exploration and Production Company, P.O. Box 2880, Dallas, TX 75221-2880.	Colorado Interstate Gas Company, Keyes Field, Cimarron County, Oklahoma.	(9)
CI88-493-000 (CI76-220), B, June 13, 1988.	OXY USA Inc., P.O. Box 300, Tulsa, OK 74102	Tennessee Gas Pipeline Company, Grand Isle Block 45 OCSG-1582, Offshore Louisiana.	(10)
CI88-494-000 (CI83-335), B, June 14, 1988.	Multistate Oil Properties, N.V., P.O. Box 2511, Houston, TX 77001.	Phillips 66 Natural Gas Company, Panhandle West Field, Hutchinson County, Texas.	(11)
CI88-495-000 (CI78-209), B, June 14, 1988.	Tenneco Oil Company	Northern Natural Gas Company, Division of Enron Corp., Vici, North Field, Woodward County, Oklahoma.	(12)
CI88-497-000 (CI84-126-000), B, June 20, 1988.	Pogo Producing Company, P.O. Box 61289, Houston, TX 77208-1289.	United Gas Pipe Line Company, Vermilion Block 228, Offshore Louisiana.	(13)
CI88-498-000 (CI86-163-000), B, June 20, 1988.	TXO Production Corp., First City Center, 1700 Pacific Avenue, Dallas, TX 75201.	ANR Pipeline Company, Laverne Field, Harper County, Oklahoma.	(14)

FOOTNOTES

[1] Effective 6-1-86, Sun assigned its interest in Property No. 826313, Ellison Gas Unit, from the surface down to a depth of 3,252 feet, to TXO Production Corp.
[2] Effective 5-1-86, ARCO assigned certain interests in lease TX-13200, which are included in the D.W. Rhode Lease, to Petrus Oil Company.
[3] Effective 8-1-87, Tenneco Oil Company assigned certain acreage to Chieftain International Inc.
[4] Effective 3-1-88, Sohio assigned certain acreage to Southhampton Mineral Corporation.
[5] Effective 1-1-87, ARCO assigned its interest in certain acreage to Hondo Oil & Gas Company.
[6] Effective 1-1-84, GEO Oil and Gas Company and Tenneco Oil Company assigned certain acreage to Quinoco Oil and Gas Income Program 1983-2, a Texas limited partnership, Quinoco Oil and Gas Income Program 1983-3, a Texas limited partnership, and Quinoco Oil and Gas Income Program 1983-4, a Texas limited partnership.
[7] By Assignment dated 9-28-87, effective 10-1-87, Sohio Petroleum Company conveyed to UPRC 100% of Sohio's right, title and interest in certain oil and gas leases in La Reforma Field, Starr and Hidalago Counties, Texas, dedicated under the contract dated 3-1-78.
[8] Effective 5-25-86, Sohio Petroleum Company assigned certain acreage to Mosbacher Energy Company. All remaining wells covered by Rate Schedule Nos. 115 and 57 have been plugged and abandoned or the land leases have expired.
[9] Effective 5-1-87, Sun sold the last remaining property to Sandollar Oil & Gas, Inc.
[10] The lease covering Grand Isle Block 45 (OCSG-1582) expired on 4-30-88.
[11] Effective 9-1-87, Multistate Oil Properties, N.V., assigned certain acreage to VITA Oil Company.
[12] Effective 12-1-86, Tenneco assgined acreage to Bell & Kinley Company and the Weaver 1-28 well was plugged and abandoned on 1-18-85.
[13] Reserves are depleted, production from Vermilion Block 228, OCS-G-2078, has ceased and the lease has terminated.
[14] Production from the only well under this contract, dated 2-22-67, the Nellie Scott #1 well, became depleted and on 5-7-87, the well was plugged.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88-15470 Filed 7-8-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CS73-229-000, et al.]

Dwight S. Ramsay, Ramco, Inc., and Ramsay Corp., et al.; Applications for Small Producer Certificates [1]

July 6, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 19, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No.	Date filed	Applicant
CS73-229-000	[1] [2] 6-20-88	Dwight S. Ramsay, Ramco, Inc., and Ramsay Corporation (Dwight S. Ramsay) P.O. Box 52027, Lafayette, LA 70505.
CS77-450	[3] 6-9-88	Robertson-Finley Operating Company (Finley Company), P.O. Box 2249, Houston, TX 77252-2249.
CS79-546	[4] 6-20-88	Lanexco, Inc. (Alpha Twenty-One Production Company), P.O. Box 2730, Midland, TX 79702.
CS83-102-008	[5] 6-17-88	Graham Energy, Ltd., **et al.**, P.O. Box 3134, Covington, LA 70434-3134.
CS88-69-000	[6] 5-26-88	Patricia Love Stephens, c/o Roberts & Hammack, Inc., 5646 Milton Street, Suite 333, Dallas, TX 75206-3907
CS88-71-000	6-10-88	Northampton/ DASA Joint Venture, 4301 Westside Drive, Suite 2000, Dallas, TX 75209.
CS88-72-000	6-13-88	Sierra Pacific Corporation, P.O. Box 162585, Austin, TX 78716.
CS88-74-000	6-16-88	Bledsoe Petro Corp. and Bledsoe Energy Corp., 3908 North Peniel, Bethany, OK 73008.

FOOTNOTES

[1] Application received June 1, 1988. Filing date is date of receipt of filing fee.

[2] By letter dated May 19, 1988, Applicant requests that the small producer certificate in Docket NO. CS73-229 be amended to include Ramco, Inc., and Ramsay Corporation.

[3] Finley Company has changed its name to Robertson-Finley Operating Company pursuant to amendment to its Articles of Incorporation dated December 31, 1986.

[4] By letter dated June 14, 1988, Applicant advised that pursuant to amendments to its Articles of Incorporation adopted January 15, 1988, Alpha Twenty-One Production Company has changed its name to Lanexco, Inc.

[5] By letter dated June 16, 1988, Applicant requests that the small producer certificate in Docket No. CS83-102-007 be amended to cover the following entities as certificate co-holders: Graham Resources, Inc. Graham Royalty, Ltd. Energy Institutional Investors 1980 Ltd. Prudential-Bache Energy Income Production Partnership VIP-23. Prudential-Bache Energy Income Production Partnership VIP-24. Prudential-Bache Energy Income Production Partnership VIP-25. Prudential-Bache Energy Income Production Partnership IIIP-15. Prudential-Bache Energy Income Production Partnership IVP-16. Prudential-Bache Energy Income Production Partnership IVP-17. Prudential-Bache Energy Income Production Partnership VP-18. Prudential-Bache Energy Income Production Partnership VP-19. Prudential-Bache Energy Income Production Partnership VP-20. Prudential-Bache Energy Income Production Partnership VP-21. Prudential-Bache Energy Income Production Partnership VP-22. Prudential-Bache Energy Production, Inc.

[6] Additional material received June 2, 1988.

[FR Doc. 88-15467 Filed 7-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-394-001, et al.]

ARCO Oil and Gas Co. et al.; Applications for Blanket Certificates With Pregranted Abandonment or for Extension of Blanket Certificates With Pregranted Abandonment [1]

July 6, 1988.

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorization or for extension of a blanket certificate with pregranted abandonment authorization for the term listed herein, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 20, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Lois D. Cashell,

Acting Secretary.

Docket No. and date filed	Applicant	Requested term of authorization
CI87-394-001: 6/20/88 [1] [2]	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221-2819.	Unlimited.
CI87-475-001: 6/20/88 [1] [3]	Texaco Inc. and Texaco Producing Inc., P.O. Box 52332, Houston, Texas 77052.	Do.
CI88-496-000: 6/17/88 [4]	O&R Energy Development Inc., 28 West Grand Avenue, Montvale, New Jersey 07645.	Do.
CI88-511-000: 6/29/88 [4]	Mock Resources, Inc., 4 Executive Circle, Suite 200, Irvine, California 92714.	Do.

[1] Application for extension of a blanket certificate with pregranted abandonment authorization for uncommited gas.

[2] Applicant also requests authorization to include interests of other co-owners which have interests in the same wells to the extent co-owners have similar undedicated interests and agree to the sale.

[3] Applicant also requests annual reporting requirements in place of quarterly reporting requirements and that the Commission consider wavier of the reporting requirements.

[4] Application by a natural gas marketer for a blanket certificate with pregranted abandonment authorization.

[FR Doc. 88-15468 Filed 7-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-451-000, et al.]

Northeast U.S. Pipeline Projects; Settlement Discussions

July 5, 1988.

On June 3 and June 30, 1988, the parties met to discuss settlement and consider joint venture proposals to provide new gas service to the Northeast United States. At the end of these discussions, there was consensus that further Settlement Discussions should be scheduled. Accordingly, there will be an additional opportunity to discuss settlement on July 14, 1988, at 10:00 a.m., in a room to be announced at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Parties are again encouraged to develop proposals that simplify and

consolidate various projects and eliminate any unnecessary or duplicative projects. In order to ensure that the discussions are productive, parties are requested to submit a copy of any settlement proposal that will be addressed to other project sponsors and interested parties and the designated staff contact by July 7. This will enable parties to review settlement proposals prior to the discussions and will result in meaningful comment and possibly in counterproposals. Parties may also submit comments on previously submitted settlement proposals.

FOR FURTHER INFORMATION CONTACT: Lee A. Alexander, Office of the General Counsel, GC–11.3, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–9176.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–15469 Filed 7–8–88; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AAA–FRL–3411–9]

Master List of Debarred, Suspended or Voluntarily Excluded Persons

AGENCY: Environmental Protection Agency.

ACTION: EPA Master List of Derbarred, Suspended, or Voluntarily Excluded Persons.

SUMMARY: 40 CFR 32,400 requires the Director, Grants Administration Division, to publish in the Federal Register each calendar quarter the names of, and other information concerning, those parties debarred, suspended, or voluntarily excluded from participation in EPA assisted programs by EPA action under Part 32. Assistance (grant and cooperative agreement) recipients and contractors under EPA assistance awards may not initiate new business with these firms or individuals on any EPA funded activity during the period of suspension, debarment, or voluntary exclusion.

This short list contains the names of those persons who have been listed as a result of EPA actions only. It is provided for general informational purposes only and is not to be relied on in determining a person's current eligibility status. A comprehensive list, updated weekly, is available in each Regional Office. Inquiries concerning the status of any individual, organization, or firm should be directed to EPA's Regional or Headquarters office for grants administration that normally serves you.

DATE: This short list is current as of June 24, 1988.

FOR FURTHER INFORMATION CONTACT: Frank Dawkins, of the EPA Compliance Branch, Grants Administration Division, at (202) 475–8025.

Dated: June 29, 1988.

Harvey G. Pippen, Jr.,

Director, Grants Administration Division (PM–216).

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS

Name and Jurisdiction	File No.	Status [1]	From	To	Grounds
Alle-Catt Asphalt, Inc. (Allegany, NY)	86-0072-02	D	07-29-87	07-28-90	§ 32.200(a)(3).
AES Engineers, Inc. (Willow Springs, IL)	86-0001-00	S	12-15-87	Open	§ 32.300(b).
Altman, Larry L. (Charleston, SC)	85-0063-03	S	07-29-85	Open	§ 32.300(b).
American Recovery Co., Inc. (Glen Burnie, MD)	86-0011-00	D	08-20-86	08-19-89	§ 32.200(f)(i).
Applied Science Distributors (Pensacola, FL)	87-0013-00	D	02-05-87	04-02-90	§ 32.200(a)(i).
Averill, Ernest Jr. (Fort Myers, FL)	83-0066-06	D	12-02-83	10-29-88	§ 32.200(b).
Azzil Trucking Co., Inc. (Roslyn, NY)	85-0008-02	D	09-11-86	09-10-89	§ 32.200(a)(b).
Barnum, James Charles (Utica, MI)	86-0010-01	D	12-10-85	12-09-88	§ 32.200(a).
Batzer Construction Co., Inc. (St. Cloud, MN)	85-0052-00	D	03-07-86	08-05-90	§ 32.200(a).
Batzer, Bruce (St. Cloud, MN)	85-0052-01	D	03-07-85	08-05-90	§ 32.200(a).
Batzer, Robert (St. Cloud, MN)	85-0052-02	D	03-07-86	08-05-90	§ 32.200(a).
Beals, Gordon (Salt Lake City, UT)	88-0024-03	VE	06-05-88	06-04-89	§ 32.200.
Beckham, Charles (Detroit, MI)	84-0030-02	D	02-24-86	07-30-89	§ 32.200(a)(b).
BECO, Inc. (High Point, NC)	85-0017-01	VE	12-10-85	12-09-88	§ 32.200(a)(3).
Bell, Bobby (Sulphur, LA)	85-0071-01	D	03-06-86	03-05-89	§ 32.200(a)(b).
Bell, Edwin (Sulphur, LA)	85-0071-02	D	03-06-86	03-05-89	§ 32.200(a)(b).
Benjamin F. Shaw Company, Inc. (Montgomery, AL)	87-0025-00	D	06-23-88	06-22-91	§ 32.200(a)(1).
Bortugno, Frank (Bronx, NY)	86-0082-30	D	11-09-87	11-08-90	§ 32.200(a).
Bortugno, Ralph (Bronx, NY)	86-0082-29	D	11-13-87	11-12-90	§ 32.200(a).
Bowers, Darralyn (Detroit, MI)	84-0030-01	D	02-24-86	05-11-89	§ 32.200(a)(b).
Bridges, William D., Jr. (Wilmington, NC)	85-0069-01	D	04-09-86	04-08-89	§ 32.200(a).
Bryan, Charles B. (Tempe, AZ)	87-0010-03	D	07-28-87	07-27-90	§ 32.200(a)(c)(i).
Cannady, Nathaniel Ellis (Asheville, NC)	86-0047-01	D	03-18-86	07-15-89	§ 32.200(a)(i).
Careocia, Vincent (Farmingdale, NY)	86-0082-26	D	11-09-87	11-08-90	§ 32.200(a).
Carl I. Schaeffer Electric Co. (St. Louis, MO)	88-0009-00	D	05-14-88	05-13-91	§ 32.200(a).
Carson, Charles (Gross Point Woods, MI)	85-0066-00	D	03-18-86	04-25-89	§ 32.200(b).
Carson, E. Eugene (Statesville, NC)	85-0004-01	D	01-06-86	01-05-89	§ 32.200(a).
Chatterjee, Samar (Willow Springs, IL)	83-0065-00	S	12-15-87	Open	§ 32.300(b).
City Chemicals Company, Inc. (Orlando, FL)	86-0038-02	D	10-02-86	11-23-89	§ 32.200(a)(1).
City Environmental Services, Inc. (Orlando, FL)	86-0038-03	D	10-02-86	11-23-89	§ 32.200(a)(1).
City Fuel Oil Company (Orlando, FL)	86-0038-05	D	10-02-86	11-23-89	§ 32.200(a)(1).
City Industries, Inc. (Orlando, FL)	86-0038-01	D	10-02-86	11-23-89	§ 32.200(a)(1).
Commonwealth Companies Incorporated (Lincoln, NE)	86-0100-01	S	11-12-86	Open	§ 32.200(a)(1).
Commonwealth Electric Company, Inc. (Lincoln, NE)	86-0100-00	S	09-09-86	Open	§ 32.300(b).
Crolich, Peter V. (Mobile, AL)	87-0017-02	D	06-18-87	06-17-90	§ 32.200(a)(i).
Crossgrove, Richard (Pensacola, FL)	87-0013-01	D	02-05-87	04-02-90	§ 32.200(a)(i).
Cryer, John P. (Baton Rouge, LA)	85-0062-03	S	07-29-85	Open	§ 32.300(b).
Cusenza, Sam (Ypsilanti, MI)	85-0024-02	D	02-24-86	04-02-89	§ 32.200(a)(b).
DeLuca, Nick (Staten Island, NY)	86-0082-25	D	11-09-87	11-08-90	§ 32.200(a).
Diliberto, Joseph L. (Fairless Hills, PA)	86-107-01	D	12-12-87	07-15-88	§ 32.200(a)(1).
DiMiceli, Thomas (Brooklyn, NY)	87-0052-00	D	05-25-88	05-24-91	§ 32.200(a).
Domanski, Gary Henry (Utica, MI)	86-0010-02	D	12-10-85	12-09-88	§ 32.200(a).
Driscoll, John William (Dundale, MD)	86-0011-02	D	10-15-86	10-14-89	§ 32.200(f)(i).
Duisen, Darrell A. (San Diego, CA)	86-0105-01	D	10-16-87	10-15-90	§ 32.200(a)(i).

EPA Master List of Debarred, Suspended and Voluntarily Excluded Persons—Continued

Name and Jurisdiction	File No.	Status [1]	From	To	Grounds
Dykes, Lamar D. (Nederland, TX)	85-0071-03	D	03-06-86	03-05-89	§ 32.200(a)(b).
Enmanco (Utica, MI)	86-0010-00	D	12-10-85	12-09-88	§ 32.200(a).
Environmental Management Corporation (Utica, MI)	86-0010-00	D	12-10-85	12-09-88	§ 32.200(a).
Environmental Technology of America, Inc. (Wilbraham, MA)	86-0071-00	D	02-05-87	02-04-90	§ 32.200(a).
Federal Chandros, Inc. (Brooklyn, NY)	87-0040-00	S	07-02-87	Open	§ 32.300(b).
Fields, Leroy (Pensacola, FL)	87-0013-02	D	02-05-87	04-02-90	§ 32.200(a).
Fox, William H. (Salt Lake City, UT)	88-0024-01	VE	06-05-88	06-04-89	§ 32.200.
Floyd D. Stuckey & Associate (Winfield, KS)	84-0028-00	D	08-26-85	08-25-88	§ 32.200(a).
Foley, Bancroft T. (Washington, DC)	86-0004-03	D	03-07-86	03-06-89	§ 32.200(a).
Franklin Wiring Co. (Youngstown, OH)	85-0044-00	D	09-04-85	09-03-88	§ 32.200(a)(3).
FSA Engineering Consultants (Winsfield, KS)	84-0028-00	D	08-26-85	08-25-88	§ 32.200(a).
Fusaro, Robert (Philadelphia, PA)	86-0022-01	D	06-23-88	06-22-88	§ 32.200(a)(1).
Futia, Joseph N., Jr. (Albany, NY)	88-0018-01	D	03-11-88	06-05-89	§ 32.200(b).
Fuita, Joseph N., Sr. (Albany, NY)	88-0018-02	VE	06-07-88	06-05-89	§ 32.200.
G. B. Industries (Atlanta, GA)	87-0082-05	D	11-02-87	Open	§ 32.200.
Gametronics Corp. (Atlanta, GA)	87-0082-06	D	11-02-87	Open	§ 32.200.
Gates and Fox, Ltd. (Tempe, AZ)	87-0010-00	VE	07-28-87	12-01-88	§ 32.200(a)(c)(i).
Gelb, Michael (Brooklyn, NY)	87-0040-01	S	07-02-87	Open	§ 32.300(b).
Gelb, Thomas (Brooklyn, NY)	87-0040-02	S	07-02-87	Open	§ 32.300(b).
Geuther, Herbert G. (Philadelphia, PA)	86-0004-04	D	03-07-86	03-06-89	§ 32.200(a).
Goodloe, George M. (Jacksonville, FL)	86-0099-01	D	08-05-87	02-04-89	§ 32.200(e)(3)(i).
Grant, Alan Blane (Atlanta, GA)	87-0082-05	D	11-02-87	Open	§ 32.200.
Graves, George William (Wilmington, NC)	85-0069-02	D	03-05-86	03-04-89	§ 32.200(a).
Gredig Industries Inc. (Atlanta, GA)	87-0082-04	D	11-02-87	Open	§ 32.200.
Greer, Arthur (Maitland, FL)	86-0038-00	D	10-02-86	11-23-89	§ 32.200.
Gross, William R. (Big Springs, TX)	86-0002-01	D	10-06-86	10-05-89	§ 32.200(a).
Hansen, Leonard A. (St. Peter, MN)	85-0019-02	D	09-26-85	09-25-88	§ 32.200(a)(3).
Herbst Electric Co. (Cleveland, OH)	87-0081-00	D	02-24-88	02-23-91	§ 32.200(a).
Hi-Way Surfacing, Inc. (Marshall, MN)	85-0053-00	D	12-17-85	12-16-88	§ 32.200(a)(3).
Hochreiter, Herbert (Roslyn, NY)	85-0008-01	D	09-11-86	09-10-89	§ 32.200(a)(b).
Hodges Electric Company (Wilmington, NC)	85-0070-00	D	04-04-86	04-03-89	§ 32.200(a).
Howard P. Foley, Company (Washington, DC)	86-0004-00	D	03-07-86	03-06-89	§ 32.200(a).
Hugo Schulz, Inc. (Lakefield, MN)	85-0047-00	D	05-01-86	04-30-89	§ 32.200(a).
Hummel Engineering Corporation (Philadelphia, PA)	86-0009-02	D	03-31-88	03-30-91	§ 32.200(a).
Ingber, Brian (S. Fallsburg, NY)	86-0096-01	D	04-24-87	02-23-90	§ 32.200(a).
J. A. LaPorte, Inc. (Arlington, VA)	86-0037-00	D	08-29-86	08-28-89	§ 32.200(a)(3).
James Electric Co., Inc. (Huntington, WV)	87-0046-00	D	12-12-87	12-11-90	§ 32.200(a)(3).
Jerlow, John A. (Lakefield, MN)	85-0047-02	D	05-01-86	04-30-89	§ 32.200(a).
Jerpbak, Daniel R. (Owatonna, MN)	86-0024-01	D	09-25-86	09-24-89	§ 32.200(i).
Jethani, Nandlal (Williston Park, NY)	86-0082-27	D	11-09-87	11-08-90	§ 32.200(a).
J. N. Futia Co., Inc. (Albany, NY)	88-0018-00	D	03-11-88	06-07-91	§ 32.200.
Johnson, C. Theodore (Indianapolis, IN)	84-0023-04	D	03-04-86	03-03-89	§ 32.200(a)(f).
Jordan, William F. (Tempe, AZ)	87-0010-02	D	07-28-87	07-27-90	§ 32.200(a)(c)(i).
Kolb, Hans (Houston, TX)	88-0004-00	VE	05-27-88	08-26-88	§ 32.200(f)(i).
Komatz Construction Co., Inc. (St. Peter, MN)	85-0019-00	D	09-26-85	09-25-88	§ 32.200(a)(3).
Komatz, Thomas P. (St. Peter, MN)	85-0019-01	D	09-26-85	09-25-88	§ 32.200(a)(3).
Kruse, Lloyd C. (Lakefield, MN)	85-0047-01	D	05-01-86	04-30-89	§ 32.200(a).
Kruse, William B. (Tempe, AZ)	87-0010-01	VE	07-28-87	10-31-88	§ 32.200.
L&J Waste Service, Inc. (Hialeah, FL)	85-0079-02	D	12-19-86	12-18-89	§ 32.200(a)(i).
Law, David P. (Greenwell Springs, LA)	85-0064-00	S	07-29-85	Open	§ 32.300(b).
Law, Theresa McBeth (Greenwell Springs, LA)	85-0064-01	S	07-29-85	Open	§ 32.300(b).
Lench, Frank P. (Lafayette, CA)	86-0004-01	D	03-07-86	03-06-89	§ 32.200(a).
Lizza Industries, Inc. (Roslyn, NY)	85-0008-00	D	09-11-86	09-10-89	§ 32.200(a)(b).
Lofgren, Sven (Lincoln, NE)	87-0014-01	VE	11-12-86	11-12-88	§ 32.200(i).
Martien Electric Company (Cleveland, OH)	88-0013-00	D	05-09-88	05-08-91	§ 32.200(a).
Martien, Harry L., Jr. (Cleveland, OH)	88-0013-01	D	05-10-88	05-09-91	§ 32.200(a).
Mastriano, Julius (New York, NY)	87-0056-90	D	05-20-88	05-19-91	§ 32.200(a).
McDowell Contractors, Inc. (Nashville, TN)	84-0014-00	VE	12-23-85	12-22-88	§ 32.200(a).
Meyer-Rohlin, Inc. (Buffalo, MN)	86-0081-00	VE	04-01-87	10-01-89	§ 32.200(a)(i).
Meyer, Thore P. (Buffalo, MN)	86-0081-01	VE	04-01-87	10-01-89	§ 32.200(a)(1).
Midhampton Asphalt (Roslyn, NY)	85-0008-03	D	09-11-86	09-10-89	§ 32.200(a)(b).
Millspaugh, Michael J. (Mobile, AL)	86-0107-02	D	06-18-87	06-17-90	§ 32.200(a).
Modern Electric Co. (Statesville, NC)	85-0004-00	D	01-06-86	01-05-89	§ 32.200(a).
Moore, Gray E. (Jr.) (Greenwood, SC)	86-0108-00	D	08-19-86	08-18-89	§ 32.200.
Moorse, Lawrence (Marshall, MN)	85-0053-01	D	12-17-85	12-16-88	§ 32.200(a)(3).
Morales, Rene (Bronx, NY)	86-0082-32	D	11-09-87	11-08-90	§ 32.200(a).
Newt Solomon, Inc. (Nashville, TN)	85-0058-00	D	10-10-85	10-09-88	§ 32.200(e)(i).
O'Mara, Lawrence (Chicksville, NY)	86-0082-24	D	11-09-87	11-08-90	§ 32.200(a).
Owens, Jerry B. (Southfield, MI)	85-0065-00	D	02-24-86	03-26-89	§ 32.200(b).
Parkhill-Goodloe Co., Inc. (Jacksonville, FL)	86-0099-00	VE	04-16-87	10-15-88	§ 32.200(a).
Payne, James (Enid, OK)	88-0005-01	D	12-02-87	10-14-88	§ 32.200.
Philadelphia Northwest Constructors and Builders, Inc. (Philadelphia, PA)	86-0022-00	D	06-23-88	06-22-91	§ 32.200(a)(1).
Piccinonna, Julio (Hollywood, FL)	85-0079-01	D	05-11-87	05-10-90	§ 32.200(a).
Pinney, J.A. Bruce (Bala Cynwyd, PA)	84-0023-06	D	01-15-86	03-03-89	§ 32.200(a)(f).
Pipeline Renovation Service, Inc. (Tacoma, WA)	86-0078-00	D	07-02-86	08-07-89	§ 32.200(c)(i).
Pirnos, Wayne (Woodbridge, NY)	86-0096-03	D	04-24-87	04-23-90	§ 32.200(a).
Polymer Chemicals, Inc. (Atlanta, GA)	87-0082-00	D	11-02-87	Open	§ 32.200.
Polymer Group, Ltd. (Atlanta, GA)	87-0082-03	D	11-02-87	Open	§ 32.200.
Polymer Industries, Inc. (Atlanta, GA)	87-0082-02	D	11-02-87	Open	§ 32.200.

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS—Continued

Name and Jurisdiction	File No.	Status [1]	From	To	Grounds
Profita, Gerald D. (Montgomery, AL)	87-0025-01	D	06-23-88	06-22-91	§ 32.200(a)(1).
Resource Conservation & Recovery of America, Inc. (Orlando, FL)	86-0038-04	D	10-02-86	11-23-89	§ 32.200(a)(i).
Riccardelli, Eugene (Brooklyn, NY)	87-0049-001	D	05-25-88	05-24-91	§ 32.200(a).
Rio Grande Construction Company (Bunkie, LA)	85-0063-00	D	07-29-85	10-13-89	§ 32.200(a)(i).
Rogers, Joseph J. (Pittsurgh, PA)	86-0004-02	D	03-07-86	03-06-89	§ 32.200(a).
Rol-Away Systems, Inc. (Hollywood, FL)	85-0079-00	D	12-19-86	12-18-89	§ 32.200(a)(i).
Rupp Construction Company, Inc. (Slayton, MN)	85-0048-00	D	07-17-86	07-16-89	§ 32.200(a).
Rupp, Douglas (Slayton, MN)	85-0048-01	D	07-17-86	07-16-89	§ 32.200(a).
Sarandos, Constantino (Gus) (Tacoma, WA)	86-0078-02	D	07-02-86	08-07-89	§ 32.200(c)(i).
Sarandos, Dolores K. (Tacoma, WA)	86-0078-01	D	07-02-86	08-07-89	§ 32.200(c)(i).
Sarandos, George (Tacoma, WA)	86-0078-03	D	07-02-86	08-07-89	§ 32.200(c)(i).
Saunders, George F. (High Point, NC)	85-0017-02	VE	12-10-85	12-09-88	§ 32.200(a)(3).
Sauseda, Roy (Bunkie, LA)	85-0063-02	D	07-29-85	10-13-89	§ 32.200(a)(i).
Schillizzi, Jack (Bronx, NY)	86-0082-32	D	11-09-87	11-08-90	§ 32.200(a).
Schorr, Paul C. (III) (Lincoln, NE)	87-0014-00	S	11-12-86	Open	§ 32.200(i).
Service Scaffold, Inc. (S. Fallsburg, NY)	86-0096-00	D	04-24-87	04-23-90	§ 32.200(a).
Sheldon, Cynthia A. (Atlanta, GA)	87-0082-08	D	11-02-87	Open	§ 32.200.
Short, Robert W. (Montgomery, AL)	87-0025-02	D	06-23-88	06-22-91	§ 32.200(a)(1).
Smith, Norman F. (Wilbraham, FL)	86-0071-01	D	02-05-87	02-04-90	§ 32.200(a).
Smith, Paul F. (Lakefield, MN)	85-0047-03	D	05-01-86	04-30-89	§ 32.200(a).
Solomon, Newt (Nashville, TN)	85-0058-01	D	10-07-85	10-06-88	§ 32.200(e)(i).
Stuckey, Floyd D. (Winfield, KS)	84-0028-01	D	08-26-85	08-26-88	§ 32.200(a).
Tow Brothers Const., Company (Fairmont, MN)	85-0054-00	D	01-22-86	01-21-89	§ 32.200(a).
Tow, James (Fairmont, MN)	85-0054-01	D	01-22-86	01-21-89	§ 32.200(a).
Toy, Daniel Lee (Utica, MI)	86-0010-03	D	12-10-85	12-09-88	§ 32.200(a).
Tubre Enterprises (Bunkie, LA)	85-0062-01	S	07-29-85	Open	§ 32.300(b).
Tubre Enterprises, Inc. (Bunkie, LA)	85-0062-00	S	07-29-85	Open	§ 32.300(b).
Tubre, Charles (Baton Rouge, LA)	85-0062-02	S	07-29-85	Open	§ 32.300(b).
Tubre, Thomas (Bunkie, LA)	85-0063-01	S	07-29-85	Open	§ 32.300(b).
Universal Engineering & Supply, Inc. (Sulphur, LA)	85-0071-00	D	03-06-86	03-05-89	§ 32.200(a)(b).
Universal Engineering (Sulphur, LA)	85-0071-05	D	03-06-86	03-05-89	§ 32.200(a)(b).
Universal Engineering Service, Inc. (Willow Springs, IL)	88-0002-05	S	12-15-87	Open	§ 32.300(b).
Universal Wheels, Inc. (Sulphur, LA)	85-0071-06	D	03-06-86	03-05-89	§ 32.200(a)(b).
Valentini, Joseph (Ypsilanti, MI)	85-0024-01	D	02-24-86	04-02-89	§ 32.200(a)(b).
Watson Electrical Construction Co. (Wilson, NC)	86-0109-00	D	12-19-86	12-18-89	§ 32.200(i).
Williams, G. Marvin (Asheville, NC)	86-0047-02	D	03-18-85	07-15-89	§ 32.200(i).
Williams, Leo (Salt Lake City, UT)	88-0024-02	VE	06-05-88	06-04-89	§ 32.200.
Wolverine Disposal, Inc. (Ypsilanti, MI)	85-0024-00	D	02-24-86	04-02-89	§ 32.200(a)(b).
X Chem, Inc. (Atlanta, GA)	87-0082-01	D	11-02-87	Open	§ 32.200.
Young, Frank Paul (Sr.) (Glen Burnie, MD)	86-0011-01-01	D	08-20-86	08-19-89	§ 32.200(f)(i).

[1] D = Debarred; S = Suspended; VE = Voluntarily Excluded.

[FR Doc. 88-15462 Filed 7-8-88; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Advanced Television Service Implementation Subcommittee

July 5, 1988.

A meeting of the Implementation Subcommittee of the Advisory Committee on Advanced Television Service will be held on: July 20, 1988, 1:00 p.m., Commission Meeting Room (Room 856), 1919 M Street, NW., Washington, DC.

The agenda for the meeting will consist of:

1. Introduction
2. Approval of Minutes of Last Meeting
3. Report of Working Part 1, Policy and Regulation
4. Report of Working Party 2, Transition Scenarios
5. General Discussion
6. Other Business
7. Date and Location of Next Steering Committee Meeting
8. Adjournment

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Implementation Subcommittee Chairman.

Any questions regarding this meeting should be directed to Dr. James J. Tietjen at (609) 734-2237 or David R. Siddall at (202) 632-7792.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-15445 Filed 7-8-88; 8:45 am]
BILLING CODE 6712-01-M

Technical and Allocations Subgroups of Radio Advisory Committee; Joint Meeting

The Technical and Allocations Subgroup of the Advisory Committee on Radio Broadcasting will hold a joint meeting at 1:30 p.m. on Wednesday, July 20, 1988 at the Headquarters of the National Association of Broadcasters, 1771 N Street, NW., Washington, DC.

The agenda will be:

—Report on the Region 2 AM Expanded Band Conference (RARC-88);
—Use of the expanded AM band (1605-1705 kHz) in the United States;
—Methods for improving the AM radio broadcast service;
—FM Translators; and
—Other business.

The Subgroups' meetings are continuing ones, and may be resumed after each session at times and places

decided by the participants. Meetings of the Radio Advisory Committee and its Subgroups are open to the public. All interested persons are invited to participate.

For further information, please call Wallace Johnson, Chairman of the Technical Subgroup, at (703) 824–5660, or Louis Stephens, Chairman of the Allocations Subgroup, at (202) 254–3394.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–15444 Filed 7–8–88; 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, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200136.

Title: Port of Oakland Terminal Lease Agreement.

Parties:

City of Oakland

Mitsui O.S.K. Lines, Ltd.

Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The agreement is a license of 3.70/acre parcel of land together with Port Building No. C–516, to be used for establishing and maintaining a truck and rail terminal for distributing goods to and from trucks, rail cars and containers and for other uses related thereto.

Agreement No.: 224–011080–003.

Title: Philadelphia Port Corporation Terminal Agreement.

Parties:

Philadelphia Port Corporation (PPC)

I.T.O. Corporation

Synopsis: The agreement provides for a further 60-day extension of the basic agreement to September 1, 1988.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: July 6, 1988.

[FR Doc. 88–15477 Filed 7–8–88; 8:45 am]

BILLING CODE 6730–01–M

Issuance of Certificate for Indemnification of Passengers for Nonperformance of Transportation; Society Expeditions Cruises, Inc.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Society Expeditions Cruises, Inc./ Discoverer Reederei GmbH, c/o Graham and James, 1050 17th Street NW., Washington, DC 20036.

Date: July 5, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–15440 Filed 7–8–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Alta Vista Bancshares, Inc. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each applicant is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonaby be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than July 27, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Alta Vista Bancshares, Inc.*, Alta Vista, Iowa; to acquire Alta Vista Insurance and Services Corporation, Alta Vista, Iowa, and thereby engage in general insurance activities in a place where the bank holding company or a subsididary of the bank holding company has a lending office and that has a population not exceeding 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. These activities will be conducted in Alta Vista, Iowa, and the surrounding area.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Lena Spitzer Limited Partnership*, Streeter, North Dakota; to acquire Streeter Insurance Agency, Inc., Streeter, North Dakota, and thereby engage in any insurance agency activity in a place where the bank holding company or a subsidiary of the bank holding company has a lending office and that has a population not exceeding 5,000 pursuant to § 225(b)(8)(iii)(A) of the Board's Regulation Y. These activities will be conducted in Streeter, North Dakota.

Board of Governors of the Federal Reserve System, July 5, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–15423 Filed 7–8–88; 8:45 am]

BILLING CODE 6210–01–M

Claire Dell Hoffman Trust; Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 26, 1988.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Claire Dell Hoffman Trust;* to acquire an additional 7.82 percent of the voting shares of NBA Bancshares, Inc., Salina, Kansas, and thereby indirectly acquire The National Bank of America at Salina, Salina, Kansas.

Board of Governors of the Federal Reserve System, July 5, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-15420 Filed 7-8-88; 8:45 am]

BILLING CODE 6210-01-M

Alan S. Fellheimer, et al.; Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 26, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Alan S. Fellheimer* and Judith E. Fellheimer of Sewickley Heights, Pennsylvania; Claire W. Gargalli of Pittsburgh, Pennsylvania; Henry Posner of Pittsburgh, Pennsylvania; David A. Gardner of New York, New York; James H. McLaughlin of Pittsburgh, Pennsylvania; Charles G. Cheleden of Horsham, Pennsylvania; George F. Eichleay of Pittsburgh, Pennsylvania; David J. East of Pittsburgh, Pennsylvania; S. Raymond Rackoff of Pittsburgh, Pennsylvania; Judith E. Yankovic of Robinson Township, Pennsylvania; Howard W. Hanna, III, of Pittsburgh, Pennsylvania; J. Bruce Johnston of McMurray, Pennsylvania; William F. Jones, Jr., of Wexford, Pennsylvania; Patricia A. Muldoon of Pittsburgh, Pennsylvania; Dennis F. Kennedy of Sewickley, Pennsylvania; Robert C. Payment of Butler, Pennsylvania; Dennis Pitocco of Pittsburgh, Pennsylvania; Emerson M. Wickwire of Sewickley, Pennsylvania; and Nicholas J. Zennario of Wexford, Pennsylvania; to acquire, collectively, up to 25 percent of the voting shares of Equimark Corporation, Pittsburgh, Pennsylvania; and thereby indirectly acquire Equibank, Pittsburgh, Pennsylvania; Equibank (Delaware), N.A., Wilmington, Delaware; Liberty Savings Bank, Dresher, Pennsylvania; Heritage National Bank, Pittsburgh, Pennsylvania.

2. *Alan S. Fellheimer* and Judith E. Fellheimer of Sewickley Heights, Pennsylvania; to acquire up to 16 percent of the voting shares of Equimark Corporation, Pittsburgh, Pennsylvania, and thereby indirectly acquire Equibank, Pittsburgh, Pennsylvania; Equibank (Delaware), N.A., Wilmington, Delaware; Liberty Savings Bank, Dresher, Pennsylvania; Heritage National Bank, Pittsburgh, Pennsylvania.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *John L. Olson,* and Marilyn J. Olson, Sidney, Montana; to acquire 28.28 percent of the voting shares of 1st Untied Bancorporation, Inc., Sidney, Montana, and thereby indirectly acquire First United Bank of Sidney, Sideny, Montana.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoeing, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *FirstBank Holding Company Employee Stock Ownership Plan,* Lakewood, Colorado; to acquire an additional 3.4 percent of the voting shares of FirstBank Holding Company of Colorado, Lakewood, Colorado, and thereby indirectly acquire FirstBank of West Arvada, N.A., Arvada, Colorado, FirstBank of Aurora, N.A., Aurora, Colorado; FirstBank of Avon, Avon, Colorado; FirstBank of Boulder, N.A., Boulder, Colorado; Breckenridge FirstBank, N.A., Breckenridge, Colorado; FirstBank of Castle Rock, N.A., Castle Rock, Colorado; FirstBank of Denver, N.A., Denver, Colorado; FirstBank of Cherry Creek, N.A., Denver, Colorado; FirstBank of Englewood, N.A., Englewood, Colorado; FirstBank of Erie, Erie, Colorado; FirstBank of Tech Center, N.A., Englewood, Colorado; FirstBank of Colorado, N.A., Littleton, Colorado; FirstBank of Lakewood, N.A., Lakewood, Colorado; FirstBank of Westland, N.A., Lakewood, Colorado; FirstBank of Academy Park, Lakewood, Colorado; FirstBank of Villa Italia, N.A., Lakewood, Colorado; FirstBank of Littleton, N.A., Littleton, Colorado; FirstBank of Wadworth/Coal Mine, N.A., Littleton, Colorado; FirstBank of Arapahoe County, N.A., Littleton, Colorado; FirstBank of North Longmont, N.A., Longmont, Colorado; FirstBank of South Longmont, N.A., Longmont, Colorado; FirstBank of Minturn, Minturn, Colorado; FirstBank of Silverthorne, N.A., Silverthorne, Colorado; Vail FirstBank Industrial Bank, Vail, Colorado; FirstBank of Vail, Vail, Colorado; FirstBank at 88th/Wadsworth, N.A., Westminster, Colorado; FirstBank of Wheat Ridge, N.A., Wheat Ridge, Colorado; and FirstBank of Republic Plaza, N.A., Denver, Colorado.

2. *FirstBank Holding Company of Colorado;* Lakewood, Colorado; to acquire 100 percent of the voting shares of FirstBank of Green Mountain, N.A., Lakewood, Colorado, and FirstBank at Arapahoe/Holly, N.A., located in an unincorporated part of Arapahoe County, Colorado.

Board of Governors of the Federal Reserve System, July 5, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-15424 Filed 7-8-88; 8:45 am]

BILLING CODE 6210-01-M

Jackson County Bancorp, Inc.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding

company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 29, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Jackson County Bancorp, Inc.*, Gainesboro, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Jackson County Bank, Gainesboro, Tennessee. Comments on this application must be received by July 27, 1988.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Edgewood Bancshares, Inc.*, Countryside, Illinois; to merge with Cosmopolitan Financial Services, Inc., Countryside, Illinois, and thereby indirectly acquire First National Bank of Lockport, Lockport, Illinois, and with Edgemark Financial Corporation, Countryside, Illinois, and thereby indirectly acquire Edgemark Bank-Lombard, Lombard, Illinois. Comments on this application must be received by July 22, 1988.

2. *Edgewood Bancshares, Inc.*, Countryside, Illinois; to acquire 100 percent of the voting shares of Edgemark Bank-Rosemont, Rosemont, Illinois, a *de novo* bank. Comments on this application must be received by July 22, 1988.

3. *Edgewood Bancshares, Inc.*, Countryside, Illinois; to acquire 100 percent of the voting shares of Merchandise National Bank of Chicago, Chicago, Illinois. Comments on this application must be received by July 22, 1988.

4. *Iroquois Bancorp, Inc.*, Gilman, Illinois; to acquire 10 percent of the voting shares of Terrapin Bancorp, Inc., Elizabeth, Illinois, and thereby indirectly acquire The Elizabeth State Bank, Elizabeth, Illinois.

5. *Peotone Bancorp, Inc.*, Peotone, Illinois; to acquire 12 percent of the voting shares of Terrapin Bancorp, Inc., Elizabeth, Illinois, and thereby indirectly acquire The Elizabeth State Bank, Elizabeth, Illinois.

6. *Terrapin Bancorp, Inc.*, Elizabeth, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of The Elizabeth State Bank, Elizabeth, Illinois.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *IV Corporate Woods Acquisition, Inc.*, Wichita, Kansas; to merge with Fourth Financial Corporation, Wichita, Kansas, and thereby indirectly acquire Corporate Bankshares, Inc., Overland Park, Kansas, and Corporate Woods State Bank, Overland Park, Kansas. In connection with this application, IV Corporate Woods Acquisition, Inc. has applied to become a bank holding company.

2. *Steamboat Springs Holding Company*, Steamboat Springs, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Steamboat Springs, Steamboat Springs, Colorado.

3. *The Weld State Company*, Fort Lupton, Colorado; to acquire 100 percent of the voting shares of Central Bank of Craig, N.A., Craig, Colorado. Comments on this application must be received by July 18, 1988.

Board of Governors of the Federal Reserve System, July 5, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-15425 Filed 7-8-88; 8:45 am]

BILLING CODE 6210-01-M

Michigan National Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is lited in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 29, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Michigan National Corporation*, Farmington Hills, Michigan; to acquire Second Commercial Fund, Inc., Bala Cynwyd, Pennsylvania, and thereby engage in making, acquiring, and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 5, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-15421 Filed 7-8-88; 8:45 am]

BILLING CODE 6210-01-M

Public Bank Holding Co., Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 29, 1988.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Public Bank Holding Company, Inc.*, Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of The First Women's Bank, New York, New York.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Southeastern Bancorp, Inc.*, Greeleyville, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Greeleyville, Greeleyville, South Carolina.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Illini Community Bancorp, Inc.*, Springfield, Illinois; to acquire 18.3 percent of the voting shares of SBV Bancshares, Inc., Virden, Illinois, and thereby indirectly acquire State Bank of Virden, Virden, Illinois.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Bancshares of Dyer, Inc.*, Dyer, Tennessee; to become a bank holding company by acquiring at least 98.09 percent of the voting shares of Bank of Dyer, Dyer, Tennessee.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *ANB Bankcorp, Inc.*, Bristow, Oklahoma; to acquire 100 percent of the voting shares of Citizens Bank, N.A., Sapulpa, Oklahoma.

2. *BBOK Bancshares, Inc.*, Wichita, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Bankers Bank of Kansas, N.A., Wichita, Kansas.

F. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Interstate Bancorp*, Los Angeles, California; to acquire 100 percent of the voting shares of Jefferson State Bank, Medford, Oregon.

Board of Governors of the Federal Reserve System, July 5, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-15422 Filed 7-8-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Closure Order; Piedra Rock Quarry, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Prohibition of shooting on public lands in and around the Piedra Rock Quarry within Fresno County in the Hollister Resource Area, Bakersfield District, California.

SUMMARY: Certain described public lands within the Hollister Resource Area in and around the Piedra Rock Quarry in Fresno County, California are hereby closed to the shooting or discharge of any firearm, air or gas gun, sling, elastic or spring gun, slingshot, bow, crossbow, dart or any implement or mechanical applicance by which any bullet, shot, stone, dart or other projectile may be propelled, sprung or thrown from one place to another for any reason. The closure will be in effect on all of the below described public land:

Section 8, Lots 17 and 18, T. 13 S., R. 24 E., MDM.

SUPPLEMENTARY INFORMATION: This order is necessary for public safety and for the protection of public and private property, lands and resources within and adjacent to the closed area. Unregulated gunfire has damaged adjacent private property and has endangered the lives of adjacent residents. This closure is issued under the authority of 43 CFR 8364.1. Any person who fails to comply with this closure order shall be subject to the penalties provided in 43 CFR 8360.0-7. Only delegated Federal Law Enforcement Officers, or any California State Peace Officer as defined in California Penal Code Section 830, while engaged in the execution of their official duties shall be exempt from this order.

DATES: This order is effective June 22, 1988 and is in effect until the order is cancelled, amended or replaced.

FOR FURTHER INFORMATION CONTACT: J. Steven Addington, Acting Area Manager, Hollister Resource Area, Bureau of Land Management, P.O. Box 365, Hollister, CA 95024; (408) 637-8183.

Dated: June 22, 1988.

J. Steven Addington,

Acting Area Manager.

[FR Doc. 88-15403 Filed 7-8-88; 8:45 am]

BILLING CODE 4310-84-M

[AZ-020-08-4212-13; AZA-22792-B]

Realty Action; Exchange of Public Land in Pinal and Yavapai Counties, AZ

The following described federal lands have been determined to be suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Base and Meridian, Pinal County, Arizona

T. 5 S., R. 5 E.,
Sec. 13, lots 1 to 7, incl., SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 14, lots 1 to 4, incl., S½N½, S½;
Sec. 15, lots 1 to 4, incl., S½N½, S½;
Sec. 16, lots 1 to 4, incl., S½N½, N½SE¼;
Sec. 17, NE¼;
Sec. 21, NE¼, S½;
Sec. 22, lots 1 to 4, incl., NW¼;
Sec. 23, lots 1 to 4, incl., S½N½;
Sec. 24, lots 1 to 5, incl., S½NE¼, SE¼NW¼, SW¼.
T. 5 S., R. 6 E.,
Sec. 17, W½;
Sec. 18, lots 1 to 5, incl., SE¼NW¼, E½SW¼, SE¼.

Comprising 4,916.93 acres

In exchange for the above-described public land, the United States will acquire all or part of the below-described private land from M&B Investments, An Arizona General Partnership, or their nominee.

T. 9 N., R. 3 E.,
Sec. 4, lot 3;
Sec. 20, SE¼NE¼.
T. 10 N., R. 3 E.,
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 8, all;
Sec. 9, all;
Sec. 11, N½SE¼;
Sec. 12, N½SW¼;
Sec. 25, all.
T. 10 N., R. 4 E.,
Sec. 34, exchange survey 667.

Comprising 2,620 acres, more or less, commonly referred to as the Horseshoe Ranch.

T. 9 N., R. 1 E.,

Sec. 24, all.
T. 9½ N., R. 2 E.,
Sec. 21, lot 1, SE¼;
Sec. 22, lots 1 and 2, S½, except metes and bounds description [1];
Sec. 27, lots 1 to 4, incl., S½N½, except metes and bounds description [1].
T. 10 N., R. 2 E.,
Sec. 8, W½;
Sec. 14, SW¼SW¼, W½SE¼SW¼;
Sec. 16, W½SW¼;
Sec. 21, NE¼;
Sec. 22, all;
Sec. 23, W½W½, W½E½W½;
Sec. 26, NW¼, N½SW¼, SW¼SW¼;
Sec. 27, all;
Sec. 28, E½, E½W½, except metes and bounds description [1];
Sec. 33, E½, E½W½, except metes and bounds description [1];
Sec. 34, all, except metes and bounds description [1].

Comprising 5,280 acres, more or less, commonly referred to as the Bumble Bee Ranch.

The exchange proposal involves all of the exchange proponent's interest in the surface and subsurface of the private lands and the surface and subsurface estate of the public lands. The exchange is consistent with the Bureau's land use planning objectives.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. Rights-of-way AZA–9034, AZA–21393, AZAR–005190, AZA–8839, AZA–18929, AZA–18979 and AZA–23377.

3. Restrictions which may be imposed by Pinal County Board of Supervisors in accordance with Pinal County floodplain regulations.

4. All valid existing rights.

Lands to be transferred out of federal ownership will affect the following livestock allotment: Sacaton Mountains 6194.

The lands to be acquired by the United States from M&B Investments shall be subject to certain easements, permits and other encumbrances detailed in Schedule B of Ticor Title Insurance Company preliminary title report number 88060240 and Transamerica Title Insurance Company preliminary title report 88005257–C.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the public from appropriation under the public land laws, inlcuding the mining laws, and from any subsequent land exchange proposals filed by any proponent other than M&B Investments or their nominee.

The segregation of the described selected lands shall terminate upon issuance of a document conveying title to such lands or upon publication in the **Federal Register** of a notice of termination of the segregation, or the expriation of two years from the date of initial publication (June 25, 1987), whichever occurs first.

Upon completion of the official appriasal, acreage adjustments will be made to equalize the values of the offered and selected lands.

For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested persons may submit comments to the District Manager, Phoenix District, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Objections will be reviewed by the State Director, who may modify, vacate or sustain this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Henri R. Bisson,

District Manager.

Date: July 5, 1988.

[FR Doc. 88–15449 Filed 7–8–88; 8:45 am]

BILLING CODE 4310–32–M

[1] Metes and bounds description from Exhibit A of Ticor Preliminary Title Report 88060240

National Park Service

National Registry of Natural Landmarks

AGENCY: National Park Service, Interior.

ACTION: Public notice and request for comment.

The areas listed below appear to qualify for designation as national natural landmarks, in accordance with the provisions of 36 CFR Part 62. Pursuant to § 62.4(d)(1) of 36 CFR Part 62, written comments concerning the potential designation of these areas as national natural landmarks may be forwarded to the Director, National Park Service (490), U.S. Department of the Interior, Washington, DC 20240. Written comments should be received no later than 60 days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Charles M. McKinney, Natural Landmarks Branch, Wildlife and Vegetation Division, (202) 343–9525.

Dated: June 29, 1988.

Denis P. Galvin,

Acting Director.

ARKANSAS

Newton County

Fitton Cave—This 1,050-acre site is located 6 miles northwest of Jasper within the Buffalo National River complex, administered by the National Park Service. It is the longest known cave (8.1 miles) in Arkansas and remains largely unexplored. Fitton Cave is also the largest known cave in the Interior Highlands Natural Region and exhibits several distinct levels of passage development in a relatively unspoiled state. It also contains the best display of secondary gypsum and mirabilite deposits, as well as some of the largest cavern rooms, within the entire physiographic province.

MISSISSIPPI

Montgomery County

Kilmichael Meteor Crater—This 1,460-acre surface crater site is located 9 miles east of Winona. It is a privately-owned recent impact crater, 6 miles in diameter, created by a meteorite approximately 520 feet in diameter, falling in soft unconsolidated Eocene sediments. Discovered in 1931, Kilmichael Meteor Crater has been outlined by a series of detailed magnetic, gravity, and seismic surveys, followed by bore holes and a deep well test. No volcanics, salt uplifts, sink-hole cavities, regional tectonics or basement uplift is observed at this site. This is the only meteor impact area where weak shock-wave patterns preserved in rock fragments have been observed. This unique and fragile feature is one of the very few recognized craters in North America illustrating the more dramatic geological processes that influenced the development of the Earth's crust. The entire area is widely known for its scenic beauty and high density deer population.

