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Monday  
July 18, 1988

# Testis Federal Register



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ON THE APPLICABILITY OF THE PRINCIPLE OF LEAST ACTION

The principle of least action is a fundamental principle of physics. It states that the path taken by a system between two states is the one for which the action is stationary. This principle is applicable to a wide range of physical systems, including classical mechanics, quantum mechanics, and field theory.

In classical mechanics, the action is defined as the integral of the Lagrangian over time. The Lagrangian is a function of the generalized coordinates and their time derivatives. The principle of least action can be used to derive the equations of motion for a system.

In quantum mechanics, the action is defined as the integral of the Lagrangian over time. The principle of least action can be used to derive the Schrödinger equation for a system.

In field theory, the action is defined as the integral of the Lagrangian over spacetime. The principle of least action can be used to derive the equations of motion for a field.

The principle of least action is a powerful tool for understanding the behavior of physical systems. It provides a unified framework for deriving the equations of motion for a wide range of systems.

The principle of least action is also a useful tool for understanding the behavior of complex systems. It can be used to derive the equations of motion for a system and to study the stability of the system.

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# Rules and Regulations

Federal Register

Vol. 53, No. 137

Monday, July 18, 1988

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.

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 202

[Reg. B; Docket No. R-0642]

#### Equal Credit Opportunity; Intent to Preempt New York Law

**AGENCY:** Board of Governors of Federal Reserve System.

**ACTION:** Notice of intent to make preemption determination.

**SUMMARY:** The Board is publishing for comment a proposed determination that a certain provision in New York law, Article 15, section 296-a, is inconsistent with the Equal Credit Opportunity Act and Regulations B. Any provision of state law that is inconsistent with the federal law, unless more protective, is preempted.

The inconsistency in this case has to do with the offering of special purpose credit programs. Both the federal and the New York state law prohibit credit discrimination on the basis of race, color, national origin, religion, sex, marital status or age. (In addition, the federal law bars discrimination based on receipt of income from public assistance programs or the good-faith exercise of any rights under the Consumer Credit Protection Act; and the New York law bars discrimination based on disability.) However, whereas the federal law permits creditors to offer special-purpose credit programs in which program participants may be required to share one or more of these characteristics, New York law permits no exceptions. The Board has made a preliminary determination that the New York law is preempted to the extent that it bars a creditor from offering a special-purpose credit program.

**DATE:** Comments must be received on or before September 12, 1988.

**ADDRESSES:** Comments should be mailed to William W. Wiles, Secretary,

Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to the Mail Services Courtyard Entrance on 20th Street between C Street and Constitution Avenue, NW., Washington, DC between 8:45 a.m. and 5:15 p.m. weekdays.

Comments should include a reference to Docket No. R-0642. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

#### FOR FURTHER INFORMATION CONTACT:

Linda Vespereny, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-2412; for the hearing-impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452-3544.

#### SUPPLEMENTARY INFORMATION: (1)

**General.** The Board has been asked to determine whether certain provisions of New York law are inconsistent with, and therefore preempted by, the Equal Credit Opportunity Act (ECOA) (15 U.S.C. 1601 *et seq.*) and Regulation B (12 CFR Part 202). The request came from an organization set up specifically to guarantee loans made in the United States to overseas Chinese residing in the United States. This request is available for public inspection and copying, subject to the Board's rules regarding availability of information (12 CFR Part 261). Section 705(f) of the ECOA authorizes the Board to determine, for purposes of preemption, whether an inconsistency exists between a provision of the act and a state law relating to credit discrimination.

This notice of proposed preemption is based on a review of the New York and the ECOA provisions. It is issued under authority delegated to the Director of the Division of Consumer and Community Affairs, as set forth in the Board's rules regarding delegation of authority (12 CFR Part 265).

(2) **Determination of Preemption.** The ECOA and Regulation B prohibit discrimination in any credit transaction on the basis of race, color, national origin, religion, sex, marital status, age, receipt of income from public assistance programs, or the good-faith exercise of any rights under the Consumer Credit Protection Act. However, § 202.8 of the regulation (which implements section 701(c) of the ECOA) permits a creditor

to extend special-purpose credit to individuals who meet certain eligibility requirements, and to consider one or more common characteristics of program participants (for example, race or national origin) when extending credit under these programs.

Under section 705 of the ECOA and § 202.11 of Regulation B, state law provisions that are inconsistent with the requirements of the act and the regulation are preempted. Section 202.11(b)(v) of Regulation B also provides that a state law is inconsistent with the requirements of the federal law to the extent that the state law prohibits inquiries necessary to establish or administer a special-purpose credit program as defined by § 202.8.

#### (3) Comparison of New York Law and Regulation B. Preemption

determinations generally are limited to those provisions of state law identified in the request for a Board determination. New York Law, Article 15, section 296-a(1) is the primary focus of this inquiry. The language of this New York provision is set forth below, along with an analysis of it in light of Regulation B.

The relevant portions of section 296-a(1) — "Unlawful discriminatory practices in relation to credit" read as follows:

It shall be an unlawful discriminatory practice for any creditor or any officer, agent or employee thereof:

(b) To discriminate in the granting, withholding, extending or renewing, or in the fixing of the rates, terms or conditions of, any form of credit, on the basis of race, creed, color, national origin, age, sex marital status or disability.

(c) To use any form of application for credit or use or make any record or inquiry which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, creed, color, national origin, age, sex, marital status or disability \* \* \*

This section of the New York Human Rights law prohibits credit discrimination based on an applicant's or class of applicants' race, creed, color, national origin, sex, marital status or disability. Moreover, creditors may not make any record or inquiry regarding these characteristics. Based on the Board's analysis and discussions with officials of New York agencies, neither this nor any other section of the New York law appears to permit exceptions.

The Board has made a comparison of these provisions—New York status section 296-a(1) (b) and (c)—to § 202.8 of the Regulation B, which implement section 701(c) of the federal statute. Section 202.8 allows for taking a prohibited basis into account when certain special-purpose credit programs are involved. It allows creditors to offer credit assistance programs authorized by federal or state law, or established by a not-for-profit organization, for the benefit of an economically disadvantaged class of persons. It allows not-for-profit organizations to offer credit assistance programs for the benefit of their members. In addition, for-profit organizations may provide special-purpose credit programs to meet special social needs if the programs are administered pursuant to a written plan that identifies the class of persons the particular program is designed to benefit. In these special-purpose credit programs, participants may be required to share one or more common characteristics, such as race, national origin, or sex. If participants are required to possess a common characteristic, the creditor may request and consider information regarding that particular characteristic.

Under New York law the establishment of a special-purpose credit program, though permissible under the ECOA and § 202.8, would be unlawful since section 296-a (1) of the Human Rights law prohibits, without exception, discrimination on the basis of the specified characteristics. Furthermore, creditors are expressly prohibited under New York law from even inquiring about these characteristics.

(4) *Proposed Determination and Effect of Preemption.* Based on its analysis, the Board has made a preliminary determination that the New York law on credit discrimination is inconsistent with federal law, and that it is preempted by the ECOA and Regulation B to the extent of the inconsistency. Thus, if the preliminary determination is ultimately adopted following the comment period, the state of New York would be barred from prohibiting special-purpose credit programs that are permissible under federal law.

The Board makes no determination, however, as to whether a particular program qualifies as a special-purpose credit program under Regulation B. As explained in comment 8(a)-1 of the official staff commentary to the regulation (12 CFR Part 202, Supp. 1) the agency or creditor administering or offering the loan program must make the determination.

(5) *Comment Requested.* Interested persons are invited to submit comments regarding the proposed finding that the New York statute section 296-a is preempted by ECOA and Regulation B. After the close of the comment period and an analysis of the comments received, notice of final action will be published in the *Federal Register*.

Board of Governors of the Federal Reserve System, July 11, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-16025 Filed 7-15-88; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 88-CE-16-AD; Amdt. 39-5977]

#### Airworthiness Directives; Cessna Models

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This amendment adopts a new Airworthiness Directive (AD), applicable to Cessna Models 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150K, A150L, A150M, F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, FRA150L, and FRA150M airplanes, which have undergone any modification which relocated the battery from the firewall to the aft fuselage, and, for Models 150, 150A, 150B, and 150C airplanes, from its location just aft of the baggage compartment aft bulkhead to any other aft position. The AD requires securing the battery to battery contactor cable to the battery box cover lock pin. This action is necessary to prevent chafing of this cable against the elevator up cable, possible failure of the elevator cable, subsequent loss of elevator control and possible loss of the airplane.

**DATES:** Effective date: August 3, 1988.

Compliance: Within the next 25 hours time-in-service after the effective date of this AD.

**ADDRESSES:** Background information pertinent to this AD is contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Douglas W. Haig, ACE-120W, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946-4409.

**SUPPLEMENTARY INFORMATION:** A recent fatal accident involved a Cessna Model

150D airplane which had undergone a modification that relocated the battery box from the firewall to the aft fuselage. The up elevator control cable was found to have chafed against the battery to battery contactor cable such that the insulation on the latter cable was destroyed resulting in an electrical short circuit of the battery cable. This produced sufficient electrical resistance and subsequent heat to cause the up elevator cable to fail. Inspection of other airplanes with similar modifications indicates that this condition could develop on these airplanes.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued requiring the battery to battery contactor cable be secured to the battery cover lock pins on Cessna Models 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150K, A150L, A150M, F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, FRA150L, and FRA150M airplanes which have undergone any modification that relocated the battery from the firewall to the aft fuselage, and, for Models 150, 150A, 150B, 150C airplanes, from its location just aft of the baggage compartment aft bulkhead to any other aft position. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, 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 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 regulation does 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 major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final

regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

#### 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:

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.

2. By adding the following new AD:

**Cessna:** Applies to all Models 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150K, A150L, A150M, F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, FRA150L, and FRA150M (all serial numbers) airplanes which have undergone any modifications which have relocated the battery from the firewall to the aft fuselage, and to the Models 150, 150A, 150B, and 150C (all serial numbers) airplanes which have undergone any modifications in which the battery has been moved from its location just aft of the baggage compartment aft bulkhead to any other aft position.

**Compliance:** Within the next 25 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the up elevator cable, accomplish the following:

(a) Tie the battery to battery contactor cable to the lock pin which attaches the battery box cover to the battery box using either MIL-C-5649 cord, or a MS17821 or MS3367 tiedown strap to achieve a minimum of one inch clearance between the battery cable and the elevator up cable.

(b) Visually inspect the battery cable and elevator cable for damage. Prior to further flight repair any such damage found.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent method of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946-4400.

All persons affected by this directive may examine the document(s) referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on August 3, 1988.

Issued in Washington, DC on July 8, 1988.

M.C. Beard,

Director of Airworthiness, AWS-1.

[FR Doc. 88-16031 Filed 7-15-88; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 88-CE-05-AD; Amdt. 39-5978]

#### Airworthiness Directives: de Havilland Model DHC-3 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to de Havilland DHC-3 airplanes which supersedes AD 85-11-01, Amendment 39-5071. This superseded AD required initial and repetitive checks of the security of engagement of the utility seat front leg with the floor rail until a positive locking modification is installed. Subsequent to the issuance of AD 85-11-01, it was realized that the AD did not provide for the above checks each time the folding seat is moved from the stowed to the deployed position; this AD includes such a requirement. This action is deemed necessary to address this condition to ensure the continuing airworthiness of the airplane.

**DATES:** Effective date: August 27, 1988.

**Compliance:** As prescribed in the body of the AD.

**ADDRESSES:** de Havilland Service Bulletin (S/B) No. 3/42, Revision A, dated September 18, 1987, applicable to this AD, may be obtained from the de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5, telephone (416) 633-7310. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lester Lipsius, Airframe Branch, ANE-172, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6220.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD, applicable to de Havilland Model DHC-3 airplanes, requiring initial and repetitive checks of the security of attachment of the seat front leg with the floor rail and a check each time the seats are moved from the stowed to the

deployed position, until Modification No. 3/932 in S/B No. 3/42, Revision A, dated September 18, 1987, is installed, was published in the Federal Register on February 8, 1988 (53 FR 3603). The proposal resulted from the realization that AD 85-11-01, Amendment 39-5071, was inadequate by not providing checks of the seat engagement with the floor rail each time the seats are moved from the stowed to the deployed position. De Havilland issued S/B No. 3/42, Revision A, dated September 18, 1987, and Transport Canada issued Canadian AD CF-85-03 R1, effective April 24, 1986. Both publications require an additional check of the seat front leg each time a seat is moved from the stowed to the deployed position.

Transport Canada, who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Canada, made this service bulletin and the actions recommended therein by the manufacturer mandatory by issuance of Transport Canada AD CF-85-03 R1, to ensure the continued airworthiness of the affected airplanes. On airplanes operated under Canadian registration, this action has the same effect as an AD on airplanes certificated for operation in the United States. The FAA relies upon the certification of Transport Canada combined with FAA review of pertinent documentation in finding compliance of the designs of these airplanes 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 examined the available information related to the issuance of S/B No. 3/42, Revision A, dated September 18, 1987, and the issuance of AD CF-85-03 R1 by Transport Canada, and concluded that the condition addressed by S/B No. 3/42, Revision A, was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change.

The FAA has determined that this regulation involves approximately 42 de Havilland DHC-3 airplanes in the United States registry at an approximate annual cost of \$40 for a check of each airplane. The total cost for each check of the fleet is estimated to be \$1,680 to the

private sector. The cost of compliance with the AD is so small that the expense of compliance with not be a significant financial impact on any small entities operating these airplanes.

The regulations set forth in this amendment are promulgated pursuant to 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 regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action: (1) Is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### 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:

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.

2. By adding the following new AD:  
de Havilland: Applies to Model DHC-3 (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished in accordance with AD 85-11-01, Amendment 39-5071.

To prevent disengagement of the folding utility seat forward leg from the floor mounting rail, which could result in hazards to seat occupants from an inadequately restrained seat during a crash, accomplish the following:

(a) Within 50 hours time-in-service (TIS) after the effective date of this AD, and at subsequent intervals of 50 hours TIS, attempt to move the lower end of each leg sideways into the open part of the keyhole slot using as much force as can be exerted by hand. If the leg can be released from the keyhole slot, remove the seat from service until de

Havilland Modification No. 3/932 is incorporated. (This modification is contained in de Havilland Service Bulletin No. 3/42, Revision A, dated September 18, 1987).

(b) Repeat the check in Paragraph (a) of this AD each time the seats are moved from the stowed to deployed position.

(c) The check required by Paragraph (b) of this AD may be accomplished by a flightcrew member, certificated under FAR 61 or FAR 63 rules, briefed on the procedure.

**Note:** When the checks required by Paragraph (b) of this AD are accomplished by a flightcrew member pursuant to the restrictions specified in Paragraph (c) of this AD, maintenance records must be made as required by FAR 43.9 and those records must be maintained as required by FAR 91.173, 121.380, or 135.439 as applicable.

(d) When Modification No. 3/932 is installed in accordance with the "ACCOMPLISHMENT INSTRUCTIONS" of de Havilland S/B No. 3/42, Revision A, on each seat, subsequent checks required by this AD are no longer required.

(e) An equivalent means of compliance may be used when approved by the Manager, New York Aircraft Certification Office, Federal Aviation Administration, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; Telephone (416) 633-7310, or may examine these documents at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This AD supersedes AD 85-11-01, Amendment 39-5071.

This amendment becomes effective on August 27, 1988.

Issued in Washington, DC on July 8, 1988.

**M.C. Beard,**

*Director of Airworthiness, AWS-1.*

[FR Doc. 88-16032 Filed 7-15-88; 8:45 am]

BILLING CODE 4910-13-M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 13

[Docket No. 9195]

### Massachusetts Board of Registration in Optometry; Prohibited Trade Practices and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Final order.

**SUMMARY:** This Final Order requires the Massachusetts board to allow truthful advertising by optometrists in the state, requires the optometry board to repeal its current regulation banning

advertising of affiliations between optometrists and optical retailers, and is also required to send a copy of the order to all optometrists currently licensed in Massachusetts and to all new applicants for five years.

**DATES:** Complaint issued July 8, 1985. Final Order issued June 13, 1988.<sup>1</sup>

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Hilder, FTC/S-3115, Washington, DC 20580. (202) 328-2545.

**SUPPLEMENTARY INFORMATION:** In the Matter of Massachusetts Board of Registration in Optometry. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing And Intimidating: § 13.345 Competitors; § 13.367 Members. Subpart—Combining or Conspiring: § 13.384 Combining or conspiring; § 13.395 To control marketing practices and conditions. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-45 Maintain records; § 13.533-45(k) Records, in general; § 13.533-50 Maintain means of communication; § 13.533-60 Release of general, specific, or contractual constrictions, requirements, or restraints.

### List of Subjects in 16 CFR Part 13

Optometrists, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 45. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

### Before Federal Trade Commission

Commissioners: Daniel Oliver, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

In the Matter of Massachusetts Board of Registration in Optometry.

[Docket No. 9195]

### Final Order

This matter has been heard by the Commission upon the cross-appeals of Respondent, Massachusetts Board of Registration in Optometry, and Complaint Counsel from the Initial Decision, and upon briefs and oral argument in support of and in opposition to the appeals. For the reasons stated in the accompanying Opinion, the Commission has determined to affirm in part and reverse in part the Initial Decision. Accordingly, the Commission enters the following order.

<sup>1</sup> Copies of the Complaint, Initial Decision, and Opinion of the Commission are available from the Commission's Public Reference Branch, H-130, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

## I

It is ordered that for the purpose of this order, the following definitions shall apply:

A. "Board" shall mean the Massachusetts Board of Registration in Optometry, its officers, committees, representatives, agents, employees, and successors.

B. "Discounted price" shall mean a price that is less than the price the person or organization usually charges for the good or service.

C. "Disciplinary action" shall mean:

1. The revocation or suspension of, or refusal to grant, a license to practice optometry in Massachusetts, or the imposition of a reprimand fine, probation, or other penalty or condition; or

2. The initiation of an administrative, criminal, or civil proceeding.

D. "Optical good" shall mean any commodity for the aid or correction of visual or ocular anomalies of the human eyes, such as lenses, including contact lenses, spectacles, eyeglasses, eyeglass frames, and appliances.

E. "Optometric service" shall mean any service that a person duly registered and licensed to practice optometry under Mass. Gen. Laws Ann. ch. 112 § 66 *et seq.*, or any future recodification thereof, is authorized to provide pursuant to those statutory provisions.

F. "Price advertising" shall mean advertising information about the price of any optometric service or optical goods.

## II

It is further ordered that the Board, in or in connection with its activities in or affecting commerce, as "commerce" is defined in section 4 of the Federal Trade Commission Act, shall cease and desist from, directly or indirectly, or through any rule, regulation, policy, disciplinary action or other conduct:

A. Prohibiting, restricting, impeding, or discouraging any person or organization from advertising or offering a discounted price or from otherwise engaging in price advertising;

B. Prohibiting, restricting, impeding, or discouraging the advertising or publishing of the name of an optometrist or the availability of an optometrist's services by a person or organization not licensed to practice optometry;

C. Prohibiting, restricting, impeding, or discouraging any advertising that uses testimonials and advertising that the Board believes is sensational or flamboyant;

D. Inducing, urging, encouraging, or assisting any person or organization to

take any of the actions prohibited by this Part.

Nothing in this order shall prevent the Board from adopting and enforcing reasonable rules, or taking disciplinary or other action, to prevent advertising that the Board reasonably believes to be fraudulent, false, deceptive, or misleading within the meaning of Massachusetts General Laws, Chapter 112, Sections 71 and 73A, or that the Board reasonably believes to be otherwise unlawful under Massachusetts General Laws, Chapter 112, Section 73A, or any future recodification thereof.