MISSOURI

Greene County

Fantastic Caverns—This 300-acre privately-owned site is located 3 miles north of Springfield. A very spacious cave, Fantastic Caverns is extremely well-decorated with speleothems, soda straws, and stalactites. The cave contains beautiful draperies, columns and large stalagmites. The cave also contains excellent calcite resolution crystals. Two underground streams flow within Fantastic Caverns, discharging on the Sac River. Most significantly, Fantastic Caverns provides a pristine habitat for endangered aquatic species. This cave contains the Ozark cavefish (*Amblyopsis rosae*), the most highly

cave-adapted cavefish in the United States. It is on the national and state lists of rare and endangered species. The only other known concentration of this cavefish is located near Fayetteville, Arkansas. In addition, other fauna include cave crayfish, the Ozark blind salamander, and the eastern Pipistrelle bat. *Cambarus setosus*, a white crayfish endemic to subterranean waters in southwestern Missouri, is also present and appears on the state rare and endangered species list.

OREGON

Umatilla County

McKay Creek Paleontological Site—This 320-acre site is located 8 miles south of Pendeleton within the McKay Creek National Wildlife Refuge, and administered by the U.S. Fish and Wildlife Service. It is well-known in the earth sciences community for its extremely fossiliferous mammalian bone beds exposed at shoreline along the edge of the reservior. Upper Miocene in age (5–10 million years old), the McKay site is one of the best exposures of mammalian fossil bearing rocks of Miocene age anywhere in the world. This "type locality" is recognized as classical by paleontologists worldwide. The variety of fossils is striking. In addition to a wide array of small mammals such as rats, mice, gophers, shrews, beaver and rabbits, the rocks yield a host of larger mammals such as rhinoceros, pigs, camels, antelope, horses, elephants (mastodon), etc. There is also a diversified assemblage of fossil mammalian predators found here including various canids and several felids. The McKay site has produced thousands of fossil specimens. Many new species of mammalian taxa were first described here. Many of the new mammal species described from this site are found nowhere else. These fossil beds also yield fossil leaves, wood, and pollen traces making it possible to assemble a complete composite picture of an upper Miocene environment. The richness of these fossil beds prompted some of the earliest pioneering research on prehistorical animal communities.

TENNESSEE

Stewart County

Bear Creek—This 257-acre site, administered by the Tennessee Valley Authority and located approximately 5 miles west of Dover, is the best known example of western mesophytic forest remaining in the Interior Low Plateaus Natural Region. No comparable forest exists on the Western Highland Rim. Ridgelines forming the southern border average 500–600 feet in elevation and floodplains are between 370–400 feet. These mesic forests are attenuated outliers of the mixed mesophytic forest, generally dominated by beech and sugar maple. The forest also contains basswood, Ohio buckeye, shagbark hickory, blackgum and white oak.

WASHINGTON

Franklin County

Kahlotus Ridgetop—This 240-acre state-owned site is located 6 miles north of Kahlotus and is considered the best representative example of the central Palouse grassland in the Columbia Plateau. It illustrates a climax community of bluebunch wheatgrass-Idaho fescue. The site occupies rolling hills with elevations varying from 1,360 to 1,558 feet. The site is carpeted with bunchgrasses and patches of annual grasses.

Whitman County

Kramer Palouse Prairie—This 27-acre site, 6 miles north of Colton, is considered the best representative example of northern Palouse grassland in the Columbia Plateau. The site occurs on rolling, deep loess hills typical of the Palouse region. Elevations range from 2,851 to 2,680 feet at this state-owned site.

[FR Doc. 88–15441 Filed 7–8–88; 8:45 am]
BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[No. MC–F–19157]

Raynald R. Dupuis; Continuance in Control of Arrow Leasing, Inc.; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Raynald R. Dupuis has filed a petition under 49 U.S.C. 11343(e) seeking an exemption from the requirement of prior regulatory approval for his continuance in control of Arrow Leasing, Inc. (Arrow Leasing). Mr. Dupuis is the president and principal stockholder of Arrow Leasing, which is presently seeking an initial grant of operating authority in No. MC–209730 which would allow it to operate as a motor common carrier of passengers, in charter and special operations, between points in the United States. Mr. Dupuis seeks the exemption in contemplation of Arrow Leasing's obtaining this operating authority. The continuance in control of the Arrow Line, Inc. (Arrow) (MC–1934) and R and D Leasing (R and D) (MC–196275) by Mr. Dupuis was previously exempted from the requirement of our prior review and approval in No. MC–F–18664, served May 5, 1988.

DATE: Comments must be received by August 10, 1988.

ADDRESSES: Send comments (an original and 10 copies), referring to Docket No. MC–F–19157, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioners' representative: Charles A. Webb, 606 London House, 1001 Wilson Boulevard, Arlington, VA 2209.

FOR FURTHER INFORMATION CONTACT: David Berger, (202) 275–7980. [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Petitioner seeks an exemption under 49 U.S.C. 11343(e) and the Commission's regulations in Procedures—Handling Exemptions Filed by Motor Carriers, 367 I.C.C. 113 (1982).

Arrow holds motor common carrier authority (1) to transport passengers, in charter and special operations, between points in the United States, and in regular-route operations, between points in Connecticut, Massachusetts, and New York, and (2) to transport automobiles, in secondary movements, between specified points in Connecticut, Massachusetts, New Jersey, and New York, on the one hand, and, on the other, points in Florida. R and D holds motor common carrier authority to transport passengers, in special and charter operations, between points in the United States. Mr. Dupuis owns 51 percent of Arrow's stock; he serves as its director and president; and the remaining 49 percent of Arrow's stock is owned by Mr Dupuis' mother, Bertha T. Dupuis. Mr. Dupuis is the sole owner of R and D.

Accordingly, upon issuance of authority to Arrow Leasing, Mr. Dupuis will control three regulated motor carriers (*i.e.*, Arrow Leasing, Arrow, an 49 U.S.C. 11343(a)(5), the Commission's prior approval is required for the acquisition of control of a carrier by a person that is not a carrier but that controls any number of carriers. Thus, the involved transaction is subject to our jurisdiction and can be carried out only under our regulation or an exemption from regulation. Mr. Dupuis contends that approval of the transaction will be consistent with the national transportation policy in that it

will promote competitive and efficient transportation services to : (a) Meet the needs of shippers, passengers, and consumers; (b) allow a variety and quality of price options; (c) allow the most productive use of equipment; (d) enable efficient and well-managed carriers to earn adequate profits; and (e) provide and maintain commuter bus operations. Mr. Dupuis asserts that the involved transaction is of limited scope because Arrow and R and D are relatively small entities, with 1987 gross operating revenues of approximately $4.4 million and $206,000, respectively, and Arrow Leasing, which will be a new carrier, is an entity that currently has no operating revenues. Should Arrow Leasing obtain the passenger authority it seeks, the only area of service overlap between Arrow Leasing, Arrow, and R and D would be in special and charter operations. Approval of the involved transaction assertedly should not result in an adverse impact on competition in the charter market, since the carriers are small, and the market is highly competitive.

A copy of the petition may be obtained from petitioner's representative, or it may be inspected at the Washington, DC, offices of the Interstate Commerce Commission during normal business hours (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic concepts, Inc., in Room 2229 at Commission headquarters.

Decided: July 1, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88-15392 Filed 7-8-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31287]

Southern Railway Co., Trackage Rights Exemption; Southrail Corp.

Southrail Corporation has agreed to grant approximately 1.4 miles of overhead trackage rights to Southern Railway Company (SR) between milepost 329.0 and milepost 330.4 in Corinth and Alcorn Counties, MS. The trackage rights will be effective on or after June 15, 1988.[1]

This notice is filed under 49 CFR 1180.2(d)(7). 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 stay the transaction.

As a condition to the use of this exemption any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: July 5, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-15391 Filed 7-8-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-254X]

CSX Transportation, Inc.; Abandonment Exemption; Letcher County, KY

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 2.7-mile of railroad between milepost 28.2 near Jenkins and milepost 30.9 at the end of applicant's Sandy Valley & Elkhorn Subdivision near Beefhide in Letcher County, KY.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, the exemption will be effective August 10, 1988 unless stayed pending reconsideration. Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by July 21, 1988 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 31, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by July 16, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 30, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 88-15327 Filed 7-8-88; 8:45 am]

BILLING CODE 7035-01-M

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[1] SR indicates that consummation of this transaction is to coincide with the effective date of its acquisition of the Illinois Central Railroad Company line between Fulton, KY, and Haleyville, AL, approved by the Commission in Finance Docket No. 31088. In a decision served June 21, 1988, Chairman Gradison issued a 10-day administrative stay of the effectiveness of that approval to permit more thorough consideration of petitions for stay filed by United Transportation Union. By decision served June 27, 1988, the Commission denied those petitions, making June 27, 1988, the effective date of the approval.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decisions on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

[2] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C. 2d 164, served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[Docket No. AB-55 (Sub-250X)]

CSX Transportation, Inc.; Abandonment Exemption; Fayette and Nicholas Counties, WV

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 8.57-mile line of railroad between milepost 0.0 at Rich Creek Jct., WV, and milepost 8.57 at the end of its Rich Creek Subdivision, in Fayette and Nicholas Counties, WV.

Applicant has certified that (1) no local or overhead traffic has moved over the line for at least 2 years, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days before the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective August 10, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by July 21, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 31, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by July 16, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 30, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 88-15328 Filed 7-8-88; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

[2] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance,* 4 I.C.C.2d 164, served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[Docket No. AB-3 (Sub-72]

Missouri Pacific Railroad Co.; Abandonment and Findings

The Commission has found that the public convenience and necessity permit Missouri Pacific Railroad Company to abandon its 162.7-mile line of railroad between milepost 408.9 near McGehee in Desha County, AR, and milepost 651.6 near Vidalia in Concordia Parish, LA.

A certificate will be issued authorizing abaondonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days from publication of this notice. The following notification must be typed in bold face on the lower left-hand corner of the envelope: "Rail Section, AB-OFA." Any offer previously made must be made within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: June 29, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Lamboley dissented with a separate expression. Commissioner Simmons did not participate in the disposition of this proceeding.

Noreta R. McGee,

Secretary.

[FR Doc. 88-15390 Filed 7-8-88; 8:45 am]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 72-4, 50-269/270/287]

Duke Power Co.; Consideration of Issuance of a Materials License for the Storage of Spent Fuel and of Amendments to Facility Operating Licenses and Opportunity for a Hearing

The Nuclear Regulatory Commission (the Commission) is considering an application dated March 31, 1988, for a materials license, under the provisions of 10 CFR Part 72, from Duke Power Company (the applicant) to possess spent fuel and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation (ISFSI) located in Oconee County, South Carolina. If granted, the license will authorize the applicant to store spent fuel in a dry storage concrete module system at the applicant's Oconee Nuclear Station site for Units 1, 2, 3 (Operating Licenses DPR-38, 47, and 55). Pursuant to the provision of 10 CFR Part 72, the term of the license for the ISFSI would be twenty (20) years.

The Commission is also considering issuance of amendments to Facility Operating Licenses Nos. DPR-38, DPR-47, and DPR-55 that would revise the Station's common Technical Specifications (TS) to allow the use of multi-element spent fuel dry shielded canisters (DSC). The DSC situated within a transfer cask would be loaded with spent fuel underwater in the spent fuel pools. The loaded DSC would then be transferred by the transfer cask from the spent fuel building to a reinforced concrete module, the independent spent fuel storage installation (ISFSI). The proposed TS revisions address the movement and handling of the transfer cask and DSC in the existing facility.

To mitigate the consequences of potential cask drop events, the current TS 3.8.13 limits movement of spent fuel

casks in the Oconee spent fuel pools. To allow the use of the heavier DSC/transfer cask, the licensee proposes to add TS 3.18.13. c and d. The amendments also propose revision to TS 5.4.2.3 to identify the ISFSI as a storage location for spent fuel.

Revised radiological consequence calculations for a hypothetical worst-case cask drop of the loaded DSC and transfer cask show that for the Oconee Units 1 and 2 spent fuel pool the spent fuel stored in the first 64 rows of the storage racks closest to the cask handling area must have decayed for 65 days for the radiation dose resulting from the incidental cask drop event to be below the limits set forth in 10 CFR Part 100. For Oconee Unit 3 spent fuel pool, all of the spent fuel must have decayed a minimum of 57 days.

Prior to issuance of the requested license and the proposed reactor operating license amendments, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The issuance of the materials license and the proposed reactor operating license amendments will not be approved until the Commission has reviewed the proposal and has concluded that approval of the license and the amendments will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public. The NRC will complete an environmental evaluation, in accordance with 10 CFR Part 51, to determine if the preparation of an environmental impact statement is warranted or if an environmental assessment and Finding of No Significant Impact are appropriate. This action will be the subject of a subsequent notice in the Federal Register.

Pursuant to 10 CFR 2.105 and 2.1107, by August 9, 1988, the licensee may file a request for a hearing; and any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to the subject materials license and/or with respect to the proposed reactor operating license amendments in accordance with the provisions of 10 CFR 2.714. 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 or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. In the event that no request for hearing or petition for leave to intervene is filed by the above date, the Commission may, upon satisfactory completion of all evaluations, issue the materials license and the reactor license amendments without further prior notice.

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 that 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 and should identify whether such aspect relates to the requested materials license or to the proposed reactor license amendments. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend a petition, without prior approval of the presiding officer at any time up to 15 days prior to the holding of the first prehearing conference, 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, the petitioner shall file a supplement to the petition to intervene which must include a list of contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. 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.

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 Richard E. Cunningham, Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards; or if the hearing is sought on the reactor amendments to David B. Matthews, Director, Project Directorate II-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation: 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 A. V. Carr, Esq., Duke Power Company, 422 South Church Street, Charlotte, North Carolina, 28242, attorney for the applicant.

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).

The Commission hereby provides notice that the materials licensing aspects of this proceeding concern an application for a license falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of NWPA, the Commission, at the request of any petitioner or any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors," (published at 50 FR 41662, October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, subpart G continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The pr esiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, then the usal procedures in 10 CFR Part 2, subpart G apply.

If a request for a hearing is received on the proposed reactor operating license amendments, 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 considerations in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application dated March 31, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the local public document room at the Oconee County Library, 501 West South Board Street, Walhalla, South Carolina 29691. The Commission's License and Safety Evaluation Report, when issued, may be inspected at the above locations.

Dated at Rockville, Maryland, this 30th day of June.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety.

David B. Matthews,

Director, Project Directorate II–3, Division of Reactor Projects–I/II.

[FR 88–15476 Filed 7–8–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25870; File No. SR–DTC–88–6]

Self-Regulatory Organizations; Depository Trust Co.; Order Extending Approval of Proposed Rule Change on a Temporary Basis

On May 3, 1988, the Depository Trust Company ("DTC") filed a proposed rule change (File No. SR–DTC–88–6) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposed rule change would approve on a permanent basis DTC's Same-Day Funds Settlement ("SDFS") Service. Pilot operation of the SDFS Service began on June 26, 1987, when the Commission approved the SDFS Service on a temporary basis until January 31, 1988.[1] In January 1988, the Commission extended temporary approval until June 30, 1988.[2] As discussed below, the Commission is extending its approval of the SDFS Service on a temporary basis, through August 31, 1988.

The Commission has requested certain information from DTC regarding SDFS Service operation experience. The Commission believes that before granting final approval of the proposed rule change that it needs to analyze fully the information DTC is providing. Therefore, the Commission believe that it is appropriate to extend the temporary approval of the SDFS Service for two months.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the approval of the proposed rule change (File No. SR–DTC–88–6) be, and hereby is, approved on a temporary basis through August 31, 1988.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

[1] *See* Securities Exchange Act Release No. 24689 (July 9, 1987) 52 FR 26613.

[2] *See* Securities Exchange Act Release No. 25308 (February 4, 1988) 53 FR 6900.

Dated: June 30, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–15270 Filed 7–8–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 09/12–0145]

Filing of Application for Transfer of Control of a Licensed Small Business Investment Company; Union Venture Corp.

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.601 of the Regulations governing Small Business Investment Companies (SBIC) (13 CFR 107.601 (1988)) for the transfer of Control of Union Venture Corporation (the Licensee), License No. 09/12–0145, 445 South Figueroa Street, Los Angeles, California 90071, a Federal Licensee under the Small Business Investment Act of 1958, as amended (Act).

The SBIC was licensed on September 30, 1967, with paid-in capital and paid-in surplus of $705,000. As of December 31, 1987, the Licensee had private capital of 23,550,000. Standard Charter Bank of England owns 100 percent of the outstanding stock of the Licensee's parent, Union Bank.

Union Bank and its parent corporation Standard Chartered Bank (SCB), entered into an agreement (the Agreement) pursuant to which SCB will sell its interest in Union Bank (parent) to California First Bank (CFB). CFB is majority owned by Bank of Tokyo, and also operates CFB Venture Capital Corporation a licensed SBIC located in San Diego, California. At the present time, no changes in the management or operating policies of Union Venture are contemplated.

Matters involved in the SBA's consideration of the application include the general business reputation and character of the proposed transferees and the probability of successful operation of the Licensee under their control and management in accordance with the Act and Regulations.

Notice is further given that any interested person may, not later than August 10, 1988 submit their comments, in writing, on the proposed transfer of control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A similar Notice shall be published by the Licensee in a newspaper of general circulation in Los Angeles, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: July 5, 1988.

[FR Doc. 88-15454 Filed 7-8-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Advisory Circular 25-14]

High Lift and Drag Devices

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 25-14, High Lift and Drag Devices. This AC sets forth an acceptable means of compliance with the provisions of Part 25 of the Federal Aviation Regulations dealing with the certification requirements for high lift and drag devices. Guidance information is provided for showing compliance with structural and functional safety standards for high lift and drag devices and their operating systems.

DATE: Advisory Circular 25-14 was issued by the Acting Manager, Aircraft Certification Division, Northwest Mountain Region on May 4, 1988.

How to Obtain Copies: A copy of AC 25-14 may be obtained by writing to the U.S. Department of Transportation, M-443.2, Subsequent Distribution Unit, Washington, DC 20590.

Issued in Seattle, Washington, on June 29, 1988.

Leroy A. Keith,

Manager, Aircraft Certification Division, Northwest Mountain Region.

[FR Doc. 88-15434 Filed 7-8-88; 8:45 am]

BILLING CODE 4910-33-M

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Pub. L. 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, DC on August 2 and 3, 1988 of the following debt management advisory committee: Public Securities Association, U.S. Government and Federal Agencies Securities Committee.

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meeting provides for a working session on August 2 and the preparation of a written report to the Secretary of the Treasury on August 3, 1988.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92-463, and vested in me by Treasury Department Order 101-05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c) (4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Pub. L. 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall wtihin the exemption covered by section 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of Title 5 of the United States Code.

Charles O. Sethness,

Assistant Secretary (Domestic Finance).

Date: July 5, 1988.

[FR Doc. 88-15439 Filed 7-8-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 1, 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: 1545-0675.
Form Number: IRS Form 1040EZ.
Type of Review: Extension.
Title: Income Tax Return for Single Filers with No Dependents.
Description: This form is used by certain single individuals to report their income subject to income tax and to compute their correct tax liability. The data is also used to verify that the items reported on the form are correct and are also for general statistics use.
Respondents: Individuals or households.
Estimated Number of Respondents: 17,980,270.
Estimated Burden Hours Per Response: 29 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 8,684,337 hours.

OMB Number: 1545-0085.
Form Number: IRS Form 1040A.
Type of Review: Revision.
Title: U.S. Individual Income Tax Return.
Description: This form is used by individuals to report their income subject to income tax and to compute their correct tax liability. The data is used to verify that the income reported on the form are correct and are also for statistics use.
Respondents: Individuals or households.

Estimated Number of Respondents: 21,447,413.
Estimated Burden Hours Per Response: 2 hours and 23 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 21,745,403 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. 88–15492 Filed 7–8–88; 8:45 am]
BILLING CODE 4810-25-M

Customs Service

[T.D. 88–39]

Revocation of Customs Broker's Permits by Action of Law; Express Service International, et al.

AGENCY: U.S. Customs Service, Department of the Treasury.
ACTION: General notice.

SUMMARY: Notice is hereby given that on April 28, 1988, pursuant to section 641(c)(3), Tariff Act of 1930, as amended (19 U.S.C. 1641(c)(3)), and § 111.45 of the Customs Regulations, as amended (19 CFR 111.45), the permits for the Customs brokers listed below were revoked in the districts indicated.

Baltimore
- Express Service International
- Floarea Florescu
- Michael McLean
- Movers Port Service
- Nathan Wein

Boston
- Compass Forwarding Co., Inc.

Charleston
- Burlington Northern Customs Brokerage
- C.F. Export-Import Services, Inc.

Chicago
- Janet K. Lutton

Detroit
- Air Express International
- C.F. Export-Import Services, Inc.
- Compagnie d'Affretement et de Transport U.S.A., Inc.

Dallas/Fort Worth
- Dorf International Ltd.

Duluth
- Associated Customs Brokers, Inc.

Honolulu
- Arthur J. Fritz & Co.

Houston
- I.C.E. Co., Inc.
- McLean Cargo Specialists
- Western Overseas Corp.

Laredo
- Dynamic Ocean Services Intenational

Miami
- Almac Shipping Co., Inc.
- C.F. Export-Import Services
- Lusk Shipping Co., Inc.
- McLean Cargo Specialists, Inc.

New Orleans
- Emery Customs Brokers

New York
- Janet K. Lutton
- Lusk Shipping Co., Inc.

Norfolk
- BDP International, Inc.

Philadelphia
- N.J. DeFonte

Portland, Me.
- J.F. Moran Co., Inc.

San Francisco
- Brinkley and Associates
- Duty Drawback Service, Inc.
- Frank Cadenhead
- Geo. S. Bush & Co., Inc. (Portland)
- Howard Hartry
- Mohawk Customs & Shipping Co.
- P.S. Clearance
- S.H. Brogan Consulting, Inc.

Seattle
- Seaport International

Savannah
- Four Winds
- Louis-Ferdinand and Co., Inc.
- Lusk Shipping Co., Inc.

Tampa
- Lund & Pullara, Inc.
- Lusk Shipping Co., Inc.
- Marvin Madden Co.
- M.G. Maher & Co., Inc.

Dated: July 1, 1988.

Michael H. Lane,
Acting Commissioner of Customs.

[FR Doc. 88–15447 Filed 7–8–88; 8:45 am]
BILLING CODE 4820-02-M

Fiscal Service

[Dept. Circular 570; 1988 Rev.]

Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies; Publication of Annual List; Correction

In notice document 88–14278, Part II, beginning on Page 25052, in the issue of Friday, July 1, 1988, make the following correction:

Page 25059 and 25060 are transposed; therefore, the order of these two pages should be reversed.

Dated: July 6, 1988.

Terry L. Boyer,
Manager, Surety Bond Branch.

[FR Doc. 88–15474 Filed 7–8–88; 8:45 am]
BILLING CODE 4810-35-M

Internal Revenue Service

[Delegation Order No. 231]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.
ACTION: Delegation of authority.

SUMMARY: Repayment of erroneous refunds without interest under certain circumstances.

New Delegation Order provides delegation of authority to District and Service Center Directors to administratively determine that interest is not due on erroneous refunds under certain circumstances. Authority may be redelegated to the division chief level. The text of the delegation order appears below.

EFFECTIVE DATE: July 7, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra F. McAree TR:L, Room 3611, 1111 Constitution Ave., NW., Washington, DC 20224. 202–566–7575 (not a toll-free telephone number).

Edward J. Martin,
Director, Office of Legislative and Management Support.

Pursuant to the authority vested in the Commissioner of Internal Revenue by Treasury Order 150–10 and section 6404(e)(2) of the Internal Revenue Code of 1986, authority to make administrative determinations that interest is not due on erroneous refunds is hereby delegated to District Directors and Service Center Directors. This authority may be redelegated to the division chief level.

In all instances, the following conditions apply:

1. Documentation is present which leaves no doubt that a Service error caused the erroneous refund to be issued.

2. Documentation is present which substantiates that repayment of the refund has been made in full.

3. The official is satisfied, after considering the relative size of the erroneous refund and the amount of interest involved, the circumstances surrounding any delay in the repayment of the erroneous refund and the handling and collection costs which would be entailed, that a waiver would be fair

and equitable to the Government and the taxpayer.

The authority delegated herein may not be further redelegated.

Date: June 14, 1988.

Approved:

Charles H. Brennan,

Deputy Commissioner, Operations.

[FR Doc. 88-15483 Filed 7-8-88; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Umberto Boccioni: A Retrospective" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York, beginning on or about September 15, 1988, to on or about January 8, 1989, is in the national interest.

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202-485-7988, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

Public notice of this determination is ordered to be published in the **Federal Register.**

Date: June 6, 1988.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 88-15479 Filed 7-8-88; 8:45 am]

BILLING CODE 8230-01-M

Grants Program for Private, Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announce a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the United States and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175 entitled "A Grants Program for Private, Non-Profit Organization in Support of International Educational and Cultural Activities," announced in the **Federal Register**, June 3, 1987.

Private Sector Organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

The Office of Private Sector Programs will assist in supporting and exchange that will focus on the United States and Africa: Petroleum Issues in the 1990s. USIA representatives abroad will select the participants from both African oil exporting and oil importing nations. The project scheduled for November 1988 will be conceived and executed by a U.S. not-for-profit institution with expertise in the field of energy and/or African affairs. The project design will include discussion of U.S. trade in petroleum with Africa, the petroleum sector and its relationship to economic development, and energy conservation. U.S. national oil policy and energy prospects in the 1990s for Africa and the United States will also be covered.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials which contains proposal guidelines. Please refer to this specific program by name in your letter of interest. This announcement is not a solicitation for proposals. It requests letters of interest from potential grantee institutions. Information on the proposal submission deadline will be forwarded with the application materials.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, (ATTN: Initiatives—Africa: Petroleum Exchange), United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Dated: July 1, 1988.

Roger C. Rasco,

Deputy Director, Office of Private Sector Programs.

[FR Doc. 88-15472 Filed 7-8-88; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 132
Monday, July 11, 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).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting was held at the offices of the Farm Credit Administration in McLean, Virginia, on July 6, 1988, from 4:00 p.m. until such time as the Board concluded its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board was closed to the public. The matter considered at the meeting was:

Closed Session [1]

1. The Federal Land Bank of Jackson, in receivership, and the Federal Land Bank Association of Jackson, in receivership.

Dated: July 7, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-15588 Filed 7-7-88; 4:02 pm]

BILLING CODE 6705-01-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 12, 1988 from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, McLean, Virginia 22102-5090, (703) 883-4003, (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

1. Final Regulations Governing Civil Money Penalties, 12 CFR Parts 662 and 663;

2. Final Regulations Governing FCA's Examination Process, 12 CFR Parts 611 and 617;

3. Reaffirmation of Final Rule Relating to the Book-Entry Procedure Applicable to the Farm Credit System Financial Assistance Corporation, 12 CFR Part 615, new Subpart R; and

Closed Session [1]

4. Examination and Enforcement Matters.

Dated: July 7, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-15589 Filed 7-7-88; 4:02 pm]

BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Wednesday, July 6, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C. C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration in open session and the addition to the agenda for consideration at the Board's closed meeting to be held at 2:30 p.m. the same day, on less than seven days' notice to the public, of the request of Sumitomo Trust and Banking Co. (U.S.A.), New York City (Manhattan), New York, for modification of Order granting Federal deposit insurance.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter moved from open session to closed session in a meeting open to public observation; and that the matter moved from open session to closed session could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: July 7, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-15550 Filed 7-7-88; 12:41 pm]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

July 6, 1988.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552B:

TIME AND DATE: 10:00 a.m., July 13, 1988.

PLACE: 825 North Capitol Street NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 881st Meeting—July 13, 1988, Regular Meeting (10:00 a.m.)

CAP-1.

Docket No. HB20-85-1-000, Public Service Company of Indiana, Louisville Gas and Electric Company, Ohio Power Company, City of Vanceburg, Kentucky, City of Hamilton, Ohio, Kanawha Valley Power

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (6), (8) and (9).

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (4), (8) and (9).

Company, Elkem Metals Company and Kentucky Utilities Company
CAP–2.
Project No. 8864–006, Weyerhaeuser Company
CAP–3.
Project No. 7490–004, Commonwealth Hydroelectric, Inc.
CAP–4.
Project No. 8662–006, Nockamixon Hydro Associates
CAP–5.
Project No. 10585–001, Meldahl Hydropower Development Corporation
CAP–6.
Project No. 2088–017, Oroville-Wyandotte Irrigation District
CAP–7.
Project Nos. 8245–001 and –002, Bellows-Tower Hydro, Inc.
CAP–8.
Project Nos. 8820–002, 8822–002 and 8823–002, City of New York, New York
CAP–9.
Project No. 7318–004, Consolidated Power Company
CAP–10.
Project No. 1417–008, The Central Nebraska Public Power and Irrigation District
Project No. 1835–019, Nebraska Public Power District
CAP–11.
Project No. 9711–000, Inghams Corporation
CAP–12.
Project No. 9712–000, Beardslee Corporation
CAP–13.
Project No. 8142–007, Henwood Associates, Inc.
CAP–14.
Docket Nos. ER88–398–000 and FA86–063–000, Louisiana Power & Light Company
CAP–15.
Docket No. ER88–411–000, Vermont Electric Power Company
CAP–16.
Docket Nos. ER85–646–003 and ER85–647–008 (Phase I), ER85–646–005 and ER85–647–003 (Phase II), New England Power Company
CAP–17.
Docket No. QF88–64–001, LaJet Energy Company
CAP–18.
Docket No. QF86–555–000, York Canyon Cogeneration Associates
CAP–19.
Docket No. ER88–279–000, Potomac Electric Power Company
CAP–20.
Docket No. ER86–25–001, Pacific Power & Light Company
CAP–21.
Docket No. EL88–19–000, Central Vermont Public Service Corporation, Lyndonville Electric Department, Village of Johnson Water and Light Department and Village of Hyde Park Water and Light Department

Consent Miscellaneous Agenda

CAM–1.
Docket No. FA87–63–001, Virginia Electric and Power Company
CAM–2.
Docket No. FA87–65–000, Connecticut Light and Power Company
CAM–3.
Docket No. RM88–10–000, Revision of Definition For Natural Gas Produced From Devonian Shale
CAM–4.
Docket No. GP88–2–001, Forest Oil Corporation
CAM–5.
Docket No. GP86–44–001, Zilkha Energy Company

Consent Gas Agenda

CAG–1.
Docket No. RP88–192–000, Texas Eastern Transmission Corporation
CAG–2.
Docket No. RP88–80–004, Texas Eastern Transmission Corporation
CAG–3.
Docket No. RP88–193–000, Midwestern Gas Transmission Company
CAG–4.
Docket No. RP88–195–000, Northern Border Pipeline Company
CAG–5.
Omitted
CAG–6.
Docket No. RP86–135–000, Caprock Pipeline Company
CAG–7.
Docket Nos. RP88–94–002 and RP88–94–005, Natural Gas Pipeline Company of America
CAG–8.
Docket No. RP88–47–004, Northwest Pipeline Corporation
CAG–9.
Docket Nos. RP85–169–030 and RP85–169–039, Consolidated Gas Transmission Corporation
CAG–10.
Docket No. RP88–131–002, Carnegie Natural Gas Company
CAG–11.
Docket Nos. RP88–45–001, and RP88–45–003, Arkla Energy Resources, a division of Arkla, Inc.
CAG–12.
Docket No. RP88–27–007, United Gas Pipeline Company
CAG–13.
Docket No. RP88–47–007, Northwest Pipeline Corporation
CAG–14.
Docket No. TA85–1–33–009, El Paso Natural Gas Company
CAG–15.
Docket No. TA88–2–35–004, Mississippi River Transmission Corporation
CAG–16.
Docket No. TA88–1–51–003, Great Lakes Gas Transmission Company
CAG–17.
Docket Nos. TA87–5–21–003 (PGA 87–4a) and TA82–2–21–009, Columbia Gas Transmission Corporation
CAG–18.
Docket No. RP83–58–014, Southern Natural Gas Company
CAG–19.
Docket No. RP87–43–001, MIGC, Inc.
CAG–20.
Docket No. RP88–96–002, Southern Natural Gas Company
CAG–21.
Docket Nos. RP86–119–007, TA84–2–9–009 and TA85–1–9–006, Tennessee Gas Pipeline Company
CAG–22.
Docket No. RP87–55–000, Columbia Gas Transmission Corporation
CAG–23.
Docket No. TA85–1–29–005 (Sulpetro Issue), Transcontinental Gas Pipe Line Corporation
CAG–24.
Docket No. RP87–74–000, Colorado Interstate Gas Company
CAG–25.
Docket No. RP87–7–003, Transcontinental Gas Pipe Line Corporation
CAG–26.
Docket No. RI88–30–002, Phillips 66 Natural Gas Company
CAG–27.
Docket No. G–4579–044, The George R. Brown Partnership
Docket No. G–4579–045, Mobile Exploration and Producing North America, Inc.
Docket Nos. G–4579–046 and G–2758–001, Texaco Inc. and Texaco Producing Inc.
Docket Nos. G–4579–047, G–3244–001 and CI63–1045–001, Cities Service Oil and Gas Corporation (Operator)
Docket No. G–6686–004, Union Texas Petroleum Corporation (Operator)
Docket No. CI86–326–001, Belco Development Croporation
Docket No. CI87–226–001, Enstar Corporation
Docket Nos. CI87–1–002 and CI87–261–001, American Royalty Producing Company
Docket No. CI63–1045–002, Samson Resources Company
CAG–28.
Docket Nos. CI85–522–000, CI87–836–000 and CI87–301–000, Marathon Oil Company
CAG–29.
Docket No. CI88–190–000, Enron Oil & Gas Company
Docket No. CI88–191–000, Enron Producing Company
Docket No. CP88–144–000, Northern Natural Gas, Company, Division of Enron Corp.
CAG–30.
Docket No. CI87–887–000, Cimarron Transmission Company v. Lincoln Rock Corporation
Docket No. CI88–144–000, Lincoln Rock Corporation
CAG–31.
Docket No. CP84–441–027, Tennessee Gas Pipeline Company
CAG–32.
Docket No. CP87–309–001, Southwest Gas Corporation and Paiute Pipeline Company
CAG–33.
Docket No. CP87–17–001, United Gas Pipe Line Company
Docket No. CP88–124–001, Mississippi River Transmission Corporation
CAG–34.
Docket No. CP88–212–001, West Texas Gathering Company
CAG–35.
Docket No. CP84–441–025, Tennessee Gas Pipeline Company

CAG–36.
Docket No. CP83–254–312, Williston Basin Interstate Pipeline Company
CAG–37.
Docket No. CP88–8–002, Great Lakes Gas Transmission Company
CAG–38.
Docket Nos. CP83–254–311 and CP83–335–227, Williston Basin Interstate Pipeline Company
CAG–39.
Docket No. CP88–18–002, Florida Gas Transmission Company
CAG–40.
Docket No. CP88–328–001, Transcontinental Gas Pipe Line Corporation
CAG–41.
Docket Nos. CP81–482–005, CP84–49–002, CP85–586–001, CP86–396–002, CP86–536–001, CP86–537–001, CP86–647–002, CP86–662–001, CP86–736–001, CP86–741–001, CP87–47–001, CP87–71–001, CP87–81–001 and CP87–87–001, Tennessee Gas Pipeline Company
Docket No. CP83–364–003, Columbia Gas Transmission Corporation
CAG–42.
Docket No. CP87–407–001, National Fuel Gas Supply Corporation
Docket No. RP86–136–004, National Fuel Gas Supply Croporation
CAG–43.
Docket No. CP88–12–001, Columbia Gas Transmission Corporation
CAG–44.
Docket Nos. CP87–499–000, 001 and 002, El Paso Natural Gas Company
CAG–45.
Docket No. CP87–442–001, ANR Pipeline Company
CAG–46.
Docket No. TC88–6–004, United Gas Pipe Line Company
CAG–47.
Docket No. CP87–8–003, Tennessee Gas Pipeline Company
CAG–48.
Docket No. CP87–19–000, Pacific Gas Transmission Company
CAG–49.
Docket Nos. CP86–215–000, CP86–245–000, CP86–280–000, CP86–286–000 and CP86–606–000, Questar Pipeline Company *et al.*
CAG–50.
Docket No. CP87–165–000, Overthrust Pipeline Company
CAG–51.
Docket Nos. CP85–108–000 and CP85–108–001, Tennessee Gas Pipeline Company
CAG–52.
Docket No. CP88–278–000, Shenandoah Gas Company
CAG–53.
Docket No. CP84–760–003, Trunkline Gas Company
Docket Nos. CP87–257–000 CP87–512–000 and CP88–54–000, Southern Natural Gas Company
CAG–54.
Docket No. CP87–534–000, Bayou Interstate Pipeline System and Pelican Interstate Gas System
CAG–55.
Docket Nos. CP87–335–000 and CP87–335–001, Northwest Pipeline Corporation
CAG–56.
Docket No. CP88–134–000, East Tennessee Natural Gas Company
CAG–57.
Docket No. CP87–519–000, Colorado Interstate Gas Company
CAG–58.
Docket No. CP88–126–000, Tennessee Gas Pipeline Company
CAG–59.
Docket No. CP88–156–000, Transcontinental Gas Pipe Line Corporation
CAG–60.
Docket No. CP84–336–004, Transcontinental Gas Pipe Line Corporation
CAG–61.
Docket No. CP88–131–001, Carnegie Natural Gas Company

I. Licensed Project Matters

P–1.
Discussion of Issues Related to Cumulative Impact Assessments

II. Electric Rate Matters

ER–1.
Docket Nos. ER87–72–001 and ER87–73–001, Orange and Rockland Utilities, Inc. Opinion on initial decision concerning rate of return.

Miscellaneous Agenda

M–1.
Docket No. RM88–17–000, Regulations Governing the Public Utility Regulatory Policies Act of 1978. Notice of Proposed Rulemaking.
M–2.
Reserved
M–3.
Reserved
M–4.
Docket No. GP86–54–000, ANR Pipeline Company v. Wagner & Brown
Docket No. GP83–48–000, Producer's Gas Company v. Southport Exploration, *et al.* & Kaiser-Francis
Docket No. RM83–49–000, Natural Gas Pipeline Company of America v. John A. Masek, *et al.*
Docket No. GP83–55–000, Associated Gas Distributors
Docket No. GP84–57–000, Transcontinental Gas Pipe Line Corporation v. Koch Industries
Docket No. GP85–1–000, Transcontinental Gas Pipe Line Corporation v. Felmont Oil Corporation and Case-Pomeroy Oil Corporation
Docket No. GP85–10–000, Southern Natural Gas Company v. Pogo Producing Company
Docket No. GP85–11–000, Sea Robin Pipeline Company v. Pogo Producing Company
Docket No. GP85–33–000, KN Energy Inc. v. Joe Gray, *et al.*.
Docket No. GP86–39–000, ANR Pipeline Company v. Northwestern Life Insurance Company
Docket No. GP86–55–000, ANR Pipeline Company v. Hamilton Brothers, *et al.*
Docket No. GP86–56–000, Cabot Pipeline Corporation
Docket No. GP87–13–000, ANR Pipeline Company v. Helmerich & Payne, Inc.
Docket No. GP87–21–000, ANR Pipeline Company v. Plains Resources, Inc.
Docket No. GP87–54–000, Transcontinental Gas Pipe Line Corporation
Docket No. GP88–12–000, Colorado Interstate Gas Company v. RJB Gas Pipeline Company
Docket No. GP88–15–000, ANR Pipeline Company v. Maguire Oil Company, *et al.*
Docket No. GP88–16–000, Colorado Interstate Gas Company v. Chemco, *et al.* Complaint raising NGPA Title I issues.
M–5.
Docket No. RM88–20–000, Five-Year Take-Or-Pay Make-Up Provisions In Natural Gas Producer-Pipelines Contracts. Notice of Proposed Rulemaking.
M–6.
Docket Nos. RI88–281–000 through RI88–284–000 and RI88–963–000 through RI88–982–000, Exxon Corporation
Docket No. RI88–1114–000 through RI88–1154–000, Arco Oil and Gas Company
Docket No. Docket Nos. RI88–1207–000 through RI88–1213–000, Samedan Oil Corporation. Order concerning requirement for five-year make up rights.

I. Pipeline Rate Matters

RP–1.
Docket No. IS87–14–000, *et al.*, Buckeye Pipe Line Company. Interlocutory appeal concerning disclosure of certain cost data.
RP–2.
Docket Nos. RP87–73–000 and RP87–73–002 through –004, Algonquin Gas Transmission Company. Contested settlement regarding Part 284 transportation.
RP–3.
(A) Docket No. GP88–11–000, Hadson Gas Systems, Inc. Declaratory order concerning "on behalf of" requirement in NGPA section 311.
(B) Docket No. CP88–286–000, Cascade Natural Gas Company v. Northwest Pipeline Corporation, Chevron Chemical Company, Intermountain Gas Company, Hadson Gas Systems, Inc., Llano, Inc., Corpus Christi Industrial Pipeline Company and Transco Energy Marketing Company. Complaint concerning transportation under NGPA section 311.
(C) Docket Nos. RP88–81–002, RP88–67–002 and RP88–175–000, Texas Eastern Transmission Corporation. Order concerning section 311 and interruptible transportation rates.
(D) Docket Nos. RP88–17–010 and –011, Southern Natural Gas Company. Order concerning priority of section 311 shippers who switch to blanket certificate service.

II Producer Matters

CI–1.
Reserved

III. Pipeline Certificate Matters

CP–1.
Reserved

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–15508 Filed 7–7–88; 9:49am]
BILLING CODE 6717–01–M

Corrections

Federal Register
Vol. 53, No. 132
Monday, July 11, 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

International Trade Administration

15 CFR Parts 370 and 386

[Docket No. 80350-8050]

Export of Commodities on Board Country Group Q, W, Y, or Z Vessels and Aircraft

Correction

In proposed rule document 88-13946 originally appearing on page 23228 in the issue of Tuesday, June 21, 1988, and corrected on page 24551 in the issue of Wednesday, June 29, 1988, make the following correction:

On page 24551, in the first column, the CFR line was incorrect and should appear as set forth above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 185 and 186

[OPP-00264; FRL 3407-5]

Tolerances for Pesticides in Food and Animal Feeds; Transfer of Regulations

Correction

In rule document 88-14718 beginning on page 24666 in the issue of Wednesday, June 29, 1988, make the following corrections:

1. On page 24666, in the third column, in the right-hand side of the table, "185.3350" should read "185.3550".

2. On page 24667, in the third column, under Part 185, Subpart B, in section 185.800, the second line "1-[1H-1,2,4-triazol-1-yl]-2-butanone" should read "[1*H*-1,2,4-triazol-1-yl]-2-butanone".

3. On page 24668, in the first column, under Part 185, Subpart B, in section 185.5450, the second line "Tetrabromolethyl)]-2,2-" should read "Tetrabromoethyl)]-2,2-".

4. On page 24669, in the first column, under Part 186, Subpart B, in section 186.3400, the second line "alpha-cyano-3-phenoxbenzyl(R)-2-[2" should read "alpha-cyano-3-phenoxybenzyl(*R*)-2-[2".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[OPP-00263; FRL 3407-4]

Tolerances for Pesticides in Food and Animal Feeds; Transfer of Regulations

Correction

In rule document 88-14717 beginning on page 24666 in the issue of Wednesday, June 29, 1988, make the following correction:

On page 24666, in the second column, the bold faced heading should read as follows:

"PARTS 193 AND 561 [REDESIGNATED AS 40 CFR PARTS 185 and 186]"

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-08-4212-13; A-22677]

Arizona; Exchange of Public and Private Lands in La Paz and Mohave Counties

Correction

In notice document 88-8130 beginning on page 12474 in the issue of Thursday, April 14, 1988, make the following correction:

On page 12474, in the first column, in the land description, under T. 15 N., R. 19 W., under Sec. 23, "E½W½" should read "E⅓W⅔"

BILLING CODE 1505-01-D

federal register

Monday
July 11, 1988

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 23 etc.
Cockpit Voice Recorders (CVR) and Flight Recorders; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23, 25, 27, 29, 91, 121, 125, and 135

[Docket No. 25530; Amdt. Nos. 23-35, 25-65, 27-22, 29-25, 91-204, 121-197, 125-10, 135-26]

[RIN 2120-AC48]

Cockpit Voice Recorders (CVR) and Flight Recorders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for additional comments (Part 91 requirements).

SUMMARY: The FAA amends its regulations to require digital flight data recorders and cockpit voice recorders (CVRs) to be installed in a broad category of airplanes and rotorcraft operated by air carriers and commuters, as well as in selected aircraft operated in general aviation. The amendments are in response to legislation which mandates the FAA to amend its flight recorder and CVR requirements in accordance with recommendations from the National Transportation Safety Board (NTSB). The intent of this rulemaking is to provide more information to accident investigators in determining the causes of accidents and the measures needed to correct the causes. In addition, the FAA also requests additional comments regarding the general aviation requirements.

DATES: Effective date: October 11, 1988. Comments on the Part 91 requirements must be submitted on or before October 11, 1988. Compliance Date: October 11, 1991.

ADDRESSES: Comments on the Part 91 requirements should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 25530, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 25530. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Frank Rock, Technical Analysis Branch [AWS-120], Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267-9567.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking on flight recorder and CVR requirements on February 12, 1988 [Notice No. 88-1, 53 FR 4314]. The proposed rule was primarily based on recommendations from the NTSB issued on June 19, 1987. FAA rulemaking on these requirements was mandated by legislation on December 22, 1987, in the Appropriations Act, 1988, [Pub. L. 100-202] and on December 30, 1987, under the Airport and Airway Safety and Capacity Expansion Act of 1987, Title III, Section 303(c) [Pub. L. 100-223].

The Appropriations Act required the FAA to expand existing CVR and flight recorder requirements "to smaller sizes of commuter air carrier aircraft" and to require CVR and flight recorder "retrofits on certain types of existing commuter air carrier aircraft. . . ."

The Airport and Airway Safety and Capacity Expansion Act required the FAA to initiate rulemaking "to consider the use of cockpit voice recorders and flight data recorders on commuter aircraft and other aircraft, commensurate with the recommendations of the National Transportation Safety Board."

The NTSB issued its safety recommendations in response to a number of significant events which had occurred since its previous recommendations issued in August 1982. These events were FAA's flight recorder and CVR rule changes issued March 25, 1987; the technological development of solid-state flight data recorders (SFDR); the continued growth of the commuter air carrier industry; revisions to Part 23 of the Federal Aviation Regulations (FAR) (14 CFR Part 23) which defined a commuter category airplane and established certification requirements for commuter category airplanes; and the adoption by the International Civil Aviation Organization (ICAO) of revised flight recorder and CVR standards.

The FAA used the NTSB recommendations of June 19, 1987, as an appropriate background to discuss extending and updating its flight recorder and CVR rules. The rules on CVR and flight recorders had been last amended March 25, 1987 [Amendment Nos. 91-199, 121-191, 125-8, 135-23; 52 FR 9622]. In simplified terms, the 1987 amendments required that FAR Part 121 operators update certain of their airplanes over a specified time period with digital flight recorders that have 6, 11, or 17 data parameters depending on the date of type certification or manufacture. Parts 91 and 125 were also amended by requiring that any operator who has installed approved flight recorders and approved CVRs shall keep the recorded information for at least 60 days after an accident or occurrence requiring immediate notification to the NTSB. The 1987 amendments extended Part 135 voice recorder requirements which applied to any turbojet airplane having a passenger seating configuration of 10 seats or more to any newly manufactured multiengine, turbine-powered airplane that was certificated to carry six or more passengers and required to have two pilots. The 1987 amendments did not require flight recorders for operations conducted under Part 135. They did not require voice recorders or flight recorders for operations conducted under Parts 91 and 125. They did not require flight recorders for helicopters.

The NTSB wanted broader application of the requirements than those established in the 1987 amendments, and the NTSB recommended that the requirements, including parameter requirements, be updated to cover technological improvements in CVR and flight recorder equipment. Through the aforementioned legislation, Congress agreed.

As stated in the preamble to the proposed rule and in the NTSB recommendations, the need for updated and expanded regulations on the installation and use of flight recorders and voice recorders is twofold. First, technological advances in cockpit equipment have greatly increased the potential for accumulating information on the flight characteristics of an aircraft at the time of an incident or accident. However, unless aircraft equipped with new electronic display systems (i.e., "glass cockpits") are also equipped with flight recorders that can capture the flight information and from which investigators can retrieve that information, the information is lost. Therefore, a major objective of this rulemaking is to upgrade the parameters and flight recorder and voice recorder standards to accommodate the most sophisticated systems now being installed in aircraft. Secondly, previous flight recorder and voice recorder requirements have not been applied to significant sectors of air transportation operations.

In recent years the commuter air carrier fleet has grown substantially and its growth is expected to continue. The 1987 annual report of the Regional Airline Association (whose membership consists primarily of commuter air carriers) estimates that more than 61 million passengers will be carried by

members of that association in 1997. The growth in commuter air transportation has resulted in newly manufactured aircraft designed specifically for the commuter market. While these new airplanes have a take-off weight in excess of 12,500 pounds, they often have a seating configuration of less than 30 passenger seats and payloads of 7,500 pounds or less, which means they are operated under Part 135. Until now Part 135 has had no flight recorder requirements. Therefore, vital accident data from commuter airline accidents has not been avaiable.

The NTSB safety recommendation cites several recent commuter air carrier accidents in which investigations revealed a lack of information that would have been pertinent to determining the causes. Although the investigations produced a number of safety recommendations based on evidence of potentially hazardous conditions and practices, the specific flight crew actions or inactions, environmental conditions or equipment failures that may have caused the accidents could not be positively determined. Therefore, the NTSB's safety recommendations towards preventing recurrence could not be as definitive as possible. The NTSB has indicated that in these accidents if flight recorder information had been available, specific deficiencies in flight crewmembers' performance or mechanical failures or malfunctions could have been determined. Without flight recorder information, accident investigators are severely limited in definitively assessing causes. Therefore, the FAA has added flight recorder requirements to Part 135 and extended the voice recorder requirements in Part 135 to specific types of airplanes and rotorcraft.

Part 91 and Part 125 operations have had neither flight nor voice recorder requirements. The lack of information poses the same problem to investigators as in commuter operations. Therefore, this rulemaking extends flight recorder and voice recorder requirements to specific types of airplanes and rotorcraft being operated under Part 91 and specific types of airplanes operated under Part 125.

In addition to the above, the NTSB recommended that all newly manufactured aircraft and new cockpit voice recorder installations be designed to allow for uninterrupted recording from boom or mask microphones and headphones for each flight crewmember station and from an area microphone on dedicated channels of the CVR. The performance of CVR installations of this kind where the audio signal of each crewmember station is continuously recorded on a dedicated channel provides much clearer recorded information for investigators than the standard cockpit area microphone (CAM). Therefore, this rulemaking includes amendments to Parts 23, 25, 121, 125, and 135, to require the NTSB recommended capability on newly manufactured aircraft and on aircraft on which new cockpit voice recorders are installed and to require the use of that capacity where it already exists.

In the interest of safety and in accordance with the Congressional mandate and NTSB recommendations, the FAA is extending and updating its regulations in flight recorders and voice recorders. This action is consistent with the requirements of section 601(b) of the FA Act that the FAA perform its powers and duties "* * * in such manner as will best tend to reduce or eliminate the possibility of, or recurrence of, accidents * * *."

Overall this rulemaking accomplishes the following significant changes:

(1) It establishes flight recorder requirements for certain aircraft operated under Parts 91, 125, and 135.

(2) It establishes cockpit voice recorder requirements for certain aircraft operated under Parts 91 and 125, and extends and revises voice recorder requirements under Part 135.

(3) It upgrades the requirements and parameters for flight recorders to the level of the most sophisticated systems installed in aircraft. The new parameters and requirements affect certain aircraft operated under Parts 121, 125, and 135.

(4) It requires uninterrupted sound recording capability in cockpit voice recorders under Parts 23 and 25 and specifies use of this capacity under the operating rules of Parts 121, 125, and 135.

(5) It revises CVR and flight recorder airworthiness standards in Part 25; establishes flight recorder installation requirements in Parts 23, 27, and 29; and establishes CVR requirements in Parts 23 and 27.

Comment Discussion

The FAA received 52 comments on the NPRM. Thirty-one comments opposed the proposed rule; nine supported it; two supported it with reservations. The rest of the comments did not express opposition or support. At least 19 comments addressed specific issues raised by the proposed rule. The categories of commenters included airport authorities, state governments, operators of airplanes and helicopters, manufacturers, and foreign air transportation companies. Of the associations representing air transportation interest groups, comments were received from the Air Line Pilots Association (ALPA), the Air Transport Association (ATA), General Aviation Manufacturers Association (GAMA), Airport Operators Council International, the National Air Transportation Association (NATA), and the Regional Airlines Association (RAA). Commenters who opposed the rule were primarily operators conducting operations under Part 135 (or Part 91), particularly operators of helicopters, as well as ATA and NATA. Categories of commenters supporting the rule were manufacturers, state governments, and airport authorities, the National Transportation Safety Board (NTSB), and the RAA.

Several commenters presented recommendations and raised concerns over specific requirements in the rule. The following categories of issues were raised and are discussed separately below:

(1) Part 121 requirements

(2) Part 91 and Part 135 requirements

(3) Specific technical requirements

(4) Comments beyond the Scope of the Notice.