## III

It is further ordered that this order shall not be construed to prevent the Board from engaging in activity protected under the First Amendment to the United States Constitution to petition for legislation concerning the practice of optometry.

## IV

It is further ordered that the Board shall:

A. Within Sixty (60) days after the date that this order becomes final, institute procedures to repeal 246 C.M.R. § 5.07(3), and complete such repeal within a reasonable time thereafter;

B. Distribute by mail a copy of this order, and executed Appendix:

1. To each person licensed to practice optometry in Massachusetts within one (1) year after the date this order becomes final;

2. Within thirty (30) days after this order becomes final, to each person whose application to practice optometry in Massachusetts is pending, and to each person who applies for five (5) years thereafter, within sixty (60) days after the filing of the application; and

3. To the Massachusetts Optometric Association, within sixty (60) days after the date this order becomes final;

C. Within one hundred twenty (120) days after the date that this order becomes final, and annually for a period of five (5) years on or before the anniversary of the date on which this order becomes final, submit a written report to the Federal Trade Commission setting forth in detail the manner in which the Board has complied with this order;

D. For a period of five (5) years after the date that this order becomes final, maintain and make available to the Federal Trade Commission staff for inspection and copying, all documents and records containing any reference to any matter covered by this order.

By the Commission, Commissioner Strenio concurring.

C. Landis Plummer,  
Acting Secretary.

## Appendix

The Federal Trade Commission has issued an order against the Massachusetts Board of Registration in Optometry. This order provides that the Board may not prohibit or restrict:

1. Offering, or truthful advertising that offers, discounted fees for goods and services provided by optometrists, or other truthful price advertising;

2. Truthful advertising of an optometrist's name and the availability of his or her services by retail sellers of optical goods or other persons not licensed to practice optometry;

3. Advertising that uses testimonials or that the Board believes is sensational or flamboyant.

The order does not affect the Board's authority to prohibit advertising that is fraudulent, false, deceptive, or misleading, or advertising that otherwise violates Massachusetts statutes.

Pursuant to the Federal Trade Commission's order, the Board has undertaken to repeal 246 C.M.R. § 5.07(3), which states, in part, that a "licensee shall not permit or authorize the use of his name, professional ability or services by any person or establishment not duly authorized to practice optometry."

In conformity with the Federal Trade Commission's order, you are advised that the prohibition on advertising gratuitous services contained in 246 C.M.R. § 5.11(1)(b) does not prohibit all advertising of gratuitous services. It only applies to those advertisements of gratuitous services prohibited by Massachusetts law, specifically M.G.L. c. 112 s. 73A. This statute prohibits "in any newspaper, radio, display sign or other advertisements . . . any statement containing the words 'free examination of eyes', 'free advice', 'free consultation', 'consultation without obligation', or any other words or phrases of similar import which convey the impression that eyes are examined free." The Board's rule is no broader than that statutory prohibition.

Pursuant to 246 C.M.R. § 5.11(6), the Board may require reasonable substantiation of a licensee's usual fees for services or goods, for the purpose of preventing the false, deceptive, or misleading advertisement of discounted fees by a licensee.

For more specific information, you should refer to the order itself, a copy of which is enclosed.

*Chairman, Massachusetts Board of Registration in Optometry.*

[FR Doc. 88-16056 Filed 7-15-88; 8:45 am]

BILLING CODE 6750-01-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 240

[Release No. 34-25891A; File Nos. S7-22-87, 4-308, SR-NYSE-86-17, and SR-PSE-84-23]

### Voting Rights Listing Standards; Disenfranchisement Rule

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** On July 12, 1988, the Commission issued a release adopting Rule 19c-4 under the Securities Exchange Act of 1934 at 53 FR 26376 (July 12, 1988). This document corrects the concurring statement of Commissioner Fleischman that was appended to the rule.

**FOR FURTHER INFORMATION CONTACT:** Amy N. Kroll, Counsel to Commissioner Fleischman (202) 272-2092.

Accordingly, in FR Doc. 15609, in the issue of July 12, 1988, page 26396, second sentence of the first full paragraph in column 3, the language for the concurring statement of Commissioner Fleischman is corrected to read as follows:

"Recognizing that application, *i.e.*, interpretation, of its own rule will as always fall in the first instance to each of the exchanges and the NASD, paragraph (f) of Rule 19c-4 admonishes those organizations to adhere to interpretive policies 'consistent with' and 'otherwise in furtherance of' <sup>10</sup> the broad purposes of the Exchange Act to which Rule 19c-4 is directed."

July 13, 1988.

Jonathan G. Katz,  
Secretary.

[FR Doc. 88-16103 Filed 7-15-88; 1:45 pm]

BILLING CODE 8010-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Parts 4, 292, and 375

[Order No. 499; Docket No. RM87-13-000]

### Implementation of Section 8 of the Electric Consumers Protection Act of 1986; Hydroelectric Applicants With Projects at a New Dam or Diversion Seeking Benefits Under the Public Utility Regulatory Policies Act of 1978

Issued: July 11, 1988.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is amending its regulations governing a hydroelectric license or exemption applicant with a project at a new dam or diversion that is seeking benefits under section 210 of the Public Utilities Regulatory Policies Act of 1978 (PURPA) (16 U.S.C. 824a-3 (1982)). In promulgating these regulations, the Commission is implementing section 8 of the Electric Consumers Protection Act of 1986 (ECPA) and terminating an interim rule currently in effect in Docket No. RM87-8-000 (52 FR 5276 (Feb. 20, 1987)).

**EFFECTIVE DATE:** September 16, 1988.

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

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the *Federal Register*, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. The full text of this final rule is available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000,

825 North Capitol Street, NE., Washington, DC 20426.

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

## I. Introduction

The Federal Energy Regulatory Commission (Commission) amends its regulations governing a hydroelectric license or exemption applicant with a project at a new dam or diversion that is seeking benefits under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA).<sup>1</sup> In promulgating these regulations, the Commission implements section 8 of the Electric Consumers Protection Act of 1986 (ECPA).<sup>2</sup> In addition, the Commission terminates one interim rule currently in effect.<sup>3</sup>

## II. Background

Section 210 of PURPA requires electric utilities to sell electricity to, and purchase electricity from, qualifying small power production facilities. The Federal Power Act (FPA) defines "small power production facility" to include facilities with a power production capacity of 80 megawatts or less that produce electric energy solely by the use of renewable resources.<sup>4</sup> The Commission has interpreted "renewable resources" to include water used at a hydroelectric project located at either an existing dam or a new dam or diversion.<sup>5</sup> Therefore, a small hydroelectric project qualifies as a "small power production facility" and may seek PURPA benefits.<sup>6</sup>

### A. Section 8 of ECPA

Section 8(a) of ECPA amends section 210 of PURPA to add a new section 210(j). Section 210(j) establishes three new environmental requirements that a hydroelectric project located at a new dam or diversion must satisfy before it can qualify for PURPA benefits. In addition, section 8(e) of ECPA imposes a moratorium on PURPA benefits for such projects. The purpose of the moratorium

<sup>1</sup> 16 U.S.C. 824a-3 (1982).

<sup>2</sup> Pub. L. No. 99-496; 100 Stat. 1243 (Oct. 16, 1986).

<sup>3</sup> Hydroelectric Applicants Seeking Benefits Under section 210 of the Public Utility Regulatory Policies Act of 1978 for Projects Located at a New Dam or Diversion, Docket No. RM87-8-000, 52 FR 5276 (Feb. 20, 1987). III FERC Stats. & Regs. ¶30,729 (Feb. 13, 1987).

<sup>4</sup> 16 U.S.C. 796(17)(A) (1982).

<sup>5</sup> Small Power Production and Cogeneration Facilities—Qualifying Status, 45 FR 17959 at 17966 (Mar. 20, 1980), FERC Stats. & Regs. [Regulations Preambles 1977-1981] ¶ 30,134 (Mar. 13, 1980).

<sup>6</sup> The term "PURPA benefits" refers to the provision in section 210 of PURPA that requires electric utilities to purchase electricity from, and sell electricity to, any qualifying facility.

<sup>10</sup> Rule 19c-4(f).

is to allow Congress time to evaluate whether PURPA benefits should continue to be extended to hydroelectric projects located at new dams or diversions (210(j) projects). Section 8(d) of ECPA requires the Commission to study whether PURPA benefits should be available to these facilities. The Commission will submit the results of its study to Congress, and Congress will then have one full session to consider the issue. The moratorium on PURPA benefits will end at the expiration of the first full session in which the Commission submits its report to Congress.

Under PURPA section 210(j), PURPA benefits will not be available to hydroelectric projects located at new dams or diversions unless the project meets each of the following requirements:

(1) *No Substantial Adverse Effects.* At the time of issuance of the license or exemption for the project, the Commission finds that the project will not have substantial adverse effects on the environment, including recreation and water quality. Such finding shall be made by the Commission after taking into consideration terms and conditions imposed under either paragraph (3) of this subsection or section 10 of the Federal Power Act (whichever is appropriate as required by that Act or the Electric Consumers Protection Act of 1986) and compliance with other environmental requirements applicable to the project.

(2) *Protected Rivers.* At the time application for a license or exemption for the project is accepted by the Commission (in accordance with the Commission's regulations and procedures in effect on January 1, 1986, including those relating to environmental consultation), such project is not located on either of the following:

(A) Any segment of a natural watercourse which is included in (or designated for potential inclusion in) a State or national wild and scenic river system.

(B) Any segment of a natural watercourse which the State has determined, in accordance with applicable State law, to possess unique natural, recreational, cultural, or scenic attributes which would be adversely affected by hydroelectric development.

(3) *Fish and Wildlife Terms and Conditions.* The project meets the terms and conditions set by fish and wildlife agencies under the same procedures as provided for under section 30(c) of the Federal Power Act.

While section 8 of ECPA establishes three new requirements for PURPA

benefits, it also creates four exceptions to the new requirements and to the moratorium. Any project which qualifies for one of the exceptions may seek PURPA benefits without complying with one or more of the new requirements. Any project that qualifies for one of the exceptions is also exempted from the moratorium.<sup>7</sup>

The first exception to these new requirements is embodied in section 210(j) of PURPA itself. This exception applies to any new dam or diversion project that is located at a government dam where non-Federal hydroelectric development is permissible (government dam exception). Any project in this category is exempted from the moratorium and may seek PURPA benefits without complying with any of the new requirements.<sup>8</sup> The remaining exceptions, in section 8(b) of ECPA, provide relief to developers who had relied on existing law and had expended a significant amount of money and effort on their projects at the time of ECPA's enactment. The remaining exceptions in section 8(b) of ECPA are:

1. None of the three new requirements applies if the application was filed, and accepted for filing by the Commission, before October 16, 1986, the date of ECPA's enactment (section 8(b)(2) of ECPA).

2. Only the protected rivers requirement (section 210(j)(2) of PURPA) applies if the application was filed before October 16, 1986, and accepted for filing by the Commission between October 16, 1986, and October 16, 1989 (section 8(b)(3) of ECPA).<sup>9</sup>

3. The fish and wildlife agency requirement (section 210(j)(3) of PURPA) does not apply if the application was filed after October 16, 1986, and if the Commission finds, based on a petition filed by the applicant within 18 months from October 16, 1986, that the applicant had (prior to ECPA's enactment)

<sup>7</sup> The result of this framework is that the new requirements can have immediate application even though there is a moratorium on PURPA benefits. For example, one of the exceptions only excepts a project from one of the new requirements. Such a project would be exempt from the moratorium and would be able to seek PURPA benefits. However, the project still would have to comply with remaining requirements in section 210(j) of PURPA.

<sup>8</sup> This "exception", unlike the exceptions in section 8(b) of ECPA, is a categorical exception and is not keyed to the timing of any event. By definition section 210(j) does not apply to new dams or diversions that are located at government dams where non-Federal hydroelectric development is permissible.

<sup>9</sup> For projects that qualify for this exception, the Commission is contacting the appropriate state agencies and requesting that the agencies determine if such projects are located on any natural watercourse as described in section 210(j)(2) of PURPA.

committed substantial monetary resources to development of the project and to the diligent and timely completion of all filing requirements of the Commission (section 8(b)(4) of ECPA).

The exception in section 8(b)(4) only excepts an applicant from the terms and conditions of fish and wildlife agencies under section 210(j)(3) of PURPA; it does not exempt the applicant from the terms and conditions set by fish and wildlife agencies under section 10(j) or 30(c) of the FPA.<sup>10</sup>

#### *B. The Commission's Environmental Responsibilities under the FPA*

As mentioned above, Congress established three new environmental requirements that must be satisfied before certain small power production facilities (*i.e.*, hydroelectric projects located at new dams and diversions) can be qualifying facilities (QFs) under PURPA. In addition to administering the new environmental requirements in section 210(j) of PURPA, the Commission has the responsibility under the FPA to ensure that all hydroelectric projects are environmentally sound. Accordingly, the Commission's hydroelectric licensing regulations require the submission of substantial amounts of environmental information, and every hydroelectric project at a new dam or diversion must comply with these regulations<sup>11</sup> regardless of whether PURPA benefits are sought.

The Commission licenses hydroelectric projects pursuant to section 4(e) of the Federal Power Act (FPA).<sup>12</sup> In order to issue a license, the

<sup>10</sup> If an applicant qualifies for the exception from the fish and wildlife agency requirement in section 210(j)(3) of PURPA, the applicant is still subject to either recommended terms and conditions set by fish and wildlife agencies under section 10(j) of the FPA or mandatory terms and conditions set by fish and wildlife agencies under section 30(c) of the FPA. Congress intended FPA section 10(j) to apply to all applications for licenses except for those applications covered by PURPA section 210(j)(3). The Conference report which accompanies ECPA states: "Section 10 of the Federal Power Act, as amended by [ECPA], shall apply to all projects \* \* \* for which a license is issued \* \* \* except that section 10(j) will not apply if section 210(j)(3) of PURPA \* \* \* applies to the project." H.R. Rep. No. 934, 99th Cong., 2nd Sess. 32 (1986).

Congress also did not intend to alter the application of section 30(c) of the FPA. Section 8(c) of ECPA requires that, "Nothing in this Act [ECPA] shall affect the application of section 30(c) of the Federal Power Act to any exemption issued after the enactment of this Act." H.R. Rep. No. 934, 99th Cong., 2nd Sess. 32 (1986) (emphasis added).

<sup>11</sup> See 18 CFR Part 4 (1987).

<sup>12</sup> 16 U.S.C. 797(e) (1982).

Commission must find under section 10(a) of the FPA that the project "will be best adapted to a comprehensive plan for improving or developing a waterway \* \* \*." <sup>13</sup> The courts interpret this standard to require consideration of the environmental consequences of any proposed project. In *FPC v. Idaho Power Company*,<sup>14</sup> the Supreme Court observed that the Commission is plainly made the guardian of the public domain under section 10(a) of the FPA.<sup>15</sup> In *Udall v. FPC*,<sup>16</sup> the Court held that:

The test [under the FPA] is whether the project will be in the public interest. And that determination can be made only after an exploration of all the issues relevant to the 'public interest' \* \* \* including the public interest in preserving reaches of wild rivers and wilderness areas, the preservation of anadromous fish for commercial and recreational purposes and the protection of wildlife.<sup>17</sup>

In addition, the term "recreational purposes" has been interpreted to encompass the conservation of natural resources, the maintenance of natural beauty and the preservation of historic sites.<sup>18</sup> Therefore, in deciding whether to issue a license of exemption, the Commission must give serious consideration to the impacts the project will have on the environment including recreation, fish, wildlife, aesthetics and water quality. The Commission's current regulations require submission of substantial amounts of environmental information so that the Commission can fulfill its duties under the FPA. The Commission intends that every applicant with a hydroelectric project at a new dam or diversion seeking PURPA benefits full comply with its hydroelectric licensing regulations.

#### C. The Interim Rule and Section 8(b)(4) of ECPA

The Commission issued an interim rule on February 13, 1987, that implemented portions of section 8 ECPA.<sup>19</sup> The interim rule was necessary

because of a provision in section 8(b)(4) of ECPA. Section 8(b)(4)(A) allows an applicant to be exempted from the fish and wildlife agency requirement in section 210(j)(3) of PURPA if, based on a petition, the applicant can demonstrate a commitment of substantial monetary resources to the project prior to ECPA's enactment. Section 8(b)(4)(A) required the Commission to issue a rule within 120 days from ECPA's enactment promulgating regulations to govern the petition to demonstrate a commitment of substantial monetary resources (CSMR petition). Section 8(b)(4)(B) provides that if an applicant had a preliminary permit and had completed environmental consultations prior to ECPA's enactment, there is a rebuttable presumption that the applicant had committed substantial monetary resources to the project.

Section 8(b)(4)(C) provides that any applicant who has filed a CSMR petition under section 8(b)(4)(A) may file a second petition and receive a preliminary determination on whether the project satisfies section 210(j)(1) of PURPA, which requires that the project not have a substantial adverse effect on the environment. Section 8(b)(4)(C) provides further that if the Commission initially finds that the project will have a substantial adverse effect, the Commission must give the applicant a reasonable opportunity to provide for mitigation of such adverse effects before making a final determination. Finally, section 8(b)(4)(C) provides that if the Commission has notified the State of its initial finding and the State has not taken any action under the protected rivers requirement (section 210(j)(2) of PURPA), the failure to take such action will be the basis for a rebuttable presumption that there is not a substantial adverse effect on the environment related to natural, recreational, cultural, or scenic attributes.

The interim rule defined "commitment of substantial monetary resources" (CSMR) and provided procedures for the filing and processing of a CSMR petition. Applicants had from March 23, 1987 (the effective date of the interim rule) until April 16, 1988 to file a CSMR petition. Three CSMR petitions have been filed with the Commission.<sup>20</sup> In

addition to implementing sections 8(b)(4)(A) and 8(b)(4)(B) of ECPA, the Commission implemented (on an interim basis) the remaining exceptions in section 8 of ECPA and the new requirements of section 210(j) of PURPA. The Commission did not implement the provisions of section 8(b)(4)(C) of ECPA in the interim rule; rather, the Commission proposed regulations to implement section 8(b)(4)(C) in a notice of proposed rulemaking that is discussed below. The Commission, in issuing this final rule, revokes the interim rule and terminates Docket No. RM87-8-000.

#### D. The Notice of Proposed Rulemaking

On October 5, 1987, the Commission issued a notice of proposed rulemaking (NPR) in order to implement remaining portions of section 8 of ECPA.<sup>21</sup> In the NPR, the Commission proposed filing requirements that would allow the Commission to enforce the new requirements in section 210(j) of PURPA. The Commission also proposed to define "substantial adverse effect on the environment" for the purposes of section 210(j)(1) of PURPA. In addition, the Commission proposed to implement that portion of the exception in section 8(b)(4) of ECPA which was not addressed in the interim rule (*i.e.*, section 8(b)(4)(C)).

The Commission received five comments on the interim rule and ten comments in response to the NPR. Commenters included State agencies, an electric utility and several private associations.<sup>22</sup>

#### III. Discussion

In this final rule, the Commission implements section 8 of ECPA by amending Part 4, Part 292, and Part 375 of its regulations. The Commission merges the regulations in the interim

for the Beaver Creek Project and the Reeds Creek Project have been dismissed by the Commission.

<sup>21</sup> Implementation of Section 8 of the Electric Consumers Protection Act of 1986; Hydroelectric Applicants with New Dam or Diversion Projects, 52 FR 38460 (Oct. 16, 1987), FERC Stats. & Regs. [Proposed Regulations 1982-1987] ¶ 32,453 (Oct. 5, 1987).