Part 121 Requirements

The Air Transport Association (ATA) on behalf of its member airlines submitted a number of objections to the proposed changes in Part 121 and in some cases to the proposed parallel changes in Part 25. Several of ATA's objections were also raised by other commenters. Overall opposition to the proposed changes was based on two general arguments. First, the ATA argued that the Congressional language cited in the NPRM as a primary basis for the proposed changes did not identify Part 121 air carriers. Second, they argued that "the NTSB and FAA have not adequately justified the Part 121 proposals for further expansion of flight recorder requirements beyond those in Amendment 121–91." ATA also stated that the 45-day comment period was too short for its member airlines to "provide the type of technical and economic impact information needed to develop final credible technical and cost analyses," and recommended that the FAA withdraw and reconsider the proposed amendments to Parts 25 and 121.

ATA and others specifically commented on technical concerns with Part 121 proposals. Comments of a purely technical nature are dealt with elsewhere in this preamble. The

remaining Part 121 comments (mostly from ATA) are summarized as follows:

- Of the six new developments cited by FAA in Notice 88–1 as justification for the proposed additional requirements, none justify the proposed Part 121 changes.
- Notice 88–1 did not include any discussion on "major rule", "significant rule" requirements under Executive Order 12291 and DOT policy, respectively.
- There are significant differences between the FAA/NTSB proposed flight recorder parameters and the ICAO standards which ATA says are "recommended standards only" which are "in the process of being revised."
- Adoption of 32 parameter flight recorder requirements for newly manufactured airplanes rather than last year's requirement for 17 parameter flight recorder for newly manufactured airplanes will create an unnecessary administrative and logistics burden.
- The proposed additional parameters could exceed the capacity of digital flight data acquisition units "denying airline use of flight recorder information for routine maintenance and operations analyses, some of which are required by the FAA."
- The relationship of the proposed requirements to the rules adopted in Amendment 121–191 is confusing and potentially disruptive and costly to airline operations especially when considered with other FAA requirements already adopted or under consideration (e.g., windshear, TCAS requirements). Related to this ATA comment was a comment by McDonnell Douglas Aircraft Co. which indicated that changing "regulatory requirements on systems such as flight recorders on an annual basis * * * makes planning very difficult and expensive."

ATA offered an alternative to the FAA proposal. ATA suggests that for a retrofit, additional parameters be required only when the airplane is already equipped with "an ARINC 717 digital flight data acquisition unit (DFDAU) with the ARINC buses containing the (a number to be later determined) additional parameters *already* converted to it." For newly manufactured airplanes ATA would follow the same pattern except that additional parameters above the 17 parameters of Amendment 121–191 would be recorded "on a space availability basis without impacting existing airline recording programs * * *."

The FAA's Response: The FAA does not agree with ATA's interpretation of the Congressional mandate. Given the overall legislative history of Public Law 100–223, FAA believes that the Congressional intent is to ensure safety by making available to the NTSB whatever data is necessary for accident investigation if acquiring that data is technologically feasible. Congress stated this intent by ordering the FAA "to initiate a rulemaking proceeding to consider the use of cockpit voice recorders and flight data recorders on commuter aircraft *and other aircraft, commensurate with the recommendations of the National Transportation Safety Board."* [Emphasis supplied.] In its June 19, 1987, letter to the FAA, the NTSB stated its requirements which covered 14 CFR Parts 23, 25, 91, 121, and 135. FAA proposed to meet those requirements in Notice 88–1, as directed by Congress. Comments submitted by the Board did not indicate that the proposed Part 121 requirements exceeded the bounds of what the Board determines as necessary information for conducting accurate accident investigations.

ATA is correct that the normal paragraph addressing "major rule" under Executive Order 12291 and "significant rule" under DOT policy was omitted—inadvertently—from the NPRM. Nonetheless, the potential costs were fully discussed in the preamble (and in a full economic evaluation in the docket) and the substance of that discussion indicated that the proposed rule would not be considered major under the Executive Order. Further, the overall preamble discussion made it clear that the proposals were significant within the meaning of the Department of Transportation's Regulatory Policies and Procedures.

The 1987 Amendments to Part 121 did not increase the parameters listed in Appendix B of that part. NTSB has stated in its recent recommendations that Appendix B should be updated to expand the parameters list and define new parameters, improved accuracies, ranges, and sampling intervals so that flight recorder standards are consistent with the capabilities of the most advanced electronic display systems. As stated by NTSB, "The introduction of the Airbus A320 with its fly-by-wire technology will present new challenges in accident investigation that will require post accident information of the quantity and quality that goes far beyond the current minimum standards of Appendix B."

In response to the NTSB recommendations, this rulemaking updates the parameter list to meet the requirements of the most advanced cockpit systems if installed and to require the best available flight recorder technology for newly manufactured airplanes operated under Part 121. The requirement for flight recorder parameters in addition to the 17 required by the 1987 amendments applies only to aircraft manufactured after October 11, 1991, or those already equipped with specific ARINC equipment. This allows adequate time for the required installation of the latest flight recorder equipment as part of the manufacturing process which should cause no manufacturing delay and only minimal cost.

While ATA describes the proposed tie-in with existing ARINC 429 equipment (or an equivalent) as a retrofit requirement, it is not the normal mandatory type retrofit requirement applicable to all or certain specified airplanes operated under Part 121 or Part 135. The final rule clarifies the FAA intent in this regard (discussed under Technical Comments portion of this preamble) and as adopted the rule will apply only where stated equipment is already installed in an airplane and where data is readily available so that it can be accessed with virtually no burden on Part 121 operators, either in lost airplane time or other costs.

In consideration of other objections raised by ATA, that extending the parameters from 17 to 32 (or higher, by ATA's count) is too great a change too soon, that Part 121 operators are being required to make other equipment changes at the same time, and that the proposed parameters were not consistent with those recommended by ICAO, and in consideration of the comments submitted by the NTSB, the FAA has done the following: (1) Extended the effective date of the requirements to 3 years instead of the proposed 2 years; and (2) reduced the number of mandatory parametes to 28 and made the other highly desired parameters optional where feasible.

Parts 91 and 135 Requirements

Except for the Regional Airline Association's agreement with most of the proposed Part 135 amendments, virtually all of the operators who commented on these requirements opposed them. Specific technical comments are discussed below. Typical of the more general opposing comments was the comment of the North Dakota Aviation Council which stated that the FAA had "expanded the intent of Congress" in proposing CVR and flight recorder requirements for certain general aviation operations under Part 91 and on-demand operations under Part 135. The National Air Transportation Association (NATA) also accused the FAA of expanding the Congressional

mandate and further stated that nowhere in the proposal "can a case be made for a quantitative increase in safety benefit for requiring CVR's in the types of aircraft typically operated in the Part 135 charter fleet."

One commenter pointed out that a 2-year compliance period for the installation of CVR's is inadequate. From the commenter's viewpoint, most of the affected aircraft require a "heavy" inspection only every 5 to 6 years. It is during this inspection that it would be most appropriate to install the CVR.

Several commenters asserted that where an aircraft is newly manufactured to a type design of long standing, the attributes and operational history are already well known and it is unlikely that the NTSB will obtain the kind of information it seeks from accident investigations. These commenters also asserted that the past safety record did not justify the new requirements and that because of the nature of on-demand and general aviation operations the costs are disproportionate since they cannot be spread out over thousands of flight hours or hundreds of thousands of passengers boarded each year.

Some of the most vigorous comments adverse to the proposed requirements were received from helicopter operators. They, too, thought that the FAA had exceeded the Congressional mandate, that none of the cited accidents or other justification involved helicopters, and that the potential costs for helicopter operators far exceeded any potential benefits to the overall aviation industry.

The Regional Airlines Association stated that there is no justification for requiring retrofit of the 32-parameter flight data recorder on 20–30 seat airplanes under Part 135 when no such retrofit requirement was proposed for Part 121. RAA indicated that while the costs would be substantial, it could not provide specific estimates because they would vary from airplane to airplane depending on the amount of wiring already installed in the airplane.

The FAA's Response: As discussed previously, the FAA does not agree that it has exceeded the Congressional mandate or that the new CVR and flight recorder requirements for Part 91 operators and for non-scheduled Part 135 operators cannot be justified. Accident investigators face the same problems in determining the causes of accidents, whether the accidents involve scheduled commuter operations, nonscheduled operations, or general aviation operations. New airplanes used in all of these operations employ state-of-the-art avionics and control systems; yet operators have not been required under Parts 91 and 135 to install flight recorders which would provide data to accident investigators. Post accident documentation, such as switch and instrument positions, that have proven vital in past investigations is not available with the new systems, thus increasing the difficulty in determining the cause of an accident.

Furthermore, many airplanes of the same type are used in Part 91 operations and in Part 135 operations. Therefore, any accident data collected from an accident of one of these airplane types has application for operations conducted under both parts. Also, an individual airplane may be used in operations conducted under both parts. If an airplane is used in operations under both parts, the Part 91 requirements would not be as burdensome as suggested by some commenters since in many cases the airplane would already be subject to Part 135 requirements. Also, because of the potential for use of an airplane type under both Parts 91 and 135, the used aircraft market ultimately benefits when airplanes are equipped so that they can move back and forth between different operating rules.

Accidents cited in the NPRM (which included operations conducted under Parts 91 and 135) illustrate the problems accident investigators encounter when aircraft are not equipped with flight or voice recorders. In such cases, investigators rely on interviews with fellow crewmembers, training records, FAA surveillance, cockpit standardization, and additional operational factors. Although the cause of an accident may be determined through these investigative efforts, the process may be long and costly in terms of lives and property. Time may be critical, particularly if the cause of an accident is an airworthiness factor.

The rule does recognize differences in accordance with the seating capacity of the aircraft. In Part 91, flight recorders are required for aircraft (both fixed-wing and rotorcraft) having a passenger seating configuration of 10 or more manufactured after October 11, 1991. The flight recorders must have 17 required parameters for airplanes and 22 for rotorcraft. In Part 135, flight recorders are required for aircraft (both fixed-wing and rotorcraft) having a passenger seating configuration of 10–19 seats that are brought onto the U.S. register after October 11, 1991. The flight recorders must have 17 parameters for airplanes and 22 for rotorcraft. In effect, Part 91 and Part 135 flight recorder requirements for these size aircraft apply only to newly manufactured aircraft. No retrofit of existing U.S. registered aircraft of this size is required for flight recorders.

In Part 135, airplanes having a passenger seating configuration of 20 to 30 seats and rotorcraft having a passenger seating configuration of 20 or more seats must be equipped with flight recorders after October 11, 1991. This is a retrofit as well as a requirement for newly manufactured aircraft. The NTSB in its comment agreed that it might be impractical to require 20–30 passenger airplanes to be retrofitted with 32 parameter flight data recorders, as proposed. In light of all the information received, the FAA has changed § 135.152(b) to require that affected aircraft be retrofitted with either 11-parameter or 17-parameter flight recorders (depending on the type certification date), except that those airplanes manufactured after October 11, 1991, must be upgraded to 28 parameters.

Clearly the flight recorder requirements for the larger aircraft being operated under Part 135 are more stringent than those for the smaller aircraft. Most, if not all, nonscheduled operations conducted under Part 135 use aircraft with a passenger seating configuration of less than 20 seats. Such aircraft are not required to be retrofitted with flight recorders. However, they are required to be equipped with voice recorders. Since the cost of installing voice recorders is substantially less than that of flight recorders, the FAA does not expect the voice recorder requirements to impose a significant burden on small operators.

With regard to comments about the inadequacy of a 2-year period to reasonably accomplish the Part 91 retrofit of CVR's, the FAA concurs. Accordingly, the FAA has provided a 3-year period to effect this retrofit, recognizing, however, that some operators may not conduct a "heavy" inspection or overhaul in this period, the regulatory language provides that the Administrator, for good cause, may authorize extension of the compliance time to accommodate such maintenance schedules. A request for extension of the compliance time must be accompanied by a demonstration of good cause and must specify a date for the operator's completion of the retrofit of the CVR.

Technical Comments

A number of commenters provided detailed comments on the technical aspects of the new rules. Any such comments that address the substance of the rule are discussed below. Comments that point out printing errors, suggest non-substantive minor language

changes, or suggest changes to make the rules internally consistent were considered and the appropriate changes were made. However those changes are not discussed in detail.

A number of commenters pointed out that, although the preamble to Notice 88–1 specifically discusses a new requirement for "hot mic" recording, the rule language specifies types of microphones but does not contain a "hot mic" requirement. Suggestions for appropriate rule language were provided. To correct this omission in the final rule, §§ 23.1457(c)(5) and 25.1457(c)(5) have been added to make it clear that all sounds received by the microphone must be recorded without interruption. In addition, §§ 121.359(e), 125.227(e), and 135.151(c) have been changed to clarify that §§ 23.1457(c)(5) and 25.1457(c)(5) apply to airplanes manufactured after October 11, 1991, and to airplanes on which a new cockpit voice recorder has been installed after October 11, 1991. One commenter stated that proposed § 25.1459(e) is unnecessary. This new paragraph requires evaluation of novel or unique design or operational characteristics of new aircraft to determine if additional parameters should be recorded on the flight recorder for that aircraft. The commenter is correct that additional parameters could be proposed as Special Conditions for that aircraft. However, the language is being inserted into § 25.1459 as a rule of general applicability so that as part of a review of airworthiness requirements for initial certification, a review to assess the need for additional parameters will be conducted.

A commenter pointed out that, while proposed § 91.35(b)(1) requires aircraft manufactured after one year after the effective date to be prewired to accept any appropriate flight recorder, the proposed language does not specify the date by which such aircraft must be equipped with flight recorders. The FAA has reviewed proposed § 91.35(b)(1) and a parallel requirement proposed in § 135.152(a) and has concluded that, even though the requirement might provide an economic incentive to manufacturers to begin equipping airplanes to accept flight recorders, the safety benefit comes from the installation of the recorders. Therefore proposed §§ 91.35(b)(1) and 135.152(a) have not been included in the final rule.

One commenter questioned the justification for applying the proposed rules to helicopters. This commenter proposed that if CVR and flight recorder requirements are applied to any helicopters, they should be applied only to large helicopters. The FAA does not agree that the large/small dividing line (small—12,500 pounds or less maximum certificated takeoff weight) is the appropriate determining factor for requiring or not requiring CVR and flight recorder equipment. As with airplanes, the FAA considers passenger seating configuration a more meaningful measure of the need for requiring safety information collection devices such as CVR and flight recorders.

A number of commenters stated that the language of proposed §§ 121.343(e) and 125.225(c) does not accomplish the objective stated in the preamble to Notice 88–1. Some commenters stated that the proposed rule language "equipped with an ARINC 429 digital data bus" is itself inaccurate. Others stated that even if an airplane does have the ARINC 429 equipment, that equipment may be used in such a way that it would not, without a major retrofit, provide access to the information in the additional parameters as suggested in the NPRM. The FAA's intent in following through on this NTSB recommendation was to take advantage of the full capability of more advanced technology equipment when that equipment is already installed. There is no intent to require any retrofitting costs beyond the minimal cost of accessing readily available data. The final rule has been redrafted so that it clearly carries out the original intent. It now states that when a large airplane is equipped with a digital data bus and ARINC digital flight data acquisition unit or equivalent the airplane must be "equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium." The rule, as adopted, also clarifies that only those parameters "available on the digital data bus" must be recorded.

As mentioned previously, the ATA and several other commenters questioned the number of new parameters that would be required under Appendix B to Part 121 for newly manufactured aircraft. Commenters suggested that there were inconsistencies between the FAA's proposed parameters, NTSB's recommended parameters, and ICAO recommended standards. Commenters also indicated that to meet the FAA proposed requirement would in many cases overload the system so that operators would have to sacrifice present usage of flight recorder systems to provide them with important safety-related, day-to-day operating information. At the same time some commenters suggested additional parameters, not proposed, that normally would be considered beyond the scope of this rulemaking. In order to establish standards that most effectively use flight recorder capability, the FAA has decided to require 28 mandatory parameters under Part 121, Appendix B, Part 125, Appendix D, and Part 135, Appendix D for newly manufactured aircraft. The remaining parameters will be optional, to be accessed if the operator's system has adequate capacity. The non-mandatory parameters include additional parameters that were not proposed, such as TCAS, which were added at the recommendation of the NTSB.

The NTSB and other commenters raised questions concerning the adequacy of existing Technical Standard Orders (TSOs) for both cockpit noise recorders and flight recorders. While TSOs are necessarily relevant, they have not been made a part of this rulemaking. As part of its ongoing TSO program, the FAA will revise TSOs when changes are needed to upgrade the specifications for equipment required by this final rule. These efforts are already underway and are being coordinated with the Society of Automotive Engineers (SAE) and European Organization for Civil Aviation Electronics (EUROCAE).

Some commenters pointed out that the minimum 15-minute duration period for cockpit voice recorders proposed for § 91.35(e) is not consistent with the standard agreed to in Europe (EUROCAE). Others noted that proposed §§ 91.35(b)(2) and 135.152(b) would allow a flight data recorder with an 8-hour duration while the international community is considering a 10-hour minimum to be consistent with the current ICAO recommended practice. While the FAA recognizes that both proposed limits are less stringent than those mentioned by commenters (and less stringent than FAA's own minimums under Part 121), the FAA's intent is to apply CVR and flight recorder solid state technology and CVR and flight recorder requirements to general aviation operations at minimal cost. Since the technology is already available, the FAA anticipates that reasonably priced CVR and flight recorder equipment for general aviation aircraft will be available for installation well within the 3-year compliance period allowed in this rule.

One commenter objected to the requirement in proposed Appendix E to Part 135 that a rotorcraft with over 20 passengers have flight recorders with a 24-hour recording capacity. The

commenter stated that most rotorcraft operate essentially short-haul journeys and that, therefore, an 8 to 10-hour capacity should be adequate. The FAA agrees, but no change is needed since Appendix E does not require a 24-hour recording capacity. In Appendix E, the recorded time is not related to the time of individual flights, but to a 24-hour clock.

Several commenters objected to the requirements in §§ 121.359(e), 125.227(e), and 135.151(c) that when operating aircraft equipped to record uninterrupted audio signals received by a boom or mask microphone, flight crewmembers must use the boom microphone below 18,000 feet. Specific objections were as follows:

(1) The requirement would make better sense elsewhere in Part 121 where it would clarify that the boom microphone rather than the handheld microphone should be used when cockpit workload is high.

(2) Flight crewmembers might not be able to determine whether the CVR in a particular aircraft has a "hot mic" feature.

(3) It requires the boom microphone even though the smoke/oxygen mask microphone might be more appropriate.

(4) It would have an impact on those aircraft which have a separate hand microphone for the public address/cabin interphone systems.

(5) Hot boom microphones are needed since acceptable recordings are provided by directional fixed mikes and high quality area mikes.

(6) The requirement could affect flight safety by causing fatigue on flight schedules with successive short stops.

The FAA does not agree that area microphones provide recordings that are equal to boom microphones. Boom or mask microphones with uninterrupted signals produce the most audible recordings. The purpose of the requirement is to require boom microphones (or smoke/oxygen mask microphones if needed) at times when the continual recorded information would be most useful if an accident or incident occurred. Flight crewmembers should be able to tell whether CVR in a particular aircraft has a "hot mic" feature. The use of the boom microphone is not likely to be a cause of flight crewmember fatigue in short hop schedules. The causes of such fatigue are well documented—airport congestion, low altitude weather, the number of arrivals and takeoffs—factors which create a need for the use of hot mics. The requirement should not affect public address/cabin interphone communications which have a dedicated channel.

GAMA stated that except for the longitudinal acceleration and stabilizer trim position or pitch central position parameters, proposed Appendix D of Part 91 and Appendix B of Part 135 are consistent with Aerospace Standard AS 8039 which was produced by a Society of Automotive Engineers (SAE) committee formed at the suggestion of the FAA and other government agencies. The committee had concluded that the value of the potential information from the two excepted parameters would not justify the cost. GAMA also pointed out that the recommendation of the SAE committee had been unanimous except for the NTSB representative. The FAA has determined that these two parameters are justified, since the NTSB in its June 19, 1987, letter stated a need for the information that would be provided by these additional parameters.

One commenter objected to the requirement in § 91.35(d)(2) that the CVR be operating during the checklist action. The requirement would pose a problem for small aircraft that have no external source of power and that would have to rely on battery power to operate the CVR. The commenter stated that for some aircraft this would be impractical. The FAA does not agree that the requirement would be impractical. It is essential that checklist actions be recorded since in the event of an accident, investigators must determine if the checklist action was properly conducted. Determining the adequacy of the power source is a certification procedure and thus the manufacturer or operator would have to show during the certification process that CVR operation would not interfere with emergency or other power needs. This showing should not impose any significant additional burden since airplanes of the size to which this requirement applies would either operate off of an auxiliary power source or have adequate backup power available.

One commenter objected to the "Resolution Readout" column which was added to Appendix B—Airplane Flight Recorder Specifications. According to the commenter, these specifications increase resolution requirements beyond the capability of equipment currently being used. The commenter states that "Compliance with the higher orders of resolution will require more complicated software in the recorder system and in the readout equipment, effectively making all current equipment obsolete."

The resolution readout column is included to make the FAA flight recorder appendices consistent with the proposed ICAO recommended standard. However, the resolution readout requirement is intended only for flight recorder equipment installed on newly manufactured airplanes. The final rule has been changed to make this clear by including a footnote to this column in each flight recorder appendix. Also, the new TSO for flight recorder standards will contain resolution requirements.

Comments Beyond the Scope of the Notice

The FAA received several comments which were recommendations or suggestions for considering alternatives or additions to the proposal. Some of these were requests that are beyond the scope of the notice while others appeared to be primarily informational. These types of comments are summarized below and responded to.

Two commenters requested that the rulemaking update maintenance requirements to cover flight recorders and cockpit voice recorders. The FAA does not consider that a specific amendment is needed in this regard because an air carrier's continued airworthiness maintenance program will automatically cover such equipment.

One commenter requested that the cockpit voice recorder requirements under Parts 91 and 135 include a requirement for underwater locator beacons to aid retrieval of the recorders from lakes and rivers. This requirement already exists for aircraft certification requirements.

One commenter requested that the rule include relief for continued aircraft operation if a flight recorder or CVR becomes inoperative. The commenter was concerned that a time lapse may occur between the revisions to the Master Minimum Equipment List (MMEL) and the compliance date, also that MMEL lists may vary depending on who has responsibility for the particular aircraft MMEL. This rulemaking does not deal with minimum equipment lists and the problem suggested by the commenter, if necessary, would be handled under normal MMEL procedures.

A comment from a manufacturer stated that the NPRM implied "different sets of data between engine manufacturers." The commenter suggested additional engine information to be recorded for each engine:

N2—High Rotor Speed
EGT—Exhaust Gas Temperature
TLA—Throttle Lever Position
N1—Low Rotor Speed
WF—Fuel Low
CLA—Fuel Cutoff Lever Position

The commenter also suggested recording maintenance and status words from the electronic engine controls.

The FAA encourages including these additional parameters, as appropriate, but is not mandating them.

Construcciones Aeronauticas, S.A. (CASA) objected to the reference in the NPRM to two CASA C–212 accidents that occurred in 1987. CASA stated that some facts about the accident were incorrect in the NPRM and that the FAA should publish a correction. The FAA has checked the NTSB June 1988 recommendation letter and has determined that the NPRM accurately reflected the facts as they were stated by the NTSB in that letter.

A manufacturer of recorder equipment requested that the FAA consider the manufacturer's new type of cockpit recorder. Information on the recorder was submitted with the comment. The comment does not require an FAA response.

The Air Line Pilots Association (ALPA) comment, which was generally supportive of the proposal, requested a change in § 121.343(e) which requires that required flight recorders "must be operated continually from the instant the airplane begins to takeoff roll until it has completed the landing roll at an airport." ALPA stated that this provision "hampers the collection of valuable data which can be used in evaluating the DFDR data." ALPA requested that the language be changed to require recorder operation to begin at the time of engine start to the time of engine shutdown at the end of the flight in order to provide "steady state" information. Two other commenters also requested that recording cover the ground operation phase.

No revisions to § 121.343(e) were requested by NTSB or included in the proposed rule. The present Part 121 requirement was simply carried over to Part 91 and Part 135 requirements. A revision of the requirement is beyond the scope of this rulemaking action and would necessitate additional rulemaking proposals. However, most operators presently activate flight recorders at engine start and other operators who wish to record "steady state" data are encouraged to consider the ALPA comment.

ALPA also strongly opposes the "use of CVR recordings for any purpose other than pure accident investigation activities" and the "premature release" of CVR information during accident investigations.

One commenter stated a belief that "in recent years, because of the rapid growth of the airlines industry, training and experience levels have dropped * * *." The commenter stated that the FAA should require additional training and safety measures rather than additional equipment. The FAA does not believe the situation is an either/or; FAA has taken action on training and other safety measures, for example, its windshear training proposal [52 FR 20560, June 1, 1987]. In any event, consideration of additional pilot training and safety measures outside the area of recording equipment is beyond the scope of this rulemaking action.

Summary of Rule Changes

Significant changes between the proposed rule and the final rule are summarized below. These changes were discussed in the appropriate sections of the Comment Discussion above:

(1) The compliance dates have been extended from 2 years to 3 years.

(2) Pre-wiring requirements in § 91.35 and § 135.52 have been deleted.

(3) The requirements for airplanes currently equipped with a digital data bus are clarified in §§ 121.343(e) and 125.225(c).

(4) Certain of the parameters in Appendix B of Part 121 have been made optional.

(5) Aircraft required to be upgraded under § 135.152(b) must meet the 11-parameter or 17-parameter flight recorder requirements (currently required of certain airplanes used under Part 121) except those manufactured after October 11, 1991.

(6) Requirements pertaining to the use of boom microphones have been clarified.

(7) The resolution readout column in each of the appendices has been made applicable only to aircraft manufactured after October 11, 1991.

The changes above were coordinated with the NTSB staff who have indicated agreement that this final rule meets the intent of the NTSB recommendations in its letter of June 19, 1987.

In addition to the above changes, Parts 23 and 27 have been revised to include airworthiness requirements for flight and voice recorders. In the proposal such airworthiness requirements were only in Parts 25 and 29, and all operators subject to flight and voice recorder requirements were referred to those parts. In the interest of consistency, the final rule includes airworthiness requirements for flight and voice recorders in Parts 23, 25, 27, and 29. References in the operating rule have been revised accordingly.

Request for Additional Comments on Part 91 Requirements

Notwithstanding that the Part 91 requirements have been incorporated in this final rule, the FAA is still interested in receiving comments with respect to issues raised in Notice 88–1. The FAA is particularly interested in comments regarding the questions asked on page 4315 of the **Federal Register** publication of the notice (53 FR 4315). Therefore, a comment period of 90 days is being provided to allow the public to comment accordingly. The FAA will review all additional comments submitted and, within 1 year after the publication of this amendment in the **Federal Register**, will publish a document discussing all comments, presenting FAA findings based upon the comments, and proposing any revisions to the requirements contained herein, if necessary.

Regulatory Evaluation Summary

The complete regulatory evaluation of the final rule is available in the regulatory docket. A discussion of those comments addressing the regulatory evaluation of the notice and a summary of the final regulatory evaluation are presented below.

Comments addressing the regulatory evaluation generally expressed concern about the costs of the proposed regulations, but provided very little detail in support of their conclusions. This was true with respect to both direct acquisition and installation costs, and indirect costs from factors such as reduced payload or aircraft range.

Some commenters stated that the amendments would impose a severe economic burden on small companies operating small aircraft for hire. The FAA is aware that the amendments will result in economic impacts. However, the Department of Transportation has been directed by the Congress to take these actions.

Some commenters misinterpreted the significance of the 10-year analysis period to mean that the FAA expected operators to spread their retrofit costs over 10 years. FAA's cost estimates were for total program costs over 10 years. In developing these estimates, retrofit costs were concentrated in the first two years of the analysis period. However, the FAA has extended the compliance period from the proposed 2-year period to three years in the final rule, which should provide relief to many operators.

Some commenters expressed concern about the high cost of retrofitting their aircraft. However, it appears they misunderstood that certain proposed flight recorder requirements would apply to newly manufactured aircraft only. Further, concerns were expressed that a 32 parameter retrofit requirement

for 20 to 30 passenger seat aircraft operated under Part 135 would impose requirements that are more stringent than those requirements applicable to existing Part 121 aircraft. This issue has been resolved in the final rule by adopting requirements for existing 20 to 30 passenger Part 135 aircraft that are similar to the current Part 121 requirements.

One commenter stated that the FAA did not consider initial development and certification costs in its regulatory evaluation. However, the FAA did attempt to account for this by adding 10 percent to its equipment and installation cost estimates to provide for certification, start-up, and support equipment costs for proposals affecting aircraft operated under Parts 91, 125, and 135. This was not done for Part 121 because aircraft exist that meet the proposed requirements, and support equipment already is in service because of existing recorder requirements.

The regulatory evaluation of the final rule is very similar to the regulatory evaluation of the notice. Appropriate revisions have been made to reflect the extension of the compliance period from 2 years to 3 years, the easing of the flight recorder retrofit requirements originally proposed for larger Part 135 aircraft, and other minor clarifying changes.

Briefly, the costs of these rules result from the need to acquire, install, and maintain recorder equipment, as well as the cost of additional fuel consumption attributable to the additional weight of this equipment, and miscellaneous costs related to engineering and certification requirements, support equipment, and administrative start-up costs. The FAA estimates that the cost for all categories of aircraft affected by these rules will be approximately $297±million (1987 dollars), or a present value of $207± million when discounted back to the start of the ten-year analysis period using the 10 percent discount rate prescribed by the Office of Management and Budget. Other potential costs of this rule that have not been quantified include diminished payload carrying capability and/or reduced range that may affect some smaller aircraft as a result of the weight and volume of these recorders, as well as possible safety tradeoffs with other equipment, such as traffic alert and collision avoidance systems, ground proximity warning systems, weather radar, etc. Solid state technology potentially could avoid or reduce many of these costs and tradeoffs.

Flight recorders and cockpit voice recorders provide information only, which does not directly save lives or prevent accidents. Accidents and casualties are prevented by other actions, such as improvements in aircraft design or operating procedures, which may result from information gained by recorders. Because the benefits of recorders are indirect, they have only been discussed qualitatively in this analysis.

Flight recorders have proven effective in determinations of aircraft structural, mechanical, and systems failures that have led to corrective actions such as aircraft modifications or changes in operating procedures. Flight recorders are extremely useful in identifying the responses of flight crews to hazardous situations, and they contribute substantially to human factors analysis. Flight recorders also help define more precisely those operational problems that need to be addressed through research and development programs, such as windshear encounters. Further, many lessons learned from flight recorders, especially those concerning human factors and operational problems, are not limited to the particular aircraft type involved in an accident. Rather, they provide safety insights that are beneficial to all pilots operating many different types of aircraft under various operating rules. Additionally, recorders will aid significantly in the analysis of those accidents that will inevitably be experienced by aircraft utilizing new technologies, such as fly-by-wire control systems, canards, and extensive use of composite materials in aircraft structures.

International Trade Impact Assessment

These amendments will have little or no impact on trade for either U.S. firms doing business in foreign countries or foreign firms doing business in the United States. The amendments will affect only U.S. air carriers and operators. Foreign air carriers are prohibited from operating between points within the United States; therefore, they would not gain any competitive advantage over the domestic operations of U.S. carriers. In international operations, foreign air carriers are not expected to realize any cost advantages over U.S. air carriers because many foreign countries have recorder requirements that are as stringent as those adopted in this final rule. Further, general aviation operations conducted in the United States are not in any direct competition with foreign enterprises. For these reasons, the FAA does not expect that these amendments will result in any trade impact.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

Any small entity that operates any aircraft in the categories that are included in the amendments to Parts 91, 121, 125, and 135 would be affected by this rule. Some of these amendments could result in "a significant economic impact on a substantial number" of small entity operators and air carriers. Most manufacturers that certificate aircraft under Parts 25 and 29 are not small entities and therefore are not subject to the RFA.

The following analysis explains the reasons for this determination concerning operators and air carriers. In developing estimates of annualized net compliance costs, uniform annualized costs for capital investments have been determined by multiplying the amount of the investment by a capital recovery factor appropriate for the discount rate and period of the analysis. A capital recovery factor of .155, based upon a 10 percent discount rate over a 10-year period, has been used in this analysis. Threshold cost values and small entity size standards are those stated in FAA Order 2100.14A, *Regulatory Flexibility Criteria and Guidance.* Values have been adjusted to 1987 dollars.

The threshold values defining a significant economic impact for scheduled carriers are $96,200 if the entire fleet has a seating capacity of over 60 seats, and $53,800 for other scheduled carriers. The threshold value for an unscheduled operator is only $3,800. Further, a small entity operator of aircraft for hire is defined as one which owns 9 or fewer aircraft.

The annualized cost for the least expensive requirement adopted in this final rule, a CVR retrofit, is approximately, $3,500 per aircraft. Therefore, an operator owning only one aircraft is very close to the $3,800 threshold for unscheduled operators, and any operator owning more than one aircraft is well over the threshold. This would apply to virtually all small Part 135 operators affected by the rule. A similar argument can be made for Part 125 operators owning only one aircraft because they would be required to retrofit the far more expensive flight recorders as well as CVR's. It is possible that a substantial number of small

entities (defined as one-third of the small entities affected by the particular proposal) could incur significant economic impacts, particularly scheduled Part 135 operators (commuters) if they obtain between 6 and 9 new aircraft with 19 or fewer seats, or retrofit between about 4 and 9 aircraft with 20 to 30 seats. Further, any small unscheduled Part 121 operator purchasing one or more new aircraft not equipped with a digital data bus and digital flight data acquisition unit (DFDAU) will exceed the threshold for nonscheduled operators.

Part 91 operators of aircraft affected by these proposals generally are not small entities, however, and therefore would not be subject to the RFA. For these reasons, the FAA has determined that these amendments may have a significant economic impact on a substantial number of those small entities operating under Parts 121, 125, and 135, and a regulatory flexibility analysis is required under the terms of the RFA. The final regulatory flexibility analysis follows below.

Final Regulatory Flexibility Analysis

As required by Section 604 of the RFA, the following analysis deals with the proposed flight recorder requirements as they relate to small operators.

A. Why Agency Action Is Taken

This rulemaking is in response to Congressional action and to several recommendations made by the NTSB. The reasons for agency action are detailed in the preamble and the regulatory evaluation.

Briefly, the advantages of additional recorded information has been demonstrated by those aircraft so equipped, and it is desirable that more specific information be obtained following an accident involving additional categories of aircraft than is possible under current regulations.

B. Summary of Issues Raised by Public Comments

Comments addressing those issues identified in the initial regulatory flexibility analysis as potentially affecting small entities primarily concerned the impact of the proposals on Part 135 operators. These commenters generally expressed concern that the proposals would impose unreasonable costs on operators in comparison to any safety benefits that might result. (Similar comments were received concerning Part 91 operations. However, those entities that conduct Part 91 operations in aircraft that will be affected by this rule generally are not small entities.)

In view of the data submitted, the final rule has been modified to extend the compliance period from 2 years to 3 years; and the flight recorder retrofit requirements for 20 to 30 passenger seat Part 135 aircraft have been reduced from the 32 parameters proposed, to only 11 or 17 parameters, depending upon the date of type certification (essentially, the same requirements as those currently in Part 121).

C. Alternatives to the Proposal

Other than those revisions discussed above, no alternatives to these proposals have been considered. The Secretary of Transportation has been directed by Congress to initiate a rulemaking that considers the recommendations of the National Transportation Safety Board to the Federal Aviation Administration concerning the use of cockpit voice recorders and flight data recorders on commuter and other aircraft. The FAA has concluded that Congress intended the NTSB to have available whatever data it needs for accident investigation purposes if acquiring that data is technologically feasible.

Federalism Implications

The regulations set forth in this notice are proposed under the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 et seq.). The FA Act has been interpreted to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that this proposed regulation does not have federalism implications requiring the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this amendment is not major under Executive Order 12291 but that it is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). For the reasons discussed above, it also has been determined that the rule may have a significant economic impact on a substantial number of small entities.

List of Subjects

14 CFR Parts 23, 25, 27, and 29

Aircraft, Aviation safety, Safety.

14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Aircraft pilots, Pilots.

14 CFR Part 121

Aviation safety, Safety, Air carriers, Aircraft, Aircraft pilots, Airplanes, Transportation, Common carriers.

14 CFR Part 125

Aircraft, Airplanes, Airworthiness

14 CFR Part 135

Air carriers, Aviation safety, Safety, Air taxi, Aircraft, Airplanes, Rotorcraft.

The Rule

Accordingly, the Federal Aviation Administration amends Parts 23, 25, 27, 29, 91, 121, 125, and 135 of the Federal Aviation Regulations as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

1. The authority citation for Part 23 is revised to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub L. 97–449, January 12, 1983).

2. By adding new § 23.1457 to read as follows:

§ 23.1457 Cockpit voice recorders.

(a) Each cockpit voice recorder required by the operating rules of this chapter must be approved and must be installed so that it will record the following:

(1) Voice communications transmitted from or received in the airplane by radio.

(2) Voice communications of flight crewmembers on the flight deck.

(3) Voice communications of flight crewmembers on the flight deck, using the airplane's interphone system.

(4) Voice or audio signals identifying navigation or approach aids introduced into a headset or speaker.

(5) Voice communications of flight crewmembers using the passenger loudspeaker system, if there is such a system and if the fourth channel is available in accordance with the requirements of paragraph (c)(4)(ii) of this section.

(b) The recording requirements of paragraph (a)(2) of this section must be met by installing a cockpit-mounted area microphone, located in the best position for recording voice

communications originating at the first and second pilot stations and voice communications of other crewmembers on the flight deck when directed to those stations. The microphone must be so located and, if necessary, the preamplifiers and filters of the recorder must be so adjusted or supplemented, so that the intelligibility of the recorded communications is as high as practicable when recorded under flight cockpit noise conditions and played back. Repeated aural or visual playback of the record may be used in evaluating intelligibility.

(c) Each cockpit voice recorder must be installed so that the part of the communication or audio signals specified in paragraph (a) of this section obtained from each of the following sources is recorded on a separate channel:

(1) For the first channel, from each boom, mask, or handheld microphone, headset, or speaker used at the first pilot station.

(2) For the second channel from each boom, mask, or handheld microphone, headset, or speaker used at the second pilot station.

(3) For the third channel—from the cockpit-mounted area microphone.

(4) For the fourth channel from:

(i) Each boom, mask, or handheld microphone, headset, or speaker used at the station for the third and fourth crewmembers.

(ii) If the stations specified in paragraph (c)(4)(i) of this section are not required or if the signal at such a station is picked up by another channel, each microphone on the flight deck that is used with the passenger loudspeaker system, if its signals are not picked up by another channel.

(5) And that as far as is practicable all sounds received by the microphone listed in paragraphs (c) (1), (2), and (4) of this section must be recorded without interruption irrespective of the position of the interphone-transmitter key switch. The design shall ensure that sidetone for the flight crew is produced only when the interphone, public address system, or radio transmitters are in use.

(d) Each cockpit voice recorder must be installed so that:

(1) It receives its electric power from the bus that provides the maximum reliability for operation of the cockpit voice recorder without jeopardizing service to essential or emergency loads.

(2) There is an automatic means to simultaneously stop the recorder and prevent each erasure feature from functioning, within 10 minutes after crash impact; and

(3) There is an aural or visual means for preflight checking of the recorder for proper operation.

(e) The record container must be located and mounted to minimize the probability of rupture of the container as a result of crash impact and consequent heat damage to the record from fire. In meeting this requirement, the record container must be as far aft as practicable, but may not be where aft mounted engines may crush the container during impact. However, it need not be outside of the pressurized compartment.

(f) If the cockpit voice recorder has a bulk erasure device, the installation must be designed to minimize the probability of inadvertent operation and actuation of the device during crash impact.

(g) Each recorder container must:

(1) Be either bright orange or bright yellow;

(2) Have reflective tape affixed to its external surface to facilitate its location under water; and

(3) Have an underwater locating device, when required by the operating rules of this chapter, on or adjacent to the container which is secured in such manner that they are not likely to be separated during crash impact.

3. By adding § 23.1459 to read as follows:

§ 23.1459 Flight recorders.

(a) Each flight recorder required by the operating rules of this chapter must be installed so that:

(1) It is supplied with airspeed, altitude, and directional data obtained from sources that meet the accuracy requirements of §§ 23.1323, 23.1325, and 23.1327, as appropriate;

(2) The vertical acceleration sensor is rigidly attached, and located longitudinally either within the approved center of gravity limits of the airplane, or at a distance forward or aft of these limits that does not exceed 25 percent of the airplane's mean aerodynamic chord;

(3) It receives its electrical power power from the bus that provides the maximum reliability for operation of the flight recorder without jeopardizing service to essential or emergency loads;

(4) There is an aural or visual means for preflight checking of the recorder for proper recording of data in the storage medium.

(5) Except for recorders powered solely by the engine-driven electrical generator system, there is an automatic means to simultaneously stop a recorder that has a data erasure feature and prevent each erasure feature from functioning, within 10 minutes after crash impact; and

(b) Each nonejectable record container must be located and mounted so as to minimize the probability of container rupture resulting from crash impact and subsequent damage to the record from fire. In meeting this requirement the record container must be located as far aft as practicable, but need not be aft of the pressurized compartment, and may not be where aft-mounted engines may crush the container upon impact.

(c) A correlation must be established between the flight recorder readings of airspeed, altitude, and heading and the corresponding readings (taking into account correction factors) of the first pilot's instruments. The correlation must cover the airspeed range over which the airplane is to be operated, the range of altitude to which the airplane is limited, and 360 degrees of heading. Correlation may be established on the ground as appropriate.

(d) Each recorder container must:

(1) Be either bright orange or bright yellow;

(2) Have reflective tape affixed to its external surface to facilitate its location under water; and

(3) Have an underwater locating device, when required by the operating rules of this chapter, on or adjacent to the container which is secured in such a manner that they are not likely to be separated during crash impact.

(e) Any novel or unique design or operational characteristics of the aircraft shall be evaluated to determine if any dedicated parameters must be recorded on flight recorders in addition to or in place of existing requirements.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for Part 25 is revised to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By revising § 25.1457 (c) (1), (2), (3), and (4)(i) and adding a new paragraph (c)(5) to read as follows:

§ 25.1457 Cockpit voice recorders.

* * * * *

(c) * * *

(1) For the first channel, from each boom, mask, or hand-held microphone, headset, or speaker used at the first pilot station.

(2) For the second channel from each boom, mask, or hand-held microphone,

headset, or speaker used at the second pilot station.

(3) For the third channel—from the cockpit-mounted area microphone.

(4) * * *

(i) Each boom, mask, or hand-held microphone, headset, or speaker used at the station for the third and fourth crew members; or

* * * * *

(5) As far as is practicable all sounds received by the microphone listed in paragraphs (c) (1), (2), and (4) of this section must be recorded without interruption irrespective of the position of the interphone-transmitter key switch. The design shall ensure that sidetone for the flight crew is produced only when the interphone, public address system, or radio transmitters are in use.

* * * * *

3. By revising § 25.1459 (a)(4) and adding a new paragraph (e) to read as follows:

§ 25.1459 Flight recorders.

* * * * *

(a) * * *

(4) There is an aural or visual means for preflight checking of the recorder for proper recording of data in the storage medium.

* * * * *

(e) Any novel or unique design or operational characteristics of the aircraft shall be evaluated to determine if any dedicated parameters must be recorded on flight recorders in addition to or in place of existing requirements.

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. The authority citation for Part 27 is revised to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub L. 97-449, January 12, 1983).

2. By adding new § 27.1457 to read as follows:

§ 27.1457 Cockpit voice recorders.

(a) Each cockpit voice recorder required by the operating rules of this chapter must be approved, and must be installed so that it will record the following:

(1) Voice communications transmitted from or received in the rotorcraft by radio.

(2) Voice communications of flight crewmembers on the flight deck.

(3) Voice communications of flight crewmembers on the flight deck, using the rotorcraft's interphone system.

(4) Voice or audio signals identifying navigation or approach aids introduced into a headset or speaker.

(5) Voice communications of flight crewmembers using the passenger loudspeaker system, if there is such a system, and if the fourth channel is available in accordance with the requirements of paragraph (c)(4)(ii) of this section.

(b) The recording requirements of paragraph (a)(2) of this section may be met:

(1) By installing a cockpit-mounted area microphone located in the best position for recording voice communications originating at the first and second pilot stations and voice communications of other crewmembers on the flight deck when directed to those stations; or

(2) By installing a continually energized or voice-actuated lip microphone at the first and second pilot stations.

The microphone specified in this paragraph must be so located and, if necessary, the preamplifiers and filters of the recorder must be adjusted or supplemented so that the recorded communications are intelligible when recorded under flight cockpit noise conditions and played back. The level of intelligibility must be approved by the Administrator. Repeated aural or visual playback of the record may be used in evaluating intelligibility.

(c) Each cockpit voice recorder must be installed so that the part of the communication or audio signals specified in paragraph (a) of this section obtained from each of the following sources is recorded on a separate channel:

(1) For the first channel, from each microphone, headset, or speaker used at the first pilot station.

(2) For the second channel, from each microphone, headset, or speaker used at the second pilot station.

(3) For the third channel, from the cockpit-mounted area microphone, or the continually energized or voice-actuated lip microphone at the first and second pilot stations.

(4) For the fourth channel, from:

(i) Each microphone, headset, or speaker used at the stations for the third and fourth crewmembers; or

(ii) If the stations specified in paragraph (c)(4)(i) of this section are not required or if the signal at such a station is picked up by another channel, each microphone on the flight deck that is used with the passenger loudspeaker system if its signals are not picked up by another channel.

(iii) Each microphone on the flight deck that is used with the rotorcraft's loudspeaker system if its signals are not picked up by another channel.

(d) Each cockpit voice recorder must be installed so that:

(1) It receives its electric power from the bus that provides the maximum reliability for operation of the cockpit voice recorder without jeopardizing service to essential or emergency loads;

(2) There is an automatic means to simultaneously stop the recorder and prevent each erasure feature from functioning, within 10 minutes after crash impact; and

(3) There is an aural or visual means for preflight checking of the recorder for proper operation.

(e) The record container must be located and mounted to minimize the probability of rupture of the container as a result of crash impact and consequent heat damage to the record from fire.

(f) If the cockpit voice recorder has a bulk erasure device, the installation must be designed to minimize the probability of inadvertent operation and actuation of the device during crash impact.

(g) Each recorder container must be either bright orange or bright yellow.

3. By adding new § 27.1459 to read as follows:

§ 27.1459 Flight recorders.

(a) Each flight recorder required by the operating rules of Subchapter G of this chapter must be installed so that:

(1) It is supplied with airspeed, altitude, and directional data obtained from sources that meet the accuracy requirements of §§ 27.1323, 27.1325, and 27.1327 of this part, as applicable;

(2) The vertical acceleration sensor is rigidly attached, and located longitudinally within the approved center of gravity limits of the rotorcraft;

(3) It receives its electrical power from the bus that provides the maximum reliability for operation of the flight recorder without jeopardizing service to essential or emergency loads;

(4) There is an aural or visual means for preflight checking of the recorder for proper recording of data in the storage medium;

(5) Except for recorders powered solely by the engine-driven electrical generator system, there is an automatic means to simultaneously stop a recorder that has a data erasure feature and prevent each erasure feature from functioning, within 10 minutes after any crash impact; and

(b) Each nonejectable recorder container must be located and mounted so as to minimize the probability of container rupture resulting from crash

impact and subsequent damage to the record from fire.

(c) A correlation must be established between the flight recorder readings of airspeed, altitude, and heading and the corresponding readings (taking into account correction factors) of the first pilot's instruments. This correlation must cover the airspeed range over which the aircraft is to be operated, the range of altitude to which the aircraft is limited, and 360 degrees of heading. Correlation may be established on the ground as appropriate.

(d) Each recorder container must:

(1) Be either bright orange or bright yellow;

(2) Have a reflective tape affixed to its external surface to facilitate its location under water; and

(3) Have an underwater locating device, when required by the operating rules of this chapter, on or adjacent to the container which is secured in such a manner that they are not likely to be separated during crash impact.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

1. The authority citation for Part 29 is revised to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By adding new § 29.1459 to read as follows:

§ 29.1459 Flight recorders.

(a) Each flight recorder required by the operating rules of Subchapter G of this chapter must be installed so that:

(1) It is supplied with airspeed, altitude, and directional data obtained from sources that meet the accuracy requirements of §§ 29.1323, 29.1325, and 29.1327 of this part, as applicable;

(2) The vertical acceleration sensor is rigidly attached, and located longitudinally within the approved center of gravity limits of the rotorcraft;

(3) It receives its electrical power from the bus that provides the maximum reliability for operation of the flight recorder without jeopardizing service to essential or emergency loads;

(4) There is an aural or visual means for perflight checking of the recorder for proper recording of data in the storage medium; and

(5) Except for recorders powered solely by the engine-drive electrical generator system, there is an automatic means to simultaneously stop a recorder that has a date erasure feature and prevent each erasure feature from functioning, within 10 minutes after any crash impact.

(b) Each nonejectable recorder container must be located and mounted so as to minimize the probability of container rupture resulting from crash impact and subsequent damage to the record from fire.

(c) A correlation must be established between the flight recorder readings of airspeed, altitude, and heading and the corresponding readings (taking into account correction factors) of the first pilot's instruments. This correlation must cover the airspeed range over which the aircraft is to be operated, the range of altitude to which the aircraft is limited, and 360 degrees of heading. Correlation may be established on the ground as appropriate.

(d) Each recorder container must:

(1) Be either bright orange or bright yellow;

(2) Have a reflective tape affixed to its external surface to facilitate its location under water; and

(3) Have an underwater locating device, when required by the operating rules of this chapter, on or adjacent to the container which is secured in such a manner that it is not likely to be separated during crash impact.

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for Part 91 is revised to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By amending § 91.35 by redesignating paragraph (b) as (f) and adding new paragraphs (b), (c), (d), and (e), to read as follows:

§ 91.35 Flight recorders and cockpit voice recorders.

* * * * *

(b) No person may operate a U.S. civil registered, multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration, excluding any pilot seats, or 10 or more that has been manufactured after October 11, 1991, unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium, that are capable of recording the data specified in Appendix E, for an airplane, or Appendix F, for a rotorcraft, of this part within the range, accuracy, and recording interval specified, and that are capable of retaining no less than 8 hours of aircraft operation.

(c) Whenever a flight recorder, required by this section, is installed, it must be operated continously from the instant the airplane begins the takeoff roll or the rotorcraft begins lift-off until the airplane has completed the landing roll or the rotorcraft has landed at its destination.

(d) Unless otherwise authorized by the Administrator, after October 11, 1991, no person may operate a U.S. civil registered, multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration of six passengers or more and for which two pilots are required by type certification or operating rule unless it is equipped with an approved cockpit voice recorder that:

(1) Is installed in compliance with § 23.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); § 25.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); § 27.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); or § 29.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g) of this chapter, as applicable; and

(2) Is operated continuously from the use of the check list before the flight to completion of the final check list at the end of the flight; and

(e) In complying with this section, an approved cockpit voice recorder having an erasure feature may be used, so that at any time during the operation of the recorder, information recorded more than 15 minutes earlier may be erased or otherwise obliterated.

* * * * *

3. By adding Appendices E and F to read as follows:

APPENDIX E—AIRPLANE FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution [4] read out
Relative Time (From Recorded on Prior to Takeoff).	8 hr minimum	±0.125% per hour	1	1 sec.
Indicated Airspeed	V_{so} to V_D (KIAS)	±5% or ±10 ks., whichever is greater. Resolution 2 kts. below 175 KIAS.	1	1%.[3]
Altitude	−1,000 ft. to max cert. alt. of A/C	±100 to ±700 ft. (see Table 1, TSO C51-a).	1	25 to 150 ft.
Magnetic Heading	360°	±5°	1	1°
Vertical Acceleration	−3g to +6g	±0.2g in addition to ±0.3g maximum datum.	4 (or 1 per second where peaks, ref. to 1g are recorded).	0.03g.
Longitudinal Acceleration	±1.0g	±1.5% max. range excluding datum error of ±5%.	2	0.01g.
Pitch Altitude	100% of usable	±2°	1	0.8°.
Roll Altitude	±60° or 100% of usale range, whichever is greater.	±2°	1	0.8°
Stabilizer Trim Position, or	Full Range	±3% unless higher uniquely required	1	1%.[3]
Pitch Control Position	Full Range	±3% unless higher uniquely required	1	1%.[3]
Engine Power, Each Engine:				
Fan or N_1 Speed or EPR or Cockpit indications Used for Aircraft Certification OR.	Maximum Range	±5%	1	1%.[3]
Prop. speed and Torque (Sample Once/Sec as Close together as Practicable).			1 (prop Speed)	1%.[3]
			1 (torque)	1%.[3]
Altitude Rate [2] (need depends on altitude resolution).	±8,000 fpm	±10%. Resolution 250 fpm below 12,000 ft. indicated.	1	250 fpm. below 12,000.
Angle of Attack [2] (need depends on altitude resolution).	−20° to 40° or of usuable range	±2°	1	0.8%.[3]
Radio Transmitter Keying (Discrete)	On/Off		1	
TE Flaps (Discrete or Analog)	Each discrete position (U, D, T/O, AAP) OR		1	
	Analog 0–100% range	±3°	1	1%.[3]
LE Flaps (Discrete or Analog)	Each discrete position (U, D, T/O, AAP) OR		1	
	Analog 0–100% range	±3°	1	1%.[3]
Thrust Reverser, Each Engine (Discrete)	Stowed or full reverse		1	
Spoiler-Speedbrake (Discrete)	Stowed or out		1	
Autopilot Engaged (Discrete)	Engaged or Disengaged		1	

[1] When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft the recording system excluding these sensors (but including all other characteristics of the recording system) shall contribute no more than half of the values in this column.