<sup>22</sup> Comments on the Interim Rule (Docket No. RM87-8-000) were submitted by the Alabama Power Company and the Montana Department of Fish, Wildlife & Parks. In addition, joint comments were filed by American Rivers, Inc., American Whitewater Affiliation, and Friends of the Earth.

Comments on the NPR (Docket No. RM87-13-000) were submitted by American Whitewater Affiliation, California Save Our Streams Council, Class VI River Runners, Inc., Eastern Professional River Outfitters, National Wildlife Federation, New York State Department of Environmental Conservation, Oregon Department of Energy, and Pocono Whitewater, LTD. In addition, joint comments were filed by American Rivers, Inc. and Friends of the Earth.

<sup>13</sup> 16 U.S.C. 803a (1982). The comprehensive plan must include plans for the adequate protection, mitigation and enhancement of fish and wildlife (including related spawning grounds and habitat) and for other beneficial public uses, including irrigation, flood control, water supply and recreational purposes.

<sup>14</sup> 344 U.S. 17 (1952).

<sup>15</sup> *Id.* at 21.

<sup>16</sup> 387 U.S. 428 (1965).

<sup>17</sup> *Id.* at 450.

<sup>18</sup> *Scenic Hudson Preservation Conference v. FPC*, 354 F.2d 608, 614 (2nd Cir. 1965), cert. denied, 384 U.S. 941 (1966).

<sup>19</sup> *Supra* note 3.

<sup>20</sup> City of Harrisburg, applicant for the Dock Sheet Project—Project No. 10418-000 (Pennsylvania), filed a CSMR petition on August 5, 1987; Beaver Creek Hydro, Inc., applicant for the Beaver Creek Project—Project No. 7853-003 (Idaho), filed a CSMR petition on September 29, 1987; and Reeds Creek Hydro, Inc., applicant for the Reeds Creek Project—Project No. 10490-000 (Idaho), filed a CSMR petition on October 1, 1987. However, the license applications

rule and the regulations proposed in the NOPR into one set of comprehensive regulations governing the requirements of section 210(j) of PURPA. In addition, the Commission makes changes in the regulations in response to the suggestions of commenters. An overview of the regulatory changes is provided below. As adopted, the rule:

- Sets out the provisions of section 210(j) of PURPA and establishes filing requirements to ensure that the Commission has the information it needs to make the required findings. This information includes filing an environmental report that conforms to § 4.41(f) of the Commission's regulations;
- Requires all applicants to state (during the initial stage of pre-filing consultation under § 4.38 of the Commission's regulations) whether or not the applicant intends to seek PURPA benefits and whether the project is located at a new dam or diversion;
- Prohibits applicants who have stated they will not seek PURPA benefits from reversing their statement of intent after the license or exemption has been issued by the Commission.
- Requires all applicants with a hydroelectric power project located at a new dam or diversion that seek PURPA benefits to perform the environmental studies in § 4.38(b)(2)(i)(D)-(F) of the Commission's regulations.
- Revises the definitions of "substantial adverse effect of the environment"; and
- Revises the regulations implementing the exceptions contained in section 8(b)(4)(C) of ECPA.

#### A. Public Reporting Burden

Except for the specific information collection burdens discussed below, this rule does not substantially change existing Commission regulations for hydroelectric license or exemption applicants. Section 8 of ECPA attaches new significance to the status of a project as either an "existing dam" or a "new dam or diversion" for the purposes of obtaining PURPA benefits. Consequently, new § 4.38(b)(1)(vi)(A) requires every applicant to state whether or not it intends to seek PURPA benefits. If the applicant intends to seek PURPA benefits it must also state whether the dam is an existing dam or a new dam or diversion.<sup>23</sup> The information collection requirement of stating whether or not the applicant intends to seek PURPA benefits represents a minimal burden that is estimated to be 5 minutes per response. This requirement will affect all

hydroelectric applicants with projects that have a capacity of 80 MW or less and the number of these respondents is estimated to be 76 (per year).

Section of ECPA imposed a moratorium on PURPA benefits. However, as noted earlier, any project that qualifies for one of the statutory exceptions is exempted from the moratorium. Consequently, except for the new requirement in § 4.38(b)(1)(vi)(A) discussed above, the information collection burdens imposed by this rule only apply to applicants that can qualify for one of the exceptions in section 8 of ECPA.

For an applicant that qualifies for the exception in section 8(b)(3) of ECPA, the information collection burden is estimated to be 16 hours per response. The number of likely respondents is 7. For an applicant that qualifies for the exception in section 8(b)(4) of ECPA, the information collection burden is estimated to be 40 hours per response. The number of likely respondents is 1. Two of the exceptions in section 8 of ECPA except applicants from all of the requirements in section 210(j) of PURPA. Therefore, there is no information collection burden for such applicants.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (Attention: Marian Obis, (202) 357-8173); and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. [Attention: Desk Officer for the Federal Energy Regulatory Commission.]

#### B. Implementation of Section 210(j) of PURPA

The Commission will make the findings required by section 210(j) of PURPA within the context of its current environmental review process. Any project within the guidelines of section 210(j) of PURPA is subject to specific environmental findings. The Commission, therefore, amends its regulations to require that all projects within the purview of section 210(j) be subject to specific filing requirements under Part 4 and Part 292 of its regulations.

Many commenters in this rulemaking proceeding express a general concern whether the proposed regulations would ensure that the Commission would receive the information needed to make the findings under section 210(j) of PURPA. These commenters apparently believe that the proposed regulations implementing section 210(j) would

subject projects to less environmental scrutiny than would otherwise be the case if PURPA benefits were not being sought. This idea is incorrect and misinterprets the relationship between the Commission's regulations implementing section 210(j) of PURPA and the Commission's hydroelectric licensing regulations under the FPA. As noted earlier, the Commission is already charged with the duty under the FPA to ensure that hydroelectric projects are environmentally sound. The regulations implementing section 210(j) of PURPA do not take the place of, but are in addition to, the Commission's hydroelectric licensing regulations. The Commission intends that every applicant with a hydroelectric project located at a new dam or diversion who seeks PURPA benefits satisfy all the applicable requirements in Part 4 of the Commission's regulations, as well as the environmental requirements of section 210(j) of PURPA.

#### Prefiling Consultation Requirements

The Commission's hydroelectric licensing regulations contain general conditions for all hydroelectric license or exemption application.<sup>24</sup> These general conditions include prefiling consultation requirements contained in § 4.38 of the Commission's regulations. Section 4.38 requires applicants to consult with each appropriate Federal and state agency before submitting its application to the Commission, and the consultation is broken down into three stages. The initial stage of consultation requires the applicant to provide each appropriate agency with detailed information regarding the project. Information required in the initial stage includes the identification of the environment to be affected, the significant resources present, and any environmental protection, mitigation, or enhancement plans.<sup>25</sup>

The second stage of consultation requires the applicant to conduct any studies that are necessary for the Commission to make an informed decision regarding the merits of the application. Studies must be conducted if the results are needed to determine the impact of the project on important natural or cultural resources, or are necessary to determine suitable mitigation, or are necessary to minimize impacts to a significant resource (e.g., wild and scenic river, anadromous fish, endangered species, caribou migration routes).<sup>26</sup>

<sup>23</sup> See 18 CFR 4.30-4.39 (1987).

<sup>24</sup> 18 CFR 4.38(b)(1)(iv) (1987).

<sup>25</sup> 18 CFR 4.38(b)(2)(i)(D)-(F) (1987).

<sup>26</sup> See, new § 4.38(b)(1)(vi)(B).

The third stage of pre-filing consultation occurs when the applicant files its application for a license or exemption. The applicant must serve a copy of the application on each agency it has consulted and must document in Exhibit E of its application that all three stages of the consultation process have been fully satisfied.<sup>27</sup> In order to comply with ECPA and section 210(j) of PURPA, the Commission amends § 4.38 of its regulations concerning pre-filing consultation requirements.

(i) *Statement of intent to seek PURPA benefits; verification of new dam or diversion.* Prior to ECPA, there was no distinction between new dams and diversions and existing dams for the purpose of obtaining PURPA benefits. ECPA introduced this distinction, imposing three new environmental requirements on projects located on new dams or diversions. Therefore, in order to comply with ECPA, the Commission must verify whether or not a project is located at a new dam or diversion. In the NOPR, the Commission proposed that every applicant for a project with a power capacity of 80 megawatts (MW) or less state in its application whether or not PURPA benefits will be sought, and if so, whether the project is located at a new dam or diversion.

All commenters were in favor of this requirement and agree with the Commission's goal of preventing an applicant from deliberately circumventing the requirements of section 210(j) by initially indicating an intent not to seek PURPA benefits and then at some point in the future seeking PURPA benefits as a project located at an "existing dam." The New York State Department of Environmental Conservation (NYDEC), while in favor of the requirement, also suggests that an applicant be required to state its intention to seek PURPA benefits at the time pre-filing consultation begins under § 4.38 of the Commission's regulations.<sup>28</sup>

The Commission agrees with NYDEC and amends its regulations to require an applicant to state, during the initial stage of pre-filing consultation, whether it intends to seek PURPA benefits, and if so, whether the project is located at a new dam or diversion.<sup>29</sup> Congress

intended that the Commission obtain the views of the various Federal and state environmental agencies on the issue of whether a dam qualifies as a new dam or diversion.<sup>30</sup> Requiring an applicant to notify the appropriate agencies whether it intends to seek PURPA benefits and whether the project is a new dam or diversion will ensure that the Commission receives the views of those agencies on that issue.

(ii) *Reversal of statement of intent not to seek PURPA benefits.* In the NOPR, the Commission proposed that if, prior to the issuance of a license or exemption, an applicant filed a statement reversing its intent not to seek PURPA benefits, the Commission would treat the statement as a material amendment to the application. Treating a reversal of intent in this manner would also change the acceptance date of the application to the date on which the amendment was filed. The Commission would then consider the amended application a new filed for the following purposes:

(1) Reissuing public notice of the application (§ 4.32 of the Commission's regulations—Acceptance for filing or rejection) 18 CFR 4.32 (1987).

(2) Timeliness (§ 4.36 of the Commission's regulations—Competing applications) 18 CFR 4.36 (1987), and

(3) Disposal of competing applications (§ 4.37 of the Commission's regulations—Rules of preference among competing applications) 18 CFR 4.37 (1987).

In addition, the Commission proposed to rescind any acceptance letter for the application which may have been issued. As a consequence, the applicant would be subject to a new notice period and might lose priority among competing applicants.

The New York State Department of Environmental Conservation (NYDEC) suggests that applicants should not be given the opportunity to seek PURPA benefits after the initial stage of consultation.<sup>31</sup> The Commission disagrees with NYDEC and will allow an applicant to reverse its statement of intent up until the time the license or exemption is issued. However, the Commission believes that the pre-filing consultation process under § 4.38 of its regulations is important for gathering the information necessary to comply with section 8 of ECPA. Accordingly, if an applicant were to reverse its statement of intent not to seek PURPA benefits prior to the issuance of a license or exemption, the Commission

will require the applicant to repeat the consultation process under § 4.38 of its regulations.<sup>32</sup>

The Commission also requested comments in the NOPR on whether it should, after the issuance of a license or exemption, prohibit an applicant from seeking PURPA benefits if the applicant reverses its statement of intent not to seek PURPA benefits. The National Wildlife Federation (NWF) believes the regulations should explicitly prohibit an applicant from initially stating that it will not seek PURPA benefits and later obtaining such benefits at the same site.<sup>33</sup> The Commission agrees with the NWF and adopts a regulation that prohibits applicants from seeking PURPA benefits after a license or exemption has been issued.<sup>34</sup>

(iii) *Environmental studies.* The second stage of pre-filing consultation requires an applicant to conduct any studies that are necessary for the Commission to make an informed decision regarding the merits of the application. Section 4.38(b)(2)(i) requires an applicant to perform studies prior to filing an application if the results: (1) Are needed to determine the impacts of the project on important natural or cultural resources; (2) are necessary to determine suitable mitigation; or (3) are necessary to minimize impacts to a significant resource. The Commission anticipates that environmental studies are likely to be required under § 4.38 (b)(2)(i)(D)–(F) of its regulations for the Commission to make the required findings under section 210(j) of PURPA. Therefore, the Commission references the environmental studies that may be required under Part 4 of its regulations in new § 292.208(c)(1)(i) of its regulations.<sup>35</sup>

## 2. Other Filing Requirements

Under section 210(j) of PURPA, a hydroelectric project located at a new dam or diversion must not have a substantial adverse affect on the environment (section 210(j)(1)), must not be located on a protected river (section 210(j)(2)), and must meet the terms and conditions set by fish and wildlife agencies (section 210(j)(3)). In its comments on the NOPR, the NWF states

<sup>27</sup> 18 CFR 4.38(b)(3) (1987). In addition, § 4.38(b)(3) requires the applicant to include in Exhibit E a copy of the water quality certification under section 401 of the Water Pollution Control Act (Clean Water Act) and any agency letters containing comments, recommendations, or proposed terms and conditions.

<sup>28</sup> Comments of NYDEC, at p. 1.

<sup>29</sup> See new § 4.38(b)(1)(iv).

<sup>30</sup> H.R. Rep. No. 934, 99th Cong., 2d Sess. 30 (1986).

<sup>31</sup> Comments of NYDEC at p. 2.

<sup>32</sup> See new § 4.32 (c)(2)(i)(A).

<sup>33</sup> Comments of NWF at p. 3.

<sup>34</sup> See new § 4.32(c)(2)(ii). As mentioned earlier, if an applicant reverses its intent not to seek PURPA benefits prior to issuance of the license or exemption, § 4.32(c)(2)(i) provides that the Commission will treat the reversal of intent as an amendment of the application under § 4.35, and the applicant must satisfy all the requirements in § 292.208 of the Commission's regulations.

<sup>35</sup> See new § 292.208(c)(1)(i).

that the Commission should promulgate a separate section of its regulations governing the findings it must make under section 210(j) of PURPA.<sup>36</sup> The Commission concurs with NWF and has restructured its regulations by merging the regulations in the interim rule and the regulations in the NOPR into one set of regulations governing the requirements in section 210(j) of PURPA. New § 292.208(a) provides that a hydroelectric project located at a new dam or diversion can be a qualifying facility only if it meets the requirements in §§ 292.208, 292.203, and Part 4 of the Commission's regulations. Section 202.208(b) sets out the statutory requirements of section 210(j) of PURPA and § 292.208(c) contains mandatory filing requirements that the Commission believes are necessary in order for it to make the required environmental findings.

(i) *Filing requirements for purposes of section 210(j)(1).* In order for the Commission to make a finding of no substantial adverse effect, § 292.208(c)(1) mandates that an applicant comply with the applicable licensing requirements in Part 4 of the Commission's regulations. These requirements include completing the pre-filing consultation process under § 4.38 and submitting an environmental report which meets the requirements of § 4.41(f).

Subpart E of Part 4 of the Commission's regulations applies to initial licenses for major unconstructed projects or major modified projects of more than 5 megawatts (MW).<sup>37</sup> Section 4.41(f) requires an applicant to file an Exhibit E, which is an environmental report. Exhibit E must contain reports on the following environmental attributes: Water use and water quality; fish, wildlife and botanical resources; historic and archeological resources; socio-economic impacts; geological and soil resources; recreational resources; aesthetic resources; land use; and alternative locations, designs, and energy sources. The Commission believes this report is essential to its ability to make the finding in section 210(j)(1) of PURPA.

(ii) *Filing requirements for purposes of section 210(j)(2).* Section 292.208(c)(2) contains filing requirements that pertain to the protected rivers requirement in section 210(j)(2) of PURPA. In their joint comments on the interim rule, American Rivers, American Whitewater Affiliation, and Friends of the Earth (American, *et al.*) request that the

Commission clarify which State river protection programs qualify as wild and scenic rivers systems and indicate the type of State action required to trigger section 210(j)(2)(B) of PURPA.<sup>38</sup>

The filing requirements in §§ 292.208(c) and (d) satisfy the request of American, *et al.* Section 292.208(c)(2) requires an applicant to state whether the project is located on any segment of a natural watercourse that: (1) is included in, or designated for potential inclusion in, the National Wild and Scenic River System<sup>39</sup> or a State wild and scenic river system; or (2) crosses an area designated under, or recommended for designation under, the Wilderness Act;<sup>40</sup> or (3) is one that the State, either by or pursuant to an act of the State legislature, has determined to possess unique, natural, recreational, cultural, or scenic attributes that would be adversely affected by hydroelectric development. If a project is located on a natural watercourse that meets any of the above conditions, the applicant must provide the Commission with the date on which the natural watercourse became protected, the statutory authority under which the watercourse was protected, and the Federal or State agency or political subdivision of the State that is in charge of administering the watercourse.<sup>41</sup>

### 3. Definition of New Dam or Diversion

Section 210(k) of PURPA defines new dam or diversion as a "dam or diversion which requires, for purposes of installing any hydroelectric power project, any construction, or enlargement of any impoundment or diversion structure (other than repairs or reconstruction or the addition of flashboards or similar adjustable devices)." The proposed definition of new dam or diversion in the NOPR tracked the statutory definition of new dam or diversion in section 210(k) of PURPA.

In its comments on the NOPR, the Oregon Department of Energy (ODE) objects to the proposed definition based on its interpretation of the words "any construction" to include construction unrelated to the impoundment or diversion structure.<sup>42</sup> In fact, the

Commission and ODE agree that it is the construction or enlargement of the impoundment or diversion structure which makes a structure a "new dam or diversion." To interpret the words "any construction" to include construction unrelated to the impoundment or diversion structure is unreasonable and would lead to irrational results.<sup>43</sup> In addition, such an interpretation would conflict with the current definition of "existing dam" in the Commission's regulations. The Commission uses the same concept of "construction or enlargement of impoundment structures" to determine whether a structure is an existing dam.<sup>44</sup> The Commission believes it is axiomatic that the words "any construction" in section 210(k) of PURPA refer to construction relating to the impoundment or diversion structure.

(i) *Flashboards.* Under the definition of a new dam or diversion in section 210(k) of PURPA, the addition of flashboards does not preclude a project from seeking PURPA benefits as an existing dam.<sup>45</sup> In contrast, the addition of flashboards or similar adjustable devices may preclude a project from qualifying for an exemption as an existing dam under the FPA. Section 4.30(b)(6)(ii) of the Commission's regulations defines an existing dam for exemption purposes as "any dam, the construction of which was completed on or before April 20, 1977, and which does not require any construction or enlargement of impoundment structures (other than repairs or reconstruction) in connection with the installation of any small hydroelectric power project." <sup>46</sup> The Commission has stated that whether a dam is an "existing dam" is an issue of fact, suited for a case-specific determination.<sup>47</sup> One factor the

<sup>43</sup> Such an interpretation would mean that any construction at an existing dam, including construction unrelated to the impoundment or diversion structure, would make the dam a "new dam or diversion."

<sup>44</sup> "Existing dam \* \* \* means any dam \* \* \* which does not require any construction or enlargement of impoundment structures \* \* \*," 18 CFR 4.30(b)(6)(i), (ii) (1987).

<sup>45</sup> Section 210(k) of PURPA provides that "the term new dam or diversion means a dam or diversion which requires, for proposing of installing any hydroelectric power project, any construction, or enlargement of any impoundment or diversion structure (other than repairs or reconstruction or the addition of flashboards or similar adjustable devices)" (emphasis added).

<sup>46</sup> 18 CFR 4.30(b)(ii) (1987).