[2] If data from the altitude encoding altimeter (100 ft. resolution) is used, then either one of these parameters should also be recorded. If however, altitude is recorded at a minimum resolution of 25 feet, then these two parameters can be omitted.

[3] Per cent of full range.

[4] This column applies to aircraft manufactured after October 11, 1991

APPENDIX F—HELICOPTER FLIGHT RECORDER SPECIFICATION

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution [3] read out
Relative Time (From Recorded on Prior to Takeoff).	4 hr minimum	±0.125% per hour	1	1 sec.
Indicated Airspeed	V_m in to V_D (KIAS) (minimum airspeed signal attainable with installed pilot-static system).	±5% or ±10 kts., whichever is greater.	1	1 kt.
Altitude	−1,000 ft. to 20,000 ft. pressure altitude	±100 to ±700 ft. (see Table 1, TSO C51-a).	1	25 to 150 ft.
Magnetic Heading	350°	±5°	1	1°
Vertical Acceleration	−3g to +6g	±0.2g in addition to ±0.3g maximum datum.	4 (or 1 per second where peaks, ref. to 1g are recorded).	0.05g.
Longitudinal Acceleration	±1.0g	±1.5% max. range excluding datum error of ±5%.	2	0.03g.
Pitch Attitude	100% of usable range	±2°	1	0.8°
Roll Attitude	±60° or 100% of usable range, whichever is greater.	±2°	1	0.8°
Altitude Rate	±8,000 fpm	±10% Resolution 250 fpm below 12,000 ft. indicated.	1	250 fpm below 12,000.
Engine Power, Each Engine				
Main Rotor Speed	Maximum Range	±5%	1	1% [2]
Free or Power Turbine	Maximum Range	±5%	1	1% [2]
Engine Torque	Maximum Range	±5%	1	1% [2]

APPENDIX F—HELICOPTER FLIGHT RECORDER SPECIFICATION—Continued

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution [3] read out
Flight Control Hydraulic Pressure				
Primary (Discrete)	High/Low		1	
Secondary-if applicable (Discrete)	High/Low		1	
Radio Transmitter Keying (Discrete)	On/Off		1	
Autopilot Engaged (Discrete)	Engaged or Disengaged		1	
SAS Status-Engaged (Discrete)	Engaged or Disengaged		1	
SAS Fault Status (Discrete)	Fault/OK		1	
Flight Controls				
Collective	Full range	±3%	2	1% [2]
Pedal Position	Full range	±3%	2	1% [2]
Lat. Cyclic	Full range	±3%	2	1% [2]
Long. Cyclic	Full range	±3%	2	1% [2]
Controllable Stabilator Position	Full range	±3%	2	1% [2]

[1] When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft the recording system excluding these sensors (but including all other characteristics of the recording system) shall contribute no more than half of the values in this column.
[2] Per cent of full range.
[3] This column applies to aircraft manufactured after October 11, 1991

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By amending § 121.343 by redesignating existing paragraphs (e), (f), (g), (h), and (i) as (g), (h), (i), (j), and (k), and by revising the introductory clause of paragraph (a) and by adding two new paragraphs, (e) and (f), to read as follows:

§ 121.343 Flight recorders.

(a) Except as provided in paragraphs (b), (c), (d), (e), and (f) of this section,

* * *

* * * * *

(e) After October 11, 1991, no person may operate a large airplane equipped with a digital data bus and ARINC 717 digital flight data acquisition unit (DFDAU) or equivalent unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. Any parameters specified in Appendix B of this part that are available on the digital data bus must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified.

(f) After October 11, 1991, no person may operate an airplane specified in paragraph (b) of this section that is manufactured after October 11, 1991, nor an airplane specified in paragraph (a) of this section that has been type certificated after September 30, 1969, and manufactured after October 11, 1991, unless it is equipped with one or more flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. The parameters specified in Appendix B of this part must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified.

3. Section 121.359 is amended by redesignating existing paragraph (e) as paragraph (f) and adding new paragraph (e) to read as follows:

§ 121.359 Cockpit voice recorders.

* * * * *

(e) For those aircraft equipped to record the uninterrupted audio signals received by a boom or a mask microphone, the flight crewmembers are required to use the boom microphone below 18,000 feet mean sea level. No person may operate a large turbine engine powered airplane or a large pressurized airplane with four reciprocating engines manufactured after October 11, 1991, or on which a cockpit voice recorder has been installed after October 11, 1991, unless it is equipped to record the uninterrupted audio signal received by a boom or mask microphone in accordance with § 25.1457(c)(5) of this chapter.

4. By revising Appendix B of Part 121 to read as follows:

APPENDIX B—AIRPLANE FLIGHT RECORDER SPECIFICATION

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	Resolution [4] readout
Time (GMT or Frame Counter) (range 0 to 4095, sampled 1 per frame).	24 Hrs	±0.125% Per Hour	0.25 (1 per 4 seconds).	1 sec.
Altitude	−1,000 ft to max certificated altitude of aircraft.	±100 to ±700 ft (See Table 1, TSO-C51a).	1	5′ to 35′ [1]
Airspeed	50 KIAS to V_{so}, and V_{so} to 1.2 D	±5%, ±3%	1	1 kt.
Heading	360°	±2°	1	0.5°
Normal Acceleration (Vertical)	−3g to +6g	±1% of max range excluding datum error of ±5%.	8	0.01g.
Pitch Attitude	−75°	±2°	1	0.5°.
Roll Attitude	±180°	±2°	1	0.5°
Radio Transmitter Keying	On-Off (Discrete)		1	
Thrust/Power on Each Engine	Full Range Forward	±2°	1 (per engine)	0.2% [2]
Trailing Edge Flap or Cockpit Control Selection.	Full Range or Each Discrete Position	±3° or as Pilot's Indicator	0.5	0.5% [2]

APPENDIX B—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	Resolution [4] readout
Leading Edge Flap or Cockpit Control Selection.	Full Range or Each Discrete Position	±3° or as Pilot's Indicator	0.5	0.5% [2]
Thrust Reverser Position	Stowed, In Transit, and Reverse (Discrete).		1 (per 4 seconds per engine).	
Ground Spoiler Position/Speed Brake Selection.	Full Range or Each Discrete Position	±2% Unless Higher Accuracy Uniquely Required.	1	0.2% [2]
Marker Beacon Passage	Discrete		1	
Autopilot Engagement	Discrete		1	
Longitudinal Acceleration	±1g	±1.5% max range excluding datum error of ±5%.	4	0.01g.
Pilot Input and/or Surface Position—Primary Controls (Pitch, Roll, Yaw) [3]	Full Range	±2° Unless Higher Accuracy Uniquely Required.	1	0.2% [2]
Lateral Acceleration	±1g	±1.5% max range excluding datum error of ±5%.	4	0.01g.
Pitch Trim Position	Full Range	±3% Unless Higher Accuracy Uniquely Required.	1	0.3% [2]
Glideslope Deviation	±400 Microamps	±3%	1	0.3% [2]
Localizer Deviation	±400 Microamps	±3%	1	0.3% [2]
AFCS Mode and Engagement Status	Discrete		1	
Radio Altitude	−20 ft to 2,500 ft	±2 Ft or ±3% Whichever is Greater Below 500 Ft and ±5% Above 500 Ft.	1	1 ft + 5% [2] above 500'
Master Warning	Discrete		1	
Main Gear Squat Switch Status	Discrete		1	
Angle of Attack (if recorded directly)	As installed	As installed	2	0.3% [2]
Outside Air Temperature or Total Air Temperature..	−50°C to +90°C	±2°c	0.5	0.3°c
Hydraulics, Each System Low Pressure	Discrete		0.5	or 0.5% [2]
Groundspeed	As installed	Most Accurate Systems Installed (IMS Equipped Aircraft Only).	1	0.2% [2]
If additional recording capacity is available, recording of the following parameters is recommended. The parameters are listed in order of significance:				
Drift Angle	When available, As installed	As installed	4	
Wind Speed and Direction	When available, As installed	As installed	4	
Latitude and Longitude	When available, As installed	As installed	4	
Brake pressure/Brake pedal position	As installed	As installed	1	
Additional engine parameters:				
EPR	As installed	As installed	1 (per engine).	
N1	As installed	As installed	1 (per engine).	
N2	As installed	As installed	1 (per engine).	
EGT	As installed	As installed	1 (per engine).	
Throttle Lever Position	As installed	As installed	1 (per engine).	
Fuel Flow	As installed	As installed	1 (per engine).	
TCAS:				
TA	As installed	As installed	1	
RA	As installed	As installed	1	
Sensitivity level (as selected by crew).	As installed	As installed	2	
GPWS (ground proximity warning system)	Discrete		1	
Landing gear or gear selector position	Discrete		0.25 (1 per 4 seconds).	
DME 1 and 2 Distance	0-200 NM	As installed	0.25	1 mi.
Nav 1 and 2 Frequency Selection	Full range	As installed	0.25	

[1] When altitude rate is recorded. Altitude rate must have sufficient resolution and sampling to permit the derivation of altitude to 5 feet.
[2] Per cent of full range.
[3] For airplanes that can demonstrate the capability of deriving either the control input on control movement (one from the other) for all modes of operation and flight regimes, the "or" applies. For airplanes with non-mechanical control systems (fly-by-wire) the "and" applies. In airplanes with split surfaces, suitable combination of inputs is acceptable in lieu of recording each surface separately.
[4] This column applies to aircraft manufactured after October 11, 1991

PART 125—CERTIFICATION AND OPERATION: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MINIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

1. The authority citation for Part 125 is revised to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 125.202 [Removed]

2. By removing existing § 125.202.

3. By adding a new § 125.225, to read as follows:

§ 125.225 Flight recorders.

(a) Except as provided in paragraph (d) of this section, after October 11, 1991, no person may operate a large airplane type certificated before October 1, 1969, for operations above 25,000 feet altitude, nor a multiengine, turbine powered airplane type certificated before October 1, 1969, unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. The following information must be able to be determined within the ranges, accuracies, resolution, and recording intervals specified in Appendix D of this part:

(1) Time;
(2) Altitude;
(3) Airspeed;
(4) Vertical acceleration;
(5) Heading;
(6) Time of each radio transmission to or from air traffic control;
(7) Pitch attitude;
(8) Roll attitude;
(9) Longitudinal acceleration;
(10) Control column or pitch control surface position; and
(11) Thrust of each engine.

(b) Except as provided in paragraph (d) of this section, after October 11, 1991, no person may operate a large airplane type certificated after September 30, 1969, for operations above 25,000 feet altitude, nor a multiengine, turbine powered airplane type certificated after September 30, 1969, unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. The following information must be able to be determined with the ranges, accuracies, resolutions, and recording intervals specified in Appendix D of this part:

(1) Time;
(2) Altitude;
(3) Airspeed;
(4) Vertical acceleration;
(5) Heading;
(6) Time of each radio transmission either to or from air traffic control;
(7) Pitch attitude;
(8) Roll attitude;
(9) Longitudinal acceleration;
(10) Pitch trim position;
(11) Control column or pitch control surface position;
(12) Control wheel or lateral control surface position;
(13) Rudder pedal or yaw control surface position;
(14) Thrust of each engine;
(15) Position of each trust reverser;
(16) Trailing edge flap or cockpit flap control position; and
(17) Leading edge flap or cockpit flap control position.

(c) After October 11, 1991, no person may operate a large airplane equipped with a digital data bus and ARINC 717 digital flight data acquisition unit (DFDAU) or equivalent unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. Any parameters specified in Appendix D of this part that are available on the digital data bus must be recorded within the ranges, accuracies, resolutions, and sampling intervals specified.

(d) No person may operate under this part an airplane that is manufactured after October 11, 1991, unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data and a method of readily retrieving that data from the storage medium. The parameters specified in Appendix D of this part must be recorded within the ranges, accuracies, resolutions and sampling intervals specified. For the purpose of this section, "manufactured" means the point in time at which the airplane inspection acceptance records reflect that the airplane is complete and meets the FAA-approved type design data.

(e) Whenever a flight recorder required by this section is installed, it must be operated continuously from the instant the airplane begins the takeoff roll until it has completed the landing roll at an airport.

(f) Except as provided in paragraph (g) of this section, and except for recorded data erased as authorized in this paragraph, each certificate holder shall keep the recorded data prescribed in paragraph (a), (b), (c), or (d) of this section, as applicable, until the airplane has been operated for at least 25 hours of the operating time specified in § 125.227(a) of this chapter. A total of 1 hour of recorded data may be erased for the purpose of testing the flight recorder or the flight recorder system. Any erasure made in accordance with this paragraph must be of the oldest recorded data accumulated at the time of testing. Except as provided in paragraph (g) of this section, no record need be kept more than 60 days.

(g) In the event of an accident or occurrence that requires immediate notification of the National Transportation Safety Board under 49 CFR Part 830 and that results in termination of the flight, the certificate holder shall remove the recording media from the airplane and keep the recorded data required by paragraph (a), (b), (c), or (d) of this section, as applicable, for at least 60 days or for a longer period upon the request of the Board or the Administrator.

(h) Each flight recorder required by this section must be installed in accordance with the requirements of § 25.1459 of this chapter in effect on August 31, 1977. The correlation required by § 25.1459(c) of this chapter need be established only on one airplane of any group of airplanes.

(1) That are of the same type;

(2) On which the flight recorder models and their installations are the same; and

(3) On which there are no differences in the type design with respect to the installation of the first pilot's instruments associated with the flight recorder. The most recent instrument calibration, including the recording medium from which this calibration is derived, and the recorder correlation must be retained by the certificate holder.

(i) Each flight recorder required by this section that records the data specified in paragraph (a), (b), (c), or (d) of this section must have an approved device to assist in locating that recorder under water.

4. By adding a new § 125.227, to read as follows:

§ 125.227 Cockpit voice recorders.

(a) No certificate holder may operate a large turbine engine powered airplane or a large pressurized airplane with four reciprocating engines unless an approved cockpit voice recorder is installed in that airplane and is operated continuously from the start of the use of the checklist (before starting engines for the purpose of flight) to completion of the final checklist at the termination of the flight.

(b) Each certificate holder shall establish a schedule for completion, before the prescribed dates, of the cockpit voice recorder installations required by paragraph (a) of this section. In addition, the certificate holder shall identify any airplane specified in paragraph (a) of this section he intends to discontinue using before the prescribed dates.

(c) The cockpit voice recorder required by this section must also meet the following standards:

(1) The requirements of Part 25 of this chapter in effect after October 11, 1991.

(2) After September 1, 1980, each recorder container must—

(i) Be either bright orange or bright yellow;

(ii) Have reflective tape affixed to the external surface to facilitate its location under water; and

(iii) Have an approved underwater locating device on or adjacent to the container which is secured in such a manner that it is not likely to be separated during crash impact, unless the cockpit voice recorder and the flight recorder, required by § 125.225 of this chapter, are installed adjacent to each other in such a manner that they are not likely to be separated during crash impact.

(d) In complying with this section, an approved cockpit voice recorder having an erasure feature may be used so that, at any time during the operation of the

recorder, information recorded more than 30 minutes earlier may be erased or otherwise obliterated.

(e) For those aircraft equipped to record the uninterrupted audio signals received by a boom or a mask microphone the flight crewmembers are required to use the boom microphone below 18,000 feet mean sea level. No person may operate a large turbine engine powered airplane or a large pressurized airplane with four reciprocating engines manufactured after October 11, 1991, or on which a cockpit voice recorder has been installed after October 11, 1991, unless it is equipped to record the uninterrupted audio signal received by a boom or mask microphone in accordance with § 25.1457(c)(5) of this chapter.

(f) In the event of an accident or occurrence requiring immediate notification of the National Transportation Safety Board under 49 CFR Part 830 of its regulations, which results in the termination of the flight, the certificate holder shall keep the recorded information for at least 60 days or, if requested by the Administrator or the Board, for a longer period. Information obtained from the record is used to assist in determining the cause of accidents or occurrences in connection with investigations under 49 CFR Part 830. The Administrator does not use the record in any civil penalty or certificate action.

5. By adding a new Appendix D, to read as follows:

APPENDIX D—AIRPLANE FLIGHT RECORDER SPECIFICATION

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	Resolution read out
Time (GMT or Frame Counter) (range 0 to 4095, sampled 1 per frame).	24 Hrs	±0.125% Per Hour	0.25 (1 per 4 seconds).	1 sec.
Altitude	−1,000 ft to max certificated altitude of aircraft.	±100 to ±700 ft (See Table 1, TSO-C51a).	1	5' to 35' [1].
Airspeed	50 KIAS to V_{so}, and V_{so} to 1.2 V_D	±5%, ±3%	1	1 kt.
Heading	360°	±2°	1	0.5.
Normal Acceleration (Vertical)	−3g to +6g	±1% of max range excluding datum error of ±5%.	8	0.01g.
Pitch Attitude	±75°	±2°	1	0.5°
Roll Attitude	±180°	±2°	1	0.5°
Radio Transmitter Keying	On-Off (Discrete)		1	
Thrust/Power on Each Engine	Full range forward	±2%	1	0.2% [2]
Trailing Edge Flap or Cockpit Control Selection.	Full range or each discrete position	±3° or as pilot's Indicator	0.5	0.5% [2].
Leading Edge Flap or Cockpit Control Selection.	Full range or each discrete position	±3° or as pilot's indicator	0.5	0.5% [2]
Thrust Reverser Position	Stowed, in transit, and reverse (Discrete)		1 (per 4 seconds per engine).	
Ground Spoiler Position/Speed Brake Selection.	Full range or each discrete position	±2% unless higher accuracy uniquely required.	1	0.2% [2]
Marker Beacon Passage	Discrete		1	
Autopilot Engagement	Discrete		1	
Longitudinal Acceleration	±1g	±1.5% max range excluding datum error of ±5%.	4	0.01g.
Pilot Input and/or Surface Position-Primary Controls (Pitch, Roll, Yaw) [3]	Full range	±2° unless higher accuracy uniquely required.	1	0.2% [2]
Lateral Acceleration	±1g	±1.5% max range excluding datum error of ±5%.	4	0.01g.
Pitch Trim Position	Full range	±3% unless higher accuracy uniquely required.	1	0.3% [2]
Glideslope Deviation	±400 Microamps	±3%	1	0.3% [2]
Localizer Deviation	±400 Microamps	±3%	1	0.3% [2]
AFCS Mode and Engagement Status	Discrete		1	
Radio Altitude	−20 ft to 2,500 ft	±2 Ft or ±3% Whichever is Greater Below 500 Ft and ±5% Above 500 Ft.		1 ft + 5% [2] above 500'
Master Warning	Discrete		1	
Main Gear Squat Switch Status	Discrete		1	
Angle of Attack (if recorded directly)	As installed	As installed	2	0.3% [2]
Outside Air Temperature or Total Air Temperature.	−50°C to +90°C	±2°C	0.5	0.3°C.
Hydraulics, Each System Low Pressure	Discrete		0.5	or 0.5% [2]
Groundspeed	As Installed	Most Accurate Systems Installed (IMS Equipped Aircraft Only).	1	0.2% [2]

If additional recording capacity is available, recording of the following parameters is recommended. The parameters are listed in order of significance:

Drift Angle	When available. As installed	As installed	4
Wind Speed and Direction	When available. As installed	As installed	4
Latitude and Longitude	When available. As installed	As installed	4
Brake pressure/Brake pedal position	As installed	As installed	1
Additional engine parameters:			
EPR	As installed	As installed	1 (per engine)
N1	As installed	As installed	1 (per engine)
N2	As installed	As installed	1 (per engine)
EGT	As installed	As installed	1 (per engine)
Throttle Lever Position	As installed	As installed	1 (per engine)
Fuel Flow	As installed	As installed	1 (per engine)
TCAS:			
*A	As installed	As installed	1

APPENDIX D—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	Resolution [4] read out
RA	As installed	As installed	1	
Sensitivity level (as selected by crew).	As installed	As installed	2	
GPWS (ground proximity warning system)	Discrete		1	
Landing gear or gear selector position	Discrete		0.25 (1 per 4 seconds).	
DME 1 and 2 Distance	0–200 NM	As installed	0.25	1 mi.
Nav 1 and 2 Frequency Selection	Full range	As installed	0.25	

[1] When altitude rate is recorded. Altitude rate must have sufficient resolution and sampling to permit the derivation of altitude to 5 feet.
[2] Percent of full range.
[3] For airplanes that can demonstrate the capability of deriving either the control input on control movement (one from the other) for all modes of operation and flight regimes, the "or" applies. For airplanes with non-mechanical control systems (fly-by-wire) the "and" applies. In airplanes with split surfaces, suitable combination of inputs is acceptable in lieu of recording each surface separately.
[4] This column applies to aircraft manufactured after October 11, 1991

PART 135—AIR TAXI OPERATIONS AND COMMERCIAL OPERATORS

1. The authority citation for Part 135 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By amending § 135.151 by revising paragraphs (a) and (b), and by adding new paragraphs (d) and (e) to read as follows:

§ 135.151 Cockpit voice recorders.

(a) After October 11, 1991, no person may operate a multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration of six or more and for which two pilots are required by certification or operating rules unless it is equipped with an approved cockpit voice recorder that:

(1) Is installed in compliance with § 23.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); § 25.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); § 27.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g); or § 29.1457(a) (1) and (2), (b), (c), (d), (e), (f), and (g) of this chapter, as applicable; and

(2) Is operated continuously from the use of the check list before the flight to completion of the final check list at the end of the flight.

(b) After October 11, 1991, no person may operate a multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration of 20 or more seats unless it is equipped with an approved cockpit voice recorder that—

(1) Is installed in compliance with § 23.1457, § 25.1457, § 27.1457 or § 29.1457 of this chapter, as applicable; and

(2) Is operated continuously from the use of the check list before the flight to completion of the final check list at the end of the flight.

* * * * *

(d) For those aircraft equipped to record the uninterrupted audio signals received by a boom or a mask microphone the flight crewmembers are required to use the boom microphone below 18,000 feet mean sea level. No person may operate a large turbine engine powered airplane manufactured after October 11, 1991, or on which a cockpit voice recorder has been installed after October 11, 1991, unless it is equipped to record the uninterrupted audio signal received by a boom or mask microphone in accordance with § 25.1457(c)(5) of this chapter.

(e) In complying with this section, an approved cockpit voice recorder having an erasure feature may be used, so that during the operation of the recorder, information:

(1) Recorded in accordance with paragraph (a) of this section and recorded more than 15 minutes earlier; or

(2) Recorded in accordance with paragraph (b) of this section and recorded more than 30 minutes earlier; may be erased or otherwise obliterated.

3. By adding a new § 135.152 to read as follows:

§ 135.152 Flight recorders.

(a) No person may operate a multiengine, turbine-powered airplane or rotorcraft having a passenger seating configuration, excluding any pilot seat, of 10 to 19 seats, that is brought onto the U.S. register after October 11, 1991, unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data, and a method of readily retrieving that data from the storage medium. The parameters specified in Appendix B or C, as applicable, of this part must be recorded within the range accuracy, resolution, and recording intervals as specified. The recorder shall retain no less than 8 hours of aircraft operation.

(b) After October 11, 1991, no person may operate a multiengine, turbine-powered airplane having a passenger seating configuration of 20 to 30 seats or a multiengine, turbine-powered rotorcraft having a passenger seating configuration of 20 or more seats unless it is equipped with one or more approved flight recorders that utilize a digital method of recording and storing data, and a method of readily retrieving that data from the storage medium. The parameters in Appendix D or E of this part, as applicable, that are set forth below, must be recorded within the ranges, accuracies, resolutions, and sampling intervals as specified.

(1) Except as provided in paragraph (b)(3) of this section for aircraft type certificated before October 1, 1969, the following parameters must be recorded:

(i) Time;
(ii) Altitude;
(iii) Airspeed;
(iv) Vertical acceleration;
(v) Heading;
(vi) Time of each radio transmission to or from air traffic control;
(vii) Pitch attitude;
(viii) Roll attitude;
(ix) Longitudinal acceleration;
(x) Control column or pitch control surface position; and
(xi) Thrust of each engine.

(2) Except as provided in paragraph (b)(3) of this section for aircraft type certificated after September 30, 1969, the following parameters must be recorded:

(i) Time;
(ii) Altitude;
(iii) Airspeed;
(iv) Vertical acceleration;
(v) Heading;
(vi) Time of each radio transmission either to or from air traffic control;
(vii) Pitch attitude;
(viii) Roll attitude;
(ix) Longitudinal acceleration;

(x) Pitch trim position;
(xi) Control column or pitch control surface position;
(xii) Control wheel or lateral control surface position;
(xiii) Rudder pedal or yaw control surface position;
(xiv) Thrust of each engine;
(xv) Position of each thrust reverser;
(xvi) Trailing edge flap or cockpit flap control position; and
(xvii) Leading edge flap or cockpit flap control position.

(3) For aircraft manufactured after October 11, 1991, all of the parameters listed in Appendix D or E of this part, as applicable, must be recorded.

(c) Whenever a flight recorder required by this section is installed, it must be operated continuously from the instant the airplane begins the takeoff roll or the rotorcraft begins the lift-off until the airplane has completed the landing roll or the rotorcraft has landed at its destination.

(d) Except as provided in paragraph (c) of this section, and except for recorded data erased as authorized in this paragraph, each certificate holder shall keep the recorded data prescribed in paragraph (a) of this section until the aircraft has been operating for at least 8 hours of the operating time specified in paragraph (c) of this section. In addition, each certificate holder shall keep the recorded data prescribed in paragraph (b) of this section for an airplane until the airplane has been operating for at least 25 hours, and for a rotorcraft until the rotorcraft has been operating for at least 10 hours, of the operating time specified in paragraph (c) of this section. A total of 1 hour of recorded data may be erased for the purpose of testing the flight recorder or the flight recorder system. Any erasure made in accordance with this paragraph must be of the oldest recorded data accumulated at the time of testing. Except as provided in paragraph (c) of this section, no record need be kept more than 60 days.

(e) In the event of an accident or occurrence that requires the immediate notification of the National Transportation Safety Board under 49 CFR Part 830 of its regulations and that results in termination of the flight, the certificate holder shall remove the recording media from the aircraft and keep the recorded data required by paragraphs (a) and (b) of this section for at least 60 days or for a longer period upon request of the Board or the Administrator.

(f) Each flight recorder required by this section must be installed in accordance with the requirements of §§ 23.1459, 25.1459, 27.1459, or 29.1459, as appropriate, of this chapter. The correlation required by paragraph (c) of §§ 23.1459, 25.1459, 27.1459, or 29.1459, as appropriate, of this chapter need be established only on one aircraft of a group of aircraft:

(1) That are of the same type;

(2) On which the flight recorder models and their installations are the same; and

(3) On which there are no differences in the type design with respect to the installation of the first pilot's instruments associated with the flight recorder. The most recent instrument calibration, including the recording medium from which this calibration is derived, and the recorder correlation must be retained by the certificate holder.

(g) Each flight recorder required by this section that records the data specified in paragraphs (a) and (b) of this section must have an approved device to assist in locating that recorder under water.

4. By adding new Appendices B, C, D, and E, to read as follows:

APPENDIX B—AIRPLANE FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution [4] read out
Relative time (from recorded on prior to takeoff).	8 hr minimum	±0.125% per hour	1	1 sec.
Indicated airspeed	V_{so} to V_D (KIAS)	±5% or ±10 kts., whichever is greater. Resolution 2 kts. below 175 KIAS.	1	1% [3]
Altitude	−1,000 ft. to max cert. alt. of A/C	±100 to ±700 ft. (see Table 1, TSO C51-a).	1	25 to 150.
Magnetic heading	360°	±5°	1	1°
Vertical acceleration	−3g to +6g	±0.2g in addition to ±0.3g maximum datum.	4 (or 1 per second where peaks, ref. to 1g are recorded).	0.03g.
Longitudinal acceleration	±1.0g	±1.5% max. range excluding datum error of ±5%.	2	0.01g.
Pitch attitude	100% of usable	±2°	1	0.8°
Roll attitude	±60° or 100% of usable range, whichever is greater.	±2°	1	0.8°
Stabilizer trim position	Full range	±3% unless higher uniquely required	1	1% [3]
Or				
Pitch control position	Full range	±3% unless higher uniquely required	1	1% [3]
Engine Power, Each Engine				
Fan or N_1 speed or EPR or cockpit indications used for aircraft certification.	Maximum range	±5%	1	1% [3]
Or				
Prop. speed and torque (sample once/sec as close together as practicable).			1 (prop speed), 1 (torque).	
Altitude rate [2] (need depends on altitude resolution).	±8,000 fpm	±10%. Resolution 250 fpm below 12,000 ft. indicated.	1	250 fpm. Below 12,000.
Angle of attack [2] (need depends on altitude resolution).	−20° to 40° or of usable range	±2°	1	0.8% [3].
Radio transmitter keying (discrete)	On/off		1	
TE flaps (discrete or analog)	Each discrete position (U, D, T/O, AAP)		1	
	Or			
	Analog 0–100% range	±3°	1	1% [3].
LE flaps (discrete or analog)	Each discrete position (U, D, T/O, AAP)		1	

APPENDIX B—AIRPLANE FLIGHT RECORDER SPECIFICATIONS—Continued

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution [4] read out
	Or			
	Analog 0-100% range	±3°	1	1% [3]
Thrust reverser, each engine (Discrete)	Stowed or full reverse		1	
Spoiler/speedbrake (discrete)	Stowed or out		1	
Autopilot engaged (discrete)	Engaged or disengaged		1	

[1] When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft the recording system excluding these sensors (but including all other characteristics of the recording system) shall contribute no more than half of the values in this column.
[2] If data from the altitude encoding altimeter (100 ft. resolution) is used, then either one of these parameters should also be recorded. If however, altitude is recorded at a minimum resolution of 25 feet, then these two parameters can be omitted.
[3] Per cent of full range.
[4] This column applies to aircraft manufacturing after October 11, 1991

APPENDIX C—HELICOPTER FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution [3] read out
Relative time (from recorded on prior to takeoff).	8 hr minimum	±0.125% per hour	1	1 sec.
Indicated airspeed	V_{min} to V_D (KIAS) (minimum airspeed signal attainable with installed pilot-static system).	±5% or ±10 kts., whichever is greater	1	1 kt.
Altitude	−1,000 ft. to 20,000 ft. pressure altitude	±100 to ±700 ft. (see Table 1, TSO C51-a).	1	25 to 150 ft.
Magnetic heading	360°	±5°	1	1°
Vertical acceleration	−3g to +6g	±0.2g in addition to ±0.3g maximum datum.	4 (or 1 per second where peaks, ref. to 1g are recorded).	0.05g.
Longitudinal acceleration	±1.0g	±1.5% max. range excluding datum error of ±5%.	2	0.03g.
Pitch attitude	100% of usable range	±2°	1	0.8°
Roll attitude	±60° or 100% of usable range, whichever is greater.	±2°	1	0.8°
Altitude rate	±8,000 fpm	±10% Resolution 250 fpm below 12,000 ft. indicated.	1	250 fpm below 12,000.
Engine Power, Each Engine				
Main rotor speed	Maximum range	±5%	1	1%. [2]
Free or power turbine	Maximum range	+5%	1	1%. [2]
Engine torque	Maximum range	±5%	1	1%. [2]
Flight Control—Hydraulic Pressure				
Primary (discrete)	High/low		1	
Secondary—if applicable (discrete)	High/low		1	
Radio transmitter keying (discrete)	On/off		1	
Autopilot engaged (discrete)	Engaged or disengaged		1	
SAS status—engaged (discrete)	Engaged/disengaged		1	
SAS fault status (discrete)	Fault/OK		1	
Flight Controls				
Collective	Full range	±3%	2	1% [2]
Pedal position	Full range	±3%	2	1%. [2]
Lat. cyclic	Full range	±3%	2	1%. [2]
Long. cyclic	Full range	±3%	2	1%. [2]
Controllable stabilator position	Full range	±3%	2	1%. [2]

[1] When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft the recording system excluding these sensors (but including all other characteristics of the recording system) shall contribute no more than half of the values in this column.
[2] Per cent of full range.
[3] This column applies to aircraft manufactured after October 11, 1991

APPENDIX D—AIRPLANE FLIGHT RECORDER SPECIFICATION

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	resolution [4] read out
Time (GMT or Frame Counter) (range 0 to 4095, sampled 1 per frame).	24 Hrs	±0.125% Per Hour	0.25 (1 per 4 seconds).	1 sec.
Altitude	−1,000 ft to max certificated altitude of aircraft.	±100 to ±700 ft (See Table 1, TSO-C51a).	1	5' to 35' [1]
Airspeed	50 KIAS to V_{so}, and V_{so} to 1.2 V_D	±5%, ±3%	1	1kt.
Heading	360°	±2°	1	0.5°

APPENDIX D—AIRPLANE FLIGHT RECORDER SPECIFICATION—Continued

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	resolution [4] read out
Normal Acceleration (Vertical)	−3g to +6g	±1% of max range excluding datum error of ±5%.	8	0.01g
Pitch Attitude	±75°	±2°	1	0.5°
Roll Attitude	±180°	±2°	1	0.5°
Radio Transmitter Keying	On-Off (Discrete)		1	
Thrust/Power on Each Engine	Full range forward	±2%	1 (per engine)	0.2% [2]
Trailing Edge Flap or Cockpit Control Selection.	Full range or each discrete position	±3° or as pilot's indicator	0.5	0.5% [2]
Leading Edge Flap on or Cockpit Control Selection.	Full range or each discrete position	±3° or as pilot's indicator	0.5	0.5% [2]
Thrust Reverser Position	Stowed, in transit, and reverse (discretion).		1 (per 4 seconds per engine).	
Ground Spoiler Position/Speed Brake Selection.	Full range or each discrete position	±2% unless higher accuracy uniquely required.	1	0.22 [2]
Marker Beacon Passage	Discrete		1	
Autopilot Engagement	Discrete		1	
Longitudinal Acceleration	±1g	±1.5% max range excluding datum error of ±5%.	4	0.01g.
Pilot Input And/or Surface Position-Primary Controls (Pitch, Roll, Yaw) [3].	Full range	±2° unless higher accuracy uniquely required.	1	0.2% [2]
Lateral Acceleration	±1g	±1.5% max range excluding datum error of ±5%.	4	0.01g.
Pitch Trim Position	Full range	±3% unless higher accuracy uniquely required.	1	0.3% [2]
Glideslope Deviation	±400 Microamps	±3%	1	0.3% [2]
Localizer Deviation	±400 Microamps	±3%	1	0.3% [2]
AFCS Mode And Engagement Status	Discrete		1	
Radio Altitude	−20 ft to 2,500 ft	±2 Ft or ±3% whichever is greater below 500 ft and ±5% above 500 ft.	1	1 ft + 5% [2] above 500'
Master Warning	Discrete		1	
Main Gear Squat Switch Status	Discrete		1	
Angle of Attack (if recorded directly)	As installed	As installed	2	0.3% [2]
Outside Air Temperature or Total Air Temperature.	−50°C to +90°c	±2°c	0.5	0.3°c/
Hydraulics, Each System Low Pressure	Discrete		0.5	or 0.5% [2]
Groundspeed	As installed	Most accurate systems installed (IMS equipped aircraft only).	1	0.2% [2]
If additional recording capacity is available, recording of the following parameters is recommended. The parameters are listed in order of significance:				
Drift Angle	When available. As installed	As installed	4	
Wind Speed and Direction	When available. As installed	As installed	4	
Latitude and Longitude	When available. As installed	As installed	4	
Brake pressure/Brake pedal position	As installed	As installed	1	
Additional engine parameters:				
EPR	As installed	As installed	1 (per engine)	
N1	As installed	As installed	1 (per engine)	
N2	As installed	As installed	1 (per engine)	
EGT	As installed	As installed	1 (per engine)	
Throttle Lever Position	As installed	As installed	1 (per engine)	
Fuel Flow	As installed	As installed	1 (per engine)	
TCAS:				
TA	As installed	As installed	1	
RA	As installed	As installed	1	
Sensitivity level (as selected by crew).	As installed	As installed	2	
GPWS (ground proximity warning system)	Discrete		1	
Landing gear or gear selector position	Discrete		0.25 (1 per 4 seconds).	
DME 1 and 2 Distance	0-200 HM;	As installed	0.25	1mi.
Nav 1 and 2 Frequency Selection	Full range.	As installed	0.25	

[1] When altitude rate is recorded. Altitude rate must have sufficient resolution and sampling to permit the derivation of altitude to 5 feet.
[2] Per cent of full range.
[3] For airplanes that can demonstrate the capability of deriving either the control input on control movement (one from the other) for all modes of operation and flight regimes, the "or" applies. For airplanes with non-mechanical control systems (fly-by-wire) the "and" applies. In airplanes with split surfaces, suitable combination of inputs is acceptable in lieu of recording each surface separately.
[4] This column applies to aircraft manufactured after October 11, 1991

APPENDIX E—HELICOPTER FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	Resolution [2] read out
Time (GMT)	24 Hrs	±0.125% Per Hour	0.25 (1 per 4 seconds).	1 sec

APPENDIX E—HELICOPTER FLIGHT RECORDER SPECIFICATIONS—Continued

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	Resolution [2] read out
Altitude	−1,000 ft to max certificated altitude of aircraft.	±100 to ±700 ft (See Table 1, TSO-C51a).	1	5' to 30'.
Airspeed	As the installed measuring system	±3%	1	1 kt.
Heading	360°	±2°	1	0.5°.
Normal Acceleration (Vertical)	−3g to +6g	±1% of max range excluding datum error of ±5%.	8	0.01g
Pitch Attitude	±75°	±2°	2	0.5°
Roll Attitude	±180°	±2°	2	0.5°
Radio Transmitter Keying	On-Off (Discrete)		1	0.25 sec.
Power in Each Engine: Free Power Turbine Speed *and* Engine Torque.	0–130% (power Turbine Speed) Full range (Torque).	±2%	1 speed 1 torque (per engine).	0.2% [1] to 0.4% [1].
Main Rotor Speed	0–130%	±2%	2	0.3% [1].
Altitude Rate	±6,000 ft/min	As installed	2	0.2% [1].
Pilot Input—Primary Controls (Collective, Longitudinal Cyclic, Lateral Cyclic, Pedal).	Full range	±3%	2	0.5% [1].
Flight Control Hydraulic Pressure Low	Discrete, each circuit		1	
Flight Control Hydraulic Pressure Selector Switch Position, 1st and 2nd stage.	Discrete		1	
AFCS Mode and Engagement Status	Discrete (5 bits necessary)		1	
Stability Augmentation System Engage	Discrete		1	
SAS Fault Status	Discrete		0.25	
Main Gearbox Temperature Low	As installed	As installed	0.25	0.5% [1].
Main Gearbox Temperature High	As installed	As installed	0.5	0.5% [1].
Controllable Stabilator Position	Full Range	±3%	2	0.4% [1].
Longitudinal Acceleration	±1g	±1.5% max range excluding datum error of ±5%.	4	0.01g.
Lateral Acceleration	±1g	±1.5% max range excluding datum of ±5%.	4	0.01g.
Master Warning	Discrete		1	
Nav 1 and 2 Frequency Selection	Full range	As installed	0.25	
Outside Air Temperature	−50°C to +90°C	±2°c	0.5	0.3°c.

[1] Per cent of full range.
[2] This column applies to aircraft manufactured after October 11, 1991

Issued in Washington, DC, on June 30, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88–15179 Filed 7–1–88; 4:07 pm]

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federal register

Monday
July 11, 1988

Part III

Department of State

48 CFR Ch. 6

Acquisition Regulation; Establishment; Final Rule and Interim Rule With Request For Comments

DEPARTMENT OF STATE

48 CFR Ch. 6

[108.868]

Acquisition Regulation; Establishment

AGENCY: Office of the Procurement Executive, Department of State.

ACTION: Final rule and interim final rule with request for comment.

SUMMARY: The Department of State Acquisition Regulation (DOSAR) is established as part of the Federal Acquisition Regulations System, which consists of the Federal Acquisition Regulation (FAR) and agency acquisition regulations that implement or supplement the FAR. This rule is necessary to provide regulatory coverage not otherwise found in the FAR for Department of State acquisitions.

DATES: This final rule and interim final rule are effective on July 11, 1988. Comments on the interim rule should be submitted on or before August 10, 1988. The interim final rule portions of the regulation are discussed in **SUPPLEMENTARY INFORMATION,** section I.C. below.

ADDRESS: Interested parties should submit written comments to the Office of the Procurement Executive, Room 227, SA–6, U.S. Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: James Tyckoski, Office of the Procurement Executive, telephone (703) 875–7044.

SUPPLEMENTARY INFORMATION:

I. Background
- A. Comments on Proposed Rule
- B. Final Rule
- C. Interim Final Rule
- D. Standardization

II. Procedural Requirements
- A. Executive Order 12291
- B. Regulatory Flexibility Act
- C. Paperwork Reduction Act

I. Background

A. Comments on Proposed Rule

On May 28, 1987, the Department published in the **Federal Register** (52 FR 19990) the DOSAR, a proposed rule that would implement and supplement the FAR. One public entity commented on the DOSAR; the Department responded directly to that entity.

The DOSAR was rewritten in consideration of comments received from the Office of Federal Procurement Policy (OFPP) of the Office of Management and Budget, comments received from Department of State offices, or to provide a more accurate and readable document. Except as provided in Supplementary Information sections C and D below, those changes have been incorporated into the final rule.

B. Final Rule

This final rule includes updates to the DOSAR resulting from changes made to the FAR since the DOSAR was published as a proposed rule; therefore, the original DOSAR coverage could not be published as written in the proposed rule. The changes are as follows.

1. DOSAR 601.602–3, Ratification of Unauthorized Contractual Commitments, rewritten pursuant to Federal Acquisition Circular (FAC) 84–33.

2. DOSAR 630.201–5, Waiver, added pursuant to FAC 84–30.

3. DOSAR 630.303, CAS Program Requirements, retitled to conform with FAC 84–30.

4. DOSAR 630.304, Waiver, deleted pursuant to FAC 84–30.

5. DOSAR 632.111–70(a), prescription for prompt payment, rewritten as part of DOSAR 632.111–70, and the clause at DOSAR 652.232–70, Prompt Payment, deleted pursuant to FAC 84–33.

C. Interim Final Rule

As a result of OFPP's review, the Department has agreed to issue the following DOSAR coverage as an interim final rule. The Department has determined that compelling reasons exist to promulgate an interim final rule because the coverage is required and it was previously published in the DOSAR proposed rule.

1. OFPP recommended that the Department submit for inclusion in the FAR several items covered in the proposed rule that may not be unique to the Department of State. Those items were identified in the preamble to the proposed rule and included:

(a) DOSAR 604.404–70, prescription for contracts involving classified information and security clearances for contractor personnel, and the clauses at DOSAR 652.204–70, Security Requirements, and DOSAR 652.204–71, Security Requirements—Personnel;

(b) DOSAR 614.201–7–70(a), prescription for use of English language solicitations and contracts awarded or performed overseas, and the clause at DOSAR 652.214–70, Language Version; and

(c) DOSAR 619.201(d), responsibilities of the Small and Disadvantaged Business Utilization Specialist.

The Department received no public comments or comments from other Federal agencies on these items. Nevertheless, the Department has submitted these items to the FAR Council for consideration of FAR coverage.

2. In reviewing the DOSAR for publication as a final rule, OFPP recommended the following additional items as appropriate for coverage in the FAR:

(a) DOSAR 614.201–7–70(c), prescription for contractor's authorization to perform, and the clause at DOSAR 652.214–72, Authorization to Perform;

(b) DOSAR 628.7001, prescription for the Government's indemnity by the contractor, and the clause at DOSAR 652.228–70, Indemnification; and

(c) DOSAR 633.104 and 633.105, which implement FAR 33.104 and 33.105 concerning protests to the General Accounting Office and the General Services Administration Board of Contract Appeals;

(d) DOSAR 642.270 and 642.271, prescription for the contracting officer's representative, and the clause at DOSAR 652.242–70, Contracting Officer's Representative (COR).

The Department has submitted the above items to the FAR Council for consideration of FAR coverage.

As the material identified in paragraphs 1 and 2 above is added to the FAR, the DOSAR will be amended accordingly. Public comments received in response to this interim rule shall be considered in formulating a final rule.

D. Standardization

In consideration of OFPP's substantive problems with the coverage at DOSAR Subpart 617.70, Standardization, the Department agreed not to issue that coverage as either a final rule or an interim final rule. Therefore, DOSAR Subpart 617.70 has been removed from this rule.

II. Procedural Requirements

A. Review Under Executive Order 12291

This rule was reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12291.

B. Review Under the Regulatory Flexibility Act

Consistent with the provisions of the Regulatory Flexibility Act, Pub. L. 96–354, and as required under 5 U.S.C. 605(b), the undersigned hereby certifies that these interim and final rules will not have a significant economic impact on a substantial number of small entities because the rule serves only to implement or supplement the Federal Acquisition Regulation.

C. Review Under the Paperwork Reduction Act

These interim and final rules do not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act of 1980, Pub. L. 96-511 (44 U.S.C. 3501 et seq.). The rules do not impose additional recordkeeping or reporting requirements beyond those contained in the FAR, for which OMB control numbers have already been assigned.

List of Subjects in 48 CFR Ch. 6

Government procurement.

For the reasons set out in the preamble, Chapter 6 of Title 48 of the Code of Federal Regulations is established as follows.

John J. Conway,

Procurement Executive.

June 24, 1988.

CHAPTER 6—DEPARTMENT OF STATE

SUBCHAPTER A—GENERAL

PART 601—DEPARTMENT OF STATE ACQUISITION REGULATIONS SYSTEM

PART 602—DEFINITIONS OF WORDS AND TERMS

PART 603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

PART 604—ADMINISTRATIVE MATTERS

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 605—PUBLICIZING CONTRACT ACTIONS

PART 606—COMPETITION REQUIREMENTS

PART 608—REQUIRED SOURCES OF SUPPLIES AND SERVICES

PART 609—CONTRACTOR QUALIFICATIONS

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 613—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

PART 614—SEALED BIDDING

PART 615—CONTRACTING BY NEGOTIATION

PART 616—TYPES OF CONTRACTS

PART 617—SPECIAL CONTRACTING METHODS

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 619—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

PART 622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

PART 623—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

PART 624—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

PART 625—FOREIGN ACQUISITION

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 628—BONDS AND INSURANCE

PART 629—TAXES

PART 630—COST ACCOUNTING STANDARDS

PART 632—CONTRACT FINANCING

PART 633—PROTESTS, DISPUTES AND APPEALS

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 634—MAJOR SYSTEM ACQUISITION

PART 636—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

PART 637—SERVICE CONTRACTING

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 642—CONTRACT ADMINISTRATION

PART 643—CONTRACT MODIFICATIONS

PART 645—GOVERNMENT PROPERTY

PART 646—QUALITY ASSURANCE

PART 648—VALUE ENGINEERING

SUBCHAPTER H—CLAUSES AND FORMS

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

PART 653—FORMS

SUBCHAPTER I—DOS SUPPLEMENTATIONS

PART 670—SPECIAL CONTRACTING PROGRAMS

SUBCHAPTER A—GENERAL

PART 601—DEPARTMENT OF STATE ACQUISITION REGULATIONS SYSTEM

Sec.

601.000 Scope of part.

Subpart 601.2—Administration

601.201 Maintenance of the FAR.
601.201-1 The two councils.

Subpart 601.3—Agency Acquisition Regulations

601.301 Policy.
601.302 Limitations.
601.303 Publication and codification.

Subpart 601.4—Deviations from the FAR

601.403 Individual deviations.
601.404 Class deviations.
601.405 Deviations pertaining to treaties and executive agreements.
601.470 Deviations from the DOSAR.
601.471 Procedures.

Subpart 601.5—Agency and Public Participation

601.570 Rule making.

Subpart 601.6—Contracting Authority and Responsibilities

601.601 General.
601.602 Contracting officers.
601.602-1 Authority.
601.602-3 Ratification of unauthorized commitments.
601.602-3-70 Procedures.
601.603 Selection, appointment, and termination of appointment.
601.603-3 Appointment.
601.603-70 Delegations of authority.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

601.000 Scope of part.

This part describes the Department of State Acquisition Regulation (DOSAR) in terms of establishment, relationship to the Federal Acquisition Regulation (FAR), arrangement, applicability, and

deviation procedures. Acquisition procedures are integrated so as to provide a complete, logical, and comprehensive publication.

Subpart 601.2—Administration

601.201 Maintenance of the FAR.

601.201-1 The two councils.

The Office of the Procurement Executive represents the Department of State (DOS) on the Civilian Agency Acquisition Council. The Procurement Executive shall appoint said representative for this purpose. The Office of the Procurement Executive is responsible for coordinating with all interested DOS elements proposed FAR revisions and for advocating FAR revisions sought by the Department.

Subpart 601.3—Agency Acquisition Regulations

601.301 Policy.

(a) The Assistant Secretary for Administration is the agency head for the purposes of FAR 1.301. Under Delegation of Authority No. 120–3 (51 FR 16768, May 6, 1986), the Assistant Secretary for Administration redelegated to the Procurement Executive the authority to prescribe, promulgate, and amend DOS acquisition policies, rules, and regulations.

(b) The Department of State Acquisition Regulation (DOSAR) is prescribed under the authority of 22 U.S.C. 2658 and 40 U.S.C. 486(c) (Title II, Chapter 288, section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended).

(c) The DOSAR implements and supplements the FAR. Deviations, as defined in FAR 1.401, are processed in accordance with FAR Subpart 1.4 and Subpart 601.4.

601.302 Limitations.

(a) The FAR and the DOSAR apply to all DOS acquisitions of personal property and services, including construction, both within and outside the United States, unless expressly excluded by this subpart, or exempt from the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 474(7)), or undertaken pursuant to Section 208 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4308).

(b) At posts where Joint Administrative Offices have been formed, the FAR and the DOSAR apply to all Agency for International Development (AID) administrative and technical support acquisitions, except in those areas which have been exempted by the cognizant administrative office.

601.303 Publication and codification.

(a) The DOSAR is issued as Chapter 6 of Title 48, Code of Federal Regulations. The DOSAR is established as Chapter 6 of the Federal Acquisition Regulations System. The DOSAR is divided into the same parts, subparts, section, subsections and paragraphs as is the FAR. However, when the FAR coverage is adequate by itself there will be no corresponding DOSAR coverage. Where the DOSAR implements a specific part, subpart, section, or subsection of the FAR, the DOSAR coverage is numbered and titled to correspond to the appropriate FAR number and title, except that the DOSAR number will include a 6 or 60 such that there will always be three numbers to the left of the decimal. For example, the DOSAR implementation of FAR 14.1 is shown as 614.1 and the DOSAR implementation of FAR 1.301 is shown as 601.301. Materials that supplement the FAR are assigned the numbers 70 and up. For example, DOSAR requires additional definitions than those used in FAR; this supplementary material is provided in 602.101–70.

(b) The DOSAR and its revisions are published in the **Federal Register** and in the Code of Federal Regulations, both of which may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

(c)(1) The DOSAR shall be referenced in the same manner as described at FAR 1.104–2(c). Using the DOSAR coverage at 609.407–3(a) as a typical illustration, reference to the—

(i) Part would be "DOSAR Part 609" outside the DOSAR and "Part 609" within the DOSAR.

(ii) Subpart would be "DOSAR Subpart 609.4" outside the DOSAR and "Subpart 609.4" within the DOSAR.

(iii) Section would be "DOSAR 609.407" outside the DOSAR and "609.407" within the DOSAR.

(iv) Subsection would be "DOSAR 609.407–3" outside the DOSAR and "609.407–3" within the DOSAR.

(v) Paragraph would be "DOSAR 609.407–3(a)" outside the DOSAR and "609.407–3(a)" within the DOSAR.

(2) When any part, subpart, section, subsection, or paragraph of the DOSAR is referenced formally in official documents such as legal briefs, it shall be prefaced by "48 CFR."

Subpart 601.4—Deviations from the FAR

601.403 Individual deviations.

The Procurement Executive is the agency head's designee for the purposes of FAR 1.403. The Office of the Procurement Executive is the DOS central agency control point for furnishing to the FAR Secretariat a copy of each approved deviation.

601.404 Class deviations.

The Procurement Executive is the agency head's designee for the purposes of FAR 1.404(a). The Office of the Procurement Executive is the DOS central agency control point for furnishing to the FAR Secretariat a copy of each approved class deviation.

601.405 Deviations pertaining to treaties and executive agreements.

The Procurement Executive shall determine whether a deviation pertaining to treaties and executive agreements is authorized under FAR 1.405 or that a request for deviation is required under FAR 1.405(e). The Office of the Procurement Executive is the DOS central agency control point for deviations pertaining to treaties and executive agreements; that office shall provide to the FAR Secretariat a copy of each approved deviation.

601.470 Deviations from the DOSAR

The authority to approve any deviations from the DOSAR is reserved to the Procurement Executive. The Office of the Procurement Executive is the DOS central agency control point for all DOSAR deviations.

601.471 Procedures.

(a) The head of the contracting activity (see 601.603–70) shall submit to the Procurement Executive a written request for each deviation from the FAR or the DOSAR, whether for individual cases, classes of cases, or deviations pertaining to treaties and executive agreements. Each request for a deviation shall state—

(1) The nature of the deviation requested, including whether an individual or class deviation is requested;

(2) The FAR or DOSAR regulation from which the deviation is requested;

(3) The circumstances under which the deviation would be used;

(4) The effect intended by the deviation; and

(5) The expiration date recommended for the deviation.