<sup>47</sup> See Winchester Water Control District, 24 FERC ¶ 61,287 (1983), *aff'd in pertinent part*, Steamboat v. FERC, 759 F.2d 382 (9th Cir. 1985); Foundry Associates, 33 FERC ¶ 61,118 (1985).

<sup>38</sup> Joint comments of American Rivers, American Whitewater Affiliation, and Friends of the Earth on interim rule (Docket No. RM87-8-000) at p. 2.

<sup>39</sup> 28 U.S.C. 1271-1278 (1982).

<sup>40</sup> 16 U.S.C. 1132 (1982).

<sup>41</sup> See new § 292.208(d).

<sup>42</sup> Comments of ODE at p. 1. ODE's interpretation is based on the placement of the comma which sets off the words "any construction" from the rest of the proposed definition of new dam or diversion, (and the absence of a comma after the word "enlargement").

<sup>36</sup> Comments of NWF, at pp. 2, 3.

<sup>37</sup> 18 CFR 4.40-4.41 (1987).

Commission reviews in determining whether an exemption project is an existing dam is whether there has been a significant change in the original impoundment.<sup>48</sup> Consequently, whether or not an exemption project can qualify as an existing dam may turn on the question of whether the project historically used flashboards as a part of the original impoundment.<sup>49</sup> The Commission will continue to examine the historical use of flashboards for exemption projects.

(ii) *Reconstruction.* The NYDEC and American Rivers and Friends of the Earth (AR) cite the legislative history of ECPA and request that the Commission establish a mechanism to ensure that before determining whether a dam is a new one, it will obtain the views of the various Federal and state environmental agencies, as well as other interested parties.<sup>50</sup>

The Commission agrees with NYDEC and AR. Accordingly, new § 4.38(b)(1)(vi) requires an applicant to state during its initial stage of consultation, whether or not the applicant will seek PURPA benefits and whether or not the project is located at a new dam or diversion. Requiring an applicant to provide this information during pre-filing consultation ensures that the Commission will have the views of the appropriate Federal and state agencies on the issue of whether the project qualifies as a new dam or diversion under section 210(k) of PURPA. Interested persons will also have the opportunity to comment on whether the project is a new dam or diversion or an existing dam. The regulations adopted in this rule ensure that an application will contain the information necessary for this determination, and any interested person can always review and comment on the application filed with the Commission.<sup>51</sup>

#### 4. Definition of "Substantial Adverse Effect on the Environment"

In the NOPR, the Commission proposed to define substantial adverse effects on the environment as,

Those effects which are characterized by substantial alteration of natural features, existing habitat, recreational uses, water quality or other environmental resources. For the purposes of this section, "substantial alteration" of a particular resource means a change in the resource which results in a modification of the continued use of that resource.<sup>52</sup>

The NWF and AR object to certain aspects of the proposed definition.<sup>53</sup> NWF suggests that the definition of "substantial adverse effect" should be set out in a separate regulatory section governing the findings the Commission must make under section 210(j) of PURPA. The Commission concurs with NWF and has restructured its regulations implementing section 210(j) of PURPA.<sup>54</sup> The definition of "substantial adverse effect on the environment" is added to § 292.202 of the Commission's regulations, which contains all the definitions for Part 292, Subpart B of the Commission's regulations.<sup>55</sup>

The NWF and AR also object to the language "a change in the resource which results in a modification of the continued use of that resource."<sup>56</sup> Both commenters believe that the definition does not take into account a substantial adverse effect on an anticipated future use of a resource (e.g., planned restoration or resource recovery projects). AR also interprets the language to exclude changes in the quality of an affected resource. Specifically, AR believes that a substantial adverse effect can take place without a modification in the use of the resource.<sup>57</sup>

The Commission intends the definition of a substantial adverse effect on the environment to include adverse effects that would diminish the quality of a resource. Consequently, the Commission amends its definition of substantial adverse effect on the environment to read as follows:

Substantial adverse effect on the environment means a substantial alteration in the existing or potential use of, or a loss of,

natural features, existing habitat, recreational uses, water quality or other environmental resources. Substantial alteration of a particular resource includes a change in the environment that substantially reduces the quality of the affected resource.<sup>58</sup>

#### C. Section 8(b)(4) of ECPA

Section 8(b)(4) of ECPA excepts an applicant from the fish and wildlife agency requirement in section 210(j)(3) of PURPA, if the applicant can demonstrate a commitment of substantial monetary resources to the development of the project prior to October 16, 1986. In the interim rule, the Commission defined a "commitment of substantial monetary resources" as the expenditure of, or commitment to expand, at least 50 percent of the total cost of preparing an application for a license or exemption that is accepted for filing by the Commission. The total cost includes [but is not limited to] the cost of agency consultation, environmental studies, and engineering studies conducted under Part 4 of the Commission's regulations.

The Montana Department of Fish, Wildlife & Parks (Montana) expresses concern "that an applicant is very likely to expend at least 50 percent of its funds on agency consultation and engineering studies before doing any environmental studies, and could, therefore, be exempt from conducting any environmental studies."<sup>59</sup> The Commission disagrees with Montana's conclusion. While it is technically possible for an applicant to spend 50 percent of its funds on agency consultation and engineering studies before doing any environmental studies, an applicant would never be exempt from conducting any environmental studies under the Commission's regulations. The second state of pre-filing consultation in § 4.38 of the Commission regulation requires an applicant to perform any reasonable studies necessary for the Commission to make an informed decision regarding the merits of the application.<sup>60</sup> Section 4.38(b)(2) requires environmental studies if the results are: (1) Needed to determine the impacts of the project on important natural or cultural resources, (2) necessary to determine suitable mitigation, or (3) necessary to minimize impacts to a significant resource (e.g., wild and scenic river, anadromous fish,

<sup>48</sup> Foundry, *supra* note 45, at p. 61,253.

<sup>49</sup> See Robert Z. Walker, 36 FERC ¶ 61,284 (1986) (where altering the historic pattern of the diversion was one of the reasons for denying existing dam status).

<sup>50</sup> The Conference report states: The conferees presume that before FERC determines whether such dam is a new or existing dam, it will obtain the views of the various Federal and State environmental agencies, and all other interested parties to ensure that, in fact, the particular proposal can qualify as "reconstruction" under the definition. H.R. Rep. No. 934, 99th Cong., 2d Sess. 30 (1986).

<sup>51</sup> See 18 CFR 388.106(b)(1) (1987).

<sup>52</sup> Implementation of Section 8 of the Electric Consumers Protection Act of 1986: Hydroelectric Applicants with New Dam or Diversion Projects, 52 FR 38460, 38463, (Oct. 16, 1987), FERC Stats. & Regs. [Proposed Regulations 1982-1987] § 32,453, 33,648-33,649 (Oct. 5, 1987).

<sup>53</sup> Comments of NWF at pp. 3-4; Comments of AR at pp. 6-7.

<sup>54</sup> See new § 292.203(c), and §§ 292.208-292.211.

<sup>55</sup> See new § 292.202(q) (1987).

<sup>56</sup> Comments of NWF at p. 4; Comments of AR pp. 6-7.

<sup>57</sup> Comments of AR at p. 7. As an example, AR states that a river could still be used for recreational whitewater rafting after the construction of a hydroelectric project, but the quality of that recreational experience could be significantly diminished.

<sup>58</sup> In response to NWF's and AR's concern regarding restoration or resource recovery projects, the Commission notes that it will consider the impact of the project on a restoration or resource recovery project as part of the record on which the Commission makes its determination on the merits of the application.

<sup>59</sup> Comments of Montana at p. 1.

<sup>60</sup> See 18 CFR 4.38(b)(2) (1987).

endangered species, caribou migration routes). The Commission believes it is highly unlikely that such environmental studies would not be required for an applicant with a project located at a new dam or diversion seeking PURPA benefits.<sup>61</sup>

#### 1. Rebuttable Presumption in Section 8(b)(4)(B) of ECPA

Section 8(b)(4)(B) of ECPA provides that any applicant who filed a commitment of substantial monetary resources petition (CSMR petition) and who had a preliminary permit and had completed environmental consultations prior to October 16, 1986, can benefit from a rebuttable presumption that the applicant had committed substantial monetary resources to the project. In the interim rule, the Commission provided that such an applicant could simply file a statement identifying the preliminary permit by project number instead of submitting more detailed information. American, *et al.* objects to this regulation and requests that the applicant not be relieved of the obligation to file detailed cost information.<sup>62</sup> American, *et al.* argues these data are necessary to rebut the presumption.

In the Commission's view, the fact that an applicant has a preliminary permit and has completed environmental consultations indicates a sufficient commitment of substantial monetary resources to allow the presumption in section 8(b)(4)(B) to arise. Consequently, the Commission does not require such applicants to file detailed information to demonstrate that they have committed substantial monetary resources. However, the Commission is amending its regulations to provide that if any interested person objects to the presumption, the applicant must provide the cost information in §§ 292.210(d)(3)-(5). Interested persons have ample information on which to base an objection to the presumption. Since the applicant will have completed pre-filing consultation, its application will be on file with the Commission.<sup>63</sup> In addition, the application for the preliminary permit will also be on file with the Commission. Any interested party can review both of these applications. If an objection is made, the applicant must provide the cost information in §§ 292.210(d)(3)-(5).

#### 2. Section 8(b)(4)(C) of ECPA

Section 8(b)(4)(C) of ECPA provides that an applicant who filed a successful CSMR petition may file an adverse environmental effects (AEE) petition asking for an initial determination that the project will not have substantial adverse effects on the environment as specified in PURPA section 210(j)(1).<sup>64</sup> The AEE petition can be filed any time before the license or exemption is issued by the Commission. If the Commission initially decides that the project will have a substantial adverse effect, it must afford the applicant a reasonable opportunity to provide for mitigation of those adverse effects before making a final determination. If the Commission initially decides that the project will not have a substantial adverse effect, it will afford states and interested persons a reasonable opportunity to comment on whether the project satisfies section 210(j)(1) before making a final determination.<sup>65</sup> ECPA also provides that if a State has not taken any of the actions described in section 210(j)(2) of PURPA between the time of the Commission's initial and final determination on the AEE petition, a rebuttable presumption arises that there is not a substantial adverse effect related to the natural, recreational, cultural or scenic attributes of the environment.

In the NOPR, the Commission proposed that the AEE petition identify the project and request that the Commission make an initial determination on whether the project satisfies section 210(j)(1) of PURPA. Eastern Professional River Outfitters (EPRO) and American Whitewater Affiliation (AWA) argue this requirement is inadequate.<sup>66</sup> EPRO and AWA are apparently under the misapprehension that this information in the AEE petition would be the only information the Commission would require in order to make the section 210(j)(1) finding of substantial adverse effects.

<sup>64</sup> The provisions of section 8(b)(4)(C) of ECPA are only available to those applicants who have filed a successful CSMR petition, *see* new § 292.211(a) and (c). Applicants had until April 16, 1988, to file a CSMR petition *see*, 18 CFR § 292.209(c) (1987) (redesignated in this rule as § 292.210(c)). Through April 16, 1988, three applicants have filed CSMR petitions: *see* applicants cited *supra* note 20. These applicants are the only applicants who may (if their CSMR petitions are granted) receive a determination on any AEE petition filed with the Commission.

<sup>65</sup> Section 8(b)(4)(C) of ECPA requires the Commission to make a final determination on the AEE petition at the time the license or exemption is issued.

<sup>66</sup> Comments of EPRO at p. 2; comments of AWA at p. 7.

This perception misinterprets the relationship between the exception in section 8(b)(4)(C) of ECPA and section 210(j)(1) of PURPA. The Commission has an absolute obligation under section 210(j)(1) of PURPA, independent of the exception in section 8(b)(4)(C), to ensure that a hydroelectric project at a new dam or diversion does not have a substantial adverse effect on the environment. The filing of the AEE petition is a voluntary decision by the applicant. Therefore, regardless of whether the applicant files an AEE petition, the Commission must have the information it needs to make the finding under section 210(j)(1) of PURPA. To ensure that it receives the necessary information the Commission establishes new filing requirements in § 292.208(c). In addition, § 292.211(b) provides that the filing of the AEE petition does not exempt an applicant from the new filing requirements.<sup>67</sup>

#### 3. Initial Determination on the AEE Petition

The NOPR provided that the Director of the Office of Hydropower Licensing (OHL) pursuant to delegated authority would make the initial determination on the AEE petition after the close of the public notice period for the accepted application.<sup>68</sup> If the initial determination were that the project would not have a substantial adverse effect on the environment, the Commission proposed waiting at least 45 days before making a final determination. If the initial determination were that the project would have substantial adverse effects, the Commission proposed to give the applicant 45 days in which to file proposed mitigative measures. The Commission also proposed to give the State 45 days to review any mitigative measures filed by the applicant.

Several commenters suggest changes concerning the initial determination on the AEE petition. AR, NWF, and AWA suggest that the regulations should allow both the State and members of the public to review the mitigative measures proposed by the applicant.<sup>69</sup> NWF and AWA suggest that the State and other interested persons should have 90 days to review mitigative measures. NYDEC suggests that the applicant be given 90 days to file the mitigative measures.<sup>70</sup>

<sup>67</sup> *See*, new § 292.211(b).

<sup>68</sup> This same provision is included in the final rule. *See* new § 292.211(f), and § 375.314(r).

<sup>69</sup> Comments of AR at p. 8; comments of AWA at p. 9; comments of NWF at pp. 4-5.

<sup>70</sup> Comments of NYDEC at p. 30.

<sup>61</sup> The Commission specifically references these studies in its new filing requirements. *See* new § 292.208(c)(1)(i).

<sup>62</sup> Comments of American, *et al.* on the interim rule (RM87-8-000) at p. 3.

<sup>63</sup> *See* 18 CFR 4.38(b)(3) (1987).

The Commission is persuaded that 45 days is too short a time period for the applicant to prepare and submit mitigative measures. Therefore, the final rule at § 292.211(g)(2) gives an applicant 90 days to submit mitigative measures and § 292.211(h)(1) provides that notice of the mitigative measures will be published in the *Federal Register*. Section 292.211(h)(2) affords the State and interested persons 90 days in which to review and comment on the mitigative measures.

#### 4. Rebuttable Presumption

Section 8(b)(4)(C) provides that if, between the time of the Commission's initial and final findings on the AEE petition, the State has not taken any action under section 210(j)(2) of PURPA, the failure to take such action shall be the basis for a rebuttable presumption that there is not a substantial adverse effect on the environment related to natural, recreational cultural or scenic attributes.

In implementing this section, it is important to note that the rebuttable presumption applies, if it arises at all, only to certain environmental attributes. The Commission has an independent obligation to make the section 210(j)(1) finding.

Several commenters object to the Commission's proposed implementation of the rebuttable presumption.<sup>71</sup> Specifically, these commenters object to (1) the timing of the presumption, (2) the evidence required to rebut the presumption, and (3) any limitations as to who may rebut the presumption.

The Commission originally proposed that in order to rebut the presumption a State had to show that it has already protected the watercourse at the time the license was accepted.<sup>72</sup> This proposal was based on the fact that section 210(j)(2) of PURPA applies at the time the application for a license or exemption is accepted by the Commission. AR and NWF suggest that Congress intended the presumption to operate between the Commission's initial and final finding on the AEE petition, and that, accordingly, a State may prevent the presumption from arising if it protects the watercourse at any time before the Commission makes its final finding on the AEE petition.

In addition, NWF criticized the proposed regulation because it would

require the State to come forward with evidence that it had protected the watercourse. While NWF believes the State should be free to make such a showing, it also believes the Commission has a duty to make a reasonable inquiry into the status of the watercourse under State law, and that other persons should be able to present evidence that the watercourse is protected under State law.

Finally, several commenters were concerned about who would be able to rebut the presumption. AWA, AR and NWF interpret the proposed regulation as only giving the State the opportunity to rebut the presumption. These commenters all argue that any interested person should be able to rebut the presumption.

The Commission adopts certain commenters' suggestions concerning the rebuttable presumption in section 8(b)(4)(C) of ECPA. The Commission also notes that it is helpful to distinguish between how the presumption arises and who can rebut the presumption once it has arisen. The Commission intends that the presumption can be prevented from arising if the State, the Commission or an interested person demonstrates that the State has acted to protect the natural watercourse under section 210(j)(2) of PURPA. In contrast, if the State has failed to take any action under section 210(j)(2) of PURPA, the presumption takes effect and the question becomes how can the presumption be rebutted. In this case, the Commission intends that any interested person (including the State or the Commission) can present evidence to show that the project will have a substantial adverse effect on the natural, recreational, cultural or scenic attributes of the environment. In either case the Commission still must make a finding of no substantial adverse effect under section 210(j)(1) of PURPA.

Accordingly, new § 292.211(k) provides that the presumption can operate between the Commission's initial and final findings on the AEE petition. In addition, § 292.211(k)(2)(iii) specifically states that the presumption has no effect on the Commission's independent (and broader) obligation to find that the project will not have a substantial adverse effect on the environment under section 210(j)(1) of PURPA. Finally, § 292.211(k)(3) provides that the presumption is prevented from taking effect if the State, the Commission or an interested person demonstrates that the state has acted to protect the natural watercourse under section 210(j)(2) of PURPA. In addition § 292.211(k)(4) provides that if the

presumption is in effect it can be rebutted if: (1) The Commission determines that the project will have an adverse effect on the environment related to the natural, recreational, cultural or scenic attributes of the environment or (2) an interested person, including a State, demonstrates that the project will have a substantial adverse effect on the environment related to the natural, recreational, cultural or scenic attributes of the environment.

#### IV. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement must be prepared for any Commission action that may have a significant adverse effect on the human environment.<sup>73</sup> The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.<sup>74</sup> No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or that does not substantially change the effect of legislation or regulations being amended.<sup>75</sup> This final rule is procedural in nature. It requires that certain information be included with an application. Moreover, the rule does not substantially change existing Commission regulations providing for pre-filing consultation with all appropriate agencies and the contents of a hydroelectric application. Thus, no environmental assessment or environmental impact statement is necessary for the regulations promulgated by this rule.

#### V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act<sup>76</sup> requires a final rule to contain either an analysis of the impact the rulemaking will have on small entities,<sup>77</sup> or to certify that the rule will not have a significant economic impact on a substantial number of small entities. In the NOPR, the Commission found that the proposed rule would not have a significant economic impact on a substantial number of small entities. No comments were received on this finding and the modifications adopted in this final rule do not affect the earlier conclusion.

<sup>71</sup> See comments of AR at pp. 2-6; AWA at pp. 4-6; California Save Our Streams Council at p. 2; Class VI River Runners at pp. 1-2; Eastern Professional River Outfitters at pp. 2-3; NWF at pp. 5-6; NYDEC at p. 3; and Pocono Whitewater at p. 1.

<sup>72</sup> See proposed § 292.210(i), 52 FR at 38,466, FERC Stats. & Regs. [Proposed Regulations 1982-1987] ¶ 32,453 at 33,655.

<sup>73</sup> Regulations Implementing National Environmental Policy Act, 52 FR 47,897 (Dec. 17, 1987), III FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987).

<sup>74</sup> 18 CFR 380.4 (1987).

<sup>75</sup> 18 CFR 380.4(a)(2)(ii) (1987).

<sup>76</sup> 5 U.S.C. 601-612 (1982).

<sup>77</sup> 5 U.S.C. 603 (1982).

## VI. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) <sup>78</sup> and the Office of Management and Budget's (OMB) regulations <sup>79</sup> require that OMB approve certain information collection requirements imposed by agency rule. The information collection provisions in this notice will be submitted to OMB for its approval.