(b) With the request for a deviation, the head of the contracting activity shall

submit all pertinent documentation supporting the request.

(c) The contracting officer shall include in the contract file a copy of each authorized deviation that pertains to the acquisition.

Subpart 601.5—Agency and Public Participation

601.570 Rule making.

(a) The DOSAR is promulgated and may be revised, as necessary, in accordance with section 22 of the Office of Federal Procurement Policy Act, Pub. L. 93–400, as amended (41 U.S.C. 418b).

(b) The Procurement Executive shall either accomplish or concur in all DOS acquisition rule making.

Subpart 601.6—Contracting Authority and Responsibilities

601.601 General.

The Procurement Executive is the agency head for the purposes of FAR 1.601.

601.602 Contracting officers.

601.602–1 Authority.

(a) DOS contracts are let pursuant to the foreign affairs management responsibilities conferred on the Secretary of State (22 U.S.C. 2656), and the various laws, regulations, and Executive Orders relating thereto.

(b) Except as otherwise provided by law, DOS reuglations, and this DOSAR, the Procurement Executive has the authority to execute, award, and administer contracts, purchase orders, other contractual arrangements, and other agreements, including interagency agreements, for the expenditure of funds involved in the acquisition of personal property, services, and for the sale of personal property. The Procurement Executive may further delegate this authority to those DOS employees appointed or designated to the contracting activities enumerated in 601.603–70.

(c) The contracting officer shall not award, modify, or terminate unless all reviews, clearances, and approvals prescribed in the FAR or the DOSAR have ben obtained, and all applicable requirements of law, the FAR, the DOSAR, and other regulations have been met.

601.602–3 Ratification of unauthorized commitments.

(b) *Policy.* (1) The Government generally is not bound by unauthorized commitments. Unauthorized commitments violate the Federal Property and Administrative Services Act, other Federal laws, the FAR, the DOSAR, and proper acquisition practice. Therefore, such unauthorized commitments are serious violations that usually necessitate disciplinary action agaisnt the transgressor.

(2) The authority to ratify an unauthorized contractual commitment is reserved to the Procurement Executive.

(3) Unauthorized contractual commitments that would involve claims subject to resolution under the Contracts Dispute Act of 1978 shall be processed in accordance with FAR Subpart 33.2 and Subpart 633.2.

(c) *Limitations.* The contracting officer is not required to obtain concurrence of legal counsel when recommending payment of an unauthorized commitment.

601.602–3–70 Procedures.

(a) The person who made the unauthorized commitment shall submit to the contracting officer assigned the ratification action all records and documents concerning the unauthorized commitment. That person shall provide a complete written, signed statement of the facts, including why normal acquisition procedures were not followed, why and how the vendor was selected, a list of other sources considered, a description of work or products, a statement regarding the status of performance, an estimated or agreed price, and certified funding citations. When the person who made the unauthorized contractual commitment is no longer available to attest to the circumstances of the unauthorized commitment, an officer from the responsible office shall accomplish the requirements of this paragraph; the statement shall identify the individual responsible for the unauthorized contractual commitment.

(b) The contracting officer assigned the ratification action, after determining that the requirements of paragraph (a) above have been met, shall prepare and execute a recommendation to ratify an unauthorized commitment.

(1) The recommendation shall include the facts and circumstances of the unauthorized commitment; the information prescribed in FAR 1.602–3(c)(1) and (c)(3) through (c)(6); and a recommendation to the ratifying official that the unauthorized commitment be ratified.

(2) Following the signature of the contracting officer, the recommendation shall include a statement that the Procurement Executive could have granted authority to enter into a contractual commitment at the time it was made and still has the authority to do so; that the Procurement Executive hereby ratifies the unauthorized commitment in the amount specified; and a date and signature block for the Procurement Executive.

(c) The information required in paragraph (b)(1) above shall be supported by factual findings included or referenced in the recommendation.

(d) The contracting officer shall submit, through the head of the contracting activity (see 601.603–70), to the Procurement Executive the complete file for ratification of the unauthorized commitment.

(e) Upon receipt and review of the complete file, if the Procurement Executive ratifies the unauthorized commitment, the file shall be returned, through the head of the contracting activity, to the contracting officer for issuance of the appropriate contractual document(s). If the request for ratification is not justified, the Procurement Executive shall return the request to the head of the contracting activity with a written explanation for the decision and a recommendation for disposition of the action.

601.603 Selection, appointment, and termination of appointment.

601.603–3 Appointment.

(a) The Procurement Executive appoints all DOS contracting officers, in conformance with FAR 1.603–3. The contracting officer shall retain the original copy of the Standard Form 1402, Certificate of Appointment, signed by the Procurement Executive.

(b) The Procurement Executive appoints DOS contracting officers for overseas posts by specific positions, not by individual, because Foreign Service personnel assignments are rotational.

601.603–70 Delegations of authority.

(a) *Policy.* Pursuant to 601.602–1(b), the Procurement Executive has delegated procurement authority to the following contracting activities. These authorities are not redelegable. Where more than one official is listed, the abbreviation "HCA" is used to designate each head of the contracting activity, as defined in FAR 2.101.

(b) *Delegations*—(1) *Overseas posts.* The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies, equipment, publications, and services and to sell personal property is delegated to the Principal Officer, the Administrative Officer, and the Principal General Services Officer (HCA).

(i) Direct transactions with vendors within the United States shall be $25,000 or less per transaction unless such transaction is under a contract executed

by the Department of State, the General Services Administration, or other U.S. Government Agency. Such transactions with U.S. vendors shall be in accordance with small purchase procedures described in FAR Part 13 and Part 613.

(ii) No authority is delegated to enter into cost-reimbursement or fixed-price incentive contracts.

(iii) When expressly authorized by a U.S. Government agency which does not have a contracting officer at the post, the officers named above in this subparagraph may enter into contracts for that agency. Use of this authority is subject to the statutory authority of that agency and any special contract terms or other requirements necessary for compliance with any conditions or limitations applicable to the funds of that agency. The agency's authorization shall cite the statute(s) and state any special contract terms or other requirements with which the acquisition so authorized must comply. In view of the contracting officer's responsibility for the legal, technical, and administrative sufficiency of contracts, questions regarding the propriety of contracting actions that the post is requested to take pursuant to this authority may be referred to the Department for resolution with the headquarters of the agency concerned.

(2) *Office of Foreign Buildings.* The authority to enter into and administer contracts pursuant to the Foreign Service Buildings Act, 1926, as amended (22 U.S.C. 292 et seq.), including the authority to make all determinations required or permitted by Section 11 of said Act but not otherwise restricted therein, is delegated to the Deputy Assistant Secretary for Foreign Buildings and to the Assistant Director for Acquisitions (HCA).

(3) *Office of Supply, Transportation and Procurement.* The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of services and personal property, and for the sale of personal property, is delegated to the Chief of the Procurement Division.

(4) *Office of Language Services.* The authority to enter into and administer contracts for interpreting, translating, conference reporting, and related language support and escort services is delegated to the Director.

(5) *Office of Overseas Schools.* The authority to enter into and administer contracts pursuant to section 29 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2701), including all determinations required or permitted but not otherwise restricted therein, is delegated to the Director.

(6) *Library.* The authority to enter into and administer contracts for the direct purchase of printing, binding, and blank-book work, when authorized by the Public Printer pursuant to the provisions of the Public Printing and Documents Act of 1968, as amended (44 U.S.C. 504), and for the acquisition of newspapers, books, maps, and periodicals is delegated to the Chief Librarian.

(7) *Office of Communications.* The authority to enter and administer contracts for leasing communications circuits is delegated to the Chief, Networks Staff.

(8) *Foreign Service Institute.* The authority to enter into and administer contracts pursuant to Chapter 7, Title I, of the Foreign Service Act of 1980, as amended (22 U.S.C. 4021 et seq.), including all determinations required or permitted but not otherwise restricted therein, is delegated to the Director of the Foreign Service Institute, the Executive Director, and the Supervisory General Services Officer (HCA).

(9) *Office of Foreign Missions.* The authority to enter into and administer contracts pursuant to Title II of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4301 et seq.), including all determinations required or permitted by section 208 of said Act but not otherwise restricted therein, is delegated to the Director, Office of Foreign Missions, and the Administrative Officer (HCA).

(10) *Office of International Conferences.* The authority to enter into and administer contracts pursuant to Section 5, Title I, of the Department of State Basic Authorities Act of 1956, as amended (22 U.S.C. 2672), including all determinations required or permitted but not otherwise restricted therein, is delegated to the Director.

(11) *Bureau for Refugee Programs.* The authority to enter into and administer contracts pursuant to the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2601 et seq.), and Executive Order 11077, dated January 22, 1963, including all determinations required or permitted but not otherwise restricted therein, is delegated to the Director, Bureau for Refugee Programs, and the Comptroller (HCA).

(12) *U.S. Mission to the United Nations.* The authority to enter into and administer contracts pursuant to the United Nations Participation Act of 1945, as amended (22 U.S.C. 287), including all determinations required or permitted but not otherwise restricted therein, is delegated to the Counselor for Administration.

PART 602—DEFINITIONS OF WORDS AND TERMS

Subpart 602.1—Definitions

Sec.
602.101 Definitions.
602.101-70 DOSAR definitions.

Subpart 602.2—Definitions Clause

602.201 Contract clause.
602.201-70 DOSAR contract clause.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3

Subpart 602.1—Definitions

602.101 Definitions.

602.101-70 DOSAR definitions.

For the purposes of the DOSAR, unless otherwise indicated, the following terms have the meanings set forth in this subpart.

"Consolidated Receiving Point" or "CRP"; means the packing firm employed by a Despatch Agency to receive and prepare items for shipment to a post. The CRP acts as agent for the government, and goods that are delivered to the CRP are constructively received by the government. The CRP receives, records, consolidates and packs items for shipment overseas under the direction of the Despatch Agency.

"Department" or "DOS" means the Department of State, including all of its activities wherever located.

"Despatch Agency" means the office responsible for the transportation of goods between the U.S. and posts within its specific geographic area as assigned by the Transportation Division, Office of Supply, Transportation and Procurement. There are four Despatch Agencies, one each in New York City; Baltimore, Maryland; Miami, Florida; and San Francisco, California.

"Government" means the Government of the United States of America unless specifically stated otherwise.

"Local procurement" means acquisition by a post in the country in which the post is located.

"Overseas post" means a "post" located outside the United States of America.

"Post" means a diplomatic or consular mission of the United States of America, administered or managed by the DOS.

"Third country procurement" means acquisition by a post in a country other than the country in which the post is located and other than the United States.

Subpart 602.2—Definitions Clause

602.201 Contract clause.

602.201-70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.202-70, Definitions, in solicitations and contracts when the acquisition may be made from a source outside the United States or when the work may be performed outside the United States.

PART 603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 603.2—Contractor Gratuities to Government Personnel

Sec.
603.203 Reporting suspected violations of the Gratuities clause.
603.204 Treatment of violations.

Subpart 603.3—Reports of Suspected Antitrust Violations

603.303 Reporting suspected antitrust violations.

Subpart 603.4—Contingent Fees

603.408 Evaluation of the SF 119.
603.408-1 Responsibilities.

Subpart 603.6—Contracts with Government Employees or organizations owned or Controlled by Them

603.602 Exceptions.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3

Subpart 603.2—Contractor Gratuities to Government Personnel

603.203 Reporting suspected violations of the Gratuities clause.

DOS personnel shall report immediately and in writing any apparent or suspected violation of the clause at FAR 52.203-3, Gratuities, in connection with any DOS operation. The report shall be made to the contracting officer and the Assistant Inspector General for Investigations. The report shall identify the individuals involved, outline the events, acts, or conditions which indicate the apparent violation occurred, and include all pertinent documents. The Assistant Inspector General for Investigations shall review the report for completeness and accuracy and shall make a preliminary decision whether to proceed with a full investigation. The Assistant Inspector General for Investigations shall provide the written decision to the individual who made the report and the contracting officer. If the decision is to proceed with an investigation, copies of the decision shall also be provided to the head of the contracting activity (see 601.603-70), the Procurement Executive, and the Office of the Legal Adviser.

603.204 Treatment of violations.

(a) The Procurement Executive is the agency head's designee for the purposes of FAR 3.204.

(b) *Procedures.* Upon a decision to proceed with an investigation of an alleged violation of the Gratuities clause, the Assistant Inspector General for Investigations shall provide to the contractor a written notice by certified mail, return receipt requested. The notice shall present the findings of the decision and shall establish a schedule, including location, for an investigative hearing for the purposes prescribed in FAR 3.204(b). As determined necessary by the Assistant Inspector General for Investigations, follow-up hearings may be scheduled. Upon completion of the investigation, the Assistant Inspector General for Investigations shall provide to the Procurement Executive a report and recommendation, together with all pertinent documentation.

(c) In addition to the requirements of FAR 3.204(c), when the Preocurement Executive determines that a violation has occurred, the Procurement Executive shall so notify the Assistant Inspector General for Investigations. The Assistant Inspector General for Investigations shall then notify the individual who made the report, the Office of the Legal Adviser, and, if appropriate, the Department of Justice.

Subpart 603.3—Reports of Suspected Antitrust Violations

603.303 Reporting suspected antitrust violations.

(a) DOS employees are obligated to report immediately and in writing any apparent or suspected antitrust violation, as described in FAR 3.303.

(b) The report shall outline the events, acts, or conditions which indicate the apparent violation and shall include all pertinent documents.

(c) The report shall be made to or by the contracting officer, who shall review it for completeness and accuracy and forward it through the head of the contracting activity (see 601.603-70), to the Office of the Legal Adviser, with a copy to the Procurement Executive. The Office of the Legal Adviser shall provide to the U.S. Attorney General a report on each suspected violation, with singles copies to the head of the contracting activity and the Procurement Executive.

Subpart 603.4—Contingent Fees

603.408 Evaluation of the SF 119.

603.408-1 Responsibilities.

In carrying out responsibilities prescribed in FAR 3.408-1, the contracting officer shall obtain advice from the Office of the Legal Adviser as to the legality and general propriety of the relationship disclosed thereon. Also, the contracting officer may request the Office of the Inspector General to develop further information if the facts available are deemed insufficient for a proper decision. After reviewing and evaluating all the information obtained, the contracting officer shall render a written decision that shall be included in the contract file, and shall provide a copy of the decision to the Procurement Executive.

Subpart 603.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

603.602 Exceptions.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.602.

PART 604—ADMINISTRATIVE MATTERS

Subpart 604.2—Contract Distribution

Sec.
604.202 Agency distribution requirements.

Subpart 604.4—Safeguarding Classified Information Within Industry

604.404 Contract clause.
604.404-70 DOSAR contract clauses.

Subpart 604.70—Contract Review

604.7001 Policy.
604.7002 Procedures.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3

Subpart 604.2—Contract Distribution

604.202 Agency distribution requirements.

As necessary, the contracting officer shall distribute reproduced copies of the signed contract or modification to those officers/offices involved in contract administrative support functions, e.g., the Contracting Officer's Representative; the requirements office; the Despatch Office or other receiving activity, particularly if it is the initial point of contact for receipt of goods or services; and each post or office where the contract will be performed. Where required by the laws of a foreign country, the original copy of the contract or modification shall be retained at the overseas post.

Subpart 604.4—Safeguarding Classified Information Within Industry

604.404 Contract clause.

604.404-70 DOSAR contract clauses.

(a) The contracting officer shall insert the clause at 652.204-70, Security Requirements, in solicitations and contracts performed outside the United States to the extent the contract involves access to classified information ("Confidential," "Secret," or "Top Secret") or access to administratively controlled information ("Limited Official Use"). Contractors or contract employees that are not U.S. citizens shall not have access to classified or administratively controlled information.

(b) The contracting officer shall insert the clause at 652.204-71, Security Requirements—Personnel, in solicitations and contracts performed outside the United States.

Subpart 604.70—Contract Review

604.7001 Policy.

The contracting officer shall review each proposed contractual document and its supporting file for completeness and accuracy. Each contract fill shall contain all pertinent information applicable to the proposed action. Each contract file should be in sufficient detail to permit reconstruction of all significant events by any subsequent reviewer without referral to the individual responsible for the contractual action.

604.7002 Procedures.

(a) Prior to issuance of a solicitation or a solicitation amendment, award of a contract, or execution of a contract modification, any of which is estimated to exceed $100,000, the contracting officer shall forward the proposed contractual action to Office of the Procurement Executive for review. For contract modifications, the contracting officer shall submit such actions in accordance with 643.102-70(b).

(b) The Office of the Procurement Executive shall document the scope and extent of the review and shall submit written recommendations to the contracting officer on each proposed contract action reviewed. In the event the contracting officer and the reviewer cannot reach agreement on the recommendation(s), the contracting officer shall document the contract file to show the rationale for not adopting any recommendations, and shall forward the file to the officer one level above the contracting officer for resolution or approval, as appropriate. For purposes of this section, the officer who has resolution/approval authority shall not be the same individual who will sign the contractual document. In instances where the contracting officer is the head of the contracting activity, as identified at 601.603-70(b), that officer shall be the Procurement Executive for domestic acquisitions and the Principal Officer at post for overseas acquisitions.

(c) For postaward reviews, the Office of the Procurement Executive shall document the scope and extent of the review and shall submit the results of its findings to the contracting officer for appropriate action.

(d) The Procurement Executive may delegate or waive the review requirements. In such instances, the Procurement Executive shall provide to each head of the contracting activity, as appropriate, a written delegation or waiver of these requirements.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 605—PUBLICIZING CONTRACT ACTIONS

Subpart 605.2—Synopsis of Proposed Contract Actions

Sec.

605.202 Exceptions.
605.202-70 Foreign acquisitions.
605.207 Preparation and transmittal of synopses.
605.207-70 Acquisitions available from only one responsible source.

Subpart 605.5—Paid Advertisements

605.502 Authority.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 605.2—Synopsis of Proposed Contract Actions

605.202 Exceptions.

605.202-70 Foreign acquisitions.

(a) *Purpose.* This subsection provides policy and procedures necessary to waive the requirement to synopsize proposed contracts in the *Commerce Business Daily* (CBD). The policy and procedures apply only to acquisitions by overseas posts when the acquisitions are made from sources outside the United States, its possessions, and Puerto Rico.

(b) *Policy.* Under certain conditions, waiver of the requirement to publish in the CBD notices of proposed contract actions is necessary for acquisitions by overseas posts when these acquisitions are made from sources outside the United States, its possessions, and Puerto Rico. This policy was processed in compliance with and as authorized by Section 18(c)(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) and Section 8(g)(3) of the Small Business Act (15 U.S.C. 637 et seq.). This policy applies only to acquisitions funded under DOS appropriations.

(c) *Procedures.* (1) When a DOS contracting activity at post receives a request for supplies or services, the requirements office shall provide with the request a memorandum identifying all established sources of supply known to the requirements office, critical dates for delivery, installation and operational dates, an estimate of the total time lapse between the date of order and final contractor performance, the urgency of the requirement, and any other factors that may be unique or mandatory to the acquisition.

(2) The head of the contracting activity (see 601.603-70) shall review the information provided by the requirements office to determine whether publication of a CBD notice is required.

(i) If the head of the contracting activity determines that publication of CBD notice will not delay or otherwise adversely impact the post's ability to satisfy the acquisition, the notice shall be published in accordance with FAR Subpart 5.2.

(ii) If the head of the contracting activity determines that publication of a CBD notice will delay or otherwise adversely impact the post's ability to satify the acquisition, that official may waive the CBD notice requirements of FAR Subpart 5.1. This determination must be in writing and made in consideration of such factors as overseas delivery, installation, maintenance or replacement requirements, special product or performance specifications, and security clearance requirements. The contracting activity shall conduct a negotiated acquisition with qualified local sources. If there are known U.S. firms or firms with U.S. affiliations in local residence capable of supplying the required supplies or services, the contracting activity shall ensure that those firms are included in the source list for the acquisition. Competition in such acquisitions, including the use of written solicitations, shall be obtained in all cases to the extent feasible and consistent with FAR Part 6 and Part 606.

(iii) The authority to make the determinations prescribed in this paragraph is not redelegable.

(d) *Documentation.* (1) Whenever the head of the contracting activity determines that use of this waiver authority is required, the following documentation shall be prepared and placed in the contract file:

(i) A determination and findings as to the existence of an overseas acquisition

where it is unreasonable or inappropriate to publish in the CBD a notice for the proposed contract action; and

(ii) A memorandum stating what efforts have been made to identify known and qualified sources and to obtain competition, detailing what negotiation procedures were followed, and justifying the selection and award.

(2) The head of the contracting activity shall sign all documents prescribed in this section. That official's signature on the documents constitutes approval of the determination to apply the waiver policy and certification of the completeness and accuracy of the information upon which the waiver is based.

605.207 Preparation and transmittal of synopses.

605.207-70 Acquisitions available from only one responsible source.

In addition to the information required at FAR 5.207, each synopsis of a proposed acquisition from only one responsible source shall include descriptions of the specific qualifications or capabilities required to perform the work and the information a potential source must submit.

Subpart 605.5—Paid Advertisements

605.502 Authority.

(a) For paid advertisements in newspapers within the United States, the Procurement Executive is the agency head's designee for the purposes of FAR 5.502(a). For acquisitions by overseas posts necessitating paid advertisements in the newspapers outside the United States, the Principal General Services Officer is the agency head's designee for the purposes of FAR 5.502(a). When the Principal General Services Officer is the contracting officer for the acquisition, the officer approving the paid advertisement shall be either the Administrative Officer or the Principal Officer, as appropriate.

(b) The Procurement Executive is the agency head for the purposes of FAR 5.502(b). Advance written authorization, in accordance with and from the official designated in paragraph (a) above, is required to place paid advertisements in media other than newspapers.

PART 606—COMPETITION REQUIREMENTS

Subpart 606.1—Full and Open Competition

Sec.
606.101 Policy.
606.101-70 Foreign acquisitions not synopsized.

Subpart 606.2—Full and Open Competition After Exclusion of Sources

606.202 Establishing or maintaining alternate sources.

Subpart 606.3—Other Than Full and Open Competition

606.302 Circumstances permitting other than full and open competition.
606.302-7 Public interest.
606.303-1 Requirements.
606.304 Approval of the Justification.
606.304-70 Acquisitions by overseas posts.

Subpart 606.5—Competition Advocates

606.501 Requirement.
606.501-70 Overseas posts.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3

Subpart 606.1—Full and Open Competition

606.101 Policy.

606.101-70 Foreign acquisitions not synopsized.

As provided in 605.202-70, overseas posts exempt certain acquisitions from the requirement to synopsize in the *Commerce Business Daily*. Full and open competition for such acquisitions is met when the competitive procedures prescribed in FAR 6.102 are used.

Subpart 606.2—Full and Open Competition After Exclusion of Sources

606.202 Establishing or maintaining alternate sources.

The Procurement Executive is the agency head for the purposes of FAR 6.202.

Subpart 606.3—Other Than Full and Open Competition

606.302 Circumstances permitting other than full and open competition.

606.302-7 Public interest.

The authority to approve the determination prescribed in FAR 6.302-7(c) is reserved to the Secretary of State.

606.303-1 Requirements.

Justifications for contract actions prescribed in FAR 6.303-1(d) shall be forwarded by the contracting officer to the Office of the Procurement Executive for transmittal to the Office of the United States Trade Representative.

606.304 Approval of the Justification.

606.304-70. Acquisitions by overseas posts.

The Principal Officer at each overseas post is the approval authority for the purposes of FAR 6.304(a)(3).

This authority is not redelegable.

Subpart 606.5—Competition Advocates

606.501 Requirement.

The Procurement Executive is the head of the agency for the purposes of FAR 6.501.

606.501-70 Overseas posts.

The Administrative Officer at each overseas post is the competition advocate for that post.

PART 608—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 608.4—Ordering from Federal Supply Schedules

608.402 Applicability.
608.402-70 Overseas posts.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 608.4—Ordering from Federal Supply Schedules

608.402 Applicability.

608.402-70 Overseas posts.

Use of the Federal Supply Schedules is not mandatory for overseas posts nor is it required for any acquisitions inside the United States for use outside the United States.

PART 609—CONTRACTOR QUALIFICATIONS

Subpart 609.2—Qualifications Requirements

Sec.
609.202 Policy.

Subpart 609.4—Debarment, Suspension, and Ineligibility

609.403 Definitions.
609.403-70 DOSAR definitions.
609.404 Consolidated List of Debarred, Suspended, and Ineligible Contractors.
609.405 Effect of listing.
609.405-1 Continuation of current contracts.
609.405-2 Restrictions on subcontracting.
609.405-70 Termination action decision.
609.406 Debarment.
609.406-1 General.
609.406-3 Procedures.
609.407 Suspension.
609.407-1 General.
609.407-3 Procedures.

Subpart 609.5—Organizational Conflicts of Interest

609.503 Waiver.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 609.2—Qualifications Requirements

609.202 Policy.

The authority prescribed in FAR 9.202(a)(1) is delegated, without power

of redelegation, to the head of the contracting activity (see 601.603–70).

Subpart 609.4—Debarment, Suspension, and Ineligibility

609.403 Definitions.

"Debarring official" means the Procurement Executive.

"Suspending official" means the Procurement Executive.

609.403–70 DOSAR definitions.

"Fact-finding official" means the chairperson of a three member fact-finding panel. The panel comprises one representative each from the Office of the Legal Adviser, the contracting activity, and the requirements office. The representative from the Office of the Legal Adviser is the panel chairperson.

"Notice" means a written communication sent by certified mail (return receipt requested) to the last known address of the party, its identified counsel, or its agent. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt shall then be presumed. This definition applies to the notice requirements in FAR 9.406–3 and FAR 9.407–3.

609.40 Consolidated List of Debarred, Suspended, and Ineligible Contractors.

The Office of the Procurement Executive shall accomplish the agency responsibilities prescribed in FAR 9.404(c)(1) through (c)(3). The authority to establish procedures prescribed in FAR 9.404(c)(5) is delegated, without power of redelegation, to the head of the contracting activity.

609.405 Effect of listing.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405(a).

609.405–1 Continuation of current contracts.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405–1. The decision whether to terminate a current contract shall be made in consideration of the circumstances listed in 609.405–70.

609.405–2 Restrictions on subcontracting.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405–2.

609.405–70 Termination action decision.

Prior to making a decision to terminate, based on the considerations listed below, the contracting officer shall have the proposed action reviewed by agency contracting and technical personnel and by the Office of the Legal Adviser.

(a) *Termination for default.* Termination for default under a contract's default clause is appropriate when the circumstances giving rise to the debarment or suspension also constitute a default in the contractor's performance of that contract. Debarment or suspension of the contractor for reasons unrelated to the performance of that contract may not support a termination for default.

(b) *Termination for convenience or cancellation.* Termination for convenience or cancellation under appropriate contract clauses should be considered when the contractor presents a significant risk to the Government in completing a current contract and when such termination for convenience or cancellation is determined to be in the Government's best interests. In making this determination, the contracting officer should consider such factors as the—

(1) Seriousness of the cause for debarment or suspension;

(2) Extent of contract performance;

(3) Potential costs to the Government;

(4) Urgency of the requirement and the impact of the delay; and/or

(5) Availability of other safeguards to protect the Government's interests.

(c) *Concurrence and approval.* The contracting officer's decision to terminate an existing contract with a debarred or suspended contractor must have—

(1) Written concurrence from the Office of the Legal Advisor, and

(2) Approval one level above the contracting officer.

609.406 Debarment.

609.406–1 General.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.406–1(c).

609.406–3 Procedures.

(a) *Investigation and referral.* (1) DOS employees aware of any cause that may serve as the basis for debarment shall immediately refer those cases through the contracting officer to the debarring official. The debarring official shall immediately refer to the Office of the Inspector General all reported cases that involve possible criminal or fraudulent activities for investigation by that office.

(2) Referrals for consideration of debarment shall include—

(i) The cause for debarment (see FAR 9.406–2);

(ii) A statement of facts;

(iii) Copies of supporting documentary evidence and a list if all necessary or probable witnesses, including addresses and telephone numbers, together with a statement concerning their availability to appear at a fact-finding proceeding and the subject matter of their testimony;

(iv) A list of all contractors involved, either as principals or as affiliates, including current or last known home and business addresses and ZIP codes;

(v) A statement of the acquisition history with such contractors;

(vi) A statement concerning any known pertinent active or potential criminal investigation, criminal or civil court proceedings, or administrative claim before Boards of Contract Appeals; and

(vii) A statement from each DOS organizational element affected by the debarment action as to the impact of a debarment on DOS programs.

(b) *Decisionmaking process.* (1) If the contractor does not respond to a debarment notice within 30 calendar days after receipt of the notice, the debarring official may put the debarment into effect.

(2) In response to the debarment notice, if the contractor or its representative notifies the debarring official within 30 days after receipt of the notice that it wants to present information and arguments in person to the debarring official, that official shall chair such a meeting within 20 calendar days of receipt of the request, unless the contractor requests a longer period of time. The oral presentation shall be conducted informally and a transcript need not be made. However, the contractor may supplement its oral presentation with written information and arguments for inclusion in the administrative record.

(3) Pursuant to FAR 9.406–3(b)(2), the contractor may request and shall be entitled to a hearing before the fact-finding panel. The fact-finding panel shall conduct the hearing within 20 calendar days of receipt of the request, unless the contractor requests a longer period of time.

(4) The debarring official shall convene the fact-finding panel for this purpose and shall provide the panel with a copy of all documentary evidence on the matter. Upon receipt of such material, the fact-finding official shall notify the contractor and schedule a hearing date.

(5) In addition to the purposes provided in FAR 9.406–3(b)(2), the hearing is intended to provide the debarring official with findings of fact

based on a preponderance of evidence submitted to the fact-finding panel and to provide the debarring official with a determination as to whether a cause for debarment exists, based on the facts as found.

(6) The fact-finding panel shall conduct its hearing in accordance with rules promulgated by the fact-finding official. The rules shall be as informal as is practicable, consistent with FAR 9.406–3(b) The fact-finding official is responsible for making the transcribed record of the hearing, unless the contractor and the fact-finding panel agree to waive the requirement for a transcript.

(7) The fact-finding official shall deliver written findings and the transcribed record, if made, to the debarring official within 10 calendar days after the hearing. The findings shall resolve any facts in dispute based on a preponderance of the evidence presented and recommend whether a cause for debarment exists.

(c) *Notice of proposal to debar.* (1) Upon receipt of a complete referral and after consulting with the Office of the Legal Adviser, the debarring official shall decide whether to initiate debarment action.

(2) When a determination is made to initiate action, the debarring official shall provide to the contractor and any specifically named affiliates written notice in accordance with FAR 9.406–3(c). A copy of the notice shall be provided to the DOS officer who made the referral and to each DOS organizational elements affected by the determination.

(3) When a determination is made not to initiate action, the debarring official shall so advise the DOS officer who made the referral.

(d) *Debarring official's decision.* In addition to complying with FAR 9.406–3(d) and FAR 9.406–3(e), the debarring official shall provide single copies of the decision to each DOS organizational element affected by the decision and to the General Services Administration in accordance with 609.404.

609.407 Suspension.

609.407–1 General.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.407–1(d).

609.407–3 Procedures.

(a) *Investigation and referral.* Investigation and referral shall be accomplished as provided in 609.406–3(a), except that referrals made to the suspending official shall cite causes pertinent to a suspension action (see FAR 9.407–2).

(b) *Decisionmaking process.* (1) If the contractor does not respond to a notice of suspension within 30 calendar days after receipt of the notice, the suspending official may proceed with completion of investigation.

(2) The DOS decisionmaking process for a suspension action pursuant to FAR 9.407–3(b) follow those established for a debarment action (see 609.406(b)), except that the contractor may request and shall be entitled to a hearing before the fact-finding panel only if permitted under FAR 9.407–3(b)(2).

(c) *Notice of suspension.* Notice of suspension shall be accomplished as provided in 609.406–3(a), except that the suspending official shall process the notice in accordance with FAR 9.407–3(c).

(d) *Suspending official's decision.* In addition to complying with FAR 9.407–3(d), the suspending official shall provide single copies of the decision to each DOS organizational element affected by the decision and to the General Services Administration in accordance with 609.404.

Subpart 609.5—Organizational Conflicts of Interest

609.503 Waiver.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.503.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 613—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 613.1—General

Sec.

613.103 Policy.
613.103–70 Acquisition by overseas posts.

Subpart 613.4—Imprest Fund

613.404 Conditions for use.

Subpart 613.5—Purchase Orders

613.501 General.
613.505 Purchase order and related forms.
613.505–2 Agency order forms in lieu of Optional Forms 347 and 348.
613.507 Clauses.
613.507–70 DOSAR clauses.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 613.1—General

613.103 Policy.

613.103–70 Acquisition by overseas posts.

(a) Overseas posts are authorized to use small purchase and other simplified purchase procedures to make purchases directly from sources within or outside the United States, in accordance with FAR Part 13, this Part 613, and 601.603–70(b)(1).

(b) Overseas posts shall ensure that the terms and conditions prescribed in FAR Part 13 are added or incorporated by reference on the documents used for small purchases from U.S. vendors.

Subpart 613.4—Imprest Fund

613.404 Conditions for use.

The Procurement Executive is the agency head's designee for the purposes of FAR 13.404(a).

Subpart 613.5—Purchase Orders

613.501 General.

The contracting officer shall distribute copies of each purchase order in conformance with Subpart 604.2.

613.505 Purchase order and related forms.

613.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

(a) In lieu of Optional Forms 347 and 348, DOS contracting activities may use either—

(1) Optional Form (OF) 206, Purchase Order, Receiving Report and Voucher, and Optional Form 206A, Continuation Sheet (illustrated at 653.302–206 and 653.302–206A, respectively); or

(2) Department of State Form (DST) 1089, Order—Supplies or Services (illustrated in 653.303–DST–1089).

(b) Both OF 206 and form DST 1089 provide the requisite space for purchase data and budgetary, accounting and voucher payment data. Either form may be used as—

(1) A purchase order for small purchases;

(2) A delivery order under an established contract;

(3) Documentation in connection with a blanket purchase agreement; and/or

(4) A voucher.

(c) (1) When using OF 206, contracting activities may use Optional Form (OF) 127, Receiving and Inspection Report (illustrated in 653.302–127), for that purpose.

(2) When using form DST 1089 as a purchase order and until such time as the form is revised, contracting activities shall replace the "Terms and Conditions Applicable to Purchase Orders" (located on the reverse of the original copy) with the appropriate FAR and DOSAR clauses, in accordance with 613.507–70.

613.507 Clauses.

613.507-70 DOSAR clauses.

In addition to the clauses listed on OF 347 or as otherwise prescribed in FAR 13.507, each DOS purchase order shall incorporate all DOSAR clauses required for or applicable to the acquisition. All such clauses may be listed on a separate document and attached to each copy of the purchase order, in which case the document shall be identified by the purchase order number and the name and address of the contracting activity.

PART 614—SEALED BIDDING

Subpart 614.2—Solicitation of Bids

Sec.
614.201 Preparation of Invitation for Bids (IFB).
614.201-7 Contract clauses.
614.201-7-20 DOSAR contract clauses.

Subpart 614.4—Opening of Bids and Award of Contract

614.402 Opening of Bids.
614.402-1 Unclassified bids.
614.402-70 Waiver of public opening of bids.
614.404 Rejection of bids.
614.404-1 Cancellation of invitations after opening.
614.406 Mistakes of bids.
614.406-3 Other mistakes disclosed before award.
614.406-4 Mistakes after award.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 614.2—Solicitation of Bids

614.201 Preparation of Invitation for Bids (IFB).

614.201-7 Contract clauses.

614.201-7-70 DOSAR contract clauses.

((a) (1) When contracting by sealed bidding, the contracting officer shall insert the clause at 652.214-70, Language Version, in all solicitations and contracts awarded or performed overseas.

(2) Use of English language solicitations and contracts is mandatory unless a deviation has been approved by the Procurement Executive in accordance with 601.470. If any part of a contract is not written in the English language, the contracting officer shall attach an accurate English language translation of such part to the original and each copy of the contract, unless the contracting officer determines such action is infeasible.

(b) When contracting by sealed bidding, the contracting officer shall insert the clause at 652.214-71, Notices, in all solicitations and contracts awarded or performed overseas.

(c) When contracting by sealed bidding, the contracting officer shall insert the clause at 652.214-72, Authorization to Perform, in all solicitations and contracts awarded or performed overseas.

(d) See 615.106-70 regarding use of the clauses prescribed in this subsection when contracting by negotiation.

Subpart 614.4—Opening of Bids and Award of Contract

614.402 Opening of bids.

614.402-1 Unclassified bids.

After the unclassified bids have been opened pursuant to FAR 14.402-1, the bid opening officer shall announce that the opening of bids has been completed and that all bidders will be notified as soon as possible regarding the award.

614.402-70 Waiver of public opening of bids.

Overseas posts may request waiver of the public opening of bids if that activity is inconsistent with local law or legal practice, or with post security. For that purpose, the Procurement Executive must approve a deviation in accordance with 601.470.

614.404 Rejection of bids.

614.404-1 Cancellation of invitations after opening.

The authority to make the determination prescribed in FAR 14.404-1(c) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70). The head of the contracting activity shall obtain the concurrence of the Office of the Legal Adviser before making a determination pursuant to this subsection.

614.406 Mistakes in bids.

614.406-3 Other mistakes disclosed before award.

The authority to make the determinations prescribed in FAR 14.406 is delegated, without power of redelegation, to the head of the contracting activity. In conformance with FAR 14.406-3(f), the head of the contracting activity shall obtain the concurrence of the Office of the Legal Adviser before making any determinations pursuant to this subsection.

614.406-4 Mistakes after award.

The authority to make all determinations prescribed in FAR 14.406-4 is delegated, without power of redelegation, to the head of the contracting activity. In conformance with FAR 14.406-4(d), the head of the contracting activity shall consult with the Office of the Legal Adviser before making any determinations pursuant to this subsection.

PART 615—CONTRACTING BY NEGOTIATION

Subpart 615.1—General Requirements for Negotiations

Sec.
615.106 Contract clauses.
615.106-1 Examination of Records clause.
615.106-70 DOSAR contract clauses.

Subpart 615.6—Source Selection

615.607 Disclosure of mistakes before award.
615.608 Proposal evaluation.
615.612 Formal source selection.

Subpart 615.8—Price Negotiation

615.804 Cost or pricing data.
615.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 615.1—General Requirements for Negotiation

615.106 Contract clauses.
615.106-1 Examination of Records clause.

See Subpart 625.9 for conditions for omission of the Examination of Records clause.

615.106-70 DOSAR contract clauses.

When contracting by negotiation, the contracting officer shall insert the clauses at 652.214-70, Language Version, 652.214-71, Notices, and 652.214-72, Authorization to Perform, in all solicitations and contracts, under the same conditions prescribed in 614.201-7-70.

Subpart 615.6—Source Selection

615.607 Disclosure of mistakes before award.

The authority to make the determination prescribed in FAR 15.607(c)(3) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70). In conformance with FAR 15.607(c)(3)(ii), the head of the contracting activity shall obtain a legal review from the Office of the Legal Adviser before making a determination pursuant to this subsection.

615.608 Proposal evaluation.

The authority to make the determination prescribed in FAR 15.608(b) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70). The head of the contracting activity shall obtain the concurrence of the Office of

the Legal Adviser before making a determination pursuant to this section.

615.612 Formal source selection.

The authority prescribed in FAR 15.612(b), including the authority to designate a source selection authority, is delegated, without power of redelegation, to the head of the contracting activity.

Subpart 615.8—Price Negotiation

615.804 Cost or pricing data.

615.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

The waiver authority prescribed in FAR 15.804-3(i) is delegated, without power of redelegation, to the head of the contracting activity.

PART 616—TYPES OF CONTRACTS

Subpart 616.1—Selecting Contract Types

Sec.
616.102 Policies.
616.102-70 Overseas posts.

Subpart 616.2—Fixed-Price Contracts

616.203 Fixed-price contracts with economic price adjustment.
616.203-4 Contract clauses.
616.207 Firm-fixed-price, level-of-effort term contracts.
616.207-3 Limitations.

Subpart 616.3—Cost-Reimbursement Contracts

616.301-3 Limitations.
616.306 Cost-plus-fixed-fee contracts.

Subpart 616.5—Indefinite-Delivery Contracts

616.505 Contract clauses.
616.505-70 DOSAR contract clause.

Subpart 616.6—Time-and-Materials, Labor-Hour, and Letter Contracts

616.603 Letter contracts.
616.603-2 Application.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3

Subpart 616.1—Selecting Contract Types

616.102 Policies.

616.102-70 Overseas posts.

Pursuant to 601.603-70(b)(12)(ii), no authority is delegated to overseas posts to enter into cost-reimbursement or fixed-price incentive contracts. When the head of the contracting activity (see 601.603-70) at post determines that no other type contract will suffice to obtain needed supplies or services, that officer shall request the Procurement Executive to delegate authority to enter into a cost-reimbursement or fixed-price incentive contract, as appropriate. Such requests shall be submitted on a case-by-case basis.

Subpart 616.2—Fixed-Price Contracts

616.203 Fixed-Price contracts with economic price adjustment.

616.203-4 Contract clauses.

The contracting officer may use an economic price adjustment clause based on cost indexes of labor or material in accordance with the circumstances listed in FAR 16.203-4(d) and after obtaining the approval of the head of the contracting activity.

616.207 Firm-fixed-price, level-of-effort term contracts.

616.207-3 Limitations.

The head of the contracting activity is the chief of the contracting office for the purposes of FAR 16.207-3.

Subpart 616.3—Cost-Reimbursement Contracts

616.301-3 Limitations.

The determination and findings prescribed in FAR 16.301-3(c) shall be executed by the contracting officer and approved at a level above the contracting officer.

616.306 Cost-plus-fixed-fee contracts.

The authority to make the determination prescribed in FAR 16.306(c)(2) is delegated, without power of redelegation, to the head of the contracting activity.

Subpart 616.5—Indefinite-Delivery Contracts

616.505 Contract clauses.

616.505-70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.216-70, Ordering—Indefinite-Delivery Contract, whenever the clause at FAR 52.216-20, Definite Quantity, or the clause at FAR 52.216-21, Requirements, or the clause at FAR 52.216-22, Indefinite Quantity, is used.

Subpart 616.6—Time-and-Materials, Labor-Hour, and Letter Contracts

616.603 Letter contracts.

616.603-2 Application.

The contracting officer, after obtaining approval of the head of the contracting activity, is authorized to extend the period for definitization of a letter contract in accordance with FAR 16.603-2(c) and when such action is in the best interest of the Government. For this purpose, the contracting officer shall execute a written determination and findings, and submit it to the head of the contracting activity for approval.

PART 617—SPECIAL CONTRACTING METHODS

Subpart 617.1—Multiyear Contracting

Sec.
617.102 Policy.
617.102-2 General.

Subpart 617.2—Options.

617.201 Definitions.
617.201-70 DOSAR Definitions.
617.207 Exercise of options.
617.207-70 Synopsis and competition requirements.

Subpart 617.5—Interagency Acquisitions Under the Economy Act

617.502 General.

Subpart 617.6—Management and Operating Contracts

617.602 Policy.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486 (c); 48 CFR Subpart 1.3.

Subpart 617.1—Multiyear Contracting

617.102 Policy.

617.102-2 General.

(a) Pursuant to Section 14 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2679a), any DOS acquisition for property or services, or both, by any contract funded on the basis of annual appropriations may nevertheless be made for periods not in excess of 5 years when—

(1) Appropriations are available and adequate for payment for the first fiscal year and for all potential cancellation costs; and

(2) The Procurement Executive determines that—

(i) The need of the Government for the property or services being acquired over the period of the contract is reasonably firm and continuing;

(ii) Such a contract will serve the best interests of the Government by encouraging effective competition or promoting economies in performance and operation; and

(iii) Such a method of contracting will not inhibit small business participation.

(b) For overseas posts, the Procurement Executive may delegate to the Principal Officer, on an individual contract or class of contracts basis, the authority to make the determination required by paragraph (a)(2) above. The Principal Officer may not redelegate this authority.

(c) In the event that funds for the continuation of such a contract are not made available into a subsequent fiscal year, the contract shall be canceled. Any cancellation costs incurred shall be paid from appropriations originally

available for the performance of the contract, appropriations currently available for the acquisition of similar property or services and not otherwise obligated, or appropriations made for such cancellation payments.

(d) Any multiyear contract awarded pursuant to this subsection shall not exceed 5 years, including options, in accordance with FAR Subpart 17.2

Subpart 617.2—Options

617.201 Definitions.

617.201-70 DOSAR Definitions.

"Evaluated option" means an option that is evaluated for award purposes by adding the total price for the option(s) to the total price for the basic requirement.

"Priced option" means an option where the prices for the option quantities or performance periods are specified in the contract at the time of award and the option prices are not subject to renegotiation or adjustment at the time the option is exercised unless an economic price adjustment clause is included in the contract.

"Unevaluated option" means an option that is not included in the evaluation for award purposes.

"Unpriced option" means an option where the prices for the option quantities or performance periods are not specified in the contract at the time of award and the option prices are negotiated at the time the option is exercised.

617.207 Exercise of options.

617.207-70 Synopsis and competition requirements.

(a) If the synopsis for the original contract action described the option provisions in sufficient detail to comply with the requirements of FAR 5.207 and the option was evaluated, a synopsis of the option before it is exercised is not required. An evaluated and priced option that was properly synopsized as provided at FAR 5.207 meets the full and open competition requirements of FAR Subpart 6.1 or the requirements of FAR Subpart 6.2 for full and open competition after exclusion of sources.

(b) If the synopsis for the original contract action did not describe the option provisions, or the original contract action was synopsized on a sole source basis, or in those instances where an unevaluated option was included in the contract, the option must be synopsized in accordance with FAR 5.207 before the option can be exercised. Any such unpriced option, option included in a contract awarded on a sole source basis, or unevaluated option is considered a new acquisition and the justification requirements of FAR Subpart 6.3 must be met before the option is exercised.

Subpart 617.5—Interagency Acquisitions Under the Economy Act

617.502 General.

The authority to make the determination prescribed in FAR 17.502 is delegated to the head of the contracting activity (see 601.603-70).

Subpart 617.6—Management and Operating Contracts

617.602 Policy.

The Assistant Secretary for Administration is the agency head for the purposes of FAR 17.602.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 619—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 619.2—Policies

Sec.
619.201 General policy.

Subpart 619.4—Cooperation with the Small Business Administration

619.402 Small Business Administration procurement center representatives.
619.402-70 DOS designee.

Subpart 619.5—Set-Asides for Small Business

619.505 Rejecting set-aside recommendations.

Subpart 619.6—Certificates of Competency and Determinations of Eligibility

619.602 Procedures.
619.602-1 Referral.

Subpart 619.7—Subcontracting with Small Business and Small Disadvantaged Business Concerns

619.705 Responsibilities of the contracting officer under the subcontracting assistance program.
619.705-3 Preparing the solicitation.
619.705-4 Reviewing the subcontracting plan.
619.705-6 Postaward responsibilities of the contracting officer.
619.705-6-70 Reporting responsibilities.

Subpart 619.8—Contracting with the Small Business Administration (the 8(a) Program)

619.801 General.
619.803 Selecting acquisitions for the 8(a) program.
619.803-70 Responsibilities of the Office of Small and Disadvantaged Business Utilization (OSDBU).
619.870 Acquisition of technical requirements.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3

Subpart 619.2—Policies

619.201 General policy.

(a) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), is responsible for performing all functions and duties prescribed in FAR 19.201 (c) and (d).

(b) In addition to the requirements of FAR 19.201(b), each head of the contracting activity (see 601.603-70), or designee, is responsible for establishing in coordination with the OSDBU director annual goals for the DOS small and disadvantaged business program.

(c) The Under Secretary for Management is the agency head for the purposes of FAR 19.201(c).

(d) Pursuant to FAR 19.201(d), each Small and Disadvantaged Business Utilization Specialist (SDBUS) is responsible for—

(1) Maintaining a program to locate capable small business, small disadvantaged business, and women-owned business sources to fulfill DOS acquisition requirements;

(2) Coordinating inquiries and requests for advice from small business, small disadvantaged business, and women-owned business sources on DOS contracting and subcontracting opportunities and other acquisition matters;

(3) Advising contracting activities on new or revised small business, small disadvantaged business, or women-owned business policies, regulations, procedures, and other related information;

(4) Assuring that small business, small disadvantaged business and women-owned business concerns are provided adequate specifications or drawings by initiating actions, in writing, with appropriate technical and contracting personnel to ensure that all necessary specifications or drawings for current and future acquisitions, as appropriate, are available;

(5) Reviewing all proposed acquisitions in excess of $25,000 to assure that small business, small disadvantaged business, and women-owned business sources will be afforded an equitable opportunity to compete and, as appropriate, initiating recommendations for small business or small disadvantaged business set-asides;

(6) Assuring that contract financing available under existing regulations is offered when appropriate and that requests by small business concerns for such financing are not treated as a handicap in the award of contracts;

(7) Providing assistance to the contracting officer in making

determinations concerning responsibility of prospective contractors whenever small business concerns are involved;

(8) Participating in the evaluation of a prime contractor's small business and small disadvantaged business subcontracting plans;

(9) Assuring that the participation of small business, small disadvantaged business, and women-owned business concerns is accurately reported;

(10) Attending, as appropriate, debriefings to unsuccessful small business and small disadvantaged business concerns to assist those firms in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(11) Making available to SBA copies of solicitations when so requested;

(12) When a bid or offer from a small business, small disadvantaged business, or women-owned business has been rejected for nonresponsiveness or nonresponsibility, upon request, aid, counsel, and assist that firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(13) Participating in Government-industry conferences to assist small business, small disadvantaged business and women-owned business concerns, including Business Opportunity/Federal Acquisition Conferences, Minority Business Enterprises Acquisition Seminars and Business Opportunity Committee meetings;

(14) Maintaining a list of supplies and services that have been placed as repetitive small business set-asides;

(15) Participating in the development, implementation, and review of automated source systems to assure that the interests of small business, small disadvantaged business, and women-owned business concerns are fully considered;

(16) Advising potential sources how they can obtain information about competitive acquisitions;

(17) Providing small business, small disadvantaged business, and women-owned business sources information regarding assistance available from Federal agencies such as the Small Business Administration, Minority Business Development Agency, Bureau of Indian Affairs, Economic Development Administration, National Science Foundation, Department of Labor and others, including State agencies and trade associations; and

(18) Participating in interagency programs relating to small business, small disadvantaged business, and labor surplus area matters as authorized by the OSDBU director.

Subpart 619.4—Cooperation with the Small Business Administration

619.402 Small Business Administration procurement center representatives.

619.402-70 DOS designee.

Where the FAR requires action by a Small Business Administration procurement center representative, but one has not been assigned to the DOS contracting activity, the OSDBU director shall perform the action so required.

Subpart 619.5—Set-Asides for Small Business

619.505 Rejecting set-aside recommendations.

The Procurement Executive is the agency head for the purposes of FAR 19.505.

Subpart 619.6—Certificates of Competency and Determinations of Eligibility

619.602 Procedures.

619.602-1 Referral.

The contracting officer shall transmit to the OSDBU director concurrently with the submission to the appropriate SBA Regional Office, a copy of the documentation supporting the determination that a small business concern is not responsible, as required by FAR 19.602-1(a).

Subpart 619.7—Subcontracting with Small Business and Small Disadvantaged Business Concerns

619.705 Responsibilities of the contracting officer under the subcontracting assistance program.

619.705-3 Preparing the solicitation.

Whenever the clause at FAR 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Program, is used in a solicitation for a negotiated acquisition, a notification also must be included in the solicitation. This notification shall advise prospective offerors that subcontracting plans may be requested from all concerns determined to be in the competitive range.

619.705-4 Reviewing the subcontracting plan.

OSDBU shall review subcontracting plans to determine if small and small disadvantaged businesses are afforded the maximum practicable opportunity to participate as subcontractors. OSDBU shall recommend to the contracting officer changes needed to subcontracting plans found to be deficient.

619.705-6 Postaward responsibilities of contracting officer.

619.705-6-70 Reporting responsibilities.

(a) The contracting officer shall forward to the OSDBU director a copy of each subcontracting plan that was incorporated into a contract or contract modification. Each contracting activity shall maintain a list of its active prime contracts that contain subcontracting plans.

(b) Contracting officers shall collect subcontracting data from contractors required to establish subcontracting plans in support of small and small disadvantaged business concerns. This data shall be collected quarterly and semiannually, using Standard Form 295, Summary Subcontracting Report, for the quarterly submissions, and Standard Form 294, Subcontracting Report for Individual Contracts, for the semiannual submissions. The head of the contracting activity shall forward these reports to the OSDBU director, not later than the 30th day of the month following the close of the reporting period.

Subpart 619.8—Contracting With the Small Business Administration (the 8(a) Program)

619.801 General.

The Procurement Executive is the agency head for the purpose of FAR 19.801(b)(2).

619.803 Selecting acquisitions for the 8(a) program.

619.803-70 Responsibilities of the Office of Small and Disadvantaged Business Utilization (OSDBU).

OSDBU shall review the capabilities of 8(a) concerns and disseminate that information to DOS program and contracting personnel. As necessary, OSDBU shall obtain from the SBA or 8(a) concerns supplemental information for DOS program and contracting personnel.