The Commission promulgated the information collection provisions of this rule in order to comply with its statutory responsibilities under section 8 of the ECPA. Section 8 of ECPA attaches new significance to the status of a project as either an "existing dam" or a "new dam or diversion" for the purposes of obtaining PURPA benefits.

Consequently, new § 4.38(b)(1)(vi)(A) requires every applicant to state whether or not it intends to seek PURPA benefits. If the applicant intends to seek PURPA benefits it must also state whether the dam is an existing dam or a new dam or diversion.<sup>80</sup> The information collection requirement of stating whether or not the applicant intends to seek PURPA benefits represents a minimal burden that is estimated to be 5 minutes per response. This requirement will affect all hydroelectric applicants with projects that have a capacity of 80 MW or less and the number of these respondents is estimated to be 76 (per year).

Section 8 of ECPA imposed a moratorium on PURPA benefits. However, as noted earlier, any project that qualifies for one of the statutory exceptions is exempted from the moratorium. Consequently, except for the new requirement in § 4.38(b)(1)(vi)(A) discussed above, the information collection burdens imposed by this rule only apply to applicants that can qualify for one of the exceptions in section 8 of ECPA.

For an applicant that qualifies for the exception in section 8(b)(3) of ECPA, the information collection burden is estimated to be 16 hours per response. The number of likely respondents is 7. For an applicant that qualifies for the exception in section 8(b)(4) of ECPA, the information collection burden is estimated to be 40 hours per response. The number of likely respondents is 1. Two of the exceptions in section 8 of ECPA except applicants from all of the requirements in section 210(j) of PURPA. Therefore, there is no information collection burden for such applicants.

Interested person can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Marian Obis, Office of Information Resources Management (202) 357-8173). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

## VIII. Effective Date

This final rule is effective September 16, 1988.

## List of Subjects

### 18 CFR Part 4

Electric power, Reporting and recordkeeping requirements.

### 18 CFR Part 292

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

### 18 CFR Part 375

Authority delegations [Government agencies], Seals and insignia, Sunshine Act.

In consideration of the foregoing, the Commission amends Parts 4, 292 and 375, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission  
Lois D. Cashell,  
Acting Secretary.

## PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATIONS OF PROJECT COSTS

1. The authority citation for Part 4 continues to read as follows:

**Authority:** Federal Power Act, 16 U.S.C. 791a-825r, as amended by the Electric Consumers Protection Act of 1986, Pub. L. 99-495; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601-2645 (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. In § 4.30, a new paragraph (b)(28) is added to read as follows:

### § 4.30 Applicability and definitions.

\* \* \*

(b) \* \* \*  
(28) "PURPA benefits" means benefits under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). Section 210(a) of PURPA requires electric utilities to purchase electricity from, and to sell electricity to, qualifying facilities.

3. In § 4.32, paragraphs (a)(5)(vii) and (a)(5)(viii) are revised, a new paragraph (a)(5)(ix) is added, paragraphs (c) through (i) are redesignated as paragraphs (d) through (j), and a new paragraph (c) is added to read as follows:

### § 4.32 Acceptance for filing or rejection.

(a) \* \* \*

(5) \* \* \*

(vii) Exemption of a small conduit hydroelectric facility: § 4.92;

(viii) Case-specific exemption of a small hydroelectric power project: § 4.107; or

(ix) License or exemption for a project located at a new dam or diversion where the applicant seeks PURPA benefits: § 292.208.

\* \* \*

(c)(1) Every application for a licensee or exemption for a project with a capacity of 80 megawatts or less must include in its application copies of the statements made under § 4.38(b)(1)(vi).

(2) If an applicant reverses a statement of intent not to seek PURPA benefits:

(i) Prior to the Commission issuing a license or exemption, the reversal of intent will be treated as an amendment of the application under § 4.35 and the applicant must:

(A) Repeat the pre-filing consultation process under § 4.38; and

(B) Satisfy all the requirements in § 292.208 of this chapter; or

(ii) After the Commission issues a license or exemption for the project, the applicant is prohibited from obtaining PURPA benefits.

4. In § 4.32, redesignated paragraphs (d) through (f) remove the words "(a) and (b)" and insert, in their place, the words "(a), (b) and (c)".

5. In § 4.32, paragraphs (b)(1) and (2) and redesignated (e)(1)(ii), remove the words, "paragraph (c)" and insert, in their place, the words "paragraph (d)".

6. In § 4.32, redesignated paragraph (d)(4), remove the words "paragraph (c) ((2)(1))" and insert, in their place, the words "paragraph (d)(2)(i)".

7. In § 4.32, redesignated paragraphs (e) introductory text and (g), remove the word "delegate" and insert, in its place, the word "designee".

8. In § 4.32 redesignated paragraph (e)(1)(iii), remove the words "paragraph (d)(2)(iii)" and insert, in their place, the words "paragraph (e)(2)(iii)".

9. In § 4.32 redesignated paragraph (e)(2)(ii)(B), remove the words "paragraph (d)(1)" and insert, in their place, the words "paragraph (e)(1)".

10. In § 4.32 redesignated paragraph (f), remove the words "paragraph (d)" and

<sup>78</sup> 44 U.S.C. 3501-3520 (1982).

<sup>79</sup> 5 U.S.C. 1320.13 (1987).

<sup>80</sup> See, new § 4.38(b)(1)(vi)(B).

insert, in their place, the words "paragraph (e)".

#### § 4.33 [Amended]

11. In § 4.33 paragraph (d)(3), remove the words "§ 4.32(c)(2)" and insert, in their place, the words "§ 4.32(d)(2)".

12. In § 4.35, the section heading and paragraph (a) are revised, paragraph (b) is redesignated as paragraph (f), and new paragraphs (b) through (e) are added to read as follows:

#### § 4.35 Amendment of application; date of acceptance.

(a) *General rule.* Except as provided in paragraph (d) of this section, if an applicant amends its filed application as described in paragraph (b) of this section, the date of acceptance of the application under § 4.32(f) is the date on which the amendment to the applicant was filed.

(b) Paragraph (a) of this section applies if an applicant:

(1) Amends its filed license or preliminary permit application in order to change the status or identity of the applicant or to materially amend the proposed plans of development; or

(2) Amends its filed application for exemption from licensing in order to materially amend the proposed plans of development, or

(3) Amends its filed application in order to change its statement of intent of whether or not it will seek benefits under section 210 of PURPA, as originally filed under § 4.32(c)(1).

(c) An application amended under paragraph (a) is a new filing for:

(1) The purpose of determining its timeliness under § 4.36 of this part;

(2) Disposing of competing applications under § 4.37; and

(3) Reissuing public notice of the application under § 4.32(d)(2).

(d) If an application is amended under paragraph (a) of this section, the Commission will rescind any acceptance letter already issued for the application.

(e) *Exceptions.* This section does not apply to:

(1) Any corrections of deficiencies made pursuant to § 4.32(e)(1);

(2) Any amendments made pursuant to § 4.37(b)(4) by a State or a municipality to its proposed plans of development to make them as well adapted as the proposed plans of an applicant that is not a state or a municipality;

(3) Any amendments made pursuant to § 4.37(c)(2) by a priority applicant to its proposed plans of development to make them as well adapted as the proposed plans of an applicant that is not a priority applicant;

(4) Any amendments made by a license or an exemption applicant to its proposed plans of development to satisfy requests of fish and wildlife agencies submitted after an applicant has consulted under § 4.38; and

(5)(i) Any license or exemption applicant with a project located at a new dam or diversion who is seeking PURPA benefits and who:

(A) Has filed an adverse environmental effects (AEE) petition pursuant to § 292.211 of this chapter; and

(B) Has proposed measures to mitigate the adverse environmental effects which the Commission, in its initial determination on the AEE petition, stated the project will have.

(ii) This exception does not protect any proposed mitigative measures that the Commission finds are a pretext to avoid the consequences of materially amending the application or are outside the scope of mitigating the adverse environmental effects.

\* \* \* \* \*

12. In § 4.38, new paragraph (b)(1)(vi) is added to read as follows:

#### § 4.38 Pre-filing consultation requirements.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(vi)(A) A statement (with a copy to the Commission) whether or not the applicant will seek benefits under section 210 of PURPA by satisfying the requirements for qualifying hydroelectric small power production facilities in § 292.203 of this chapter; and

(B) If benefits under section 210 of PURPA are sought, whether or not the project is located at a new dam or diversion (as that term is defined in § 292.202(p) of this chapter).

\* \* \* \* \*

13. In § 4.38 paragraph (b)(3), remove the words "§ 4.32(d)(1)" and inserting, in their place, the words "§ 4.32(e)(1)".

#### § 4.40 [Amended]

14. In § 4.40 paragraph (b), remove the words "§ 4.32(g)" and insert, in their place, the words "§ 4.32(h)".

#### § 4.50 [Amended]

15. In § 4.50 paragraph (b), remove the words "§ 4.32(g)" and insert, in their place, the words "4.32(h)".

#### § 4.82 [Amended]

16. In § 4.82 paragraph (b), remove the words "§ 4.32(c)(2)(i)" and insert, in their place, the words "§ 4.32(d)(2)(i)".

### PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

17. The authority citation for Part 292 is revised to read as follows:

Authority: Federal Power Act 16 U.S.C. 791a-824r (1982), as amended by Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Electric Consumers Protection Act of 1986, Public Utility Regulatory Policies Act, 16 U.S.C. 2601-2645 (1982), as amended.

18. In § 292.202, new paragraphs (p), (q), and (r) are added to read as follows:

#### § 292.202 Definitions.

\* \* \* \* \*

(p) "New dam or diversion" means a dam or diversion which requires, for the purposes of installing any hydroelectric power project, any construction, or enlargement of any impoundment or diversion structure (other than repairs or reconstruction or the addition of flashboards of similar adjustable devices);

(q) "Substantial adverse effect on the environment" means a substantial alteration in the existing or potential use of, or a loss of, natural features, existing habitat, recreational uses, water quality, or other environmental resources. Substantial alteration of particular resource includes a change in the environment that substantially reduces the quality of the affected resources; and

(r) "Commitment of substantial monetary resources" means the expenditure of, or commitment to expend, at least 50 percent of the total cost of preparing an application for license or exemption for a hydroelectric project that is accepted for filing by the Commission pursuant to § 4.32(e) of this chapter. The total cost includes (but is not limited to) the cost of agency consultation, environmental studies, and engineering studies conducted pursuant to § 4.38 of this chapter, and the Commission's requirements for filing an application for license exemption.

19. In § 292.203, paragraph (c) is revised to read as follows:

#### § 292.203 General requirements for qualification.

\* \* \* \* \*

(c) *Hydroelectric small power production facilities located at a new dam or diversion.* (1) Except as provided in paragraph (c)(2) of this section, a hydroelectric small power production facility that impounds or diverts the

water of a natural watercourse by means of a new dam or diversion (as that term is defined in § 292.202(p)) is a qualifying facility if it meets the requirements of:

- (i) Paragraph (a) of this section; and
- (ii) Section 292.208.

(2) *Moratorium.*—(i) *General rule.*

Except as provided in paragraph (c)(2)(ii) of this section, a hydroelectric small power production facility that impounds or diverts the water of a natural watercourse is not a qualifying facility if the moratorium described in section 8(e) of the Electric Consumers Protection Act of 1986 (ECPA), Pub. L. No. 99-495, is in effect. The moratorium applies to a license or an exemption issued on or after October 16, 1986. The moratorium will end at the expiration of the first full session of Congress following the session during which the Commission reports to Congress on the results of the study required by section 8(d) of ECPA.

(ii) *Exemption.* A hydroelectric small power production facility is exempt from the moratorium and can be a qualifying facility if it:

- (A) Meets the requirements in paragraph (c)(1) of this section; and
- (B) Qualifies for one of the exceptions in §§ 292.209 or 292.210.

§§ 292.209 and 292.210 [Redesignated from §§ 292.208 and 292.209]

20. Sections 292.208 and 292.209 are redesignated as §§ 292.209 and 292.210 respectively, and a new § 292.208 is added to read as follows:

§ 292.208 Special requirements for hydroelectric small power production facilities located at a new dam or diversion.

(a) A hydroelectric small power production facility that impounds or diverts the water of a natural watercourse by means of a new dam or diversion (as that term is defined in § 292.202(p)) is a qualifying facility only if it meets the requirements of:

- (1) Paragraph (b) of this section;
- (2) Section 292.203(c); and
- (3) Part 4 of this chapter.

(b) A hydroelectric small power production described in paragraph (a) is a qualifying facility only if:

- (1) The Commission finds, at the time it issues the license or exemption, that the project will not have a substantial adverse effect on the environment (as that term is defined in § 292.202(q)), including recreation and water quality;
- (2) The Commission finds, at the time the application for the license or exemption is accepted for filing under § 4.32 of this chapter, that the project is not located on any segment of a natural watercourse which:

(i) Is included, or designated for potential inclusion in, a State or National wild and scenic river system; or

(ii) The State has determined, in accordance with applicable State law, to possess unique natural, recreational, cultural or scenic attributes which would be adversely affected by hydroelectric development; and

(3) The project meets the terms and conditions set by the appropriate fish and wildlife agencies under the same procedures as provided for under section 30(c) of the Federal Power Act.

(c) For the Commission to make the findings in paragraph (b) of this section an applicant must:

(1) Comply with the applicable hydroelectric licensing requirements in Part 4 of this chapter, including:

(i) Completing the pre-filing consultation process under § 4.38 of this chapter, including performing any environmental studies which may be required under §§ 4.38(b)(2)(i)(D) through (F) of this chapter; and

(ii) Submitting with its application an environmental report that meets the requirements of § 4.41(f) of this chapter, regardless of project size;

(2) State whether the project is located on any segment of a natural watercourse which:

(i) Is included in or designated for potential inclusion in:

(A) The National Wild and Scenic River System (28 U.S.C. 1271-1278 (1982)); or

(B) A State wild and scenic river system;

(ii) Crosses an area designated or recommended for designation under the Wilderness Act (16 U.S.C. 1132) as:

(A) A wilderness area; or

(B) Wilderness study area; or

(iii) The State, either by or pursuant to an act of the State legislature, has determined to possess unique, natural, recreational, cultural, or scenic attributes that would be adversely affected by hydroelectric development.

(d) If the project is located on any segment of a natural watercourse that meets any of the conditions in paragraph (c)(2) of this section, the applicant must provide the following information in its application:

(1) The date on which the natural watercourse was protected;

(2) The statutory authority under which the natural watercourse was protected; and

(3) The Federal or state agency, or political subdivision of the state, that is in charge of administering the natural watercourse.

21. Redesignated § 292.209 is revised to read as follows:

§ 292.209 Exceptions from requirements for hydroelectric small power production facilities located at a new dam or diversion.

(a) The requirements in §§ 292.208(b)(1) through (3) do not apply if:

(1) An application for license or exemption is filed for a project located at a Government dam, as defined in section 3(10) of the Federal Power Act, at which non-Federal hydroelectric development is permissible; or

(2) An application for license or exemption was filed and accepted before October 16, 1986.

(b) The requirements in §§ 292.208(b)(1) and (3) do not apply if an application for license or exemption was filed before October 16, 1986, and is accepted for filing by the Commission before October 16, 1989.

(c) The requirements in § 292.208(b)(3) do not apply to an applicant for license or exemption if:

(1) The applicant files a petition pursuant to § 292.210; and

(2) The Commission grants the petition.

(d) Any application covered by paragraphs (a), (b), or (c) of this section is excepted from the moratorium imposed by section 8(e) of the Electric Consumers Protection Act of 1986, Pub. L. No. 99-495.

22. Redesignated § 292.210 is revised to read as follows:

§ 292.210 Petition alleging commitment of substantial monetary resources before October 16, 1986.

(a) An applicant covered by § 292.203(c) whose application for license or exemption was filed on or after October 16, 1986, but before April 16, 1988, may file a petition for exception from the requirement in § 292.208(b)(3) and the moratorium described in § 292.203(c)(2). The petition must show that prior to October 16, 1986, the applicant committed substantial monetary resources (as that term is defined in § 292.202(r)) to the development of the project.

(b) Subject to rebuttal under paragraph (d)(7)(ii) of this section, a showing of the commitment of substantial monetary resources will be presumed if the applicant held a preliminary permit for the project and had completed environmental consultations pursuant to § 4.38 of this chapter before October 16, 1986.

(c) *Time of filing petition.*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section, the applicant must:

(i) File the petition with the application for license or exemption; or

(ii) Submit with the application for license or exemption a request for an extension of time, not to exceed 90 days or April 16, 1988, whichever occurs first, in which to file the petition.

(2) *Exception.* If the application for license or exemption was filed on or after October 16, 1986, but before March 23, 1987, the petition must have been filed by June 22, 1987.

(d) *Filing requirements.* A petition filed under this section must include the following information or refer to the pages in the application for license or exemption where it can be found:

(1) A certificate of service, conforming to the requirements set out in § 385.2010(h) of this chapter, certifying that the applicant has served the petition on the Federal and State agencies required to be consulted by the applicant pursuant to § 4.38 of this chapter;

(2) Documentation of any issued preliminary permits for the project;

(3) An itemized statement of the total costs expended on the application;

(4) An itemized schedule of costs the applicant expended, or committed to be expended, before October 16, 1986, on the application, accompanied by supporting documentation including but not limited to:

(i) Dated invoices for maps, surveys, supplies, geophysical and geotechnical services, engineering services, legal services, document reproduction, and other items related to the preparation of the application, and

(ii) Written contracts and other written documentation demonstrating a commitment made before October 16, 1986, to expend monetary resources on the preparation of the application, together with evidence that those monetary resources were actually expended; and

(5) Correspondence or other documentation to support the items listed in paragraphs (d)(3) and (d)(4) of this section to show that the expenses presented were directly related to the preparation of the application.

(6) The applicant must include in its total cost statement and in its schedule of the costs expended or committed to be expended before October 16, 1986, the value of services that were performed by the applicant itself instead of contracted out.

(7)(i) If the applicant held a preliminary permit for the project and had completed pre-filing consultation pursuant to § 4.38 of this chapter prior to October 16, 1986, the applicant may, instead of submitting the information listed in paragraphs (d)(3), (d)(4), and (d)(5) of this section, submit a statement

identifying the preliminary permit by project number.

(ii) If any interested person objects (pursuant to § 385.211 of this chapter) to the presumption in paragraph (b) of this section, the applicant must supply the information listed in paragraphs (d)(3), (d)(4), and (d)(5) of this section.

(8) If the application is deficient pursuant to § 4.32(e) of this chapter, the applicant must include with the information correcting those deficiencies a statement of the costs expended to make the corrections.

(e) *Processing of petition.* (1) The Commission will issue a notice of the petition filed under this section and publish the notice in the **Federal Register**. The petition will be available for inspection and copying during regular business hours in the Public Reference Room maintained by the Division of Public Information.

(2) *Comments on the petition.* The Commission will provide the public 45 days from the date the notice of the petition is issued to submit comments. The applicant for license or exemption has 15 days after the expiration of the public comment period to respond to the comments filed with the Commission.

(3) *Commission action on petition.* The Director of the Office of Hydropower Licensing will determine whether or not the applicant for license or exemption has made the showing required under this section.

23. A new § 292.211 is added to read as follows:

**§ 292.211 Petition for initial determination on whether a project has a substantial adverse effect on the environment (AEE petition).**

(a) An applicant that has filed a petition under § 292.210 may also file an AEE petition with the Commission for an initial determination on whether the project satisfies the requirement that it has no substantial adverse effect on the environment as specified in § 292.208(b)(1).

(b) The filing of the AEE petition does not relieve the applicant of the filing requirements of § 292.208(c).

(c) The Commission will act on the AEE petition only if the Commission has granted the applicant's commitment of resources petition under § 292.210.

(d) *Time of filing petition.* The applicant may file the AEE petition with the application for license or exemption or at any time before the Commission issues the license or exemption.

(e) *Contents of petition.* The AEE petition must identify the project and request that the Commission make an initial determination on the adverse

environmental effects requirements in § 292.208(b)(1).

(f) The Director of the Office of Hydropower Licensing will make the initial determination on the AEE petition. In making this determination, the Director will consider the following:

(1) Any proposed mitigative measures;

(2) The consistency of the proposal with local, regional, and national resource plans and programs;

(3) The mandatory terms and conditions of fish and wildlife agencies under section 210(j) of PURPA, or section 30(c) of the Federal Power Act; or the recommended terms and conditions of fish and wildlife agencies under Section 10(j) of the Federal Power Act, whichever is appropriate; and

(4) Any other information which the Director believes is relevant to consider.

(g) *Initial finding on the petition.* The Director of the Office of Hydropower Licensing will make the initial determination on the AEE petition after the close of the public notice period for the accepted application. If the Director's initial determination finds:

(1) No substantial adverse effect on the environment, the Commission must wait at least 45 days before making a final determination that the project satisfies the requirements of § 292.208(b)(1).

(2) A substantial adverse effect on the environment, the applicant may file, within 90 days of the initial finding that the project does not satisfy the requirements in § 292.208(b)(1), proposed measures to mitigate the adverse environmental effects found.

(3) (i) The Commission will provide written notice of the Director's initial finding on the petition to the applicant and to the Federal and State and agencies that the applicant must consult under § 4.38 of this chapter.

(ii) The Commission will publish notice of the Director's initial finding in the **Federal Register**.

(h) *Notice and Comment on the Mitigative measures.* (1) The Commission will issue notice of the mitigative measures filed by an applicant under paragraph (g)(2) of this section and will publish the notice in the **Federal Register**. The mitigative measures will be on file and available for inspection or copying during regular business hours in the Public Reference Room maintained by the Division of Public Information;

(2) The Commission will provide the State and interested persons within 90 days from the date the notice is issued to review and submit comments on the mitigative measures. The applicant for license or exemption has 15 days after

the expiration of the public comment period to respond to the comments filed with the Commission.

(i) *Material amendments to application.* The proposed mitigative measures filed under paragraph (g)(2) of this section will not be considered a material amendment to the application unless the Commission finds that the proposed measures are unnecessary to, or exceed the scope of, mitigating substantial adverse effects. If the Commission finds the proposed mitigative measures constitute a material amendment, the application will be considered filed with the Commission on the date on which the applicant filed the proposed mitigative measures, and all other provisions of § 4.35(a) of this chapter will apply.

(j) *Final determination on the petition.* The Commission will make a final determination on the petition at the time the Commission issues a license or exemption for the project.

(k) *Presumption* (1) If, between the Commission's initial and final findings on the AEE petition, the State does not take any action under § 292.208(b)(2), the failure to take action can be the basis for a presumption that there is not substantial adverse effect on the environment (as that term is defined in § 292.202(q)).

(2) If the presumption in paragraph (k)(1) of this section comes into effect, it:

(i) Is only available for those adverse effects related to the natural, recreational, cultural, or scenic attributes of the environment;

(ii) Can only operate during the time between the Commission's initial and final findings on the AEE petition; and

(iii) Has no effect on the Commission's independent obligation to find that the project will not have a substantial adverse effect on the environment under § 292.208(b)(1).

(3) The presumption in paragraph (k)(1) of this section does not take effect if the State, the Commission or an interested person demonstrates that the State has acted to protect the natural watercourse under § 292.208(b)(2).

(4) The presumption in paragraph (k)(1) of this section can be rebutted if:

(i) The Commission determines that the project will have a substantial adverse effect on the environment related to the environmental attributes listed in paragraph (k)(2)(i) of this section; or

(ii) Any interested person, including a State, demonstrates that the project will have a substantial adverse effect on the environment related to the

environmental attributes listed in paragraph (k)(2)(i) of this section.

## PART 375—THE COMMISSION

24. The authority citation for Part 375 continues to read as follows:

Authority: Omnibus Budget Reconciliation Act of 1986, 42 U.S.C. 7178; Electric Consumers Protection Act 1986, 16 U.S.C. 791a note; Department of Energy Organization Act, 42 U.S.C. 7101-7352, E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 551-557 (1982); Federal Power Act, 16 U.S.C. 791-828c, as amended; Natural Gas Act, 15 U.S.C. 717-717w, as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et seq.*, as amended.

25. In § 375.314, a new paragraph (r) is added to read as follows:

### § 375.314 Delegations to the Director of the Office of Hydropower Licensing.

\* \* \*

(r) Pass upon petitions filed under §§ 292.210 and 292.211 of this chapter.

[FR Doc. 88-15872 Filed 7-15-88; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 522

#### Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Ivermectin Injection

AGENCY: Food and Drug Administration.  
ACTION: Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Merck Sharp & Dohme Research Laboratories providing for safe and effective use of IVOMEK® (ivermectin) injection in swine for treating and controlling infections caused by somatic threadworm larvae, in addition to certain species of gastrointestinal roundworms, lungworms, lice, and mites.

**EFFECTIVE DATE:** July 18, 1988.

**FOR FURTHER INFORMATION CONTACT:** Dianne T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

**SUPPLEMENTARY INFORMATION:** Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., P.O. Box

2000, Rahway, NJ 07065, has filed a supplement to NADA 135-008 providing for subcutaneous use of a 1-percent IVOMEK® (ivermectin) injection in swine for treating and controlling infections caused by somatic threadworm larvae (*Strongyloides ransomi*) in addition to the currently approved use for treating and controlling infections caused by certain species of gastrointestinal roundworms, lungworms, lice, and mites.

The supplemental NADA is approved and the regulations in 21 CFR 522.1192(d)(4)(ii) are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

#### List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

#### PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 522.1192 is amended by revising paragraph (d)(4)(ii) to read as follows:

**§ 522.1192 Ivermectin Injection**

(d) \* \* \*

(4) \* \* \*

(ii) *Indications for use.* It is used in swine for treatment and control of gastrointestinal roundworms (adults and fourth-stage larvae) (large roundworm, *Ascaris suum*; red stomach worm, *Hyostrogylus rubidus*; nodular worm, *Oesophagostomum* spp.; threadworm, *Strongyloides ransomi* (adults only)); somatic roundworm larvae (threadworm, *Strongyloides ransomi* (somatic larvae)); lungworms (*Metastrongylus* spp. (adults only)); lice (*Haematopinus suis*); and mites (*Sarcoptes scabiei* var. *suis*).

Dated: July 12, 1988.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 88-16048 Filed 7-15-88; 8:45 am]

BILLING CODE 4160-01-M

**21 CFR Part 558**

**Animal Drugs, Feeds, and Related Products; Mono-alkyl (C<sub>8</sub>-C<sub>18</sub>) Trimethyl Ammonium Oxytetracycline**

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc., providing for safe and effective use of a 100-gram-per-pound mono-alkyl (C<sub>8</sub>-C<sub>18</sub>) trimethyl ammonium oxytetracycline Type A article to make a Type C feed for salmonids and catfish.

**EFFECTIVE DATE:** July 18, 1988.

**FOR FURTHER INFORMATION CONTACT:**

Henry E. Schmaus, Center for Veterinary Medicine (HFV-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2280.

**SUPPLEMENTARY INFORMATION:** Pfizer, Inc., 235 East 42d St., New York, NY 10017, has filed supplemental NADA 38-439 providing for use of a 100-gram-per-pound mono-alkyl (C<sub>8</sub>-C<sub>18</sub>) trimethyl ammonium oxytetracycline Type A article to make Type C feeds for salmonids for the control of ulcer disease, furunculosis, bacterial

hemorrhagic septicemia, and pseudomonas disease, and for catfish for the control of bacterial hemorrhagic septicemia and pseudomonas disease. Currently, 10- and 50-gram-per-pound Type A articles are approved for making this Type C fish feed.

The supplemental NADA is approved and 21 CFR 558.450(a)(2) is amended to reflect the approval.

This supplement provides for use of a higher strength Type A article to make a previously approved Type C medicated fish feed. The feed is used at previously approved treatment levels for the approved indications and limitations. Since approval of this supplement does not require added safety or effectiveness data or information, a freedom of information (FOI) summary is not required.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

**PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS**

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

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.450 is amended by revising paragraph (a)(2) to read as follows:

**§ 558.450 Oxytetracycline.**

(a) \* \* \*

(2) 100 grams per pound to 000069 in § 510.600(c) of this chapter for use as in paragraph (d)(1), table 1, item (v) and table 3, item (ii) of this section.

\* \* \*

Dated: July 8, 1988.

Suzanne Fitzpatrick,

Acting Director, Division of Drug Manufacturing and Residue Chemistry, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 88-16049 Filed 7-15-88; 8:45 am]

BILLING CODE 4160-01-M

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[T.D. 8214]

**Application of Section 904 to Income Subject to Separate Limitations**

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final Regulations.

**SUMMARY:** This document contains final regulations relating to the application of section 904 with respect to income received or accrued by a taxpayer consisting of income described in section 904(d). These regulations are necessary because of the changes made to the applicable law by the Tax Reform Act of 1986. The regulations provide the public with guidance needed to comply with that act and affect individuals and entities claiming the foreign tax credit.

**DATES:** The amendments are generally to be effective for taxable years beginning after December 31, 1986. Paragraphs (c) (2), (3), (4), and (5) of § 1.904-4 apply to taxable years beginning after December 31, 1987.

**FOR FURTHER INFORMATION CONTACT:**

Carolyn M. DuPuy of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202-634-5406).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 904 of the Internal Revenue Code of 1954. These amendments are made to conform the regulations to section 1201 of the Tax Reform Act of 1986 (Pub. L. 99-514) and are issued under the authority contained in sections 7805 and 904(d)(5) of the Internal Revenue Code (68A Stat. 637, 26 U.S.C. 7805 and 100 Stat. 2524, 26 U.S.C. 904(d)(5)).

On August 26, 1987, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 904 of the Internal Revenue Code of 1954 (51 FR 3193). The amendments provide rules for determining a taxpayer's foreign tax credit limitations under section 904(d). The proposed regulations reflected proposed technical corrections. Because the technical corrections bill has not yet been passed by the Congress, portions

of the final regulations have been reserved. In addition, the regulations have been reserved on the issue of whether payments from a foreign parent to its United States subsidiary should be characterized under the principles of the look-through rules. The reserved portions are:

Section 1.904-4(c)(6)(iv) increase in taxes paid by successors;

Section 1.904-4(e)(1) the definition of financial services income;

Section 1.904-4(e)(5) (i) and (ii) exceptions to the definition of financial services income;

Section 1.904-4(g)(2)(iv) the treatment of section 1293 inclusions attributable to section 902 corporations;

Section 1.904-4(h)(3)(ii) export financing interest received or accrued by a financial services entity;

Section 1.904-4(h)(3)(iii) export financing interest that is high-withholding tax interest;

Section 1.904-4(h)(3)(iv) *Example (2)*;

Section 1.904-4(h)(3)(v)(C) *Example (2)* and *Example (4)*;

Section 1.904-4(k) priority rules;

Section 1.904-5(c)(1)(ii) *Example (2)* and *Example (3)*;

Section 1.904-5(d)(1) de minimis amounts of subpart F income;

Section 1.904-5(d)(3) *Example (1)* and *Example (2)*;

Section 1.904-5(h)(3) income from the sale of a partnership interest;

Section 1.904-5(i)(3) special rule for payments from foreign parents to domestic subsidiaries;

Section 1.904-5(j) look-through rules applied to passive foreign investment companies;

Section 1.904-5(l) *Example (2)* and *Example (5)*;

Section 1.904-5(m)(7) coordination with treaties.

Numerous written comments were received with respect to the proposed regulations. A public hearing was held on November 12, 1987. The significant points raised by the comments and the changes made to the proposed amendments are discussed in the remainder of the preamble. After consideration of the comments regarding the proposed amendments, the amendments are adopted as modified by this Treasury decision.

#### Discussion of Major Comments and Revised Amendments

##### *Section 1.904-4 Separate application of section 904 with respect to certain categories of income.*

In response to comments, an example has been added to paragraph (b)(1) to make it clear that if a taxpayer has foreign currency gain that would not be

foreign personal holding company income if the taxpayer were a controlled foreign corporation because the gain is directly related to the business needs of the corporation, that income will not be passive income within the meaning of section 904(d)(2)(A)(i).

Paragraph (b)(2) has been revised to provide that the determination of whether a rent or royalty is an active rent or royalty for purposes of section 904(d) shall be made taking into account the activities of all members of the recipient's affiliated group (as redefined to include foreign corporations). This revision changes the rules in the proposed regulations in several respects. First, the regulations, as revised, now treat rents and royalties received by a domestic corporation and those received by a controlled foreign corporation in the same way. Second, the regulations now provide a rule for qualifying rents received by a controlled foreign corporation as active rents by reference to the activities of an affiliate of the controlled foreign corporation. Third, the requirement that the controlled foreign corporation perform activities that are an essential economic element with respect to the royalties it receives is eliminated. Fourth, the regulations, as revised, provide that a United States shareholder that receives a rent or royalty directly can satisfy the active conduct test by reference to its own activities or the activities of affiliates (including foreign affiliates) of the shareholder. These changes to the proposed regulations were made in response to numerous comments that the proposed regulations were too restrictive because they did not allow the activities of foreign affiliates of the recipient to be considered and because they required a recipient that was a controlled foreign corporation to perform an activity that was an essential economic element in the realization of the royalty. The changes were also in response to comments that the proposed regulations did not provide parallel treatment for rent and royalty income received by a controlled foreign corporation.

Section 1.904-4(c)(1) provides rules for determining whether an item of income that is otherwise passive income is high-taxed income and, therefore, should be treated as general limitation income. Numerous comments were received suggesting that the rules be simplified. In response to those comments the grouping rules have been changed and paragraph (c)(2)(ii) is added to provide that a taxpayer that allocates and apportion interest expense on an asset basis may further apportion passive interest expense among the groups of

passive income on a gross income basis. Paragraph (c)(3), as revised, groups items of income received directly by a United States person (other than through a foreign branch) according to the rate of withholding tax on the items. These rules apply both to income received from unrelated persons and income received from controlled foreign corporations. These rules also apply to subpart F inclusions and items of income earned through a foreign branch to the extent provided in paragraph (c)(4). Under paragraph (c)(4), income is initially grouped into two groups, income from sources within the QBU's country of operation and income from sources outside the QBU's country of operation. Income from outside the country of operation is then grouped according to the rate of withholding tax. These rules are applied separately for each foreign QBU. Paragraph (c)(5) provides special rules for grouping certain enumerated items of income. The grouping rules are effective for taxable years beginning after December 31, 1987. See Notice 87-6, 1987-3 I.R.B. 8, for the grouping rules for taxable years beginning after December 31, 1986 and before January 1, 1988.

Paragraph (c)(6) provides rules relating to the determination of whether an amount included in gross income under section 951(a) is high-taxed income if additional taxes are paid or deemed paid in the year of receipt of this income. Several commenters suggested that we should permit taxpayers to elect, on a distribution by distribution basis, whether to go back and amend their returns to reflect the increase in tax. It was also suggested that the exception for distributions received during the pre-filing period be changed to expand the pre-filing period. The final regulations do not allow such an election but do redefine the pre-filing period to be a period ending 90 days prior to the due date of the return (determined with extensions) for the taxable year of inclusion.

The preamble to the proposed regulations asked for comments concerning whether the rules in paragraph (c) should apply to gains and losses resulting from a change in the effective rate of tax because of exchange rate fluctuations between the time an amount is included in the gross income of a United States shareholder of a controlled foreign corporation under section 951 and the distribution to the United States shareholder of earnings attributable to that amount. Several commenters stated that there should be no recharacterization of the initial inclusion because of exchange rate

fluctuations between the time of the inclusion and the time of the distribution of that income. The final regulations do not require such a recharacterization because the foreign currency gain or loss is attributable to an increase or decrease in the value of the controlled foreign corporation's earnings and profits and not to an increase or decrease in the amount of income earned by the controlled foreign corporation in the inclusion year.

Paragraph (c)(7) provides special rules for determining whether income that has been taxed under an integrated tax system is high-taxed income. In the preamble to the proposed regulations taxpayers were invited to comment on the application of this rule to cases in which the foreign tax system does not provide a mechanism for tracing distributions out of a particular year's earnings. One commenter suggested that the regulations adopt a FIFO rule for tracing distributions. The final regulations provide that, in general, the rules of § 1.904-6 apply for purposes of determining to which category the reduction in taxes on distribution relate. However, the reduction in taxes shall be attributable on a last-in first-out (LIFO) basis to foreign taxes potentially subject to reduction that are associated with previously taxed income, on a LIFO basis to foreign taxes associated with income that remains as passive income under paragraph (c)(7)(iii), and then on a LIFO basis to foreign taxes associated with other earnings and profits. The final regulations also clarify that the rules in paragraphs (6) and (7) relating to increases and decreases in foreign tax rate on distributions out of PTI apply only to net increases or decreases in foreign tax liability. Thus, if on distribution the foreign corporate tax is reduced but the reduction is fully offset by a withholding tax on the distribution, no reduction will be considered to have occurred for purposes of determining whether the income is high-taxed.

Paragraph (e)(1) concerning the definition of financial services income has been reserved because of the pending technical corrections bill that limits the financial services category to entities that are predominantly engaged in the active conduct of a banking, insurance, financing or similar business (active financing business). Paragraph (e) (2), (3), and (e)(4) have not been reserved because the definition of active financing income, the determination of when an entity is predominantly engaged in the active financing business and the definition of incidental income are relevant under current law and under the technical corrections bill.

Paragraphs (e)(5) (i) and (ii) have been reserved because of the proposed technical correction concerning the exceptions from financial services income for income that is export financing interest and high withholding tax interest.

Numerous comments were received with respect to what constitutes income from the active conduct of a banking, insurance, financing or similar business (active financing income). Paragraph (e)(2) reflects some of the suggestions for additions to the list of includible income. The list has been changed to include related person insurance income. Paragraph (e)(2) has also been changed to allow taxpayers to include items of income similar to those enumerated if such items are disclosed in a manner designated in the instructions to the Forms 1116 and 1118 or in guidance published by the Internal Revenue Service. For any year in which the instructions to the Forms 1116 and 1118 do not provide a method of designating similar items, a taxpayer may include similar items as active financing income even though they are not designated. This change is made in recognition of the fact that financial institutions constantly market new products, income from which may appropriately be categorized as active financing income.

Several commenters suggested that the requirement that an entity earn eighty percent of its gross income from active financing income should be liberalized. The eighty percent test in paragraph (e)(3)(i) has been maintained. The Conference Report to the 1986 Act makes it clear that an entity shall not be considered predominantly engaged in the active conduct of a financial services business unless a "high percentage" of the entity's income is active financing income. In addition, the eighty percent test seems reasonable in light of two other changes to the proposed regulations. The first of these changes is the addition of similar items of income to the list of active financing income. The second change is a revision of paragraph (e)(3)(i) to exclude from the eighty percent computation any gain from the sale of stock of a corporation controlled by the transferor. This latter change was made to prevent an entity from disqualifying itself from financial services status because of a large one-time gain from the sale of stock. In addition, the application of the eighty percent test has been changed to eliminate from the test any income characterized under the look-through rules that is received from a related person that is a financial services entity.