619.870 Acquisition of technical requirements.

(a) *Offering Letter.* When a decision has been made by the OSDBU and contracting officer to process an acquisition through the SBA under the 8(a) program, the contracting activity shall promptly send to the applicable SBA office a letter offering the acquisition to the SBA, with an information copy to the SDBUS. The offering letter should transmit the statement of work, purchase description, technical data package, or specifications

and such other information deemed necessary by the contracting officer.

(b) The contracting officer has greater latitude in holding discussions with the concerns solicited under an 8(a) program acquisition than under a non-8(a) program acquisition. The technical evaluation must be carefully reviewed to determine if any source declared to be unacceptable is capable of being made acceptable.

PART 622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 622.6—Walsh-Healey Public Contracts Act

Sec.
622.604 Exemptions.
622.604–2 Regulatory exemptions.

Subpart 622.8—Equal Employment Opportunity

622.807 Exemptions.

Subpart 622.13—Special Disabled and Vietnam Era Veterans

622.1303 Waivers.

Subpart 622.14—Employment of the Handicapped

622.1403 Waivers.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 622.6—Walsh-Healey Public Contracts Act

622.604 Exemptions

622.604–2 Regulatory exemptions.

The Procurement Executive is the agency head for the purposes of FAR 22.604–2(c)(1).

Subpart 622.8—Equal Employment Opportunity

622.807 Exemptions.

The Procurement Executive is the agency head for the purposes of FAR 22.807(a)(1).

Subpart 622.13—Special Disabled and Vietnam Era Veterans

622.1303 Waivers.

The Procurement Executive is the agency head for the purposes of FAR 22.1303.

Subpart 622.14—Employment of the Handicapped

622.1403 Waivers.

The Procurement Executive is the agency head for the purposes of FAR 22.1403.

PART 623—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 623.1—Pollution Control and Clean Air and Water

Sec.
623.104 Exemptions.
623.107 Compliance responsibilities.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 623.1—Pollution Control and Clean Air and Water

623.104 Exemptions.

The Procurement Executive is the agency head for the purposes of FAR 23.104(c).

623.107 Compliance responsibilities

The Procurement Executive is the agency head's designee for the purposes of FAR 23.107.

PART 624—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 624.2—Freedom of Information Act

624.202 Policy.

DOS regulations implementing the Freedom of Information Act (5 U.S.C. 552), as amended, are codified in Chapter 1, Department of State, Subchapter R, Access to Information, Part 171, Availability of information and records to the public, of Title 22 of the Code of Federal Regulations (22 CFR Part 171).

PART 625—FOREIGN ACQUISITION

Subpart 625.1—Buy American Act—Supplies

Sec.
625.102 Policy.
625.105 Evaluating offers.
625.108 Excepted articles, materials, and supplies.

Subpart 625.2—Buy American Act—Construction Materials

625.202 Policy.
625.204 Violations.

Subpart 625.3—Balance of Payments Program

625.300 Scope of subpart.
625.300–70 Overseas acquisitions.
625.302 Policy.
625.304 Excess and near-excess foreign currencies.

Subpart 625.7—Restrictions on Certain Foreign Purchases

625.703 Exceptions.

Subpart 625.9—Omission of the Examination of Records Clause

625.903 Conditions for omissions.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 625.1—Buy American Act—Supplies

625.102 Policy.

The authority to make the determination prescribed in FAR 25.102(a)(3) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603–70). The authority to make the determination prescribed in FAR 25.102(b) is reserved to the Procurement Executive.

625.105 Evaluating offers.

The authority to make the determinations prescribed in FAR 25.105 is delegated, without power of redelegation, to the head of the contracting activity.

625.108 Excepted articles, materials, and supplies.

The Office of the Procurement Executive is the DOS central agency control point for furnishing to the appropriate FAR Council the documentation prescribed in FAR 15.108(b) and (c).

Subpart 625.2—Buy American Act—Construction Materials

625.202 Policy.

The authority to make the determination prescribed in FAR 25.202(a)(2) is delegated, without power of redelegation, to the head of the contracting activity. The authority to make the determination prescribed in FAR 25.202(b) is reserved to the Procurement Executive.

625.204 Violations.

The Procurement Executive is the agency head for the purposes of FAR 25.204.

Subpart 625.3—Balance of Payments Program

625.300 Scope of subpart.

625.300–70 Overseas acquisitions.

This program applies to acquisitions of supplies and services for use outside the United States regardless of the contractor's location.

625.302 Policy.

The authority to make the determination prescribed in FAR 25.302(b)(3) is delegated, without power of redelegation, to the head of the contracting activity. The authority

prescribed in FAR 25.302(c) is delegated, without power of redelegation, to the head of the contracting activity.

625.304 Excess and near-excess foreign currencies.

The authority to make the determination prescribed in FAR 25.304(c) is delegated to the head of the contracting activity.

Subpart 625.7—Restrictions on Certain Foreign Purchases

625.703 Exceptions.

The authority to approve exceptions for other contracts, as prescribed in FAR 25.703(b), is delegated, without power of redelegation, to the head of the contracting activity.

Subpart 625.9—Omission of the Examination of Records Clause

625.903 Conditions for omission.

The Procurement Executive is the agency head for the purposes of FAR 25.903.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 628—BONDS AND INSURANCE

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 628-70—Indemnification

628.7001 DOSAR contract clause.

(a) Contractors should not ordinarily be required to assume risks which a private buyer would guard against through insurance. There may be occasions, however, when a contractor's assumption of such risks is in the best interest of the Government. The clause in paragraph (b) below is authorized for use on those occasions. In the determination of its use, the contracting officer should weigh the advantages it provides against the likelihood of a resultant increase in the contract price.

(b) The contracting officer shall insert the clause at 652.228–70, Indemnification, in solicitations and contracts when it is determined that the contractor's assumption of risk is in the best interest of the Government.

PART 629—TAXES

Subpart 629.1—General

Sec.
629.101 Resolving tax problems.

Subpart 629.2—Federal Excise Taxes

629.202 General exemptions.
629.202–70 Exemption from other Federal taxes.

Subpart 629.3—State and Local Taxes

629.302 Application of State and local taxes to the Government.
629.303 Application of State and local taxes to Government contractors and subcontractors.

Subpart 629.4—Contract Clauses

629.401 Domestic contracts.
629.401–70 DOSAR contract clause.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 629.1—General

629.101 Resolving tax problems.

In certain instances, acquisitions by posts are exempt from various taxes in foreign countries. Contracting officers shall ascertain such exemptions and take maximum advantage of them.

Subpart 629.2—Federal Excise Taxes

629.202 General exemptions.

629.202-70 Exemptions from other Federal taxes.

Taxable articles purchased for presentation abroad as gifts to foreign dignitaries and taxable articles purchased for presentation as gifts to foreign dignitaries visiting in the United States but which are to be taken out of the United States may be exempt from retail taxes or manufacturers excise taxes, in accordance with the letter of October 18, 1963, from the Chief, Excise Tax Branch, Internal Revenue Service.

Subpart 629.3—State and Local Taxes

629.302 Application of State and local taxes to the Government.

The Office of the Legal Adviser is the agency-designated counsel for the purposes of FAR 29.302(a).

629.303 Application of State and local taxes to Government contractors and subcontractors.

The authority to make the determination prescribed in FAR 29.303(a) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603–70). The Office of the Legal Adviser is the agency-designated counsel for the purposes of FAR 29.303(c).

Subpart 629.4—Contract Clauses

629.401 Domestic contracts.

629.401-70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.229–71, Excise Tax Exemption Statement for Contractors Within the United States, in solicitations and contracts if the prospective contractor is located inside the United States and the acquisition involves export of supplies to an overseas post.

PART 630—COST ACCOUNTING STANDARDS

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 630.3—CAS Program Requirements

630.201-5 Waiver.

The Procurement Executive is the agency head's designee for the purposes of FAR 30.201–5(c).

PART 632—CONTRACT FINANCING

Subpart 632.1—General

Sec.
632.111 Contract clauses.
632.111–70 DOSAR contract clauses

Subpart 632.4—Advance Payments

632.402 General.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 632.1—General

632.111 Contract clauses.

632.111-70 DOSAR contract clauses.

As prescribed in FAR 32.901, the policies, procedures, and contract clause implementing Office of Management and Budget Circular A–125, Prompt Payment, do not apply to purchases made outside the United States from foreign vendors. In those instances, the contracting officer at the overseas post shall insert the clauses at 652.232–70, Invoice Requirements, in solicitations and contracts. If payments are to be made by electronic funds transfer, the contracting officer also shall insert the clause at 652.232–71, Method of Payment (Electronic Funds Transfer).

Subpart 632.4—Advance Payments

632.402 General.

The authority to make the determination prescribed in FAR 32.402(c)(1)(iii) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603–70). For acquisitions by overseas posts, the head of the contracting activity shall obtain the concurrence of the Procurement Executive before making a determination pursuant to this section.

PART 633—PROTESTS, DISPUTES, AND APPEALS

Subpart 633.1—Protests

Sec.
633.102 General.
633.103 Protests to the agency.

Subpart 633.1—Protests

Sec.
633.104 Protests to GAO.
633.105 Protests to GSBCA.

Subpart 633.2—Disputes and Appeals

633.203 Applicability.
633.211 Contracting officer's decision.
633.270 Disputes and appeals under DOS contracts subject to the Contract Disputes Act of 1978.
633.270–1 Scope of section.
633.270–2 Designation.
633.270–3 DOS support.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 633.1—Protests

633.102 General.

All communications relative to protests filed with the General Accounting Office (GAO) or the General Services Administration Board of Contract Appeals (GSBCA) shall be coordinated with the Office of the Legal Adviser.

633.103 Protests to the agency.

For protests filed with the Department and received before award, the contracting office shall obtain the advice of the Office of the Legal Adviser before making the determination prescribed in FAR 33.103(a).

633.104 Protests to GAO.

The following procedures implement the corresponding paragraphs of FAR 33.104.

(a) *General.* (1) Upon being telephonically advised by the GAO of the receipt of a protest, before or after award, the Office of the Legal Adviser shall inform the appropriate head of the contracting activity (see 601.603–70), who shall immediately notify the contracting officer. For protests concerning ADP acquisitions, the Office of the Legal Adviser shall also inform the Deputy Assistant Secretary for Information Systems. After receiving a copy of the protest from GAO and its request for an administrative report, the Office of the Legal Adviser shall promptly provide the same to the head of the contracting activity involved, who shall promptly provide a copy to the contracting officer and request a written report in conformance with FAR 33.104(a)(2).

(2) In addition to the requirements in FAR 33.104(a)(2), the report responsive to the protest shall be appropriately titled and dated, shall cite the GAO file number, and shall be prepared and signed by the contracting officer. The contracting officer shall prepare the report with the assistance of the Office of the Legal Adviser. If appropriate, the report shall contain a statement regarding any urgency for the acquisition and the extent to which a delay in award may result in significant performance difficulties or additional expense to the Government. If award is not urgent, the report shall include an estimate of the length of time an award may be delayed without significant expense or difficulty in performance. The head of the contracting activity shall submit to the Office of the Legal Adviser an original and two complete copies of the contracting officer's report. The contracting officer shall provide one complete copy to each interested party who responded to GAO, to the contracting officer, or to the Office of the Legal Adviser pursuant to the notification prescribed in paragraph (a)(3) below. In submitting the report to GAO, the Office of the Legal Adviser shall identify all parties to whom the report has been furnished.

(3) As prescribed in FAR 33.104(a)(3) and 4 CFR 21.3, the contracting officer shall promptly notify all interested parties, including offerors (or the contractor if the protest is after award) involved in or affected by the protest, that a protest has been filed with the GAO and the basis for the protest. The contracting officer shall place a written record of such notifications in the contract file. The contracting officer shall promptly transmit by letter a copy of the protest to all interested parties previously notified and include a statement requiring furnishing of views and information directly to the GAO. The contracting officer shall send copies of such cover letters concurrently to the Office of the Legal Adviser. Cover letters shall contain a specified period of time for submission of comments, in accordance with FAR 33.104(a)(3), and include instructions that any comments submitted to the GAO should also be submitted simultaneously to the contracting officer and the Office of the Legal Adviser. Materials submitted by the protester may be withheld from interested parties in accordance with 4 CFR 21.3(b).

(4) All DOS personnel shall handle protests on a priority basis. If the specific circumstances of the protest require a longer period than allowed under FAR 33.104(a)(3), the head of the contracting activity shall immediately notify the Office of the Legal Adviser, which shall prepare a written request for extension of the period in accordance with 4 CFR 21.3(d). The head of the contracting activity shall deliver the protest report to the Office of the Legal Adviser within 15 work days from the date of telephonic notification by the Office of the Legal Adviser. For reports involving use of the 10 work day express option provided at FAR 33.104(a)(4), the Office of the Legal Adviser shall establish the report delivery date after consultation with the head of the contracting activity.

(b) *Protests before award.* If a protest before award has been filed with GAO and the contracting officer determines in writing that it is necessary to make award under the circumstances prescribed in FAR 33.104(b)(1), the contracting officer shall first obtain advice from the Office of the legal Adviser. The contracting officer shall submit the written determination to the head of the contracting activity for approval.

(f) *Notice to GAO.* The authority to submit the report prescribed in FAR 33.104–(f) is delegated, without power of redelegation, to the head of the contracting activity. The report shall be submitted to the Comptroller General through the Office of the Legal Adviser.

633.105 Protests to GSBCA.

The following procedures implement FAR 33.105.

(a) Upon receipt of a copy of a protest to GSBCA, the contracting officer or the official designated in the solicitation shall immediately notify the Office of the Legal Adviser and the Deputy Assistant Secretary for Information Systems. The contracting officer is responsible for compliance with the requirements in FAR 33.105(a)(2). The contracting officer shall include in the contract file a record of such notifications to all parties and related correspondence with GSBCA. The contracting officer shall provide to the Office of the Legal Adviser a copy of the list of interested parties notified, simultaneously with submission of the list to the GSBCA.

(b) The contracting officer shall submit to the Office of the Legal Adviser an original and two copies of the protest file, documented in conformance with FAR 33.105(b), within 8 work days after the filing of a protest. The contracting officer also shall provide a complete copy of the file to the protester and all other interested parties within 10 work days after filing of the protest. The protest file shall be organized to comply with the requirements of Rule 4(b) of the GSBCA Rules of Procedure (48 CFR Part 61). The Office of the Legal Adviser shall then submit the file to the GSBCA within 10 work days after filing of the protest.

(c) The Office of the Legal Adviser shall represent the contracting officer at any hearing on suspension of the agency's delegation of procurement

authority or at any hearing on the merits of the protest. The Office of the Legal Adviser shall notify the contracting officer and the Deputy Assistant Secretary for Information Systems of the results of any hearing.

(d) The authority to execute the determination and findings (D&F) prescribed in FAR 33.105–(d)(2) is delegated, without power of redelegation, to the head of the contracting activity.

Subpart 633.2—Disputes and Appeals

633.203 Applicability.

The Procurement Executive is the agency head for the purposes of FAR 33.203(b).

633.211 Contracting officer's decision.

(a) In the second sentence of FAR 33.211(a)(4)(v), contracting officers shall replace "the Board of Contact Appeals" with "Armed Services Board of Contract Appeals, Skyline 6, 5109 Leesburg Pike, Falls Church, VA 22041."

(b) Prior to issuing a contracting officer's final decision, the contracting officer shall obtain assistance, as appropriate, from the Office of the Legal Adviser.

633.270 Disputes and appeals under DOS contracts subject to the Contract Disputes Act of 1978.

633.270–1 Scope of section.

This section concerns disputes relating to DOS contracts and the transfer of certain appellate and review functions from the Department of State to the Armed Services Board of Contract Appeals.

633.270–2 Designation.

The Armed Services Board of Contract Appeals (ASBCA) is the authorized representative of the Secretary of State and the Procurement Executive for the purposes of hearing and resolving disputes relating to DOS contracts subject to the Contract Disputes Act of 1978. The ASBCA shall hear and determine appeals by contractors from contracting officers' final decisions on disputed issues relating to DOS contracts subject to the Contract Disputes Act of 1978.

633.270–3 DOS support.

The Procurement Executive shall ensure the support of all DOS personnel in processing appeals before the ASBCA. The Procurement Executive is authorized to require such DOS officers and employees to cooperate for this purpose.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 634—MAJOR SYSTEM ACQUISITION

Sec.
634.001 Definitions.
634.001–70 Supplemental definitions.
634.002 Policy.
634.003 Responsibilities.

Authority: 22 U.S.C. 2658, 40 U.S.C. 486(c), 48 CFR Subpart 1.3.

634.001 Definitions.

"Major system":

(a) The definition of "major system" in OMB Circular No. A–109, Major System Acquisitions (A–109), provides no exclusions; however, FAR 34.001 excludes from the definition of "major system" construction or other improvements to real property. Acquisition of capital project systems by the Office of Foreign Buildings, which would otherwise be subject to the requirements of A–109 are thus exempted from these requirements. Under separate authority, the DOS has other existing controls that provide the necessary review, approval, and monitoring procedures to manage capital project systems acquisitions by the Office of Foreign Buildings.

(b) Pursuant to A–109 and paragraph (b) of the definition of "major system" prescribed in FAR 34.001, any DOS system shall be considered a major system if total acquisition costs with private industry are expected to equal or exceed $10,000,000.

(c) The acquisition executive is the agency head for the purposes of paragraph (c) of the definition of "major system" prescribed in FAR 34.001. The acquisition executive is authorized to designate as a major system acquisition any DOS system not expected to meet or exceed the $10,000,000 threshold identified in paragraph (b) above; provided, that the determination shall be made in accordance with the requirements of A–109, FAR Part 34, and this Part 634.

(d) Classification as a major system acquisition is independent of the number of component DOS contracting activities involved in the process. A major system acquisition may occur entirely within the jurisdiction of a single contracting activity or it may involve more than one DOS contracting activity.

(e) Each major system acquisition shall be in response to a need of one of the DOS major missions, which are identified in volume 1 of the Foreign Affairs Manual System.

634.001–70 Supplemental definitions.

Section five of A–109 defines several terms in addition to those defined in FAR 34.002.

634.002 Policy.

The objective of A–109 is to assure effectiveness and efficiency in acquiring major systems. Section six of A–109 provides general policy guidelines in addition to those prescribed in FAR 34.002.

634.003 Responsibilities.

(a) The Procurement Executive is the agency head for the purposes of FAR 34.003(a).

(b) The Deputy Assistant Secretary for Operations is the agency head for the purposes of FAR 34.003(c) and the acquisition executive for the purposes of A–109.

PART 636—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 636.1—General

Sec.
636.101 Applicability.
636.101–70 Exception.

Subpart 636.2—Special Aspects of Contracting for Construction

636.209 Construction contracts with architect-engineer firms.

Subpart 636.6—Architect-Engineer Services

636.602 Selection of firms for architect-engineer contracts.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 636.1—General

636.101 Applicability.

636.101–70 Exception.

Contracts for overseas construction, including capital improvements, alterations, and major repairs, are excepted from the provisions of the FAR (48 CFR Ch. 1) under the authority of the Foreign Service Buildings Act, 1926, as amended, 22 U.S.C. 292 et seq., as further codified at Section 474 of Title 40, Public Buildings, Property, and Works, of the U.S. Code.

Subpart 636.2—Special Aspects of Contracting for Construction

636.209 Construction contracts with architect-engineer firms.

The Procurement Executive is the head of the agency for the purposes of FAR 36.209.

Subpart 636.6—Architect-Engineer Services

636.602 Selection of firms for architect-engineer contracts.

The Procurement Executive is the head of the agency for the purposes of FAR 36.602.

PART 637—SERVICE CONTRACTING

Subpart 637.1—Service Contracts—General

Sec.
637.103 Contracting officer responsibility.
637.104 Personal services contracts.
637.104–70 DOS personal services contracts.

Subpart 637.2—Consulting Services

637.204 Policy.
637.204–70 Supplemental policy.
637.270 DOSAR contract clause.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3

Subpart 637.1—Service Contracts—General

637.103 Contracting officer responsibility.

The Office of the Legal Adviser is the DOS legal counsel for the purposes of FAR 37.103(a)(2).

637.104 Personal services contracts.

The Office of the Legal Adviser is the DOS legal counsel for the purposes of FAR 37.104(e).

637.104–70 DOS personal services contracts.

Pursuant to FAR 37.104(b), DOS statutory authorities for personal services contracts are—

(a) For the Department, section 2(c) of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2669);

(b) For the Bureau for Refugee Programs, section 5(a)(6) of the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2605);

(c) For the Bureau for International Narcotics Matters, section 636(a)(3) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2396);

(d) For the Foreign Service Institute, section 704(a)(4) of the Foreign Service Act of 1980, as amended (22 U.S.C. 4024);

(e) For the Office of Foreign Missions, section 208(d) of Title II—Authorities Relating to the Regulation of Foreign Missions, of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4308);

(f) For the Office of Foreign Buildings, section 5 of the Foreign Service Buildings Act, 1926, as amended (22 U.S.C. 296);

(g) For the U.S. Mission to the United Nations, section 7 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287e); and

(h) For the Bureau of International Organization Affairs, the separate State Department appropriations acts.

Subpart 637.2—Consulting Services

637.204 Policy.

637.204–70 Supplemental policy.

In addition to the policy prescribed in FAR 37.204(c), consulting services will normally be obtained on an intermittent or temporary basis; repeated or extended contracts are not to be effected except under extraordinary circumstances and with the prior approval of the head of the contracting activity (see 601.603–70). Also, grants and cooperative agreements may not be used as legal instruments for consulting services arrangements.

637.270 DOSAR contract clause.

The contracting officer shall include the clause at 652.237–70, Reports (Consulting Services), in solicitations and contracts for consulting services that require submission of written reports.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 642—CONTRACT ADMINISTRATION

Subpart 642.2—Assignment of Contract Administration

Sec.
642.270 Contracting Officer's Representative (COR)
642.271 DOSAR contract clause.

Subpart 642.6—Corporate Administrative Contracting Officer

642.602 Assignment and location.

Subpart 642.14—Traffic and Transportation Management

642.1406–2 Contract clause.
642.1406–2–70 DOSAR contract clauses.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 642.2—Assignment of Contract Administration

642.270 Contracting Officer's Representative (COR)

(a) Contracting officers may designate technically qualified personnel as their authorized representatives to assist in the administration of contracts. The COR must be a U.S. Government employee. The contracting officer shall designate the COR in writing; the designation shall define the scope and limitations of the COR's authority. The contracting officer shall provide a copy of the COR's designation to the contractor and, as necessary, copies to the requirements and payments offices. The COR does not have the authority to make any commitments or changes that will affect the price, quality, quantity, or delivery terms of a contract; in order to do so, or to otherwise commit or bind the Government, a valid contracting officer warrant is required.

(b) Contracting officers also may designate technically qualified personnel as their authorized representatives to assist in the administration of small purchases and other simplified purchase procedures. The authorities delegated under such designations shall not exceed those provided in paragraph (a) above.

642.271 DOSAR contract clause.

The contracting officer shall insert the clause at 652.242–70, Contracting Officer's Representative, in solicitations and contracts when appointment of a contracting officer's representative is anticipated.

Subpart 642.6—Corporate Administration Contracting Officer

642.602 Assignment and location.

The Procurement Executive is the agency head's designee for the purposes of FAR 42.602(a).

Subpart 642.14—Traffic and Transportation Management

642.1406–2 Contract clause.

642.1406–2–70 DOSAR contract clauses.

(a) The contracting officer shall insert the clause at 652.242–71, Notice of Shipment, in solicitations and contracts entered into and performed outside the United States, when overseas shipment of supplies is required.

(b) The contracting officer shall insert the clause at 652.242–72, Shipping Instructions, in solicitations and contracts with a source in the United States and overseas shipment of supplies is required.

PART 643—CONTRACT MODIFICATIONS

Subpart 643.1—General

Sec.
643.102 Policy.
643.102–70 Contract compliance and review.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 643.1—General

643.102 Policy.

643.102-70 Contract compliance and review.

(a) When applicable, the contracting officer shall ensure the proposed contract modification complies with the competition requirements of FAR Part 6 and DOSAR Part 606.

(b) Subpart 604.70 prescribes the review requirements for modifying contracts for supplies and services, including construction. The contracting officer shall submit such contract modifications to the Office of Procurement Executive when the modification itself exceeds $100,000, when the modification will cause the contract to exceed $100,000, or when any proposed change under the modification results in an increase or decrease exceeding $100,000 in any of the individual cost elements of the existing contract.

PART 645—GOVERNMENT PROPERTY

Subpart 645.3—Providing Government Property to Contractors

Sec.
645.302 Providing facilities.
645.302-1 Policy.

Subpart 645.6—Reporting, Redistribution, and Disposal of Contractor Inventory

645.608 Screening of contractor inventory.
645.608-6 Waiver of screening requirements.
645.610 Sale of surplus contractor inventory.
645.610-2 Exemptions from sale by GSA.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 645.3—Providing Government Property to Contractors

645.302 Providing facilities.

645.302-1 Policy.

The authority to make the determination prescribed in FAR 45.302-1(a)(4) is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70).

Subpart 645.6—Reporting, Redistribution, and Disposal of Contractor Inventory

645.608 Screening of contractor inventory.

645.608-6 Waiver of screening requirements.

The Procurement Executive is the agency head's designee for the purposes of FAR 45.608-6.

645.610 Sale of surplus contractor inventory.

645.610-2 Exemptions from sale by GSA.

The Procurement Executive is the agency head for the purposes of FAR 45.610-2(a).

PART 646—QUALITY ASSURANCE

Subpart 646.7—Warranties

Sec.
646.710 Contract clauses.
646.710-70 DOSAR contract clause.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

Subpart 646.7—Warranties

646.710 Contract clauses.

646.710-70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.246-70, Commercial Warranty, in solicitations and contracts for commercial supplies or services awarded and performed outside the United States.

PART 648—VALUE ENGINEERING

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

Subpart 648.1—Policies and Procedures

648.102 Policies.

The Procurement Executive is the agency head for the purposes of FAR 48.102(a). The Procurement Executive is the agency head's designee for the purposes of FAR 48.102(e). The authority to extend the sharing base to include the entire contracting activity or any part of it, as prescribed in FAR 45.102(e), is delegated, without power of redelegation, to the head of the contracting activity (see 601.603-70).

SUBCHAPTER H—CLAUSES AND FORMS

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
652.000 Scope of part.

Subpart 652.1—Instructions for Using Provisions and Clauses

652.100 Scope of subpart.
652.100-70 Policy.
652.102 Incorporating provisions and clauses.
652.102-1 Incorporation by reference.

Subpart 652.2—Texts of Provisions and Clauses

652.200 Scope of subpart.
652.202-70 Definitions.
652.204-70 Security Requirements.
652.204-71 Security Requirements—Personnel.
652.214-70 Language Version.
652.214-71 Notices.
652.214-72 Authorization to Perform.
652.216-70 Ordering—Indefinite-Delivery Contract.
652.228-70 Indemnification.
652.229-70 Excise Tax Exemption Statement for Contractors Within the United States.
652.232-70 Invoice Requirements.
652.232-71 Method of Payment (Electronic Funds Transfer).
652.237-70 Reports (Consulting Services).
652.242-70 Contracting Officer's Representative (COR).
652.242-71 Notice of Shipments.
652.242-72 Shipping Instructions.
652.246-70 Commercial Warranty.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

652.000 Scope of part.

This part sets forth solicitation provisions and contract clauses, in addition to those prescribed in FAR Part 52, for use in DOS acquisitions.

Subpart 652.1—Instructions for Using Provisions and Clauses

652.100 Scope of subpart.

652.100-70 Policy.

(a) The solicitation provisions and contract clauses in FAR Subpart 52.2 or this Subpart 652.2 shall be used as prescribed therein, except when the use of any provision or clause is prohibited by or inconsistent with local laws, or the supplies or services could not be obtained if the provision or clause were to be included.

(b) The contracting officer shall justify the exclusion of any provisions or clauses in accordance with FAR Subpart 1.4 and 601.470.

652.102 Incorporating provisions and clauses.

652.102-1 Incorporation by reference.

The Procurement Executive is the agency head for the purposes of FAR 52.102-1(a)(2)(ii).

Subpart 652.2—Texts of Provisions and Clauses

652.200 Scope of subpart.

This subpart sets forth the text of all DOSAR provisions and clauses, and for each provision and clause provides a cross-reference to the location in the DOSAR that prescribes its use.

652.202-70 Definitions.

As prescribed in 604.201-70, insert the following clause in solicitations and contracts if the contract will be performed outside the United States.

Definitions (July 1988)

"American Embassy" and "Embassy" means the diplomatic or consular mission of the United States of America for which all supplies or services are provided under the contract.

"Department" means the Department of State, including all of its activities wherever located.

"Government" means the Government of the United States of America, unless specifically stated otherwise.

(End of clause)

652.204-70 Security Requirements.

As prescribed in 604.404-70, insert the following clause in solicitations and contracts performed outside the United States to the extent the contract involves access to classified information ("Confidential," "Secret," or "Top Secret") or administratively controlled information ("Limited Official Use"). Contractors or contract employees that are not U.S. citizens shall not have access to classified or administratively controlled information.

Security Requirements (July 1988)

(a) This clause applies to the extent that this contract involves information the Government has determined to be classified ("Confidential," "Secret," or "Top Secret," hereinafter referred to as "classified") or administratively controlled ("Limited Official Use," hereinafter referred to as "administratively controlled").

(b) The Contractor (1) shall be responsible for safeguarding all classified or administratively controlled information in accordance with paragraph (d) below and shall not supply, disclose, or otherwise permit any unauthorized person access to classified or administratively controlled information; (2) shall not make or permit to be made any reproductions of classified information or administratively controlled information, except with the prior written authorization of the Contracting Officer, Post Security Officer, or Regional Security Officer; (3) shall submit to the Contracting Officer, at such times as the Contracting Officer may direct, an accounting of all reproductions of classified or administratively controlled information; and (4) shall not incorporate in any other project any matter which will disclose classified or administratively controlled information except with the prior written authorization of the Contracting Officer.

(c) The Contractor shall not permit any non-U.S. citizen access to classified or administratively controlled information. The Contractor shall not permit any individual access to classified information without the prior written authorization of the Contracting Officer, Post Security Officer, or Regional Security Officer.

(d) The Contractor shall follow the procedures for classifying, marking, handling, transmitting, disseminating, storage, and destroying official materials in accordance with the Uniform Regulations (Foreign Affairs Manual, Volume, 5, Chapter 900, "Policy and Procedural Security"). The Contracting Officer, Post Security Officer, or Regional Security Officer shall provide a copy of this document to the Contractor. The Contracting Officer shall provide any supplements to these regulations to the Contractor in writing.

(e) The Contractor agrees to submit immediately to the Contracting Officer, Post Security Officer, a complete detailed report, appropriately classified, of any information which the Contractor may have concerning existing or threatened espionage, sabotage, or subversive activity.

(f) The Government agrees that when necessary it shall indicate by security classification or administratively controlled designation the degree of importance to the national security of information to be furnished by the Contractor to the Government or by the Government to the Contractor. The Government shall give written notice to the Contractor of such security classification or administratively controlled designation and of any subsequent changes thereof. The Contractor shall rely on any letter or other written instrument signed by the Contracting Officer changing a security classification or administratively controlled designation of information.

(g) The Contractor agrees to certify after completion of this contract that it has surrendered or disposed of all classified or administratively controlled information in its custody in accordance with applicable security regulations or instructions.

(End of clause)

652.204-71 Security Requirements—Personnel.

As prescribed in 604.404-70, insert the following clause in solicitations and contracts performed outside the United States.

Security Requirements—Personnel (July 1988)

The Contractor agrees, if directed by the Contracting Officer, to furnish the Government with the name, date and place of birth, current address, and such other biographical information as is readily available to the Contractor, concerning any individual before permitting said individual to perform under this contract. The Contractor further agrees to permit only those individuals approved by the Government to be used in the performance of this contract.

(End of clause)

652.214-70 Language Version.

As prescribed in 614.201-7-70(a), insert the following clause in solicitations and contracts effected and performed outside the United States, except when the Procurement Executive has approved a waiver of this clause.

Language Version (July 1988)

The English language version of this contract is the official version and binding on both parties.

(End of clause)

652.214-71 Notices.

As prescribed in 614.201-7-70(b), insert the following clause in solicitations and contracts entered into and performed outside the United States.

Notices (July 1988)

Any notice or request relating to this contract given by either party to the other shall be in writing. Said notice or request shall be mailed or delivered by hand to the other party at the address provided in the schedule of the contract. All modifications to the contract must be made in writing by the Contracting Officer.

(End of Clause)

652.214-72 Authorization to Perform.

As prescribed in 614.201-7-70(c), insert the following clause in solicitations and contracts performed outside the United States.

Authorization to Perform (July 1988)

The Contractor warrants that (a) it has obtained authorization to operate and do business in the country or countries in which this contract will be performed; (b) it has obtained all necessary licenses and permits required to perform this contract; and (c) it shall comply fully with all laws, decrees, labor standards and regulations of said country or countries during the performance of this contract.

(End of clause)

652.216-70 Ordering—Indefinite-Delivery Contract.

As prescribed in 616.505-70, insert the following clause in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

Ordering—Indefinite-Delivery Contract (July 1988)

The Government shall use one of the following forms to issue orders under this contract:

(a) Optional Form (OF) 347, Order for Supplies or Services;

(b) Optional Form (OF) 206, Purchase Order, Receiving Report and Voucher; or

(c) Department of State Form (DST) 1089, Order—Supplies or Services.

(End of Clause)

652.228-70 Indemnification.

As prescribed in 628.7001(b), insert the following clause in solicitations and contracts when the contractor's assumption of risk is in the best interest of the Government.

Indemnification (July 1988)

The Contractor expressly agrees to indemnify and to save the Government, its officers, agents, servants, and employees harmless from and against any claim, loss, damages, injury, and liability, however caused, resulting from or arising out of the Contractor's fault or negligence in connection with the performance of work under this contract. Further, any negligence or alleged

negligence of the Government, its officers, agents, servants, or employees, shall not bar a claim for indemnification unless the act or omission of the Government, its officers, agents, servants, or employees is the sole competent, and producing cause of such claim, loss, damages, injury, or liability.

(End of clause)

652.229-70 Excise Tax Exemption Statement for Contractors Within the United States.

As prescribed in 629.401-70, insert the following clause in solicitations and contracts if the prospective contractor is located inside the United States and the acquisition involves export of supplies to an overseas post.

Excise Tax Ememption Statement for Contractors Within the United States (July 1988)

This is to certify that the item(s) covered by this contract is/are for export solely for the use of the U.S. Foreign Service Post identified in the contract schedule.

The Contractor shall use a photocopy of this contract as evidence of intent to export. Final proof of exportation may be obtained from the agent handling the shipment. Such proof shall be accepted in lieu of payment of excise tax.

(End of clause)

652.232-70 Invoice Requirements.

As prescribed in 632.111-70, insert the following clause in solicitations and contracts awarded to foreign vendors.

Invoice Requirements (July 1988)

(a) The Contractor shall submit its invoices to the Government official responsible for inspection and acceptance of the property or services. A proper invoice must include the following information:

(1) Contractor's name and mailing address (for payments by checks) or Contractor's name and bank account information (for payments by wire transfers);

(2) Invoice date;

(3) Contract number or other authorization for property delivered or services performed (including order number and contract line number);

(4) Description, quantity, unit of measure, unit price, and extended price of property delivered or services performed;

(5) Shipping and payment terms, e.g., shipment number and date of shipment, payment discount terms. Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading;

(6) Name, signature, title, and telephone number of the Contractor's officer certifying the invoice;

(7) Name and address of the Contractor's officer to whom payment is to be sent (must be the same as that in the contract or on a proper notice of assignment);

(8) Name (where practicable), title, telephone number, and mailing address of the person to be notified in the event of a defective invoice; and

(9) Any other information or documentation required by the contract (such as evidence of shipment).

(b) If an invoice does not comply with the above requirements, the Government official receiving the invoice pursuant to paragraph (a) of this clause shall notify the Contractor of the defect(s). After correcting the defect(s), the Contractor must then resubmit the invoice.

(End of clause)

652.232-71 Method of Payment (Electronic Funds Transfer).

As prescribed in 632.111-70, insert the following clause in solicitations and contracts effected outside the United States from foreign vendors when payments are to be made by electronic funds transfer.

Method of Payment (Electronic Funds Transfer) (July 1988)

(a) The Government shall make payments under this contract by electronic funds transfer through the Treasury Financial Communications System (TFCS) or the Automated Clearing House (ACH), at the option of the Government. After award, but no later than 14 days before an invoice or contract financing request is submitted, the Contractor shall designate a financial institution for receipt of electronic funds transfer payments. The Contractor shall submit this designation to the Contracting Officer or designee.

(b) For payment through TFCS, the Contractor shall provide the following information:

(1) Name, address, and telegraphic abbreviation of the receiving financial institution receiving payment;

(2) The American Bankers Association 9-digit identifying number of the financial institution receiving payment if the institution has access to the Federal Reserve Communications system;

(3) Payee's account number at the financial institution where funds are to be transferred; and

(4) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains electronic funds transfer messages. Provide the telegraphic abbreviation and American Bankers Association identifying number for the correspondent institution.

(c) For payment through ACH, the Contractor shall provide the following information:

(1) Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for TFCS);

(2) Number of account to which funds are to be deposited;

(3) Type of depositor account ("C" for checking, "S" for savings);

(4) If the Contractor is a new enrollee to the ACH system, a TFS 3881, "Payment Information Form," must be completed before payment can be processed.

(d) In the event the Contractor during the performance of this contract elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official (Contracting Officer or designee) 30 days prior to the date such change is to become effective.

(e) The documents furnishing the information required in this clause must be dated and contain the signature, title, telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number.

(f) Contractor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

(End of clause)

652.237-70 Reports (Consulting Services).

As prescribed in 637.270, insert the following clause in solicitations and contracts for consulting services.

Reports (Consulting Services) (July 1988)

The Contractor shall submit all reports with covers that display the following information:

(1) Name and business address of the Contractor;

(2) Contract number;

(3) Contract dollar amount (including modifications);

(4) Type of award, i.e., full and open competition or statutory authority for other than full and open competition;

(5) Name of the individual who requested the consulting services, and the name and telephone number of the requesting individual's office; and

(6) The following statement: Any report prepared by the Department of State that is substantially derived from or substantially includes the contents of this report shall cite the contract number and contractor for this report.

(End of clause)

652.242-70 Contracting Officer's Representative (COR).

As prescribed in 642.271, insert the following clause in solicitations and contracts when one or more contracting officer representatives are required.

Contracting Officer's Representative (COR) (July 1988)

The Contracting Officer may designate in writing one or more Government employees, by name and position title, to take action for the Contracting Officer under this contract. Each designee shall be identified as a Contracting Officer's Representative (COR). Such designation(s) shall specify the scope and limitations of the authority so delegated; provided, that the designee shall not change the terms or conditions of the contract, unless the COR is a warranted Contracting Officer

and this authority is delegated in the designation.

(End of clause)

652.242-71 Notice of Shipments.

As prescribed in 642.1406-2-70(a), insert the following clause in solicitations and contracts entered into and performed outside the United States, when overseas shipment of supplies is required.

Notice of Shipments (July 1988)

At the time of delivery of supplies to a carrier for onward transportation, the Contractor shall give notice of prepaid shipment to the consignee establishment, and to such other persons as instructed by the Contracting Officer. If the Contractor has not received such instructions by 24 hours prior to the delivery time, the Contractor shall contact the Contracting Officer and request instructions from the Contracting Officer concerning the notice of shipment to be given.

(End of clause)

652.242-72 Shipping Instructions.

As prescribed in 642.1406-2-70(b), insert the following clause in solicitations and contracts with a source in the United States and requiring overseas shipment of supplies.

Shipping Instructions (July 1988)

(a) Each packing box shall be of solid construction in accordance with best commercial practices and sufficiently strong in direct ratio to the weight of the contents to withstand excessively rough handling while in transit overseas. It shall be constructed of lumber that is well seasoned, reasonably sound, free from bad cross grain and from knots or knotholes that interfere with nailing or that occupy more than ⅓ of the width of the piece of lumber. Box shall be constructed with three-way corners and diagonal bracing. All nails shall be cement-coated, of correct size and properly spaced to avoid splitting or warping, and shall be driven into the grain of the wood. Dimension of lumber shall be in accordance with the following table, dependent upon the weight of the contents:

Weight of box and contents	Minimum dimensions of lumber for struts, frame members, and single diagonal braces
Up to 100 lbs	¾" × 2¼".
101 to 250 lbs	⅞" × 2⅞".
251 to 400 lbs	⅞" × 3⅞".
401 to 600 lbs	⅞" × 4⅞" or 1" × 3⅞".

(b) Each box shall be lined with waterproof paper and shall be bound with ¾" steel straps firmly stapled in position to prevent the straps from slipping off the box. Articles must be secured and braced inside the shipping container to prevent the articles from shifting.

(c) Packing cases weighing 1,000 pounds and more must be equipped with skids. Each skid shall consist of two end sections of 2 × 6-inch lumber placed flat and a center section of 2 × 4-inch lumber placed flat and then arranged in line to provide 10-inch forklift spaces between center and end sections. When goods are ready for shipment, the Contractor shall prepare four (4) copies of a packing list, indicating the contract and, if applicable, order numbers; case number; itemized list of contents; net and gross weights in pounds and kilograms; and outside dimensions, including all clears, of each shipping container. The Contractor shall provide three (3) copies of the packing list to the U.S. Despatch Agent as specified in the contract or order. The Contractor shall place the fourth copy of the packing list in the packing case number one, which shall be marked as such so that it is easily identified by the consignee. Upon receipt of the packing list, the Despatch Agent will furnish export marks and instructions regarding shipment to the port specified, depending upon steamer services available at the time.

(d) The export marks shall be stenciled on one side of each box reserved for that purpose, and the appropriate case number stenciled in the lower left-hand corner of the same side. The contract and, as necessary, order numbers, net and gross weights in pounds and kilograms shall be stenciled on the same side. (One kilogram equals 2.2046 pounds avoirdupois.) However, if the size of the box is too small to accommodate all stenciling on one side, the contract and order numbers and weights may be stenciled on the side opposite that used for the export marks and case number.

(e) The contract and, as necessary, order numbers must appear on all containers and papers relating to this clause.

(End of clause)

652.246-70 Commercial Warranty.

As prescribed in 646.710-70, insert the following clause in solicitations and contracts for commercial supplies or services awarded and performed outside the United States.

Commercial Warranty (July 1988)

The Contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services. The rights and remedies provided herein are in addition to and to not limit any rights afforded to the Government by any other clause of this contract.

(End of clause)

PART 653—FORMS

Sec.

653.000 Scope of part.

Subpart 653.1—General

653.101 Requirements for use of forms.
653.101-70 Policy.
653.107 Obtaining forms.
653.110 Continuation sheets.

Subpart 653.2—Prescription of Forms

653.200 Scope of subpart.
653.213 Small purchase and other simplified purchase procedures (SF's 18, 30, 44, 1165, OF's 347, 348).
653.213-70 DOSAR forms (OF's 206, 206A, DST 1089, OF 127).

Subpart 653.3—Illustrations of Forms

653.300 Scope of subpart.
653.302 Optional forms.
653.303 Agency forms.
653.302.127 Optional Form 127, Receiving and Inspection Report.
653.302.206 Optional Form 206, Purchase Order, Receiving Report and Voucher.
653.302.206A Optional Form 206A, Purchase Order, Receiving Report and Voucher—Continuation Sheet.
653.303-DST-1089 Department of State Form 1089, Order—Supplies or Services.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3.

653.000 Scope of part.

This part prescribes DOSAR forms in addition to those provided in FAR Part 53.

Subpart 653.1—General

653.101 Requirements for use of forms.

653.101-70 Policy.

The forms in FAR Subpart 53.2 or in Subpart 653.2 shall be used as precribed therein, except when the use of any form is prohibited by or inconsistent with local laws, or the supplies or services could not be obtained if the form were used. The contracting officer shall justify the exclusion of any form in accordance with FAR Subpart 1.4 and 601.470.

653.110 Continuation sheets.

The provisions of FAR 53.110 also apply to forms prescribed in the DOSAR.

Subpart 653.2—Prescription of Forms

653.200 Scope of subpart.

This subpart prescribes or references optional and DOS forms for use in acquisition. Consistent with FAR 53.200, this subpart is arranged by subject matter, in the same order as and keyed to the parts of the DOSAR in which the form usage requirements are addressed.

653.213 Small purchase and other simplified purchase procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

653.213-70 DOSAR forms (OF's 206, 206A, DST 1089, OF 127).

As provided in FAR 53.213(e), the following forms are approved for use in lieu of Optional Forms 347 and 348.

(a) Optional Form (OF) 206, Purchase Order, Receiving Report and Voucher, and Optional Form 206A, Continuation Sheet (see 613.505-2(a)(1)).

(b) Department of State Form (DST) 1089, Order—Supplies or Services (see 613.505-2(a)(2); also see 613.505-2(c)(2)

regarding replacement of the "Terms and Conditions Applicable to Purchase Orders," which are located on the reverse of the original copy of the DST 1089).

(c) When using OF 206, contracting activities may use Optional Form 127, Receiving and Inspection Report, for that purpose (see 613.505–2(c)(1)).

Subpart 653.3—Illustrations of Forms

653.300 Scope of subpart.

This subpart contains illustrations of forms prescribed in the DOSAR but not illustrated in FAR Subpart 53.3.

653.302 Optional forms.

This section illustrates the optional forms that are specified by the DOSAR for use in acquisitions. The forms are illustrated in numerical order. The subsection numbers correspond with the optional form numbers.

653.303 Agency forms.

This section illustrates the DOS forms that are specified by the DOSAR for use in acquisitions. The forms are illustrated in numerical order. The subsection numbers correspond with the DOS form numbers.

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653.302.127 OPTIONAL FORM 127, RECEIVING AND INSPECTION REPORT

RECEIVING AND INSPECTION REPORT	METHOD OF ACQUISITION	DOCUMENT NUMBERS
	☐ PURCHASED ☐ RENTED	REPORT NO.
	☐ CONSTRUCTED ☐ LOANED	P.O. NO.
RECEIVED FROM	☐ DONATED ☐ INVENTORY OVERAGE	REQUISITION NO.
NAME AND ADDRESS	☐ (OTHER)	TRANSFER AUTHORITY NO.
	APPROPRIATION	CONTRACT NO.
	ALLOTMENT	JOB NO.
POINT OF SHIPMENT / GBL NO.	OBJECTIVE CLASS	

ITEM NO.	DESCRIPTION (Include Terms of Acceptance on Loans, Donations, Etc.)	QUANTITY	UNIT	UNIT PRICE	AMOUNT

CERTIFICATE OF RECEIPT		INSPECTOR'S CERTIFICATE		
I HEREBY CERTIFY THAT ALL ITEMS LISTED ABOVE WERE RECEIVED, INSPECTED AND ACCEPTED		☐ COMPLETE	☐ PARTIAL	☐ FINAL
NAME (Type or Print)	OFFICE SYMBOL	☐ OVER	☐ SHORT	☐ DEFECTIVE MATERIAL
SIGNATURE	DATE	(USE REVERSE FOR COMMENTS)		

50127-102 NSN 7540-00-138-9185

OPTIONAL FORM 127
REV. JANUARY 1982
STATE - AID - USICA

653.302.206 OPTIONAL FORM 206, PURCHASE ORDER, RECEIVING REPORT AND VOUCHER

Form approved by Comptroller General, U.S. March 19, 1953

PURCHASE ORDER, RECEIVING REPORT AND VOUCHER
(For use in foreign countries only)

D.O. Vou. No.

Bu. Vou. No.

Department or Establishment: U.S.

Purchase Order No.

Prepared at (place) (date)

PAID BY

Purchaser: THE UNITED STATES GOVERNMENT, DR.

Seller (Payee)

Address of seller

Contract No. (dated)

Order is hereby placed with the above-named seller for the articles or services described below, to be furnished:

To | at

ITEM NOS.	ARTICLES OR SERVICES	QUANTITY	UNIT PRICE Cost	UNIT PRICE Per	AMOUNT

Use continuation sheet(s) if necessary.

Ordering Officer (Signature)	Approp. / Allot.	Funds Available:	
Name:	Obl. No.	Name:	
Title:	Amt.	Title:	TOTAL

I certify that the ordered items listed were received on _____ (date) except as follows:

Signature

Name:

Title:

PAYMENT:

☐ Complete

☐ Partial

☐ Final

Amount billed, as per attached bill(s)	
Differences	
Amount verified correct for	
Prepayment Audit (Signature or initials)	

Approved for $

Exchange rate to $

Pursuant to authority vested in me, I certify this voucher correct and proper for payment.

Signature of Authorized Certifying Officer

Name:

Title:

ACCOUNTING CLASSIFICATION

Fund	Allotment	Oblig. No.	Paying Office	Date Paid	Object	Amount

PAID BY

Check No. dated , 19 , for $ on Treasurer of United States.

Check No. dated , 19 , for on

Cash on 19

Payee

Title of Payee:

OPTIONAL FORM 206
(FORMERLY FS-455)
MARCH 1973
DEPT. OF STATE

50206-101

IMPORTANT NOTICE TO SELLER

1. The entering office is exempt from taxes.

2. The invoices must be submitted in two copies. Carriers' invoices covering transportation and/or accessorial services shall show on the original the following certification statement, manually signed by the vendor or his authorized representative and dated: "I certify that the above bill is correct and just and that payment therefor has not been received."

3. The order number shown in the upper right hand corner of this purchase order must be shown on your invoices.

4. All communications concerning this order must refer to order number and be addressed to the originating office.

5. Discount terms, if any, must be shown on all bills.

653.302.206A OPTIONAL FORM 206A, PURCHASE ORDER, RECEIVING REPORT AND VOUCHER—CONTINUATION SHEET

Form approved by
Comptroller General, U. S.
March 19, 1953.

PURCHASE ORDER, RECEIVING REPORT AND VOUCHER

Continuation Sheet

U. S. .....
(Department or establishment)

Sheet No. ..... of Bureau Vou. No. .....
Purchase Order No. .....

ITEM NOS.	ARTICLES OR SERVICES	QUANTITY	UNIT PRICE		AMOUNT	
			Cost	Per		

OPTIONAL FORM 206A
(FORMERLY FS-455A)
MARCH 1975
DEPT. OF STATE

U.S. GOVERNMENT PRINTING OFFICE 1975 O—579-102

50206-201

653.303-DST-1089 DEPARTMENT OF STATE FORM 1089, ORDER—SUPPLIES OR SERVICES

DEPARTMENT OF STATE
WASHINGTON, DC 20520

ORDER — SUPPLIES OR SERVICES
(Subject to terms and conditions on reverse side)

00 | Page of Pages

ORDER NUMBER MUST APPEAR ON ALL PACKAGES AND RELATED PAPERS

ATTENTION:
PHONE:

1. Form	2. CONTRACT NUMBER	3. C	4. DEST	5. PSC	6. SHIPPING INSTRUCTIONS	7. ORDER NUMBER
						—

8. Comm	9. GBL NUMBER	10. Type	11. Date P	12. REQ OFFICE	13. Date Rec.	AI	14. Date Sig.

15. DESCRIPTION	16. AMOUNT

17. APPROPRIATION	ALLOTMENT	OBLIG.	ORG.	FUNC.	OBJ.	S OBJ.

18. CONTRACTOR
TO
DUNS ID
ZIP

19. CONSIGNEE AND DESTINATION
SHIP TO

20. ULTIMATE DESTINATION

LINE ITEM	CATALOG/NSN	S. ID	SUPPLIES OR SERVICES	Delivery Date	U O I	NO. OF UNITS	UNIT PRICE	TOTAL

21. FOB POINT/FAS POINT	22. DISCOUNT	23. ISSUER'S NAME	24. ISSUER'S PHONE

BILLING INSTRUCTIONS

Contractor's invoice shall be submitted in an original and one copy to:
Office of Finance — General Claims
P.O. Box 9487
Rosslyn Station
Arlington, VA 22209

Invoices must show the Department's 10 digit order number, time payment discount (even if net), description of each item, quantity, unit cost and total amount. Contractor must furnish signed receipt from transportation carrier as proof that shipment has been forwarded.

When Contractor is requested to prepay transportation charges against an F.O.B. order, such charges are to be added as a separate item to the invoice and must be supported by a paid transportation receipt. If shipment via APO, furnish postal receipts.

25. CONTRACTING/ORDERING OFFICER

Signature Date

FORM DST - 1099-4-81

ORIGINAL CONTRACTOR

TERMS AND CONDITIONS APPLICABLE TO PURCHASE ORDER

Note: If a contract number is shown, Terms and Conditions of the applicable contract shall apply to this Delivery Order which is issued pursuant thereto.