Income received from a related person that is not a financial services entity but that is financial services income under the look-through rules is also eliminated.

In response to comments, paragraph (e)(3)(i) has been changed to require foreign affiliates to be considered when applying the eighty percent test on an affiliated basis. In addition, that paragraph has been changed to make it clear that certain income from intercompany transactions is not considered in applying the affiliated group test, that leasing income will not be considered to be active financing income for purposes of the affiliated group test if any member of the group meets the requirements of section 954 (c)(2)(A), and that passive income will not be considered active financing income for purposes of the affiliated group test merely because that income is earned by a member of the group that is a financial services entity under the entity level test.

Paragraph (e)(3)(iii) provides rules for applying the eighty percent test to partnerships. That paragraph has been changed to conform with changes to the general rule in paragraph (e)(3)(i).

Paragraph (e)(4) describes incidental income that will be considered to be financial services income if earned by a financial services entity. Several commenters stated that the rule regarding debt-equity conversions was too restrictive. That rule has been changed to establish that income received within the first five years of the conversion is incidental income.

Section 1.904-4(g)(1) defines the term "noncontrolled section 902 corporation." That paragraph has been changed to make it clear that, in general, a controlled foreign corporation is not a section 902 corporation with respect to distributions out of earnings and profits earned during periods when the corporation is a controlled foreign corporation.

Paragraph (g)(2)(iv) concerning the treatment of inclusions under section 1293 has been reserved.

Paragraph (g)(3) has been changed to provide that dividends from a CFC attributable to a period when the CFC was neither a CFC nor a noncontrolled section 902 corporation will be treated as dividends from a noncontrolled section 902 corporation. This change has been made because it is consistent with the statute. Two commenters suggested that dividends from earnings attributable to periods when the CFC was neither a CFC or a noncontrolled section 902 corporation should be characterized under look-through principles. It was determined that there

was no statutory basis for such treatment.

Sections 1.904-4(h)(3) (ii) and (iii) relating to export financing interest that is received or accrued by a financial service entity and export financing interest that is high-withholding tax interest have been reserved.

Section 1.904-4(j) contains a special rule relating to the treatment of certain currency gain or loss.

Section 1.904-4(k) relating to the priority rules has been reserved.

*Section 1.904-5 Look-through rules as applied to controlled foreign corporations and other entities.*

Section 1.904-5 provides look-through rules for CFCs and other entities. Paragraph (a)(1) defines the term "separate category" of income. Paragraph (a)(2) defines the term "controlled foreign corporation." Paragraph (a)(3) defines the term "United States shareholder." This paragraph has been changed to include affiliates in the definition of a "United States shareholder."

Section 1.904-5(c)(2)(i) provides that interest that is received or accrued from a CFC in which the taxpayer is a United States shareholder shall be treated as income in a separate category to the extent it is allocable to income of the CFC in that category. Paragraph (c)(2)(ii) provides rules for allocating expenses of a CFC to the income of the CFC in separate categories if interest is paid to a United States shareholder of the CFC (related person interest). Pursuant to section 954(b)(5), this paragraph provides that related person interest is allocated to passive income of the CFC to the extent of such passive income (the "netting rule").

Two commenters suggested that unrelated person interest should be allocated to passive income before related person interest. One commenter suggested that the netting rule should be applied to financial services income. These changes were not adopted because they lack statutory support.

The final regulations do, however, change paragraph (c)(2) in some important respects. Under the final regulations, non-interest expenses that are not definitely related, or that are definitely related to all classes of income, are allocated to the separate categories after the allocation of related person interest. This change was made to avoid the creation of passive losses and because it seemed more consistent with the theory underlying the netting rule that passive investments of a controlled foreign corporation that are funded by related person debt should be treated as if they were direct

investments of the related person. In addition, the final regulations have been changed to combine into one step the allocation of these non-definitely related expenses and non-definitely related third person interest. This change is a simplifying change and is consistent with the theory of the netting rule. The final regulations also provide rules for allocating expenses when the CFC allocates interest expense on a gross income basis. This rule reflects the anticipated adoption of this alternative in § 1.861-8.

Paragraph (c)(4)(i) provides that dividends shall be treated as income in a separate category in proportion to the ratio of the portion of earnings and profits attributable to income in such category to the total amount of earnings and profits of the CFC. This rule has been changed to make it clear that it applies to an amount included in gross income under section 951(a)(1)(B). Paragraph (c)(4)(ii) provides a special rule for dividends attributable to loans made to the CFC payor by a related person. In response to several comments, this rule has been changed to clarify the situations in which it will apply.

Section 1.904-5(d) concerning the de minimis rule for subpart F income has been reserved pending the passage of the technical corrections bill. Several commenters suggested that de minimis rules should be adopted in other contexts, e.g. for partnership income or for income earned directly by a United States person. These changes were not adopted because they lack statutory support.

Section 1.904-5(g) provides for the application of the look-through rules to certain foreign source payments between related United States corporations. The final regulations expand the types of entities to which the look-through rules apply.

Section 1.904-5(h)(1) provides rules for the application of the look-through rules to partnerships. Paragraph (h)(2) provides an exception to the look-through rules for certain less than 10 percent general and limited partnership interests. Several commenters suggested that the exception should be deleted. The final regulations retain the exception, because it is felt that these interests are properly characterized as passive investments.

In response to comments, paragraph (h)(4) has been added to provide rules for valuing a partnership interest.

Section 1.904-5(i) provides rules for the application of the look-through rules to related CFCs. Several commenters suggested that the definition of a related CFC be expanded to include all

situations in which there is 10 percent common ownership of the CFCs or in which the CFC owns at least 10 percent of other CFCs. This change was not adopted because it was felt that it would allow significant dilution of the ownership requirements when income is paid through tiers. In response to comments, these rules have been expanded to provide rules for determining when entities other than CFCs are related.

Section 1.904-5(j) concerning the application of the look-through rules to passive foreign investment company inclusions has been reserved.

Section 1.904-5(k) provides ordering rules for purposes of determining the character of income received or accrued by a person from a related person if the payor or another related person also receives or accrues income from the recipient and the look-through rules apply to the income in all cases. These rules have been clarified to deal with partnership distributions and offsetting interest payments when more than two related persons are involved.

Section 1.904-5(l) provides rules for the application of section 904(g) to income of a CFC. The application of section 904(g) to income of United States-owned foreign corporations other than CFCs is not addressed in these rules. Paragraph (l)(2) has been changed to reflect the changes to the treatment of related person interest.

Section 1.904-5(n) provides rules for the order of application of sections 904 (d) and (g). This rule does not address how principles similar to those of section 904(f) apply to income earned at the CFC level because the Service is still considering this issue. See Notice 88-71, 1988-27 I.R.B. 17, for the effect of deficits in one separate category on earnings and profits in other categories.

#### *Section 1.904-6 Allocation of taxes.*

Section 1.904-6 provides rules for the allocation of taxes to a separate category of income. Paragraph (a)(1) provides the general rule for allocating taxes to separate categories of income. This rule has been changed to make it clear that the principles of section 954(b)(5) apply for purposes of determining the net amount of income in a separate category. In response to comments, paragraph (a)(1)(iii) has been added to provide rules for apportioning taxes to groups of passive income for purposes of the high-tax kickout. One commenter suggested that foreign taxes should be allocated on a multi-year basis. This suggestion was not adopted. Paragraph (a)(2) provides a special rule for the treatment of foreign taxes

allocable to certain dividends from noncontrolled section 902 corporations. An example has been added that clarifies the application of this paragraph.

Section 1.904-6(b)(1) provides rules for the determination of foreign taxes deemed paid under sections 902 and 960 for taxes allocated to different categories of income. The proposed regulations provided a special allocation rule for taxes on income excluded from subpart F under section 954(b)(4). In response to comments, this rule has been eliminated.

#### Section 1.904-7 Transition rules.

Section 1.904-7 provides transition rules for the application of section 904(d). The heading of paragraph (a)(1) has been modified to refer to controlled foreign corporations because some taxpayers were incorrectly reading this paragraph as applying to distributions from noncontrolled corporations out of pre-effective date earnings. Under the rules of § 1.904-4(g)(1), distributions from a noncontrolled section 902 corporation are treated as distributions from a noncontrolled section 902 corporation even if out of pre-effective date earnings and profits.

Paragraph (e) provides a rule for the characterization of amounts subject to recapture under section 585(c). This rule has been changed to provide that the recapture income can be treated as attributable to high-withholding tax interest if the taxpayer establishes to the satisfaction of the Secretary that the recapture amount is attributable to high-withholding tax interest. In determining whether recapture income is attributable to high-withholding tax interest or financial services income, the transition rule of section 1201(e)(2) of the Tax Reform Act of 1986 will be taken into account to the extent this rule is applicable in the recapture year.

Section 701 of the Act (relating to the limitation on the use of foreign tax credits against minimum tax liability) shall apply notwithstanding any treaty provisions in effect on the date of enactment of the Act.

#### Special Analyses

It has been determined that this rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The Internal Revenue Service has also concluded that regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations do not constitute regulations subject to the

Regulatory Flexibility Act (5 U.S.C. chapter 6).

#### Drafting Information

The principal author of this regulation is Carolyn M. DuPuy of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, other personnel from offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of substance and style.

#### List of Subjects in 26 CFR 1.861-1 Through 1.997-1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

#### Income Tax Regulations

#### PART 1—[AMENDED]

**Paragraph 1.** The authority for Part 1 continues to read in part:

**Authority:** 26 U.S.C. 7805. \* \* \* Sections 1.904-4 through 1.904-7 also issued under 26 U.S.C. 904(d)(5). \* \* \*

**Par. 2.** Sections 1.904-4 and 1.904-5 are removed. New § 1.904-0 is added immediately before § 1.904-1. New § 1.904-4 through § 1.904-7 are added immediately after § 1.904-3. The added sections read as follows:

#### § 1.904-0 Outline of regulation provisions for section 904.

(I) Reserved.  
(II) Reserved.  
(III) Reserved.  
(IV) § 1.904-4 *Separate application of section 904 with respect to certain categories of income.*

(a) In general.  
(b) Passive income.  
(1) In general.  
(i) Rule.  
(ii) Example.  
(2) Active rents or royalties.  
(i) In general.  
(ii) Exception for certain rents and royalties.

(iii) Unrelated person.  
(iv) Example.  
(c) High-Taxed Income.  
(1) In general.  
(2) Grouping of items of income in order to determine whether passive income is high-taxed income.  
(i) Effective date.  
(ii) Allocation and apportionment of expenses.

(3) Amounts received or accrued by United States persons.

(4) Income of controlled foreign corporations and foreign branches.

(i) Income from sources within the QBU's country of operation.

(ii) Income from sources without the QBU's country of operation.

(iii) Determination of the source of income.

(5) Special rules.

(i) Certain rents and royalties.

(ii) Treatment of partnership income.

(iii) Currency gain or loss on distributions out of previously taxed income.

(6) Application of this paragraph to additional taxes paid or deemed paid in the year of receipt of previously taxed income.

(i) Determination made in year of inclusion.

(ii) Exceptions.

(iii) Allocation of foreign taxes imposed on distributions of previously taxed income.

(iv) Increase in taxes paid by successors.

(7) Application of this paragraph to certain reductions of tax on distributions of income.

(i) In general.

(ii) Allocation of reductions of foreign tax.

(iii) Interaction with section 954(b)(4).

(8) Redeterminations of foreign tax.

(9) Examples.

(d) High withholding tax interest.

(e) Financial services income.

(1) In general.

(2) Active financing income.

(i) Income included.

(3) Financial services entities.

(i) In general.

(ii) Special rule for affiliated groups.

(iii) Treatment of partnerships and other pass-through entities.

(A) Rule.

(B) Examples.

(4) Definition of incidental income.

(i) In general.

(A) Rule.

(B) Examples.

(ii) Income that is not incidental income.

(5) Exceptions.

(f) Shipping income.

(g) Non-controlled section 902 corporations.

(1) Definition.

(2) Treatment of dividends for each separate non-controlled section 902 corporation.

(i) In general.

(ii) Special rule for dividends received by a controlled foreign corporation.

(iii) Special rule for high withholding tax interest.

- (iv) Treatment of inclusions under section 1293.
- (3) Special rule for controlled foreign corporations.
  - (4) Examples.
  - (h) Export financing interest.
  - (1) Definitions.
    - (i) Export financing interest.
    - (ii) Fair market value.
    - (iii) Related person.
- (2) Treatment of export financing interest.
  - (3) Interaction of export financing interest and related person factoring income.
    - (i) Export financing interest that is also related person factoring income.
    - (ii) Export financing interest that is received and accrued by a financial services entity.
    - (iii) Export financing interest that is high withholding tax interest.
  - (iv) Examples.
  - (v) Income eligible for section 864(d)(7) exception (same country exception) from related person factoring treatment.
    - (A) Income other than interest.
    - (B) Interest income.
    - (C) Examples.
  - (i) Interaction of section 907(c) and income described in this section.
  - (j) Special rule for certain currency gains and losses.
  - (k) Priority rules.
- (V) § 1.904-5 *Look through rules as applied to controlled foreign corporations and other entities.*
  - (a) Definitions.
  - (b) In general.
  - (c) Rules for specific types of inclusions and payments.
    - (1) Subpart F inclusions.
      - (i) Rule.
      - (ii) Examples.
    - (2) Interest.
      - (i) In general.
      - (ii) Allocating expenses including interest paid to a related person.
      - (iii) Definitions.
        - (A) Value of assets and reduction in value of assets and gross income.
        - (B) Related person debt allocated to passive assets.
    - (iv) Examples.
    - (3) Rents and royalties.
    - (4) Dividends.
      - (i) Look-through rule.
      - (ii) Special rule for dividends attributable to certain loans.
      - (iii) Examples.
    - (d) Effect of exclusions from Subpart F income.
      - (1) De minimis amount of Subpart F income.
      - (2) Exception for certain income subject to high foreign tax.
      - (3) Examples.
    - (e) Treatment of Subpart F income in excess of 70 percent of gross income.

- (1) Rule.
- (2) Example.
- (f) Modifications of look-through rules for certain income.
  - (1) High withholding tax interest.
  - (2) Dividends from a non-controlled section 902 corporation.
  - (3) Distributions from a FSC.
  - (4) Example.
  - (g) Application of the look-through rules to certain domestic corporations.
  - (h) Application of the look-through rules to partnerships and other pass-through entities.
    - (1) General rule.
    - (2) Exception for certain partnership interests.
      - (i) Rule.
      - (ii) Exceptions.
    - (3) Income from the sale of a partnership interest.
    - (4) Value of a partnership interest.
    - (i) Application of look-through rules to related entities.
      - (1) In general.
      - (2) Exception for distributive shares of partnership income.
      - (3) Special rule for payments from foreign parents to domestic subsidiaries.
    - (j) Look-through rules applied to passive foreign investment company industries.
      - (k) Ordering rules.
        - (1) In general.
        - (2) Specific rules.
      - (l) Examples.
      - (m) Application of section 904 (g)
        - (1) In general.
        - (2) Treatment of interest payments.
        - (3) Examples.
        - (4) Treatment of dividend payments.
      - (i) Rule.
        - (ii) Determination of earnings and profits from United States sources.
        - (iii) Example.
      - (5) Treatment of Subpart F inclusions.
        - (i) Rule.
        - (ii) Example.
      - (6) Treatment of section 78 amount.
      - (7) Coordination with treaties.
      - (n) Order of application of sections 904 (d) and (g).
        - (o) Effective date.
- (VI) § 1.904-6 *Allocation of taxes.*
  - (a) Allocation of taxes to a separate category or categories of income.
    - (1) In general.
      - (i) Taxes related to a separate category of income.
      - (ii) Apportionment of taxes related to more than one separate category.
      - (iii) Apportionment of taxes for purposes of applying the high tax income test.
        - (2) Treatment of certain dividends from non-controlled section 902 corporations.
    - (b) Application of paragraph (a) to sections 902 and 960.

- (1) Determination of foreign taxes deemed paid.
  - (2) Distributions received from foreign corporations that are excluded from gross income under section 959(b).
  - (3) Application of section 78.
  - (4) Increase in limitation.
  - (c) Examples.
  - (VII) § 1.904-7 *Transition rules.*
    - (a) Characterization of distributions and section 951(a)(1)(B) inclusions of earnings of a controlled foreign corporation accumulated in taxable years beginning before January 1, 1987 during taxable years of both the payor controlled foreign corporation and the recipient which begin after December 31, 1986.
      - (1) In general.
      - (2) Limitation on establishing the character of earnings and profits.
        - (b) Application of look-through rules to distributions (including deemed distributors) and payments by an entity to a recipient when one's taxable year begins before January 1, 1987 and the other's taxable year begins after December 31, 1986.
          - (1) In general.
          - (2) Payor of interest, rents, or royalties is subject to the Act and recipient is not subject to the Act.
          - (3) Recipient of interest, rents, or royalties is subject to the Act and payor is not subject to the Act.
          - (4) Recipient of dividends and subpart F inclusions is subject to the Act and payor is not subject to the Act.
          - (5) Examples.
        - (c) Installment sales.
        - (d) Special effective date for high withholding tax interest earned by persons with respect to qualified loans described in section 1201(e)(2) of the Act.
        - (e) Treatment of certain recapture income.
- § 1.904-4 *Separate application of section 904 with respect to certain categories of income.*
  - (a) *In general.* A taxpayer is required to compute a separate foreign tax credit limitation for income received or accrued in a taxable year that is described in section 904(d)(1)(A) (passive income), (B) (high withholding tax interest), (C) (financial services income), (D) (shipping income), (E) (dividends from each noncontrolled section 902 corporation), (F) (dividends from a DISC or former DISC), (G) (foreign trade income), (H) (distributions from a FSC or former FSC), or (I) (general limitation income).
    - (b) *Passive income*—(1) *In general*—
      - (i) *Rule.* The term "passive income" means any—

(A) Income received or accrued by any person that is of a kind that would be foreign personal holding company income (as defined in section 954(c)) if the taxpayer were a controlled foreign corporation, including any amount of gain on the sale or exchange of stock in excess of the amount treated as a dividend under section 1248; or

(B) Amount includible in gross income under section 551 or section 1293.

Passive income does not include any income that is also described in section 904(d)(1) (B) through (H), any export financing interest (as defined in section 904(d)(2)(G) and paragraph (h) of this section), any high-taxed income (as defined in section 904(d)(2)(F) and paragraph (c) of this section), or any foreign oil and gas extraction income (as defined in section 907(c)). In determining whether any income is of a kind that would be foreign personal holding company income, the rules of section 864(d)(6) shall apply only in the case of income of a controlled foreign corporation (as defined in section 957).

(ii) *Example.* The following example illustrates the application of paragraph (b)(1)(i) of this section:

P is a domestic corporation with a branch in foreign country X. P does not have any financial services income. For 1988, P has a net foreign currency gain that would not constitute foreign personal holding company income if P were a controlled foreign corporation because the gain is directly related to the business needs of P. The currency gain is, therefore, general limitation income to P because it is not income of a kind that would be foreign personal holding company income.

(2) *Active rents or royalties—(i) In general.* Passive income does not include any rents or royalties that are derived in the active conduct of a trade or business and received from a person who is an unrelated person. Except as provided in paragraph (b)(2)(ii) of this section, the principles of § 1.954-2(d)(1) shall apply in determining whether rents or royalties are derived in the active conduct of a trade or business. For this purpose, the term "taxpayer" shall be substituted for the term "controlled foreign corporation" if the recipient of the rents or royalties is not a controlled foreign corporation.