1 INSPECTION AND ACCEPTANCE - Inspection and acceptance will be at destination, unless otherwise provided Until delivery and acceptance, and after any rejection, risk of loss will be on the Contractor unless loss results from negligence of the Government

2 VARIATION IN QUANTITY - No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract

3 DISCOUNTS - (a) Time discounts will be computed from (1) date of delivery of the supplies to carrier when delivery and acceptance are at the point of origin, (2) date of delivery at destination or port of embarkation, when delivery and acceptance are at either of those points, or (3) date a proper invoice or voucher is received in the office specified by the Government, if the latter date is later than the date of delivery (b) Payment will be deemed to have been made on the date which appears on payment checks

4 DISPUTES - (This contract is governed by the Contract Disputes Act of 1978 (Public Law 95-563 "the Act")). The Act provides administrative procedures for the submittal, analysis, negotiation, and if necessary, litigation of claims relating to this contract The parties to this contract must comply with certain time restrictions on rendering of contracting officer decisions on claims, and on the appeal of those decisions Further details on the rights and remedies under the Act may be found in the Federal Procurement Regulations at 1-1.318.4

5 FOREIGN SUPPLIES - This contract is subject to the Buy American Act (41 U.S.C 10 a-d) as implemented by Executive Order 10582 of December 17, 1954, and any restrictions in appropriation acts on the procurement of foreign supplies

6 CONVICT LABOR - In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence or imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C 4082(c) (2)) and Executive Order 11775, December 29, 1973

7 OFFICIALS NOT TO BENEFIT - No member of or Delegate to Congress or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

8 COVENANT AGAINST CONTINGENT FEES - The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fees excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee

9 FEDERAL, STATE, AND LOCAL TAXES - Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties in effect on the date of this contract but does not include any taxes from which the Government, the contractor or this transaction is exempt. Upon request of the Contractor, the Government shall furnish a tax exemption certificate or similar evidence of exemption with respect to any such tax not included in the contract price pursuant to this clause For the purpose of this clause, the term "date of this contract" means the date of the contractor's quotation or, if no quotation, the date of this Purchase Order

10 SERVICE CONTRACT ACT OF 1965, As Amended (Service contracts not exceeding $2,500) - Except to the extent that an exemption, variation, or tolerance would apply pursuant to 29 CFR 4.6 if this were a contract in excess of $2,500, the Contractor and any sub-contractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a) (1) of the Fair Labor Standards Act of 1938, as amended. All regulations and interpretations of the Service Contract Act of 1965 expressed by 29 CFR Part 4 are hereby incorporated by reference in this contract

11 The following terms and conditions are applicable to purchases in excess of $2,500 (a) Employment of the Handicapped - Federal Procurement Regulation, Temporary Regulation 38, dated May 26 1976 (b) Contract Work Hours and Safety Standards Act - Overtime Compensation Section - Federal Procurement Regulation 1-12 303 (c) Service Contract Act of 1965 - (Services contracts in excess of $2,500) Federal Procurement Regulation 1-12.904-1

MARKING INSTRUCTIONS

CONTAINERS OR PACKAGES shall be plainly marked to show the order number brief description of contents, including form number if any quantity and vendor's name

Receiving clerk may reject any deliveries which do not bear such identification

SHIPPING DOCUMENTS AND CORRESPONDENCE

All shipping documents and correspondence pertaining to this order (except invoices as stated below) shall be referred or forwarded to the person and organization who signed the order Such documents MUST refer to the departments order number

BILLING CODE 4710-24-C

SUBCHAPTER I—DOS SUPPLEMENTATIONS

PART 670—SPECIAL CONTRACTING PROGRAMS

Subpart 670.1—International Narcotics Control Program Acquisitions

Sec.
670.101 Scope of subpart.
670.102 Policy.
670.103 Applicability.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR Subpart 1.3

Subpart 670.1—International Narcotics Control Program Acquisitions

670.101 Scope of subpart.

This subpart prescribes policies for acquisitions under the International Narcotics Control (INC) Program, which is authorized by section 481 of the Foreign Assistance Act of 1961, as amended (22 U.S.C 2291).

670.102 Policy.

(a) The Procurement Executive is responsible for INC Program acquisitions. In this capacity, the Procurement Executive has the specific authority to enter into and administer INC funded contracts. Unless otherwise directed by the Secretary of State or provided in DOS regulations, the Procurement Executive shall also provide policy direction and prescribe or approve standards, procedures, and internal instructions for the award and administration of INC funded contracts, including contracts with individuals for personal services abroad.

(b) To accomplish the purposes of the INC Program, the following implementing authorities and regulations may be utilized to the extent the Procurement Executive deems necessary or appropriate in the performance of the acquisition function.

(1) The Foreign Assistance Act of 1961, as amended.

(2) Sections 1, 2, and 3 of Executive Order No. 11223 of May 12, 1965.

(3) Chapter 7 of this Title, Agency for International Development Acquisition Regulation, 48 CFR Ch. 7, including any amendments thereto.

(c) Authority to perform functions prescribed in this subpart may be redelegated.

670.103 Applicability.

The provisions of this subpart apply to acquisitions for the INC Program both within and outside the United States.

[FR Doc. 88–15466 Filed 7–8–88; 8:45 am]
BILLING CODE 4710–24–M

Federal Register

Monday
July 11, 1988

Part IV

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Parts 316 and 318

Training Personnel for the Education of the Handicapped; Proposed Rulemaking

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Parts 316 and 318

Training Personnel for the Education of the Handicapped

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Training Personnel for the Education of the Handicapped Program under Part D of the Education of the Handicapped Act (EHA). These amendments are needed to implement changes made by the Education of the Handicapped Act Amendments of 1986. The intended effect of these proposed regulations is to clarify the statutory requirements and improve the operation of the program.

DATE: Comments must be received on or before August 10, 1988.

ADDRESS: Comments concerning the proposed regulations should be addressed to Dr. Norman Howe, Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202. A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Dr. Norman Howe, Telephone: (202) 732-1068.

SUPPLEMENTARY INFORMATION: The Training Personnel for the Education of the Handicapped Program is authorized by sections 631 and 632 of the EHA. Section 631 creates three specific programs, providing grants to (1) nonprofit organizations for parent training and information, (2) institutions of higher education (IHEs) and nonprofit organizations training personnel for careers in special education and nearly intervention, and (3) IHEs and nonprofit organizations for special projects. Section 632 provides for grants to State educational agencies (SEAs) and IHEs for preservice and inservice personnel training.

In the past, the regulations implementing all four programs were included under 34 CFR Part 318, and the same selection criteria were used in reviewing applications submitted under that part. However, in order to clarify the separate requirements for the programs, and to propose separate selection criteria, 34 CFR Part 318 will be divided into three separate parts.

The final regulations for the program authorized by section 632 were published July 8, 1987 as Part 319.

The new proposed Part 316 and Part 318 would contain the regulations for Parent Training and Information Centers, and Training Personnel for Careers in Special Education and Early Intervention authorized by section 631. Three separate components are addressed in the proposed regulations: Parent training and information centers; training personnel for careers in special education and early intervention; and special projects.

Under the parent training and information centers program, eligible parent organization may submit applications that proposed training and dissemination of information to parents of children and youth with handicaps, and to professionals and paraprofessionals who work with parents, to enable parents to participate more fully and effectively with professionals in meeting the educational needs of children and youth with handicaps. The Secretary would select applications for funding based on the selection criteria established in the regulations.

Under the training personnel for careers in special education and early intervention program, eligible applicants may propose preservice training of personnel for careers in special education and early intervention. In the special projects program, applicants may propose preservice and inservice training activities.

Executive Order 12606

Regulations governing the Parent Training and Information Centers program will have a positive impact on the family and are consistent with Executive Order 12606—The Family. The regulations strengthen the authority and participation of parents in the education of their children by providing appropriate training and disseminating information.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have significant economic impact on a substantial number of small entities because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 316.20, 316.21, 316.31, 318.20, 318.21, and 318.35, contain information collection requirements. As required by the Paperwork Reduction Act of 1980, (44 U.S.C. 3504 (h)), the Department of Education will submit a copy of these proposed regulations to the Office of Management Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4628, Switzer Building, 330 "C" Street, SW., Washington, DC 20202, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

In addition, the Secretary invites comments on the new selection criteria which expand the previous focus on extent of needs to include the capacity of the institution to make an impact on need. This addresses not only the applicant's ability to define the present and projected need addressed in the application, but also allows the application to be evaluated in terms of whether or not the identified need is significant and the extent to which the result, *i.e.*, the graduates of the training program can be expected to have an impact on that need.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations 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.

List of Subjects

34 CFR Part 316

Education, Education of handicapped, Education-training, Grant programs-education, Nonprofit organizations, Teachers.

34 CFR Part 318

Education, Education of handicapped, Education-training, Grant programs-education, Student aid, Teachers.

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for the Education of the Handicapped)

Dated: May 17, 1988.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding new Part 316 and by revising Part 318 to read as follows:

Part 316—TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED—PARENT TRAINING AND INFORMATION CENTERS

Subpart A—General

Sec.

316.1 What is the purpose of this program?
316.2 Who is eligible for an award?
316.3 What activities may the Secretary fund?
316.4 What regulations apply to this program?
316.5 What definitions apply to this program?
316.6 What are the application requirements for a continuation award?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

316.20 How does the Secretary evaluate an application?
316.21 What selection criteria does the Secretary use?
316.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must a Grantee Meet?

316.30 What types of services are required?
316.31 What types of reports are required?
316.32 What are the duties of the board of directors or special governing committee of a parent organization?

Authority: 20 U.S.C. 1431 and 1434, unless otherwise noted.

Subpart A—General

§ 316.1 What is the purpose of this program?

(a) This program supports grants to parent organizations for the purpose of providing training and information to parents of children and youth with handicaps and to persons who work with parents, to enable parents to participate more fully and effectively with professionals in meeting the educational needs of their children and youth.

(b) Parent training and information programs may, at a grantee's discretion, include State or local educational personnel if that participation will further an objective of the program assisted by the grant.

(Authority: 20 U.S.C. 1431(c))

§ 316.2 Who is eligible for an award?

(a) Parent organizations are eligible to receive grants under this program. A parent organization is a private nonprofit organization that meets the following requirements.

(1) The organization is governed by a board of directors on which a majority of the members are parents of children and youth with handicaps and that includes professionals in the field of special education and related services who serve children and youth with handicaps; or

(2) Has—

(i) A membership representing the interests of individuals with handicaps; and

(ii) A special governing committee, a majority of the members of which are parents of children and youth with handicaps, and which includes professionals in the fields of special education and related services.

(b) The organization, in providing training and information under this part must serve the parents of children and youth representing a full range of handicapping conditions.

(c) The organization must demonstrate the capacity and expertise to conduct the authorized training and information activities effectively.

(Authority: 20 U.S.C. 1431(c))

§ 316.3 What activities may the Secretary fund?

Parent training and information programs assisted under this program must be designed to assist parents to—

(a) Understand the nature and needs of the handicapping conditions of their children and youth;

(b) Provide follow-up support for their children and youth's educational programs;

(c) Communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(d) Participate fully in the educational decisionmaking processes, including the development of a child's individualized education program;

(e) Obtain information about the programs, services, and resources available to their children, and the degree to which the programs, services, and resources are appropriate; and

(f) Understand the provisions for educating children and youth with handicaps under Part B of the Act.

(Authority: 20 U.S.C. 1431(c))

§ 316.4 What regulations apply to this program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 316.

(Authority: 20 U.S.C. 1431(c))

§ 316.5 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Grant period
Local educational agency
Nonprofit
Preschool
Private
Project
Public
Secretary
State
State educational agency

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR Part 300:

Individualized education program (§ 300.30)
Parent (§ 300.10)
Related services (§ 300.13)
Special education (§ 300.14)

(c) *Other definitions specific to 34 CFR Part 316.* The following terms used in this part are defined as follows:

(1) "Act" means the Education of the Handicapped Act (EHA).

(2) "Children and youth with handicaps" means children and youth who are mentally retarded, hard of hearing, deaf, speech or language

impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, or who have specific learning disabilities and who by reason thereof need special education and related services.

(Authority: 20 U.S.C. 1431(c))

§ 316.6 What are the application requirements for a continuation award?

In addition to meeting the requirements of 34 CFR 75.118, an application for a continuation award under this program must include a copy of a written review, by the recipient's board of directors or special governing committee, of the parent and training information program conducted by the recipient during the preceding fiscal year.

(Authority: 20 U.S.C. 1431(c)(3))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 316.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 316.21.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1431(c))

§ 316.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Extent of present and projected needs.* (15 points) The Secretary reviews each application to determine the extent to which the project makes an impact on parent training and information needs, consistent with the purposes of the Act, including consideration of the impact on—

(1) The present and projected needs in the applicant's geographic area for trained parents; and

(2) The present and projected training and information needs for personnel to work with parents of children and youth with handicaps.

(b) *Anticipated project results.* (25 points) The Secretary reviews each application to determine the extent to which the project will assist parents to—

(1) Understand the nature and needs of the handicapping conditions of their children;

(2) Provide follow-up support for their children and youth's educational programs;

(3) Communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(4) Participate fully in educational decisionmaking processes, including the development of their child's individualized educational program;

(5) Obtain information about the programs, services, and resources available to their children and the degree to which the programs, services, and resources are appropriate to meet the needs of their children; and

(6) Understand the provisions of Part B of the Act.

(c) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective management plan that ensures proper and efficient administration of the project;

(3) How the objectives of the project relate to the purpose of the program; and

(4) The way the applicant plans to use its resources and personnel to achieve each objective.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable. (See 34 CFR 75.590, Evaluation by the grantee.)

(e) *Quality of key personnel.* (15 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(1) The qualifications of the project director;

(2) The qualifications of each of the other key personnel to be used in the project;

(3) The time that each of the key personnel plans to commit to the project;

(4) How the applicant, as a part of its nondiscriminatory practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition; and

(5) Evidence of the applicant's past experience and training in fields related to the objectives of the project.

(f) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1431(c))

§ 316.22 What additional factors does the Secretary consider?

In addition to the criteria in § 316.21, the Secretary considers the following factors in making an award:

(a) *Geographic distribution.* In selecting projects for award, the Secretary ensures that, to the greatest extent possible, awards are distributed geographically, on a State or regional basis, throughout all the States and serve parents of children and youth with handicaps in both urban and rural areas.

(b) *Unserved areas.* In selecting projects for award, the Secretary gives priority to applications that propose to serve unserved areas.

(Authority: 20 U.S.C. 1431(c))

Subpart D—What Conditions Must A Grantee Meet?

§ 316.30 What types of services are required?

(a) Projects must be designed to meet the unique training and information needs of parents of children and youth with handicaps who live in the area to be served by the project, particularly those who are members of groups that have been traditionally underrepresented.

(b) A grantee shall consult with appropriate agencies which serve or assist children and youth with handicaps in the geographic areas served by the project.

(Authority: 20 U.S.C. 1431(c))

§ 316.31 What types of reports are required?

Not more than sixty days after the end of the fiscal year, a grantee shall submit a report to the Secretary, in such form and detail as the Secretary determines to be appropriate, that includes—

(a) The number of individuals trained under the grant by category of training and level of training, *i.e.*, introductory, elementary, or advanced; and

(b) The types of training and information provided.

(Authority: 20 U.S.C. 1434)

§ 316.32 What are the duties of the board of directors or special governing committee of a parent organization?

The recipient's board of directors or special governing committee as described in § 316.2 must meet at least

once in each calendar quarter to review the parent training and information activities for the grant.

(Authority: 20 U.S.C. 1431(c))

PART 318—TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED—CAREERS IN SPECIAL EDUCATION AND EARLY INTERVENTION

Subpart A—General

Sec.
318.1 What is the purpose of this program?
318.2 Who is eligible for an award?
318.3 What activities may the Secretary fund?
318.4 What priorities may the Secretary establish?
318.5 What regulations apply to this program?
318.6 What definitions apply to this program?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

318.20 How does the Secretary evaluate an application?
318.21 What selection criteria does the Secretary use?
318.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must a Grantee Meet?

318.30 Is student financial assistance authorized?
318.31 What are the student financial assistance criteria?
318.32 May the grantee use funds if a financially assisted student withdraws or is dismissed?
318.33 What types of reports are required?

Authority: 20 U.S.C. 1431 and 1434, unless otherwise noted.

Subpart A—General

§ 318.1 What is the purpose of this program?

This program serves to increase the quantity and improve the quality of personnel available to serve children and youth with handicaps through—

(a) The provision of awards to support the preservice training of personnel for careers in special education and early intervention in—

(1) Special education teaching, including speech-language pathology, audiology, and adaptive physical education;

(2) Related services to children and youth with handicaps in educational settings;

(3) Special education supervision and administration;

(4) Special education research; and

(5) Training of special education personnel and other personnel providing special services and preschool and early intervention services for children with handicaps; and

(b) Special projects designed to develop and demonstrate new approaches for the preservice and inservice training described in § 318.3(a).

(Authority: 20 U.S.C. 1431 (a) and (b) and 1434)

§ 318.2 Who is eligible for an award?

(a) The following agencies are eligible for assistance under this part:

(1) Institutions of higher education; and

(2) Other appropriate nonprofit agencies.

(b) In order to receive a preservice training grant under § 318.3 an institution or agency must demonstrate that it meets State and professionally recognized standards for the training of special education and related services personnel, as evidenced by appropriate State and professional accreditation, unless the grant is for the purpose of assisting the applicant agency or institution to meet those standards.

(Authority: 20 U.S.C. 1431(a)(2))

§ 318.3 What activities may the Secretary fund?

The Secretary supports three types of projects under this program:

(a) Special projects designed to include—

(1) Development, evaluation, and distribution of innovative approaches to personnel preparation;

(2) Development of materials to prepare personnel to educate children and youth with handicaps; and

(3) Other preservice and inservice projects of national significance.

(b) Development of new programs designed to establish and increase the capacity and quality of preservice training.

(c) Improvement of existing programs designed to maintain and upgrade the capacity and quality of preservice training.

(Authority: 20 U.S.C. 1431 (a) and (b))

§ 318.4 What priorities may the Secretary establish?

(a) Projects supported under this program that meet a priority as described in paragraph (b) or (c) of this section may provide training to degree, nondegree, certified, and noncertified personnel, except that doctoral and post-doctoral preparation may be supported only under the priorities described in paragraphs (b)(3) and (b)(8) of this section.

(b) The Secretary may select annually one or more of the following priority areas for funding:

(1) *Preparation of special educators.* This priority supports projects under § 318.3 (b) and (c) which are designed to provide preservice training of personnel for careers in special education of children and youth with handicaps, or supervisors of those personnel. The priority includes the preparation of special teachers of children and youth with handicaps, special education administrators and supervisors, speech-language pathologists, audiologists, adaptive physical educators, vocational educators, and infant intervention specialists.

(2) *Preparation of related services personnel.* This priority supports projects under § 318.3 (b) and (c) which are designed to provide preservice preparation of individuals who provide developmental, corrective, and other supportive services that assist children and youth with handicaps to benefit from special education. These include paraprofessional personnel, therapeutic recreation specialists, health service providers, physical therapists, occupational therapists, and other related services personnel.

(3) *Preparation of leadership personnel.* This priority supports projects under § 318.3 (b) and (c) which are designed to provide preservice doctoral and post-doctoral preparation of professional personnel such as administrators and supervisors, researchers, and teacher trainers.

(4) *Transition of youth with handicaps to adult and working life.* This priority supports projects under § 318.3 (b) and (c) which are designed to provide preservice preparation of individuals who assist youth with handicaps in their transition from school to adult roles. Personnel may be prepared to provide short-term transitional services, long-term structured employment services, or instruction in community and school settings with secondary school students.

(5) *Preparation of personnel to provide services to newborn and infant handicapped children.* This priority supports projects under § 318.3 (b) and (c) which are designed to provide preservice preparation of individuals who serve newborns and infants with handicaps or those who are at high risk of being handicapped. Personnel may be prepared to provide short-term services or long-term services that extend into a child's preschool program.

(6) *Preparation of personnel for special populations of children with handicaps.* This priority supports the preservice preparation of special education and related services personnel under § 318.3 (b) and (c) who will serve special populations of

children with handicaps who, because of special characteristics, require professional competencies in addition to those needed for other children with similar disabilities. Projects funded under this priority must define a specific special population, describe the additional competencies that are needed by professionals serving that population, and show how the project's training program will result in the attainment of those competencies.

(7) *Preparation of personnel to work in rural areas.* This priority supports projects under § 318.3 (b) and (c) which are designed to provide preservice training of personnel who will serve children and youth with handicaps in rural areas. Projects must also be designed to provide training to assist personnel working with parents, teachers, and administrators.

(8) *Special Projects.* This priority supports projects with preservice and inservice activities specified in § 318.3(a).

(c) In addition to the priority areas described in paragraph (b) of this section, the Secretary may select annually as a priority the support of preservice preparation of special educators and early intervention personnel who serve infants, toddlers, children, and youth with low-incidence handicaps in a designated State or geographic area. Specifically, the Secretary may select one or more of the following low-incidence categories:

(1) Severe and profound mental handicaps, including multiple handicaps;

(2) Severe and profound hearing impairments;

(3) Severe and profound visual impairments;

(4) Severe emotional disturbance; and

(5) Other serious health impairments, including neurological deficiences, traumatic brain injuries, and autism.

(Authority: 20 U.S.C. 1431 (a) and (b))

§ 318.5 What regulations apply to this program?

The following regulations apply to assistance under the Training Personnel for the Education of the Handicapped program:

(a) The Education Department General Administrative Regulations (EDGAR) in 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), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 318.

(Authority: 20 U.S.C. 1431 (a) and (b) and 1434)

§ 318.6 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal Year
Grant period
Local educational agency
Nonprofit
Preschool
Private
Project
Public
Secretary
State
State educational agency

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR Part 300:

Related services (§ 300.13)
Special education (§ 300.14)

(c) *Other definitions specific to 34 CFR Part 318.* The following terms used in this part are defined as follows:

(1) "Act" means the Education of the Handicapped Act (EHA).

(2) "Children and youth with handicaps" means children and youth who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, or who have specific learning disabilities, and who by reason thereof need special education and related services.

(3) "Early intervention" is used in this part as it has been defined in 34 CFR 303.10.

Note.—34 CFR 303.10 is part of the proposed regulations for the Early Intervention Program for Infants and Toddlers with Handicaps, 52 FR 44352–44363, published in the **Federal Register** on November 18, 1987.

(Authority: 20 U.S.C. 1431 (a) and (b))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 318.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 318.21.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1431 (a) and (b))

§ 318.21 What selection criteria does the Secretary use?

(a) The Secretary uses the following criteria to evaluate all applications other than applications for special projects, as described in § 318.3(a).

(1) *Impact on critical present and projected need.* (30 points) The Secretary reviews each application to determine the extent to which the training will have a significant impact on critical State, regional, or national needs in the quality or the quantity of personnel serving infants, toddlers, children and youth with handicaps. The Secretary considers—

(i) The significance of the personnel needs to be addressed to the provision of special education and related services. Significance of the need identified by the applicant may be shown by—

(A) Evidence of critical personnel shortages in targeted specialty or geographic areas, as demonstrated by data from the State Comprehensive System of Personnel Development; reports from the Clearinghouse on Careers and Employment of Personnel serving children and youth with handicaps; or other indicators of need that the applicants demonstrate are relevant and reliable; or

(B) Evidence showing significant need for improvement in the quality of personnel providing special education and related services, as shown by comparisons of actual and needed skills of personnel in targeted specialty or geographic areas; and

(ii) The impact the proposed project will have on the targeted need. Evidence that the project results will have an impact on the targeted need may include:

(A) The projected number of graduates from the project each year who will have necessary competencies and certification to affect the need;

(B) For ongoing programs, the extent of which applicants' projections are supported by the number of previous program graduates that have entered the field for which they received training, the professional contributions of those graduates, and data on the need for graduates in paragraph (a)(1)(ii)(A) of this section; and

(C) For new programs, the extent to which program features support the projections in paragraph (a)(1)(ii)(A) of this section, and the applicant's plan for helping graduates locate appropriate

employment in the area of need or the program features that ensure that graduates will have competencies needed to address identified qualitative needs.

(2) *Capacity of the institution.* (25 points) The Secretary reviews each application to determine the capacity of the institution or agency to train qualified personnel, including consideration of—

(i) The qualifications and accomplishments of the project director and other key personnel directly involved in the proposed training program, including prior training, positive performance evaluations, and publications.

(ii) The amount of time each key person plans to commit to the project;

(iii) The adequacy of resources, facilities, supplies, and equipment that the applicant plans to commit to the project;

(iv) The quality of the practicum training settings, icluding evidence that they are sufficiently available, apply state-of-the-art services and model teaching practices, materials and technology, provide adequate supervision to trainees, and offer opportunities for trainees to teach and foster interaction between students with handicaps and their non-handicapped peers;

(v) The capacity of the applicant to recruit well-qualified students;

(vi) The experience and capacity of the applicant to assist local public schools in providing training to these personnel, including the development of model practicum sites; and

(vii) The extent to which the applicant cooperates with SEAs, other IHEs, and other appropriate public and private agencies in the region served by the applicant in identifying personnel needs and plans to address those needs;

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) High quality in the design of the project;

(ii) The extent to which the plan of management ensures effective, proper, and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans 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;

(vi) The extent to which the application includes a delineation of competencies that program graduates will acquire and how the competencies will be evaluated;

(vii) The extent to which substantive content and organization of the program—

(A) Are appropriate to the student's attainment of professional knowledge and competencies deemed necessary for the provision of quality educational services for children and youth with handicaps; and

(B) Demonstrate an awareness of methods, procedures, techniques, and instructional media or materials that are relevant to the preparation of personnel who serve children with handicaps; and

(viii) The extent to which program philosophy, objectives, and activities implement current research and demonstration results in meeting the educational needs of children and youth with handicaps.

(4) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate for the project;

(ii) To the extent possible, are objective and produce data that are quantifiable including, but not limited, to, the number of trainees graduated and hired;

(iii) Provide evidence that evaluation data and student follow-up data are systematically collected and used to modify and improve the program. (See 34 CFR 75.590, Evaluation by the grantee.)

(5) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(i) The budget for the project is adequate to support the project activities;

(ii) Costs are reasonable in relating to the objectives of the project; and

(iii) The applicant presents appropriate plans for the institutionalization of Federally supported activities into basic program operations.

(b) The Secretary uses the following criteria to evaluate a Special Projects application described in § 318.3(a):

(1) *Anticipated project results.* (20 points) The Secretary reviews each application to determine the extent to which the project will meet present and projected needs under Parts B and H of the Act in special education, related services, and early intervention services personnel development.

(2) *Program content.* (20 points) The Secretary reviews each application to determine—

(i) The project's potential for national significance, its potential for replication as an effective training program, and the quality of its plan for dissemination of the results of the project;

(ii) The extent to which substantive content and organization of the program—

(A) Are appropriate for the attainment of knowledge that is necessary for the provision of quality educational early intervention services to infants, toddlers, children, and youth with handicaps; and

(B) Demonstrate an awareness of relevant methods, procedures, techniques, and instructional media or materials that can be used in the development of a model to prepare personnel to serve children and youth with handicaps; and

(iii) The extent to which program philosophy, objectives, and activities are related to the educational and early intervention needs of infants, toddlers, children, and youth with handicaps.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) How the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(4) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate for the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable, including, but not limited to, the number of trainees graduated and hired. (See 34 CFR 75.590, Evaluation by the grantee.)

(5) *Quality of key personnel.* (15 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use in the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each of the key personnel plans to commit to the project;

(iv) How the applicant, as a 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; and

(v) Evidence of the applicant's past experience and training in fields related to the objectives of the project.

(6) *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.

(7) *Budget and effectiveness.* (10 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.

(Authority: 20 U.S.C. 1431 (a) and (b))

§ 318.22 What additional factors does the Secretary consider?

The Secretary makes awards for a one- to five-year period based on the nature of projected needs addressed by the project and the quality of the plan for meeting those needs.

(Authority: 20 U.S.C. 1431 (a) and (b))

Subpart D—What Conditions Must a Grantee Meet?

§ 318.30 Is student financial assistance authorized?

A grantee may use grant funds to provide traineeships or stipends. The sum of the assistance provided to a student through this part and any other assistance provided the student shall not exceed the cost of attendance. Cost of attendance is defined as—

(a) Tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;

(b) An allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution;

(c) An allowance (as determined by the institution) for room and board costs incurred by the student which—

(1) Shall be an allowance of not less than $1,500 for a student without dependents residing at home with parents;

(2) For students without dependents residing in institutionally owned or operated housing, shall be a standard allowance determined by the institution based on the amount normally assessed most of its residents for room and board; and

(3) For all other students shall be allowance based on the expenses reasonably incurred by such students for room and board, except that the amount may not be less than $2,500;

(d) For less than half-time students (as determined by the institution) tuition and fees and an allowance for only books, supplies, and transportation (as determined by the institution) and dependent care expenses (in accordance with paragraph (g) of this section);

(e) For a student engaged in a program of study by correspondence, only tuition and fees and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

(f) For a student enrolled in an academic program which normally includes a formal program of study abroad, reasonable costs associated with such study (as determined by the institution);

(g) For a student with one or more dependents, an allowance (as determined by the institution) based on the expenses reasonably incurred for dependent care based on the number and age of such dependents;

(h) For a handicapped student, an allowance (as determined by the institution) for those expenses related to his or her handicap, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies; and

(i) For a student receiving all or part of his or her instruction by means of telecommunications technology, no distinction shall be made with respect to the mode of instruction in determining costs, but his paragraph shall not be construed to permit including the cost of rental or purchase of equipment.

(Authority: 20 U.S.C. 1431 (a) and (b))

§ 318.31 What are the student financial assistance criteria?

Direct financial assistance may only be paid to students in preservice programs and only if—

(a) The student is qualified for admission to the program of study;

(b) The student maintains satisfactory progress in a course of study as defined in 34 CFR 668.16(e);

(c) The student certifies that he or she is not in default of a student loan provided under Title IV of the HEA, as amended; and

(d) The student is—

(1) A citizen or a national of the United States; or

(2) A lawful permanent resident in the United States, or is in the United States for other than a temporary purpose and intends to become a citizen or permanent resident.

(Authority: 20 U.S.C. 1431 (a) and (b))

§ 318.32 May the grantee use funds if a financially assisted student withdraws or is dismissed?

Financial assistance awarded to a student that is unexpended because the student withdraws or is dismissed from the training program may be used for award to other students during the grant period.

(Authority: 20 U.S.C. 1431 (a) and (b))

§ 318.33 What types of reports are required?

Not more than sixty days after the end of any fiscal year, each grantee shall submit a report to the Secretary, in such form and detail as the Secretary determines to be appropriate, that includes—

(a) The number of individuals trained under the grant by category of training and level of training; and

(b) The number of individuals trained under the grant receiving degrees and certification, by category and level of training.

(Authority: 20 U.S.C. 1434)

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July 11, 1988

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Early Season Migratory Bird Hunting Regulations; Supplemental Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Early Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental proposed rule.

SUMMARY: This document supplements proposed rules published on March 9, 1988 (53 FR 7702), and June 7, 1988 (53 FR 20874), which notified the public that the U.S. Fish and Wildlife Service (hereinafter the Service) proposes to establish hunting regulations for certain migratory game birds during 1988–89, and provided information on certain proposed regulations.

This proposed rulemaking provides frameworks or outer limits for dates and times when shooting may begin and end, and the number of birds that may be taken and possessed in early seasons for migratory bird hunting. These are hunting seasons that open prior to October 1 and relate to mourning, white-winged and white-tipped doves; band-tailed pigeons; woodcock; common snipe; rails; common moorhens; purple gallinules; sea ducks; experimental September duck seasons in Florida, Kentucky, and Tennessee; experimental September Canada goose seasons in Illinois, Michigan, and Minnesota; a special Canada goose season in southwestern Wyoming; sandhill cranes; extended falconry seasons; and migratory game birds in Alaska, Puerto Rico and the Virgin Islands.

The Service annually prescribes hunting regulations frameworks to the States for season selection purposes. The primary purpose of this proposed rule is to facilitate establishment of early-season migratory bird hunting regulations for 1988–89. Additional information relevant to the outlook for duck production this year is becoming available almost daily. If this additional information indicates substantially greater adverse impacts of the drought, it may be necessary to further restrict those waterfowl seasons proposed herein.

DATES: The comment period for the proposed early-season frameworks will end on July 20, 1988, except for Hawaii where the comment period closed on June 22, 1988. The comment period for the proposed frameworks for Alaska, Puerto Rico, and the Virgin Islands, which was identified in previous **Federal Register** documents mentioned above as ending on June 22, 1988, is reopened and extended to July 20, 1988. The comment period for late-season proposals will close on August 29, 1988.

A Public Hearing on Late-Season Regulations will be held August 3, 1988, starting at 9 a.m.

ADDRESSES: Comments should be mailed to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240. The August 3 Public Hearing will be held in the Auditorium of the Department of the Interior Building on C Street, between 18th and 19th Streets, NW., Washington, DC. Notice of intention to participate in this hearing should be sent in writing to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Comments received on this supplemental proposed rulemaking will be available for public inspection during normal business hours in Room 536, Matomic Building, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240, (202) 254–3207.

SUPPLEMENTARY INFORMATION: The annual process for developing migratory game bird hunting regulations deals with regulations for early and late seasons, and regulations for Alaska, Hawaii, Puerto Rico and the Virgin Islands. Early seasons are those that open before October 1; late seasons open about October 1 or later. Regulations are developed independently for the early and late seasons, and Alaska and insular areas. The early-season regulations relate to mourning doves; white-winged and white-tipped doves; band-tailed pigeons; rails; common moorhens; purple gallinules; woodcock; common snipe; sea ducks in the Atlantic Flyway; experimental duck seasons opening in September in Florida, Kentucky and Tennessee; experimental Canada goose seasons opening in September in Illinois, Michigan and Minnesota; sandhill cranes in the Central Flyway and Arizona and Utah; a special Canada goose season in southwestern Wyoming; and some extended falconry seasons. Late seasons include the general waterfowl seasons; special seasons for scaup and goldeneyes; extra scaup and teal in regular seasons; coots; and other extended falconry seasons.

Certain general procedures are followed in developing regulations for the early and late seasons. Initial regulatory proposals are announced in a **Federal Register** document published in March and opened to public comment. The proposals are supplemented as necessary with additional **Federal Register** documents. Following termination of comment periods and after public hearings, the Service further develops and publishes proposed frameworks for times of seasons, season lengths, shooting hours, daily bag and possession limits, and other regulatory elements. After consideration of additional public comments, the Service publishes final frameworks in the **Federal Register**. Using these frameworks, State conservation agencies then select hunting season dates and options. Upon receipt of State selections, the Service publishes a final rule in the **Federal Register**, amending Subpart K of 50 CFR Part 20, to establish specific seasons, bag limits and other regulations. The regulations become effective upon publication. States may prescribe more restrictive seasons than those provided in the final frameworks.

The regulations schedule for this year is as follows. On March 9, 1988, the Service published for public comment in the **Federal Register** (53 FR 7702) a proposal to amend 50 CFR Part 20, with comment periods ending as noted earlier.

On June 7, 1988, the Service published for public commment a second document (53 FR 20875) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks, with comment periods ending June 22, 1988, for Alaska, Hawaii, Puerto Rico and the Virgin Islands, July 18, 1988, for remaining early-season proposals, and August 29, 1988, for late-season proposals. This document reopens and extends the comment period for Alaska, Puerto Rico and the Virgin Islands through July 20, 1988.

This document is the third in a series of proposed, supplemental and final rulemaking documents for migratory bird hunting regulations and deals specifically with supplemental proposed frameworks for early-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours and daily bag and possession limits for the 1988-89 season. All pertinent comments on the March 9 proposal received through June 22, 1988, have been considered in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods on this third doucment are specified above under **DATES.** Final regulatory

frameworks for migratory game bird hunting seasons for Alaska, Puerto Rico, and the Virgin Islands, and early seasons in other areas of the United States are scheduled for publication in the **Federal Register** on or about August 10, 1988.

On June 22, 1988, a public hearing was held in Washington, DC, as announced in the **Federal Register** of March 9 (53 FR 7702), June 7 (53 FR 20874), and June 10 (53 FR 21924), 1988, to review the status of mourning doves, woodcock, band-tailed pigeons, white-winged and white-tipped doves, rails, common moorhens, purple gallinules, common snipe, sandhill cranes, and preliminary waterfowl information. Proposed hunting regulations were discussed for these species and for migratory game birds in Alaska, Puerto Rico and the Virgin Islands; experimental duck seaons in September in Florida, Kentucky and Tennesse; experimental September Canada goose hunting seasons in Illinois, Michigan and Minnesota; a special Canada goose season in southwest Wyoming; specials sea duck seasons in the Atlantic Flyway; and extended falconry seasons.

This supplemental proposed rulemaking consolidates further changes in the original framework proposals published on March 9, 1988, in the **Federal Register** (53 FR 7702).

The regulations for early waterfowl hunting seasons proposed in this document are based on the most current information available at this time about the status of waterfowl populations and habitat conditions on the breeding grounds. The drought that has plagued the prairies and parklands of Canada and the United States through most of the 1980s has reached its most severe and widespread level in 1988. It is affecting not only breeding areas but also migration and wintering areas.

Presentations at Public Hearing

A number of reports were given on the status of various migratory bird species for which early hunting seasons are being proposed. These are briefly reviewed as a matter of public information, and to facilitate the Service's response to public comments from the public hearing on June 22 and in correspondence. Unless otherwise noted, persons making the presentations are Service employees.

Mr. Brad Bortner, Woodcock Specialist, reported on the 1988 status of American woodcock. The report included harvest information gathered over the last 23 years and breeding population information collected since 1968. The two surveys are cooperatively run by the U.S. Fish and Wildlife Service, Canadian Wildlife Service, and 39 State and Provincial wildlife agencies. The most significant findings were from the recently conducted singing-ground survey. This survey of woodcock breeding populations in the United States and Canada indicated minor increases in woodcock in both the Eastern Region (Atlantic Flyway) and the Central Region (Mississippi Flyway and a portion of the Central Flyway) since 1987. These changes were not statiscally significant. The Eastern Region population has declined 35.7 percent since 1968 and remains below the long-term average. The Central Region breeding population has been increasing at the rate of 1.0 percent per year since 1968; however, current populations are just slightly above the long-term average. A new method of analysis with superior statistical properties was initiated during 1988.

Mr. David Dolton, Mourning Dove Specialist, presented the status of the 1988 mourning dove population. The report included information gathered over the last 23 years. Trends were calculated for the most recent 2- and 10-year intervals and for the entire 23-year period. Between 1987 and 1988, the number of doves heard per route showed a significant increase in all three management units as follows: Eastern, 11.8 percent; Central, 6.5 percent; and Western, 14.6 percent. Estimates indicated significant downward trends in the Western Unit for the 10- and 23-year periods. No significant trend was found in the Eastern Unit for either timeframe. In the Central Unit, a downward trend was indicated for the most recent 10 years, but no long-term trend was found. Trends for doves seen at the unit level over the 23-year period agreed with trends for doves heard in all management units.

Mr. Ronnie R. George, Texas Parks and Wildlife Department, reported on the status of white-winged and white-tipped doves in Texas. Whitewing populations in 1988 declined 2 percent for 1987 and are still 14 percent below the long-term average. White-tipped doves decreased 29 percent from the record high in 1986, but all indications are that this population is healthy. He stated that populations are adequate to support relaxed hunting regulations for 1988. Specifically, the Texas Parks and Wildlife Department recommends a season with a aggregated daily bag limit of 12 white-winged, mourning, and white-tipped doves, no more than 2 of which could be white-tipped doves.

Mr. Roy Tomlinson, Southwest Dove Coordinator, conveyed information received from the Arizona Game and Fish Department about white-winged dove status in Arizona. The 1987 harvest of 112,838 whitewings declined 41 percent from 1986 and 28 percent from the 7-year mean. The decrease in the 1987 harvest is, in part, due to the reduced mourning dove season regulations (10 doves, no more than 6 whitewings during a 13 day season). Preliminary 1988 call-count data indicated a small population decline from 1987.

Mr. Tomlinson also summarized status and harvests of the two populations of band-tailed pigeons. Harvest of the Four-Corners Population remain at low levels and all indications are that this population is stable. The Pacific Coast population of bandtails has experienced a precipitous decline in status and harvest during the past 3 years. In February and March, 1988, the California Department of Fish and Game reported a die-off of bandtails in northern California. Subsequent laboratory examination confirmed a positive diagnosis of trichomoniasis, a protozoan disease. The California Department of Fish and Game estimated that a minimum of 15,000 bandtails died of trichomoniasis in Mendocino, Monterey, and Sonoma counties during February–March. Because of the low productive potential of this species, the continued declines in population and harvest of bandtails in Washington, Oregon, and California are cause for concern.

Mr. Skip Ladd, Central Flyway Representative, reported on the status of sandhill cranes. The mid-continent Population may still be increasing. Preliminary estimates for 1988, uncorrected for visibility, indicated nearly 400,000 cranes, the highest count since the current technique was initiated in 1978. Approximately 5,200 hunters harvested about 12,700 cranes in the Cental Flyway in the 1987–88 season, which is nearly the same as the previous year. The Canadian harvest was about 5,200 and harvests in other areas (Alaska and Mexico) are believed to be less than 4,000. Collectively, total harvests of mid-continent sandhill cranes are within guidelines established for this population.

The Rocky Mountain Population of greater sandhill cranes was estimated to number about 19,100 birds in March 1988. This is not significantly different from that during the last adequate survey, completed in 1985, and is within the objective range of 18,000–22,000. Special limited hunting seasons were held in 1987 in Arizona, Wyoming, and New Mexico where, collectively, the harvest of Rocky Mountain sandhill

cranes was approximately 1,200, which is within harvest guidelines established for this population. Hunts conducted in 1987 are proposed to be continued in 1988 and new experimental hunts are proposed in southwest New Mexico and Utah. All hunts will be in conformance with the Rocky Mountain Sandhill Crane Management Plan.

Mr. James Bartonek, Pacific Flyway Representative, reported on the status of certain Alaska-nesting geese that have been under special scrutiny because of their declined status. The fall population of cackling Canada geese was 7 percent above that for 1986; however, birds were both in Alaska and enroute at the time of the survey, the index of 54,800 underestimates their true status. The 1987 fall index of the Pacific Flyway population of white-fronted geese was 130,600 geese, a 22 percent increase over the 1986 index. The winter index of 138,600 Pacific brant was 8 percent above that of 1986 when the last complete count was taken. The combined U.S. sport harvest on these brant was estimated to be 1,729 birds and well below the predicted harvest. The 1988 spring survey of staging areas along the Alaska Peninsula tallied 53,800 emperor geese which was 4 percent above the 1987 index. The January 1988 index of dusky Canada geese was 12,200 and unchanged from the previous count in 1986. Harvest strategy continues to redirect harvest away from dusky Canada geese towards more plentiful races, and during the past hunting season only 163 duskies were taken in a harvest of 4,320 geese in western Oregon and southwestern Washington. The Aleutian Canada goose, classified as an endangered species, has dramatically increased from about 800 in 1975 to more than 5,000 birds in 1988. Preliminary information on habitat conditions in areas where these six populations nest suggest that this will be the second consecutive year of favorable conditions. There is no open season on Aleutian Canada geese.

Comments Received at Public Hearing

Thirteen individuals presented statements at the public hearing on proposed early-season regulations. The comments are summarized below, and where appropriate, the Service has provided a response.

Mr. Leon Kirkland, representing the Atlantic Flyway Council, provided comment in support of Service action regarding migratory shore and upland game birds. He expressed concern over harvest of woodcock in February based on preliminary data and asked the Service to begin evaluating possible impacts of February hunting on woodcock and advise the flyway councils of the findings of the evaluation. He concurred with the action taken to continue the September duck season in Florida. He also expressed support for the Service action to protect blue-winged teal and reduce harvest but disagreed with the means by which the Service proposes to accomplish these reductions. He stated that teal seasons have been in effect for many years and to close the season would be too extreme an action. He suggested we could accomplish a similar goal by reducing the season length and bag limits rather than suspending the season.

Response. The Service notes the request to evaluate impacts of February hunting of woodcock and will examine available data and report back to the Flyway Council. The Service appreciates the support given the proposed action to protect blue-winged teal during the September duck seasons. Bluewings have been permitted in the harvest during these special seasons in Florida, Kentucky, and Tennessee, since their initiation in 1981. However, due to their low population status throughout most of the 1980s, the Service believes it unwise to continue providing additional harvest opportunities on bluewings with these special seasons. Thus, the Service proposes to continue these September seasons with existing bag limits on wood ducks but restrict the daily harvest of bluewings and other species to only 1 bird. Response to Mr. Kirkland's comments about the September teal season included in the response to Mr. Bateman's comments.

Mr. Lauren Schaaf, representing the Kentucky Department of Fish and Wildlife Resources, commented on the proposals regarding September hunting seasons. He stated that Kentucky's experimental 5-day September duck season, which has been held since 1981, has been very popular there. The September harvest is comprised mainly of wood ducks. Although blue-winged teal are harvested, the Kentucky harvest is only a small part of the Mississippi Flyway blue-winged teal harvest and has negligible impact on the population. He concurred with the Service's proposal to continue the experimental season with primary emphasis on wood ducks. He recognized the need for action to provide added protection for blue-winged teal, but felt that closure of the September teal season should be used only as a last option, and that adequate harvest reduction could be accomplished by retaining the season and manipulating season length and bag limit.

Response. The Service notes the concurrence with the proposed action to continue Kentucky's experimental September duck season but limit the blue-winged teal component of the harvest. The Service response to Mr. Schaaf's comments about the September teal season is included in the response to Mr. Bateman's comments.

Mr. Gary Norman, representing the Viriginia Department of Wildlife and Inland Fisheries, requested that the Service allow Virginia to zone the State into East-West zones for woodcock. The State has reviewed season timing, woodcock migration, and the literature and feels that woodcock hunters across the State do not have equal opportunity to hunt woodcock. Mr. Norman stated that zoning would alow optimum woodcock hunting opportunity within the State without significantly increasing harvest. The State offered to accept a 10-day penalty in each zone and to work with the Service to establish information needs to evaluate the impacts of the proposed zoning experiment. The Virginia Department also commended the Service for its initiative in releasing the draft North American Woodcock Management Plan and also indicated that the Department has recently approved a research study to investigate the habitat needs of woodcock on Virginia's Eastern Shore.

Response. The Service recognizes Virginia's desire to provide more hunting opportunity for woodcock hunters across the State. However, in view of the significant long-term decline in Eastern Region woodcock, the Service believes that harvest opportunity should not be increased. Further, the Service notes the present option to split the hunting season dates provides the State some opportunity to respond to differing season needs in different parts of the State. Little is known about the impacts of zoning on woodcock, and the Service reiterates its concern about offering this option to Eastern Region States (see June 6, 1986, **Federal Register**, at 51 FR 20681). During 1988 the zoning issue will be reviewed and discussed with the Atlantic Flyway Council's Technical Section. The Service appreciates the comment on the woodcock management plan and looks forward to working with the State on implementing the plan.

Mr. John Anderson, representing the National Audubon Society, was encouraged by recent increases in mourning dove populations but was concerned about the long-term decline in the Western Management Unit where he recommended continued restrictive frameworks. He supported the recommended frameworks on mourning

doves, band-tailed pigeons, and white-winged doves, with the exception of the special white-winged dove season in south Texas for which he recommended daily bag limits of 12 white-winged doves and mourning doves, either singly or in the aggregate, citing past evidence that such a season would not result in excessive harvests of either species. He said that consideration must be given to the effect that restrictions would have on Texas' efforts to restore nesting habitat. He supported both the regular and special sandhill crane seasons, noting that he personally had viewed such hunts and believed that adequate protection was provided whooping cranes and the overall harvests of sandhill cranes were within population guidelines. He was supportive of the proposed experimental season in the Hatch-Deming area in New Mexico, since it would occur when whooping cranes would not be expected. Mr. Anderson recommended that because the woodcock populations were still depressed that no new zoning be allowed and that the February season be discontinued until its impacts are better known. Because of poor habitat conditions and prospects for decreased populations of ducks he recommended that there be no relaxation of special duck seasons and that there be significant reductions but not elimination of the September teal season, suggesting that that season be reduced from 9 to 3 days. Lastly, he recommended that the restrictive seasons on certain Alaska-nesting geese be continued.

Response. The Service notes Mr. Anderson's support for both the regular and special sandhill crane seasons in the Central Flyway, New Mexico, Arizona, Utah and Wyoming, including the proposed experimental season in the Hatch-Deming area of New Mexico. The Service proposes to approve all of these hunts. With regard to Mr. Anderson's comments concerning the need for continued restrictive frameworks for mourning doves in the Western Management Unit, refer to the response to Mr. Hunt that follows. Comments concerning recommendations to increase bag limits on white-winged doves and mourning doves in the Texas special white-winged dove hunt are addressed in response to comments by Mr. Ron George. The Service notes Mr. Anderson's support for Service-recommended frameworks on mourning doves, band-tailed pigeons, and white-winged doves. The Service has addressed issues concerning zoning and February hunting for woodcock in the responses to Messers. Norman and Kirkland. We note Mr. Anderson's concern about the poor status of waterfowl and expected poor production and his recommendation for significant reductions in, but not elimination of, the September teal season. This is addressed in the response to Mr. Bateman. The Service notes commentor's support for continued restrictive seasons on certain Alaska-nesting geese, which is consistent with recommendations made in this proposed framework.

Mr. Eldridge Hunt, representing the Pacific Flyway Council, said that the Council's written request for seasons had been sent to the Director earlier. He thanked the Service for the opportunity to observe the proceedings of the Service Regulations Committee on regulatory matters pertaining to species of migratory gamebirds other than waterfowl and participate as a consultant on matters pertaining to waterfowl. He urges the Service to provide opportunity in the future to consult on all regulatory issues pertaining to the early seasons. He asked the Service to reconsider its recommended frameworks on mourning dove seasons in Arizona and California. He stated the Council's recommendation was more responsive in that it required the two States to select the split season, thereby protecting most doves migrating from more northern States. The Council recommendation would provide additional recreational days with likely no increase in harvest over that which would occur during a 30-day season opening on September 1. While agreeing with the Service's intent to eliminate the canvasback harvest, he requested an exception for Alaska that would permit one "mistake" canvasback in the bag, reasoning that (1) there was a precedence for not restricting the first year when the population was below threshold level, (2) the moult development of ducks during this early season in Alaska is such that most species would still be "brown" or "gray", making identification difficult, (3) the harvest of about 300 birds annually is small and relatively unimportant in the total harvest, and (4) it would help prevent violations and improve hunter compliance with the changes in basic limits also being proposed.

Response. The Service notes that the Pacific Flyway Council, the Central Flyway Council and others have repeatedly requested participation in the early-season process by providing consultants to the Service Regulations Committee on matters pertaining to all migratory game birds, including waterfowl, shorebirds, and upland birds. While there is agreement among States within those 2 Councils that Flyway Councils are the appropriate bodies for providing consultants, there is not similar agreement among eastern States where it has been suggested consultants come from three Regional Fish and Game Associations. Until these differences are resolved consultation in most years will remain limited to matters pertaining to waterfowl during the late-season process.

The Service notes that the mourning dove population in the Western Management Unit has experienced a substantial long-term downward trend. In 1987, restrictive hunting regulations were initiated, to be continued for a 3-year period (1987–89). Incomplete harvest information (no data from California or Oregon) indicates the restrictions partially achieved harvest objectives. A relaxation in hunting by increasing the split-season option from 45 days to the requested 60 days is considered unwarranted until the 3-year period has concluded and results evaluated. Further, the Service's proposed frameworks would not preclude either Arizona or California taking the 45-day split season option which would probably result in a greater reduction in harvest of more northern-nesting doves than would occur with the 30-day option.

While information on breeding duck populations is preliminary and data are still being edited, indices for canvasback nonetheless will be significantly below those for which hunting would be allowed. The Service had previously noted that the decline in the Western Population and the likelihood of a season closure this year. Admittedly, Alaska's harvest of canvasbacks is small and occurs at a time when identification of sex (but not species) is more difficult than during later seasons; however, there are other States that shoot fewer canvasbacks than Alaska that have had season closures. It is also noted that hunters elsewhere must identify duck species, including such less distinctively colored ducks as hen canvasbacks, before shooting. The Service will work with Alaska to provide visual material to hunters that will help them in identifying canvasback.

Mr. Gary Myers, representing the Tennessee Wildlife Resources Agency, stated that exciting opportunities exist with regard to new waterfowl management programs through the North American Waterfowl Management Plan. Concentrated international and interagency programs will provide a basis for preserving key

waterfowl habitats and rebuilding waterfowl populations in both Canada and the United States. Unfortunately, funds are limited, waterfowl breeding habitat is in very poor condition and duck populations are low. There is little likelihood of significant production this year. He noted the need to maintain strong support from hunters and to give adequate protection to existing breeding stocks. Mr. Myers supported the Service recommendation to reduce the harvest of blue-winged teal during the early September duck season in Tennessee. He indicated further that now is the time when the resource must come first and he urged the various States and Flyway Councils to join with the Service in achieving this objective.

Response. The Service notes Mr. Myers' support of the North American Waterfowl Management Plan and the Service proposal to reduce the harvest of blue-winged teal during the September duck season in Tennessee.

Mr. Ronnie R. George, representing the Central Flyway Council and the Texas Parks and Wildlife Department, expressed support and endorsement of the following recommendations:

1. Modification of the aggregate daily bag limit for the special 4-day white-winged dove season in Texas to include 12 white-winged, mourning, and white-tipped doves, no more than 2 of which could be white-tipped doves.

2. Continuation of the experimental sandhill crane seasons in the Middle Rio Grande Valley of New Mexico in accordance with the Pacific and Central Flyway Management Plans for the Rocky Mountain Population of greater sandhill cranes. This would be the third and final year of the experimental hunt.

3. Revision of framework dates in the Pacific and Central Flyway plans for Rocky Mountain Sandhill Cranes to read: "between September 1 and November 30, except that in Sierra, Luna and Dona Ana Counties of New Mexico, the season framework dates will be between September 1 and January 31."

4. Adoption of operational status for the sandhill crane season in the Hatch-Deming area of New Mexico to reduce depredations and allow increased hunting opportunity.

5. Expansion of the framework dates for hunting American coot so that they would coincide with all other duck seasons, including teal and other special duck seasons.

6. Adoption of the proposed basic framework for webless and waterfowl species not addressed in recommendation numbers 1 through 5.

Mr. George then presented a series of slides to support the Texas Parks and Wildlife Department's request for a change in the special 4-day white-winged dove season bag limits. Texas believes that the present frameworks are too restrictive, that harvest of whitewings and mourning doves has been unduly restricted, that such restrictions encourage hunters to hunt in Mexico (where regulations are more liberal), which has reduced income from the Texas white-winged dove stamp and threatens such habitat acquisition programs. Further, Mr. George notes that September hunting of mourning doves has recently been shown not to be detrimental to mourning dove populations and that call-count data indicate that dove populations in Texas were not adversely affected during years of more liberal regulations. He pointed out that prior to 1984, the limits had been 12 mourning doves and 10 whitewings, and that its current proposal is far more restrictive than the pre-1984 limits. Mr. George also commented that the absence of the Flyway Council Consultants for the early-seasons regulations process prevented Texas from adequately presenting and explaining their data to the Service Regulations Committee.

Response. The white-winged dove population in Texas declined substantially after the 1983 freeze that affected nesting habitat, and that populations have not fully recovered. In addition, during the early 1980's when more liberal regulations were permitted, the harvest of mourning doves increased markedly during the early whitewing season (when a substantial segment of the mourning dove population is still nesting in south Texas). For these reasons, the Service feels that relaxation of the special white-winged dove hunting regulations is not warranted at this time. The Service has concern also, with permitting a season designed primarily for one species, whitewings in this case, that results in a large proportion of the harvest being a different species.

Mr. George's comments on consultants to the early-seasons regulations process are addressed previously in the response to Mr. Hunt.

The Service concurs with recommendations to continue the experimental sandhill crane hunt in the Middle Rio Grande Valley of New Mexico and extension of the framework to January 31 for sandhill crane hunting in Sierra, Luna, and Dona Ana Counties of New Mexico. We also concur with a sandhill crane hunt in those counties but the Service proposes this hunt to be considered experimental for 3 years. Although a 3-year experimental hunt was held during 1982–85 in this area, that experiment involved hunting only one weekend per month in November, December and January, whereas the proposed operational hunt would involve 30 days, all of which would be during January. The substantial differences in the previous experimental hunt and the proposed hunt warrant experimental status.

The Service disagrees with extending coot frameworks to include all duck seasons, rather than only regular seasons, because it believes that, in most cases, special seasons are established to target specific species or populations and not as general duck seasons. In light of the direction reflected by the Service's recently published Supplemental Environmental Impact Statement (Statement) on Issuance of Annual Regulations for Sport Hunting of Migratory Birds (June 1988), it is the intent of the Service to control extension and proliferation of special seasons and bag limits due to difficulties in evaluating the impact of such on target and non-target populations. Thus, allowing coot hunting during all duck seasons, including special seasons, would not be in keeping with the direction of the Statement. Further, with the suspension of September teal seasons proposed in these frameworks, an extended framework would not be applicable in the Central Flyway at this time since there are no other special seasons.

The Service notes the Central Flyway Council's support for retention of other previous frameworks for the early season regulations.

Mr. Raymond Lee, representing the Arizona Game and Fish Department, commented on the mourning dove status and hunting regulations in the Western Management Unit in relation to Arizona. Prior to 1987, Arizona traditionally set a 70-day split dove season with about 21–28 days in September, with the balance (42–49 days) in November through December. The proportion of the dove harvest that occurred during the late segment averaged 17.5 percent. In 1987, with restrictive regulations, Arizona selected a season with 13 days in September and 32 days in the late segment. The proportion of the harvest during the late segment was 17.1 percent. The 1987 restricted season resulted in a reduction of harvest of about 25 percent.

The Arizona Game and Fish Department supports the Pacific Flyway Council recommendation of a 60-day season in Arizona and California to be split between two periods, September 1–15 and November 1–January 15. The Council's recommendation would result in 33 percent more hunting opportunity

during the late segment but the maximum increase in harvest is estimated to be less than 5 percent in Arizona.

Response. The request for a relaxation in mourning dove hunting season frameworks for Arizona and California in the Western Management Unit is addressed in the response to comments by Mr. Hunt.

Mr. Hugh Bateman, representing the Lower Region Regulations Committee of the Mississippi Flyway Council, commented in opposition to suspension of the September teal season. He indicated that the season has been operational for many years and is utilized by 8 Mississippi Flyway States. Additionally, 2 more States harvest teal in September duck seasons which they cloose in lieu of the teal season. Overall, the September harvest of blue-winged teal accounts for about one-third of the Flyway's total season harvest of bluewings. He stated that the Lower Region recognizes the potential impact on duck production of the existing severe drought affecting most northern breeding grounds, but stressed that such drastic action as is proposed is ill-advised at this time because the regulations process has, in this instance, failed to allow for proper consideration of alternatives and the action is in conflict with the spirit of the North American Waterfowl Management Plan. He urged the Service to reconsider its proposal, and recommended as an alternative that the September teal season be retained and reduced from 9 to 3 days with a daily bag limit of 4 birds. He further recommended that the 5-day experimental September duck seasons in Kentucky and Tennessee continue with a 4-bird daily bag limit to include not more than 2 wood ducks and 2 blue-winged teal. These actions would substantially reduce the September harvest of blue-winged teal. The proposed 3-day teal season would provide only token hunting opportunity but would maintain hunter interest, whereas suspending the season would erode public support for wetlands conservation programs now being developed under the North American Waterfowl Management Plan. He indicated that the Lower Region would also support developing a continentwide management plan for blue-winged teal, which would provide a more deliberate approach for addressing all factors affecting population declines in this species, not only hunting regulations.

Response. The Service's proposed action to suspend the September teal season and severely restrict the harvest of blue-winged teal during experimental September duck seasons is in response to the diminished status of the species. Breeding populations have been substantially below the long-term average since 1981. Production has been poor during that period, and the prospects for production in 1988 the worst yet due to severe drought conditions in traditional nesting areas. Although the September teal season has been in effect for many years, it and the inclusion of blue-winged teal in other September seasons represent an additional harvest opportunity over and above the regular duck season. Declining age ratios in the kill indicate that proportionately more adult birds have been taken in recent years. While the reduced status of blue-winged teal is primarily a result of the continuing drought and attendant habitat degradation on the breeding grounds, the Service nevertheless believes the proposed action is necessary to provide adequate protection to the species until populations can recover. Overall, the continuing poor conditions and little production are not a circumstance under which a separate harvest opportunity can be offered. The Service appreciates the Council's support for development of a management plan for blue-winged teal and intends to work closely with the flyway councils toward this end.

Mr. Ken Babcock, representing the Upper Region Regulations Committee of the Mississippi Flyway Council, recognized the precarious status of North American waterfowl and commended the Service for its leadership in addressing this current problem. He indicated that the timing for these early-seasons regulations deliberations precludes full input by the Mississippi Flyway Council and expressed concern for this lack of opportunity. He supported statements by other flyway councils in opposition to complete closure of September teal seasons. He asked the Service to take immediate action to initiate discussions with Mexico concerning high harvest of waterfowl such as teal and pintails, particularly at a time when their populations are extremely low.

Response. The Service appreciates Mr. Babcock's support for its efforts to address the current problems with waterfowl population status and notes his concern for the lack of opportunity for full input from the Mississippi Flyway Council in the development of early-season hunting regulations. Unfortunately, the timing of decisions about early hunting seasons, some of which open as early as September 1, is dictated on one hand by the need to establish the regulations and make them available to the public before the hunting seasons open, and on the other hand by the need for as much information as possible about population status before decisions about appropriate hunting regulations are made. Because of these limitations, regulations for early hunting seasons must be established prior to the regular summer meetings of the flyway councils.

With reference to Mexico, the Service has an ongoing cooperative program with the Mexican Government, and will discuss the status of various waterfowl species with Mexican authorities in the near future.

Mr. Dale Witt, representing the Central Flyway Council, expressed the Council's concern for the status of blue-winged teal but noted that the poor status is due mainly to drought and habitat degradation and not to overharvest. He also noted that, although the blue-winged teal population is low, it has been fairly stable during the past several years. He expressed the Council's opposition to a complete suspension of the September teal season in that such drastic action is not warranted. He recommended that, instead of a complete closure, a 3-day season be allowed and that a realistic management strategy be developed in cooperation with the Flyway Councils prior to the 1989 regulations process.

Response. The Service notes the Central Flyway's concern about the Service's proposed suspension of the September teal season, recommendations for a restricted rather than a closed season and the need to develop a management strategy for teal. Our response to these issues is addressed in the response for Mr. Bateman.

Mr. Jim Phillips, a journalist, expressed his strong support to discontinue September teal seasons. He presented his views of the political nature by which these seasons were first established and the illegal harvest associated with the very early years of teal seasons.

Response. The Service notes Mr. Phillips' support for discontinuance of the September teal season.

Mr. Charles Kelley, first speaking as Chairman of the Migratory Bird Committee of the Southeastern Association of Fish and Wildlife Agencies, complimented the Service on regulatory actions affecting southeastern States pertaining to migratory upland gamebirds and shorebirds. Then, speaking as Director of the Alabama Division of Fish and Game, he recommended that there not be a closure of the September teal

seasons, noting the importance of this season to hunters and legislators in furthering waterfowl management and habitat programs. He said that the Service Regulations Committee had not concluded that hunting was a factor affecting the population of ducks, but should the Service not allow September teal seasons the message he would take back to his duck hunters is that somebody in Washington, DC, believed the gun was the cause. Mr. Kelley called for reconsideration of the action to suspend the teal season and suggested a 3-day September teal season as an alternative.

Response. The Service notes Mr. Kelley's support for migratory shore and upland game bird regulations. The response to Mr. Kelley's comments about the September teal season is included in the response to Mr. Bateman.

Written Comments Received

The supplemental proposed rulemaking which appeared in the **Federal Register** dated June 7, 1988 (53 FR 20874), summarized 48 comments which had been received by May 9, 1988. Since then 36 comments on early-season proposals and 1,686 comments on swan hunting have been received. They are summarized below and numbered in the order used in the March 9, 1988, **Federal Register.**

6. September Teal Seasons

The Wisconsin Department of Natural Resources, the Illinois Department of Conservation, and four individuals recommended that the September teal seasons be closed in 1988. All cited the poor population status of teal and related information.

Response. The Service proposes to not offer the September teal season in 1988 due to the low populations of blue-winged teal and very poor outlook for production this year. Thus, the comments received are in support of the Service's proposal.

11. Mergansers

In a letter to the Service, the Concerned Coastal Sportsmen's Association requested that red-breasted and common mergansers be included in the sea duck season. They cite that mergansers are detrimental to recreational and commercial fisheries activities and that numbers are sufficient to justify this longer 107-day season and larger 7-bird limit.

Response. Currently, States in the Atlantic and Mississippi Flyways may select a separate 5-daily bag limit of mergansers. However, little information is available to support the contention that mergansers are harming coastal fisheries. Further available population status and production information does not warrant a relaxation in bag limit regulations on these species.

15. Tundra Swans

As of June 22, 1988, the date of the Public Hearing, the Service had received 1,686 postcards and letters, primarily from individuals urging that swans not be hunted. Most requested "Not to lift Federal restrictions on swan hunting" following the wording in a flyer distributed by the National Humane Education Society (no address or date given).

Response. The Service proposes to offer Alaska frameworks for an experimental swan season in Game Management Unit 22. This season was initially proposed in June 1986 by Kawerak, Inc. (a Native regional corporation) (see 51 FR 26713), approved by the Alaska Game Board and presented by the Alaska Department of Fish and Game for consideration by the Pacific Flyway Council, which in turn recommended it to the Service. Swans that would be hunted belong to the Western Population of tundra swans which is experiencing a long-term increase in numbers. During the past 10 years (1979–88), the winter population index averaged 63,600 swans, well above the population objective. The proposed hunt is within guidelines in the Western Population of Tundra Swan Management Plan. Existing and proposed swan seasons in other States will be addressed in the late-season regulations cycle.

17. Coots

The Kansas Department of Wildlife and Parks favors an extension of the frameworks to allow coot hunting during all duck seasons rather than only during regular duck seasons. Kansas cites as reasons the additional hunting opportunity afforded at a time when such opportunities for ducks are being restricted and the fact that no biological rationale can be given for not allowing an expanded framework. Additionally, in Kansas, the coot harvest has decreased to a point of being insignificant due to the shifting of regular duck seasons to later periods to take advantage of late-arriving mallards that utilize recently developed reservoir habitats.

Response. The Service disagrees with extending coot frameworks to include any duck season, rather than only regular seasons, because it believes that, in most cases, special seasons are established to target specific species or populations and not as general waterfowl seasons. In light of the direction reflected by the Service's recently published Supplemental Environmental Impact Statement (Statement) on Issuance of Annual Regulations for Sport Hunting of Migratory Birds (June 1988), it is the intent of the Service to control extension and proliferation of special seasons and bag limits due to difficulties in evaluating the impact of such on target and non-target populations. Thus, allowing coot hunting during all duck seasons, including special seasons, would not be in keeping with the direction of the Statement. Further, with the suspension of September teal seasons proposed in these frameworks, an extended framework would not be applicable in the Central Flyway at this time since there are no other special duck seasons.

21. Woodcock

The Pennsylvania Game Commission requested that the Service continue the Eastern Region restrictive harvest regulations adopted during the 1985–86 hunting seasons and discontinue February hunting of woodcock throughout the range of the woodcock.

Response. The Service proposes to continue the Eastern Region restrictive regulations. The Service is aware of the concern about February woodcock hunting. Since no documentation was presented concerning February hunting of woodcock, the Service will review available data and discuss the issue with States and Flyway Councils.

22. Band-tailed Pigeons

Two letters were received from Washington State residents, one from a private citizen and the other from the Western Region, Washington State office of the National Audubon Society. Both urged that hunting season frameworks on band-tailed pigeons be restricted in 1988 to reduce impacts on a declining pigeon population and to initiate studies to investigate the factors contributing to the decline. The individual also recommended that mineral spring sites be closed to hunting and season length be reduced in California.

Response. The Service concurs that bandtail populations have declined and the situation is serious. In 1987 hunting restrictions, to continue for a 3-year period, were imposed. Considering the continued population decline, the Service proposes to further restrict hunting season frameworks in 1988 by delaying the opening date from September 7 to September 15. This measure will provide further protection

of band-tailed pigeons prior to and during migration. The delayed opening will result in significantly fewer pigeons using mineral springs and, thereby, reduce harvests there. In California seasons occur later, when birds from all subpopulations have mixed and current season frameworks in California are considered appropriate at this time.

23. Mourning Doves

An unsigned letter was received from the Humane Society of the United States and the World Society for the Protection of Animals expressing opposition to the practice of permitting hunting of mourning doves in September, during a time when this species is still nesting. The letter also urged the closure of the hunting season on all migratory birds in Puerto Rico to relieve pressure on these species while studies are being conducted. The letter recommended (1) that studies be expanded to determine if Category 2 species of waterfowl should be listed pursuant to the Endangered Species Act of 1973, and (2) increased law enforcement effort in Puerto Rico to stem illegal shooting, particularly in relation to white-cheeked pintails. The letter supported the Service's habitat acquisition efforts in Puerto Rico.

Response. The Service's position concerning September hunting of mourning doves has been discussed in earlier **Federal Register** documents (51 FR 24418, July 3, 1986 and 52 FR 25173, July 2, 1987). Continued September hunting of mourning doves in most areas of the United States is viewed as a valid use of the resource under the Migratory Bird Treaty Act of 1918. The Puerto Rico Department of Natural Resources, with assistance from the Service, continues to evaluate breeding activities of waterfowl in Puerto Rico and believes this can be accomplished under present hunting season frameworks. The Service continues to support a strong law enforcement program to control illegal shooting and continues to promote habitat acquisition of key waterfowl areas.

24. White-winged Doves

A letter from the Texas Parks and Wildlife Department requested a liberalization in the regulations frameworks for the special 4-day white-winged dove hunting season. Specifically, Texas requested a change from a 10-dove aggregate bag limit, no more than 2 of which could be mourning doves and 2 of which could be white-tipped doves, to a 12-dove aggregate bag limit, no more than 2 of which could be white-tipped doves. Under the proposed 12-dove limit, there would be no restrictions on mourning doves.

Response. The Service notes that the white-winged dove population in Texas declined substantially after the 1983 freeze that affected nesting habitat, and that populations have not fully recovered. In addition, during the early 1980s when more liberal regulations were permitted, the harvest of mourning doves increased markedly during the early whitewing season (when a substantial segment of the mourning dove population is still nesting in south Texas). For these reasons, the Service feels that relaxation of the special white-winged dove hunting regulations is not warranted at this time. The Service has concern, also, with permitting a season designed primarily for one species, whitewings in this case, that results in a large proportion of the harvest being a different species.

25. Migratory Bird Hunting in Alaska

The Alaska Department of Fish and Game in letters dated June 16 and 17, 1988, recommended changes in brant seasons and continuation of duck season frameworks. Alaska requested that the season on brant be reinstated by increasing it from 50 to 107 days and, thereby, eliminate an unnecessary and complicating restriction without increasing the harvest. Alaska noted in detail the nature of the U.S. sport harvest, that it was well within harvest objectives, that cooperative efforts with Native groups have been effective in reducing all harvests of brant, and there is support from Native groups for continuation of the sport seasons on brant. Acknowledging the probability of a depressed population of ducks, Alaska requested retention of frameworks offered in the past because: (1) Their harvests of about 400 canvasbacks and 14,000 pintails are relatively inconsequential in comparison to the continental harvests of these species, (2) because the effective hunting season in much of Alaska is from 15 to 40 days, and (3) because the average seasonal harvest by Alaska hunters is about 5 compared to 8 among hunters in the Pacific Flyway. If retention of existing frameworks were not possible and numbers of canvasbacks dropped below threshold levels for hunting, Alaska offered as an alternative that the daily bag limits on ducks include no more than 3 pintails and 3 canvasbacks, statewide. They note that the usual species-specific restrictions required in other States are largely precluded in Alaska because most ducks are in drab eclipse plumages during the season and hunter identification of species and sexes is difficult at best. Restrictive regulations in areas of light harvest are largely tokenism, create public resentment, and undermine credibility of waterfowl managers.

Response. The Service appreciates Alaska's willingness and leadership role in taking restrictive measures to protect those populations of Alaska-nesting geese that have undergone declines. What was perceived to be a potential problem by an expansion of areas in which brant would be hunted did not materialize. The combined U.S. sport harvest of Pacific brant was estimated at 1,729, less than forecasted, and about 1.2 percent of the wintering population. The Service concurs with Alaska and proposes to reinstate the brant season length to 107 days.

Only preliminary information on duck populations was available to Alaska when they made their proposal. Since then, additional information on ducks, but particularly about pintails and canvasback, which are of considerable importance in the Alaska breeding population, indicate major declines. The Service believes that restrictive measures are warranted and should be more restrictive than those proposed by Alaska. Therefore, the Service proposes that the basic daily bag limits be reduced by 2 ducks, include not more than 2 pintails and the season on canvasback not be opened.

27. Migratory Game Birds Seasons for Falconers

Eight individuals and two falconers associations submitted comments in support of the proposal to extend the falconry season frameworks.

Response. The Service notes these comments and proposes to extend the falconry season frameworks.

Public Comment Invited

Based on the results of migratory game bird studies now in progress and having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours and bag and possession limits for designated migratory game birds in the United States.

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies and private interests on these proposals and will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time which the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on the one hand, to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms, and, on the other hand, the unavailability before mid-June of specific, reliable data on this year's status of some waterfowl, and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified earlier is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street NW., Washington, DC.

All relevant comments on these early-season proposals received no later than July 20, 1988, and on late-season proposals received by August 29, 1988, will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–54)" was filed with the Council on Environmental Quality (CEQ) on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). A supplement to the FES, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)", was filed with CEQ on June 9, 1988, and Notice of Availability was published in the **Federal Register** of June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727).

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and shall] "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of [critical] habitat * * *" The Service therefore initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 17, 1988, the Office of Endangered Species gave a biological opinion that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. Examples of such consideration include areas in Alaska and the Pacific Flyway closed to Canada goose hunting for protection of the endangered Aleutian Canada goose, and closed areas in Puerto Rico for protection of the Plain pigeon and Puerto Rican parrot.

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for inspection in the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act

In the **Federal Register** dated March 9, 1988 (53 FR 7702), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Matomic Building—Room 536, Department of the Interior, Washington, DC 20240. As noted in the early **Federal Register** publication, the Service plans to issue its memorandum of Law for migratory bird hunting regulations at the same time the first of the annual hunting rules is completed. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act.

Authorship

The primary author of this proposed rulemaking is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1988–89 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 701–708h); the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712); and the Alaska Game Act of 1925 (43 Stat. 739, as amended, 54 Stat. 1103–04).

Proposed Regulations Frameworks for 1988–89 Early Hunting Seasons on Certain Migratory Birds

Pursuant to the Migratory Bird Treaty Act, the Secretary of Interior has approved proposed frameworks which prescribe season lengths, bag limits, shooting hours and outside dates within which States may select seasons for mourning doves, white-winged doves, white-tipped doves, band-tailed pigeons, rails, woodcock, snipe, moorhens and gallinules; experimental September duck seasons in Florida, Tennessee and Kentucky; sea ducks (scoter, eider, and oldsquaw) in certain defined areas of the Atlantic Flyway; experimental September Canada goose seasons in Michigan, Minnesota, and Illinois; sandhill cranes; special Canada Goose season in Wyoming; and extended falconry seasons.

NOTICE

Any State desiring its hunting seasons for mourning doves, white-winged doves, white-tipped doves, band-tailed pigeons, rails, woodcock, common snipe, common moorhens and purple gallinules, sandhill cranes or extended falconry seasons to open in September must make its selection no later than August 10, 1988. States desiring these seasons to open after September 30 may

make their selections at the time they select regular waterfowl seasons. Season selections for the six States offered experimental September waterfowl seasons and Wyoming's special Canada goose season must also be made by August 10, 1988.

Atlantic Flyway coastal States desiring their seasons on sea ducks in certain defined areas to open in September must make their selection no later than August 10, 1988. Those desiring this season to open after September may make their selections when they select their regular waterfowl seasons.

Outside Dates: All dates noted are inclusive.

Shooting Hours: Between 1/2 hour before sunrise and sunset daily for all species except as noted below. The hours noted here and elsewhere also apply to hawking (taking by falconry).

Mourning Doves

Outside Dates: Between September 1, 1988, and January 15, 1989, except as otherwise provided, States may select hunting seasons and bag limits as follows:

Eastern Management Unit

(All States east of the Mississippi River and Louisiana)

Hunting Seasons, and Daily Bag and Possession Limits:

Not more than 70 days with bag and possession limits of 12 and 24, respectively; *or* not more than 60 days with bag and posssession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Shooting Hours: Between 1/2 hour before sunrise and sunset daily.

Zoning: *Alabama, Georgia, Illinois, Louisiana* and *Mississippi,* may elect to zone their States as follows:

A. Two zones per State having the following descriptions or division lines:

Alabama—South Zone: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston and Henry Counties. North Zone: Remainder of the State.

Georgia—The Northern Zone shall be that portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County, thence east along the southern border of Wilcox County to the Ocmulgee River; thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence east along the northern border of Evans to Bulloch County; thence north along the western border of Bulloch County to Highway 301; thence northeast along Highway 301 to the South Carolina line.

Illinois—U.S. Highway 36.

Louisiana—Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

Mississippi—U.S. Highway 84.

B. Within each zone, these States may select hunting seasons of not more than 70 days (or 60 under the alternative) which may be split into not more than 3 periods.

C. The hunting seasons in the South Zones of Alabama, Georgia, Louisiana and Mississippi may commence no earlier than September 20, 1988.

D. Regulations for bag and possession limits, season length and shooting hours must be uniform within specific hunting zones.

Central Management Unit

(Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas and Wyoming)

Hunting Seasons and Daily Bag and Possession Limits:

Not more than 70 days with bag and possession limits of 12 and 24, respectively; *or* not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Texas Zoning—As an alternative to the basic frameworks, Texas may select hunting seasons for each of 3 zones described below.

North Zone—The portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. 90 to San Antonio; then east on Interstate 10 to Orange, Texas.

Special White-Winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. Highway 90 to Uvalde, south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southeast along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Central Zone—That portion of the State lying between the North and South Zones.

Hunting seasons in these zones are subject to the following conditions:

A. The hunting season may be split into not more than 2 periods, except that, in that portion of Texas where the special 4-day white-winged dove season is allowed, a limited mourning dove season may be held concurrently with the white-winged dove season and with shooting hours coinciding with those for white-winged doves (see white-winged dove frameworks).

B. Each zone may have a season of not more than 70 days (or 60 under the alternative). The North and Central zones may select a season between September 1, 1988 and January 25, 1989; the South zone between September 20, 1988 and January 25, 1989.

C. Except during the special 4-day white-winged dove season in the South Zone, each zone may have an aggregate daily bag limit of 12 doves (or 15 under the alternative), no more than 2 of which may be white-winged doves and no more than 2 of which may be white-tipped doves. The possession limit is double the daily bag limit.

D. Regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit

(Arizona, California, Idaho, Nevada, Oregon, Utah and Washington)

Hunting Seasons, and Daily Bag and Possession Limits:

Not more than 30 consecutive days between September 1, 1988 and January 15, 1989; *or* not more than 45 days to be split between two periods, September 1–15, 1988, and November 1, 1988–January 15, 1989.

In all States, the bag and possession limits are 10 and 20, respectively.

White-winged Doves

Outside Dates: *Arizona, California, Nevada, New Mexico,* and *Texas* (except as shown below) may select hunting seasons between September 1 and December 31, 1988. *Florida* may select its hunting season between September 1, 1988 and January 15, 1989.

Arizona may select a hunting season of not more than 30 consecutive days running concurrently with the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves, and a possession limit twice the daily bag limit after the opening day.

In the *Nevada* counties of Clark and Nye, and in the *California* counties of Imperial Riverside and San Bernardino, the aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 10 and 20, respectively, and run concurrently with the season on mourning doves.

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours are to conform with those for mourning doves.

Texas may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate including no more than 2 mourning doves and 2 white-tipped doves per day; and the possession limit may not exceed 20 white-winged, mourning and white-tipped doves in the aggregate including no more than 4 mourning doves and four white-tipped doves in possession.

and

In addition, *Texas* may also select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1988, and January 25, 1989, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be white-winged doves and not more than 2 of which may be white-tipped doves. The possession limit may not exceed 24 white-winged, mourning and white-tipped doves (or 30 under the alternative) in the aggregate, of which not more than 4 may be white-winged doves and not more than 4 of which may be white-tipped doves.

Florida may select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1988, and January 15, 1989, and coinciding with the mourning dove season. The aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected); however, for either option, the bag and possession limits of white-winged doves may not exceed 4 and 8, respectively.

Band-tailed Pigeons

Pacific Coast States and Nevada: California, Oregon, Washington and the Nevada counties of Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral and Storey.

Outside Dates: Between September 15, 1988, and January 1, 1989.

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 16 consecutive days, with a bag and possession limit of 4.

Zoning: *California* may select hunting seasons of 16 consecutive days in each of the following two zones:

1. In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama and Trinity; and

2. The remainder of the State.

Four-Corners States: Arizona, Colorado, New Mexico and Utah.

Outside Dates: Between September 1 and November 30, 1988.

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 30 consecutive days, with bag and possession limits of 5 and 10, respectively.

Areas: These seasons shall be open only in the areas delineated by the respective States in their hunting regulations.

Zoning: *New Mexico* may be divided into North and South Zones along a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and south along Interstate Highway 25 from Socorro to the Texas State line. Hunting seasons not to exceed 20 consecutive days may be selected between September 1 and November 30, 1988, in the North Zone and October 1 and November 30, 1988, in the South Zone.

Rails

(Clapper, King, Sora and Virginia)

Outside Dates: States included herein may select seasons betwen September 1, 1988, and January 20, 1989, on clapper, king, sora and Virginia rails as follows:

Hunting Seasons: The season may not exceed 70 days. Any State may split its season into two segments.

Clapper and King Rails

Daily Bag and Possession Limits: In *Rhode Island, Connecticut, New Jersey, Delaware,* and *Maryland,* 10 and 20 respectively, singly or in the aggregate of these two species. In *Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina,* and *Virginia,* 15 and 30, respectively, singly or in the aggregate of the two species.

Sora and Virginia Rails

Daily Bag and Possession Limits: In the Atlantic, Mississippi and Central [1] Flyways and portions of Colorado, Montana, New Mexico and Wyoming in the Pacific Flyway,[2] 25 daily and 25 in possession, singly or in the aggregate of the two species.

Woodcock

Outside Dates: States in the Atlantic Flyway may select hunting seasons between October 1, 1988, and January 31, 1989. States in the Central and Mississippi Flyways may select hunting seasons between September 1, 1988, and February 28, 1989.

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[1] The Central Flyway is defined as follows: Colorado (east of the Continental Divide), Kansas, Montana (east of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nebraska, New Mexico (east of the Continental Divide but outside the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas and Wyoming (east of the Continental Divide).

[2] The Pacific Flyway is defined as follows: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington; those portions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental Divide plus the entire Jicarilla Apache Indian Reservation; and in Montana, the counties of Hill, Chouteau, Cascade, Meagher and Park, and all counties west thereof.

Hunting Seasons, and Daily Bag and Possession Limits: In the Atlantic Flyway, seasons may not exceed 45 days, with bag and possession limits of 3 and 6, respectively; in the Central and Mississippi Flyways, seasons may not exceed 65 days, with bag and possession limits of 5 and 10, respectively. Seasons may be split into two segments.

Zoning: *New Jersey* may select seasons by north and south zones divided by State Highway 70. The season in each zone may not exceed 35 days.

Common Snipe

Outside Dates: Between September 1, 1988, and February 28, 1989. In *Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland* and *Virginia* the season must end no later than January 31.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 107 days in the Atlantic, Mississippi and Central Flyways and 93 days in Pacific Flyway portions of Montana, Wyoming, Colorado and New Mexico. In the remainder of the Pacific Flyway the season shall coincide with the duck seasons. Seasons may be split into two segments. Bag and possession limits are 8 and 16, respectively.

Common Moorhens and Purple Gallinules

Outside Dates: September 1, 1988, through January 20, 1989, in the Atlantic and Mississippi Flyways and September 1, 1988, through January 22, 1989, in the Central Flyway. States in the Pacific Flyway must select their hunting seasons to coincide with their duck seasons.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi and Central Flyways; in the Pacific Flyway seasons must be the same as the duck seasons. Seasons may be split. Bag and possession limits are 15 and 30 common moorhens and purple gallinules, singly or in the aggregate of the two species, respectively; except the daily bag and possession limits in the Pacific Flyway may not exceed 25 coots and common moorhens, singly or in the aggregate of the two species.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Seasons not to exceed 58 days between September 1, 1988, and February 28, 1989, may be selected in the following States: *Colorado* (the Central Flyway portion except the San Luis Valley); *Kansas*; *Montana* (the Central Flyway portion except that area south of I–90 and west of the Bighorn River); *North Dakota* (west of U.S. 281); *South Dakota*; and *Wyoming* (in the counties of Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte and Weston).

For the remainder of the flyway, seasons not to exceed 93 days between September 1, 1988 and February 28, 1989, may be selected in the following States: *New Mexico* (the counties of Chaves, Curry, DeBaca, Eddy, Lea, Quay and Roosevelt); *Oklahoma* (that portion west of I–35); and *Texas* (that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Sonora; U.S. 277 to Abilene; Texas 351 to Albany; U.S. 283 to Vernon; and U.S. 183 to the Texas-Oklahoma boundary).

Bag and Possession Limits: 3 and 6, respectively.

Permits: Each person participating in the regular sandhill crane seasons must obtain and have in his possession while hunting a valid Federal sandhill crane hunting permit.

Special Seasons in the Central and Pacific Flyways:

Arizona, Colorado, Idaho, Montana, New Mexico, Utah and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (as described in a management plan approved March 22, 1982 (revised July 28, 1987), by the Central and Pacific Flyway Councils) subject to the following conditions:

1. Outside dates are September 1–November 30, 1988 except September 1, 1988–January 31, 1989, in the Hatch-Deming Area (Zone) in New New Mexico (Sierra, Luna, and Dona Ana Counties).

2. Season(s) in any State or zone may not exceed 30 days.

3. Daily bag limits may not exceed 3 and season limits may not exceed 9.

4. Participants must have in their possession while hunting a valid permit issued by the appropriate State.

5. Numbers of permits, areas open and season dates, protection plans for other species, and other provisions of seasons are consistent with the management plan and approved by the Central and Pacific Flyway Councils.

6. Seasons in the Middle Rio Grande Valley zone and the Hatch-Deming Zone in New Mexico and in Utah will be experimental.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15, 1988, and January 20, 1989.

Hunting Seasons, and Daily Bag and Possession Limits: Not to exceed 107 days, with bag and possession limits of 7 and 14, respectively, singly or in the aggregate of these species.

Bag and Possession Limits During Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may set, in addition to the limits applying to other ducks during the regular duck season, a daily limit of 7 and a possession limit of 14 scoter, eider and oldsquaw ducks, singly or in the aggregate of these species.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in *Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut* and *New York*; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island and emergent vegetation in *New Jersey, South Carolina*, and *Georgia*; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island and emergent vegetation in *Delaware, Maryland, North Carolina* and *Virginia*; and provided that any such areas have been described, delineated and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season conventional or point-system daily bag and possession limits.

Deferred Selection: Any State desiring its sea duck season to open in September must make its selection no later than August 10, 1988. Any State desiring its sea duck season to open after September may make its selection at the time it selects its waterfowl season.

Special September Duck Seasons

Florida September Duck Season: An experimental 5-consecutive-day duck season may be selected in September. The daily bag limit will be 4 ducks, no more than one of which may be a species other than wood duck, and the possession limit will be double the daily bag limit.

Tennessee and Kentucky September Duck Seasons: Experimental 5-consecutive-day duck seasons may be selected in September by *Tennessee* and *Kentucky*. The daily bag limit will be 2 ducks, no more than 1 of which may be a species other than wood duck. The possession limit will be double the daily bag limit.

Special Early-September Canada Goose Seasons

Experimental Canada goose seasons of up to 10 consecutive days may be selected in September by *Michigan, Illinois,* and *Minnesota* subject to the following conditions:

1. Outside dates for the season are September 1–10, 1988.

2. The daily bag and possession limits will be no more than 5 and 10 Canada geese, respectively.

3. Areas open to the hunting of Canada geese are as follows:

Michigan:

Lower Peninsula—all areas except the Shiawassee River, Allegan, Lapeer and Muskegon State Game Areas (SGA), the Shiawassee National Wildlife Refuge, that portion of the Maple River SGA east of State Road, that portion of the Pointe Mouillee SGA south of the Huron River, Muskegon County Wastewater Area, and the Fish Point and Nayanquing Point Wildlife Areas.

Upper Peninsula—that area bounded by a line beginning at the Michigan/Wisconsin border in Green Bay and extending north through the center of Little Bay De Noc and the center of White Fish River to U.S. Highway 2, east along U.S. Highway 2 to Interstate Highway 75, north along Interstate Highway 75 to State Highway 28, west along State Highway 28 to State Highway 221, then north along State Highway 221 to Brimley, then north to the Michigan/Ontario border.

Illinois: McHenry, Lake, Kane, DuPage, Cook, Kendall, Grundy, Will, and Kankakee Counties.

Minnesota: All or portions of Anoka, Washington, Ramsey, Hennepin, Carver, Scott and Dakota Counties.

4. Areas open to hunting must be described, delineated and designated as such in each State's hunting regulations.

Wyoming may select a September season for Canada geese subject to the following conditions:

1. The season must be concurrent with the September Sandhill crane season.

2. Outside dates for the season(s) are September 1–22, 1988.

3. Hunting will be by State permit.

4. No more than 60 permits may be issued for the Salt River (Star Valley) area in Lincoln County. Each permittee may take 2 Canada geese per season.

5. No more than 75 permits may be issued in the Eden-Farson Agricultural Project in Sweetwater and Sublette Counties, each permittee may take no more than 1 goose per season, and the season may not exceed 14 days.

Special Falconry Regulations

Extended Seasons: Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season not exceeding 107 days for taking migratory game birds in accordance with the following:

Framework Dates: Seasons must fall between September 1, 1988 and March 10, 1989.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting seasons and extended falconry seasons.

Regulations Publication: Each State selecting the special season must inform the Service of the season dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Note: In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September seasons, special scaup season, special scaup and goldeneye season or falconry season) exceed 107 days for a species in one geographical area. The extension of this framework to include the period September 1, 1988–March 10, 1989, is considered tentative, and will be evaluated in cooperation with States offering such extensions after a period of several years.

Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Alaska, 1988–1989

Outside Dates: Between September 1, 1988, and January 26, 1989, Alaska may select seasons on waterfowl, snipe, cranes, and tundra swans subject to the following limitations:

Shooting hours: One-half hour before sunrise to sunset daily.

Hunting seasons:

Ducks, geese and brant—107 consecutive days for ducks, geese, and brant in each of the following: North Zone (State Game Management Units 11–13 and 17–26); Gulf Coast Zone (State Game Management Units 5–7, 9, 14–16, and 10—Unimak Island only); Southeast Zone (State Game Management Units 1–4); Pribilof and Aleutian Islands Zone (State Game Management Unit 10—except Unimak Island); Kodiak Zone (State Game Management Unit 8). The season may be split without penalty in the Kodiak Zone. *Exceptions:* The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. Throughout the State there is no open hunting season for Aleutian Canada geese, cackling Canada geese and emperor geese.

Snipe and sandhill cranes—An open season concurrent with the duck season.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of 5 and a possession limit of 15 ducks. Daily bag and possession limits in the North Zone are 8 and 24, and in the Gulf Coast Zone they are 6 and 18, respectively. The basic limits may not include more than 2 pintails daily and 6 pintails in possession. There is no open season on canvasback. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, eider, oldsquaw, harlequin, and common and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6 and a possession limit of 12, of which not more than 4 daily and 8 in possession may be greater white-fronted or Canada geese, singly or in the aggregate of these species.

Brant—A daily bag limit of 2 and a possession limit of 4.

Common snipe—A daily bag limit of 8 and a possession limit of 16.

Sandhill cranes—A daily bag limit of 3 and a possession limit of 6.

Tundra swans—In Game Management Unit 22 an experimental open season for tundra swans may be selected subject to the following conditions:

1. No more than 300 permits may be issued, authorizing each permittee to take 1 tundra swan.

2. The season must be concurrent with the duck season.

3. The appropriate State agency must issue permits, obtain harvest and hunter participation data, and report the results of this hunt to the Service by June 1, 1989.

Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Puerto Rico, 1988–89

Shooting hours: Between one-half hour before sunrise and sunset daily.

Doves and Pigeons:

Outside Dates: Puerto Rico may select hunting seasons between September 1, 1988, and January 15, 1989, as follows:

Hunting Seasons: Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

Daily Bag and Possession Limits: Not to exceed 10 doves of the species named herein, singly or in the aggregate, and not to exceed 5 scaly-naped pigeons.

Closed Areas:

Municipality of Culebra and Desecheo Island—closed under Commonwealth regulations.

Mona Island—closed in order to protect the reduced population of white-crowned pigeon *(Columba leucocephala)*, known locally as "Paloma cabeciblanca."

El Verde Closure Area—consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) all lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture on 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one kilometer from the juncture of routes 186 and 956 south to KM 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public. The purpose of this closure is to afford protection to the Puerto Rican parrot (*Amazona vittata*) presently listed as an endangered species under the Endangered Species Act of 1973.

Cidra Municipality and Adjacent Areas consisting of all of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayer, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning. The purpose of this closure is to protect the Plain pigeon (*Columba inornata wetmorei*), locally known as "Paloma Sabanera," which is present in the above locale in small numbers and is presently listed as an endangered species under the Endangered Species Act of 1973.

Ducks, Coots, Moorhens, Gallinules and Snipe

Outside Dates: Between November 5, 1988, and February 28, 1989, Puerto Rico may select hunting seasons as follows.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag and Possession Limits:

Ducks—Not to exceed 3 daily and 6 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*), which are protected by the Commonwealth of Puerto Rico.

Common moorhens—Not to exceed 6 daily and 12 in possession; the season is closed on purple gallinules (*Porphyrula martinica*).

Common snipe—Not to exceed 6 daily and 12 in possession.

Coots—There is no open season on coots, i.e. common coots (*Fulica americana*) and Caribbean coots (*Fulica caribaea*).

Closed Areas: No open season for ducks, common moorhens, and common snipe is prescribed in the Municipality of Culebra and on Desecheo Island.

Final Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in the Virgin Islands, 1988–89

Shooting Hours: Between one-half hour before sunrise and sunset daily.

Doves and Pigeons.

Outside Dates: The Virgin Islands may select hunting seasons between September 1, 1988, and January 15, 1989, as follows.

Hunting Seasons: Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

Closed Seasons: No Open season is prescribed for ground or quail doves, or other pigeons in the Virgin Islands.

Local Names for Certain Birds.

Zenaida dove (*Zenaida aurita*)—mountain dove.

Bridled quail dove (*Geotrygon mystacea*)—Barbary dove, partridge (protected).

Common Ground dove (*Columba passerina*)—stone dove, tobacco dove, rola, tortolita (protected).

Scaly-naped pigeon (*Columba squamosa*)—red-necked pigeon, scaled pigeon.

Ducks.

Outside Dates: Between December 1, 1988, and January 31, 1989, the Virgin Islands may select a duck hunting season as follows.

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag and Possession Limits: Not to exceed 3 daily and 6 inpossession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whislting (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*).

Date: July 6, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–15453 Filed 7–7–88; 8:45 am]

BILLING CODE 4310–55–M

federal register

Monday
July 11, 1988

Part VI

Department of Education

Office of Elementary and Secondary Education

34 CFR Part 200

Financial Assistance to Meet Special Needs of Children; Notice of Meeting to Conduct a Modified Negotiated Rulemaking Process

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 200

Financial Assistance To Meet Special Educational Needs of Children

AGENCY: Department of Education.

ACTION: Notice of meeting to conduct a modified negotiated rulemaking process.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education of the U.S. Department of Education (Department) will convene a negotiating group—including Federal, State, and local education administrators, parents, teachers, and members of local boards of education—to participate in a modified negotiated rulemaking process. This group will review draft proposed regulations developed following recent regional meetings on selected issues related to the content of proposed regulations to be issued under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended. The Department has arranged with the Federal Mediation and Conciliation Services (FMCS) and the Environmental Protection Agency (EPA) to obtain the services of facilitators. See the Section on Facilitators and Record of Meeting for a description of the role of the facilitators. The meeting is open to the public for individuals who wish to observe the process.

DATES: The meeting of the negotiating group is scheduled for July 19 and 20 in the Park Hyatt Hotel, 1201 24th Street, NW., Washington, DC from 9:00 a.m. on July 19 to 4:30 p.m. on July 20. Other meetings may be recommended and called by the Department, if necessary.

FOR FURTHER INFORMATION CONTACT: Persons wanting additional information about the results of regional meetings and the issues to be discussed in the July 19–20 meeting should contact Mary Jean LeTendre, Director, Compensatory Education Programs, U.S. Department of Education at (202) 732–4682. Persons desiring additional information about the negotiated rulemaking process should contact Daniel P. Dozier of the FMCS at (202) 653–5305. Louis Manchise of FMCS and Chris Kirtz and Deborah S. Dalton of EPA will assist in the facilitation of the meeting.

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1988, the President signed into law Pub. L. 100–297, the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988. Title I of that Act reauthorizes, for a five-year period, the program currently known as Chapter 1 of the Education Consolidation and Improvement Act. The program is now authorized in Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by Pub. L. 100–297. Section 1431 of the ESEA, concerning Federal regulations, contains procedural requirements the Department is to follow in developing and issuing regulations to govern the Chapter 1 program. In particular, section 1431(b)(2) requires the Secretary to "prepare draft regulations and submit regulations on a minimum of 4 key issues to a modified negotiated rulemaking process as a demonstration of such process." Section 1431(b)(1) also requires that, prior to publishing proposed regulations, the Secretary shall convene regional meetings "on the content of proposed regulations," and that these meetings shall include "representatives of Federal, State, and local administrators, parents, teachers, and members of local boards of education involved with implementation of programs under this chapter." The statute requires that participants in the modified negotiated rulemaking process be selected from among those attending the regional meetings. Prior to convening the regional meetings, the Secretary solicited nominations for attendees from organizations representing the people described in section 1431(b)(1). All persons nominated by these organizations were invited to attend a regional meeting. The following organizations were requested to submit nominations:

American Association of School Administrators
American Federation of Teachers
Center for Law and Education, Inc.
Children's Defense Fund
Council of American Private Education
Council of Chief State School Officers
Council of Great City Schools
International Reading Association
Lawyer's Committee for Civil Rights Under Law
National Association of Elementary School Principals
National Association of Federal Education Program Administrators
National Association of State Boards of Education
National Center for Neighborhood Enterprise
National Coalition of Title I/Chapter 1 Parents
National Council of Teachers of Mathematics
National Governors' Association
National Education Association
National Parent Teachers Association
National School Boards Association
Rural Education Association

The Department announced that it would conduct regional meetings in 53 FR 16292–93 (May 6, 1988) and convened those meetings in Atlanta, Georgia; Philadelphia, Pennsylvania; Indianapolis, Indiana; Denver, Colorado; and San Francisco, California. Persons attending each regional meeting will be provided a summary of the meeting they attended. Participants in the negotiating rulemaking will be provided summaries of all meetings.

Items Selected for Negotiation

The following items related to the Chapter 1 program in local educational agencies have been selected for the modified negotiated rulemaking process. They were chosen because they seemed to be issues on which there is most likely to be diversity of opinion on the contents of the proposed rules and/or because they contain major changes in the Chapter 1 program.

1. Targeting of schools and students
2. National evaluation standards
3. State administration
4. Program improvement
5. Schoolwide projects
6. Parental involvement

These same items (as well as others) were discussed in the regional meetings. Discussions at the negotiated rulemaking sessions may cover other subjects as necessary or as raised by participants.

Participants

The following is a list of the participants who have been invited by the Department to participate in the modified negotiated rulemaking process. The participants are all representatives of those groups specified in the statute (section 1431(b)(1)). The Department has attempted to invite from among the attendees at the regional meetings a range of individuals who will represent the interest groups mandated by section 1431(b)(1).

If, in response to this notice, an additional individual or representative of an interest group requests representation in the modified negotiated rulemaking process, the Department, in consultation with the facilitators, will determine whether that individual or representative should be added to the group. The Department will make that decision based on whether the individual or representative:

(1) Would be substantially affected by the rule;

(2) Is not already adequately represented by the group; and

(3) Meets the requirements of section 1431(b)(1) of the Act.

Federal Administrator—Mary Jean LeTendre, Director, Compensatory Education Programs

State Administrators—
- Thomas Gilhool, Secretary of Education, PA
- Thomas Anderson, Deputy Commissioner for Finance and Compliance, TX
- Oliver Himley, Chief, Bureau of Compensatory and Equity Education, IA
- JoLeta Reynolds, Associate Assistant Commissioner, Special Education Programs, TN
- Mitchell Akers, Department of Federal Programs Liaison, PA

Local Administrators—
- Carley Ochoa, Director, Special Programs, Riverside, CA
- Ambrosio Melendrez, Administrator, Chapter 1, Austin, TX
- Lynn Beckwith, Executive Director, State and Local Programs, St. Louis, MO
- Joseph Marinelli, Associate Superintendent, Orange County, FL
- Charles Weber, Principal, Langhorne, PA

Local School Board Members—
- Judith Fischer, Buffalo, NY
- Paul Leuker, Wichita, KS

Teachers—
- Wanda Beauman, Denver, CO
- Fran Gouze, Atlanta, GA

Parents—
- Barbara Alexander, Richmond, CA
- Jane Boyer, Prospect, KY

Private School Representatives—
- Morton Avigdor, Associate General Counsel, Agudath Israel, New York, NY
- Michael McCarron, Education Coordinator, Florida Catholic Conference, Tallahassee, FL

Facilitators and Record of Meeting

Facilitators

The Department will use facilitators. The facilitators will not be involved with the substantive development of the regulations. The facilitators' role is to:

- Chair negotiating sessions;
- Help the negotiation process run smoothly; and
- Help participants define issues and reach consensus.

Record of Meeting

The Department will keep a record of the meeting. This record will be placed in the public record for this rulemaking.

Dated: July 7, 1988.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

(Catalog of Federal Domestic Assistance Number 84.010)

[FR Doc. 88-15604 Filed 7-8-88; 9:17 am]

BILLING CODE 4000-01-M

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641 The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 4162/Pub. L. 100-362

To make the International Organizations Immunities Act applicable to the Organization of Eastern Caribbean States. (July 6, 1988; 102 Stat. 819; 1 page) Price: $1.00

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $595.00 domestic, $148.75 additional for foreign mailing.

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1, 2 (2 Reserved)	$10.00	Jan. 1, 1988
3 (1987 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1988
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1-149	15.00	Apr. 1, 1987
150-279	14.00	Apr. 1, 1987
280-399	13.00	Apr. 1, 1987
400-End	8.50	Apr. 1, 1987
19 Parts:		
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200-End	5.50	Apr. 1, 1988
20 Parts:		
1-399	12.00	Apr. 1, 1988
400-499	23.00	Apr. 1, 1987
500-End	25.00	Apr. 1, 1988
21 Parts:		
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100-169	14.00	Apr. 1, 1988
170-199	16.00	Apr. 1, 1988
200-299	5.00	Apr. 1, 1988
300-499	26.00	Apr. 1, 1988
500-599	21.00	Apr. 1, 1987
600-799	7.50	Apr. 1, 1988
800-1299	16.00	Apr. 1, 1988
1300-End	6.00	Apr. 1, 1988
22 Parts:		
1-299	19.00	Apr. 1, 1987
300-End	13.00	Apr. 1, 1988
*23	16.00	Apr. 1, 1988
24 Parts:		
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500-699	9.00	Apr. 1, 1987
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1700-End	12.00	Apr. 1, 1987
25	24.00	Apr. 1, 1988
26 Parts:		
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*§§ 1.61-1.169	23.00	Apr. 1, 1988
§§ 1.170-1.300	17.00	Apr. 1, 1987
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50-299	15.00	Apr. 1, 1988
300-499	15.00	Apr. 1, 1988
500-599	8.00	[3] Apr. 1, 1980
600-End	6.00	Apr. 1, 1988
27 Parts:		
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28	23.00	July 1, 1987

Title	Price	Revision Date
29 Parts:		
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800–End	16.00	July 1, 1987
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

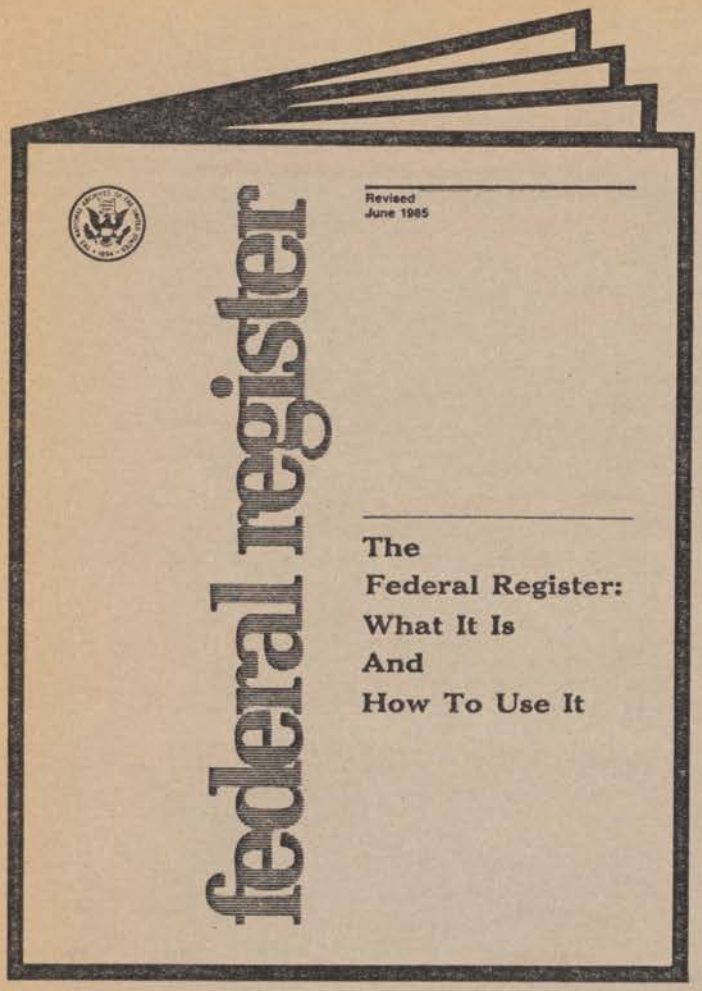
[3] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1987. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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