(ii) *Exception for certain rents and royalties.* Rents or royalties are considered derived in the active conduct of a trade or business by a United States person or by a controlled foreign corporation (or other entity to which the look-through rules apply) for purposes of section 904 (but not for purposes of section 954) if the requirements of section 954(c)(2)(A) are satisfied by one or more corporations that are members

of an affiliated group of corporations (within the meaning of section 1504(a) without regard to section 1504(b)(3)) of which the recipient is a member.

(iii) *Unrelated person.* For purposes of this paragraph (b)(2), a person is considered to be an unrelated person if the person is not a related person within the meaning of section 954(d)(3), without regard to whether the relationship described in section 954(d)(3) is between a controlled foreign corporation and another person or between two persons neither one of which is a controlled foreign corporation.

(iv) *Example.* The following example illustrates the application of paragraph (b)(2)(ii) of this section.

*Example.* Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. S is regularly engaged in the restaurant franchise business. P licenses trademarks, tradenames, certain know-how, related services, and certain restaurant designs for which S pays P an arm's length royalty. P is regularly engaged in the development and licensing of such property. The royalties received by P for the use of its property are allocable under the look-through rules of § 1.904-5 to the royalties S receives from the franchisees. All of the franchisees are unrelated to S or P and operate in S's country of incorporation. S does not satisfy, but P does satisfy, the active trade or business requirements of § 1.954-2(d)(1). The royalty income earned by S with regard to its franchisees is foreign personal holding company income that is general limitation income, and the royalties paid to P are general limitation income to P.

(c) *High-taxed income—(1) In general.* Income received or accrued by a United States person that would otherwise be passive income shall not be treated as passive income if the income is determined to be high-taxed income. Income shall be considered to be high-taxed income if, after allocating expenses of the United States person to that income, the sum of the foreign income taxes paid or accrued by the United States person with respect to such income and the foreign taxes deemed paid or accrued by the United States person with respect to such income under section 902 or section 960 exceeds the highest rate of tax specified in section 1 or section 11, whichever applies (and with reference to section 15 if applicable), multiplied by the amount of such income (including the amount treated as a dividend under section 78). If, after application of this paragraph, income that would otherwise be passive income is determined to be high-taxed income, it shall be treated as general limitation income, and any taxes imposed on that income shall be considered related to general limitation income under § 1.904-6. Income and

taxes shall be translated at the appropriate rates, as determined under sections 986 and 989 and the regulations thereunder, before application of this paragraph.

(2) *Grouping of items of income in order to determine whether passive income is high-taxed income—(i) Effective Date.* For purposes of determining whether passive income is high-taxed income, the grouping rules of paragraphs (c)(3), (c)(4), and (c)(5) of this section apply to taxable years beginning after December 31, 1987. See notice 87-8 for the grouping rules applicable to taxable years beginning after December 31, 1986 and before January 1, 1988.

(ii) *Allocation and apportionment of expenses.* For purposes of determining whether passive income is high-taxed, expenses shall be allocated and apportioned to each of the groups of passive income (described in paragraphs (c)(3), (c)(4), and (c)(5) of this section) under the rules of § 1.861-8. Taxpayers that allocate and apportion interest expense on an asset basis may nevertheless apportion passive interest expense among the groups of passive income on a gross income basis.

(3) *Amounts received or accrued by United States persons.* Except as provided in paragraph (c)(5) of this section, all passive income received by a United States person shall be subject to the rules of this paragraph (c)(3). However, subpart F inclusions that are passive income and income that is earned by a United States person through a foreign qualified business unit (foreign QBU) that is passive income shall be subject to the rules of this paragraph only to the extent provided in paragraph (c)(4)(ii) of this section. For purposes of this section, a foreign QBU is a QBU (as defined in section 989(a)) other than a controlled foreign corporation, that has its principal place of business outside the United States. These rules shall apply whether the income is received from a controlled foreign corporation of which the United States person is a United States shareholder or from any other person. For purposes of determining whether passive income is high-taxed income, the following rules apply:

(i) All passive income received during the taxable year that is subject to a withholding tax of fifteen percent or greater shall be treated as one item of income.

(ii) All passive income received during the taxable year that is subject to a withholding tax of less than fifteen percent (but greater than zero) shall be treated as one item of income.

(iii) All passive income received during the taxable year that is subject to no withholding tax shall be treated as one item of income.

(4) *Income of controlled foreign corporations and foreign branches.* Except as provided in paragraph (c)(5) of this section, all amounts included in the gross income of a United States shareholder under section 951(a)(1) for a particular year that (after application of the look-through rules of section 904(d)(3) and § 1.904-5) are attributable to passive income received or accrued by a controlled foreign corporation and all amounts received or accrued by a United States person through a foreign QBU shall be subject to the rules of this paragraph (c)(4). These rules shall be applied separately to inclusions with respect to each controlled foreign corporation of which the taxpayer is a United States shareholder. These rules shall also be applied separately to income attributable to each foreign QBU of a United States person and to each QBU of a controlled foreign corporation or any other entity subject to the look-through rules of § 1.904-5.

(i) *Income from sources within the QBU's country of operation.* Passive income from sources within the QBU's country of operation shall be treated as one item of income.

(ii) *Income from sources without the QBU's country of operation.* Passive income from sources without the QBU's country of operation shall be grouped on the basis of the withholding tax imposed on that income as provided in paragraph (c)(3) (i) through (iii) of this section.

(iii) *Determination of the source of income.* For purposes of this paragraph (c)(4), income will be determined to be from sources within or without the QBU's country of operation under the laws of the foreign country of the payor of the income.

(5) *Special rules—(i) Certain rents and royalties.* All items of rent or royalty income to which an item of rent or royalty expense is directly allocable shall be treated as a single item of income and shall not be grouped with other amounts.

(ii) *Treatment of partnership income.* A partner's distributive share of partnership income that is not subject to the look-through rules and that is treated as passive income under § 1.904-5(h)(2) shall be treated as a single item of income and shall not be grouped with other amounts. A distributive share of partnership income that is treated as passive income under the look-through rules shall be grouped according to the rules in paragraph (c)(4) of this section that are applicable to subpart F inclusions.

(iii) *Currency gain or loss on distributions out of previously taxed income.* Any currency gain or loss with respect to a distribution received by a United States shareholder of previously taxed earnings and profits that is recognized under section 986(c) and that is treated as an item of passive income shall be treated as an item of passive income that is subject to no withholding tax for purposes of paragraph (c)(3) of this section, unless the distribution is received by a controlled foreign corporation or a foreign QBU of the United States shareholder. Any currency gain or loss with respect to a distribution of previously taxed earnings and profits that is recognized under section 986(c) and that is treated as passive income, and that is received by a controlled foreign corporation or a foreign QBU of a United States person shall be treated as an item of passive income from sources within the QBU's country of operation for purposes of paragraph (c)(4) of this section. The preceding sentence shall be applied separately for each foreign QBU of the United States person and for each QBU of a controlled foreign corporation.

(6) *Application of this paragraph to additional taxes paid or deemed paid in the year of receipt of previously taxed income—(i) Determination made in year of inclusion.* The determination of whether an amount included in gross income under section 951(a) is high-taxed income shall be made in the taxable year the income is included in the gross income of the United States shareholder under section 951(a) (hereinafter the "taxable year of inclusion"). Any increase in foreign taxes paid or accrued, or deemed paid or accrued, when the taxpayer receives an amount that is excluded from gross income under section 959(a) and that is attributable to a controlled foreign corporation's earnings and profits relating to the amount previously included in gross income will not be considered in determining whether the amount included in income in the taxable year of inclusion is high-taxed income.

(ii) *Exceptions.* Paragraph (c)(6)(i) of this section shall not apply to an increase in tax in a case in which the taxpayer is required to adjust its foreign taxes in the year of inclusion under section 905(c). Paragraph (c)(6)(i) of this section shall also not apply to the extent that the taxpayer receives a distribution of earnings and profits that is excluded from gross income under section 959(a), the distribution is received prior to the day that the taxpayer files its return for the taxable year of inclusion of the amount to which the distribution is

attributable, and the distribution is received in the "prefiling period." For this purpose the "prefiling period" is the period ending 90 days prior to the due date of the return (determined with extensions) for the taxable year of inclusion. In such a case, for purposes of determining whether the amount included in income in the taxable year of inclusion is high-taxed income, the United States shareholder shall consider as taxes attributable to that inclusion all foreign taxes paid or accrued, or deemed paid or accrued, prior to the end of the prefiling period with respect to that inclusion. A United States shareholder may also elect to consider as taxes paid or accrued, or deemed paid or accrued, with respect to the inclusion all foreign taxes paid or accrued or deemed paid or accrued after the end of the prefiling period but before the taxpayer files its return for the year of inclusion.

(iii) *Allocation of foreign taxes imposed on distributions of previously taxed income.* If an item of income is considered high-taxed income in the year of inclusion and paragraph (c)(6)(i) of this section applies, then any increase in foreign income taxes imposed with respect to that item shall be considered to be related to general limitation income. If an item of income is not considered to be high-taxed income in the taxable year of inclusion and paragraph (c)(6)(i) of this section applies, the following rules shall apply. The taxpayer shall treat an increase in taxes paid or accrued, or deemed paid or accrued, on any distribution of the earnings and profits attributable to the amount included in gross income in the taxable year of inclusion as taxes related to passive income to the extent of the excess of the product of (A) the highest rate of tax in section 11 (determined with regard to section 15 and determined as of the year of inclusion) and (B) the amount of the inclusion (after allocation of parent expenses) over (C) the taxes paid or accrued, or deemed paid or accrued, in the year of inclusion. The taxpayer shall treat any taxes paid or accrued, or deemed paid or accrued, on the distribution in excess of this amount as taxes related to general limitation income. If these additional taxes are not creditable in the year of distribution the carryover rules of section 904(c) apply. For purposes of this paragraph, the foreign tax on a subpart F inclusion shall be considered increased on distribution of the earnings and profits associated with that inclusion if the total of taxes paid and deemed paid on the inclusion and the distribution (taking

into account any reductions in tax and any withholding taxes) is greater than the total taxes deemed paid in the year of inclusion. Any foreign currency loss associated with the earnings and profits that are distributed with respect to the inclusion is not to be considered as giving rise to an increase in tax.

(iv) *Increase in taxes paid by successors.* [Reserved]

(7) *Application of this paragraph to certain reductions of tax on distributions of income—(i) In general.* If the effective rate of tax imposed by a foreign country on income of a foreign corporation that is included in a taxpayer's gross income is reduced under foreign law on distribution of such income, the rules of this paragraph (c) apply at the time that the income is included in the taxpayer's gross income without regard to the possibility of subsequent reduction of foreign tax on the distribution. If the inclusion is considered to be high-taxed income, then the taxpayer shall treat the inclusion as general limitation income. When the foreign corporation distributes the earnings and profits to which the inclusion was attributable and the foreign tax on the inclusion is reduced, then the taxpayer shall redetermine whether the inclusion should be considered to be high-taxed income provided that a redetermination of United States tax liability is required under section 905(c). If, taking into account the reduction in foreign tax, the inclusion would not have been considered high-taxed income, then the taxpayer, in redetermining its United States tax liability for the year or years affected, shall treat the inclusion and the associated taxes (as reduced on the distribution) as passive income and taxes. See section 905(c) and the regulations thereunder regarding the method of adjustment. For this purpose, the foreign tax on a subpart F inclusion shall be considered reduced on distribution of the earnings and profits associated with the inclusion if the total of taxes paid and deemed paid on the inclusion and the distribution (taking into account any reductions in tax and any withholding taxes) is less than the total taxes deemed paid in the year of inclusion. Any foreign currency gain associated with the earnings and profits that are distributed with respect to the inclusion is not to be considered a reduction of tax.

(ii) *Allocation of reductions of foreign tax.* For purposes of paragraph (c)(7)(i) of this section, reductions in foreign tax shall be allocated among the separate categories under the same principles as those of § 1.904-6 for allocating taxes

among the separate categories. For purposes of determining to which year's taxes the reduction in taxes relate, the reduction in taxes shall be attributable, on an annual last-in-first-out (LIFO) basis, to foreign taxes potentially subject to reduction that are associated with previously taxed income, then on a LIFO basis to foreign taxes associated with income that under paragraph (c)(7)(iii) of this section remains as passive income but that was excluded from subpart F income under section 954(b)(4), and finally on a LIFO basis to foreign taxes associated with other earnings and profits. Furthermore, in applying the ordering rules of section 959(c), distributions shall be considered made on a LIFO basis first out of earnings described in section 959(c) (1) and (2), then on a LIFO basis out of earnings and profits associated with income that remains passive income under paragraph (c)(7)(iii) of this section but that was excluded from subpart F under section 954(b)(4), and finally on a LIFO basis out of other earnings and profits.

(iii) *Interaction with section 954(b)(4).* If the effective rate of tax imposed by a foreign country on income of a foreign corporation is reduced under foreign law on distribution of that income, the rules of section 954(b)(4) shall be applied without regard to the possibility of subsequent reduction of foreign tax. If a taxpayer excludes passive income from a controlled foreign corporation's foreign personal holding company income under these circumstances, then the income shall be considered to be passive income until distribution of that income. At that time, the rules of this paragraph shall apply to determine whether the income is high-taxed income and, therefore, general limitation income. For purposes of determining whether a reduction in tax is attributable to taxes on income excluded under section 954(b)(4), the rules of paragraph (c)(7)(ii) of this section apply. The rules of paragraph (c)(7)(ii) of this section shall apply for purposes of ordering distributions to determine whether such distributions are out of earnings and profits associated with such excluded income.

(8) *Redeterminations of foreign tax.* If in the pre-filing period there is a redetermination of foreign taxes, within the meaning of section 905(c) and the regulations thereunder, then, for purposes of this paragraph (c), the amount of foreign taxes paid or deemed paid for the taxable year will be the taxes as redetermined.

(9) *Examples.* The following examples illustrate the application of this paragraph (c).

*Example (1).* Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation P. S is a single qualified business unit (QBU) operating in foreign country X. In 1988, S earns \$130 of gross passive royalty income from country X sources, and incurs \$30 of expenses that do not include any payments to P. S's \$100 of net passive royalty income is subject to \$30 of foreign tax, and is included under section 951 in P's gross income for the taxable year. P allocates \$50 of expenses to the \$100 (consisting of the \$70 section 951 inclusion and \$30 section 78 amount), resulting in a net inclusion of \$50. After application of the high-tax kick-out rules of paragraph (c)(1) of this section, the \$50 inclusion is treated as general limitation income, and the \$30 of taxes deemed paid are treated as taxes imposed on general limitation income, because the foreign taxes paid and deemed paid on the income exceed the highest United States tax rate multiplied by the \$50 inclusion ( $\$30 > \$17 (.34 \times \$50)$ ).

*Example (2).* The facts are the same as in Example (1) except that instead of earning \$130 of gross passive royalty income, S earns \$65 of gross passive royalty income from country X sources and \$65 of gross passive interest income from country Y sources. S incurs \$15 of expenses and \$5 of foreign tax with regard to the royalty income and incurs \$15 of expenses and \$10 of foreign tax with regard to the interest income. P allocates \$50 of expenses pro rata to the \$50 inclusion (\$45 section 951 inclusion and \$5 section 78 amount) attributable to the royalty income earned by S and the \$50 inclusion (\$40 section 951 inclusion and \$10 section 78 amount) attributable to the interest income earned by S. Under paragraph (c)(4) of this section, the high-tax test is applied separately to the section 951 inclusion attributable to the income from X sources and the section 951 inclusion attributable to the income from Y sources. Therefore, after allocation of P's \$50 of expenses, the resulting \$25 inclusion attributable to the royalty income from X sources is still treated as passive income because the foreign taxes paid and deemed paid on the income do not exceed the highest United States tax rate multiplied by the \$25 inclusion ( $\$5 < \$8.50 (.34 \times \$25)$ ). The \$25 inclusion attributable to the interest income from Y sources is treated as general limitation income because the foreign taxes paid and deemed paid exceed the highest United States tax rate multiplied by the \$25 inclusion ( $\$10 > \$8.50 (.34 \times \$25)$ ).

*Example (3).* Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation P. S is incorporated and operating in country Y and has a branch in country Z. S has two QBUs (QBU Y and QBU Z). In 1988, S earns \$65 of gross passive royalty income in country Y through QBU Y and \$65 of gross passive royalty income in country Z through QBU Z. S allocates \$15 of expenses to the gross passive royalty income earned by each QBU, resulting in net income of \$50 in each QBU. Country Y imposes \$5 of foreign tax on the royalty income earned in Y, and country Z imposes \$10 of tax on

royalty income earned in Z. All of S's income constitutes subpart F foreign personal holding company income that is passive income and is included in P's gross income for the taxable year. P allocates \$50 of expenses pro rata to the \$100 subpart F inclusion attributable to the QBUs (consisting of the \$45 section 951 inclusion derived through QBU Y, the \$5 section 78 amount attributable to QBU Y, the \$40 section 951 inclusion derived through QBU Z, and the \$10 section 78 amount attributable to QBU Z), resulting in a net inclusion of \$50. Pursuant to paragraph (c)(4) of this section, the high-tax kickout rules must be applied separately to the subpart F inclusion attributable to the income earned by QBU Y and the income earned by QBU Z. After application of the high-tax kickout rules, the \$25 inclusion attributable to Y will still be treated as passive income because the foreign taxes paid and deemed paid on the income do not exceed the highest United States tax rate multiplied by the \$25 inclusion ( $\$5 < \$8.50 (.34 \times \$25)$ ). The \$25 inclusion attributable to Z will be treated as general limitation income because the foreign taxes paid and deemed paid on the income exceed the highest United States tax rate multiplied by the \$25 inclusion ( $\$10 > \$8.50 (.34 \times \$25)$ ).

**Example (4).** Domestic corporation M operates in branch form in foreign countries X and Y. The branches are qualified business units (QBUs), within the meaning of section 993(a). In 1988, QBU X earns passive royalty income, interest income and rental income. All of the QBU X passive income is from country Z sources. The royalty income is not subject to a withholding tax, and the interest income and the rental income are subject to a 5 percent and 10 percent withholding tax, respectively. QBU Y earns interest income in Country Y that is not subject to foreign tax. For purposes of determining whether M's foreign source passive income is high-taxed income, the rental income and the interest income earned in QBU X are treated as one item of income pursuant to paragraphs (c)(4)(ii) and (c)(3) of this section. The interest income earned in QBU Y and the royalty income earned in QBU X are each treated as a separate item of income under paragraphs (c)(4)(i) and (c)(4)(ii) and (c)(3) of this section.

**Example (5).** S, a controlled foreign corporation incorporated in foreign country R, is a wholly-owned subsidiary of P, a domestic corporation. For 1988, P is required under section 951(a) to include in gross income \$80 attributable to the earnings and profits of S for such year, all of which is foreign personal holding company income that is passive rent or royalty income. S does not make any distributions in 1988 or 1989. Foreign income taxes paid by S for 1988 that are deemed paid by P for such year under section 960(a) with respect to the section 951(a) inclusion equal \$20. Twenty dollars (\$20) of P's expenses are properly allocated to the section 951(a) inclusion. The foreign income tax paid with respect to the section 951(a) inclusion does not exceed the highest United States tax rate multiplied by the amount of income after allocation of parent expenses ( $\$20 < \$27.20 (.34 \times \$80)$ ). Thus, P's section 951(a) inclusion for 1988 is included in P's passive income and the \$20 of taxes attributable to that inclusion are treated as

taxes related to passive income. In 1990, after P has filed its return for its 1988 tax year, S distributes \$80 to P, and under section 959 that distribution is treated as attributable to the earnings and profits with respect to the amount included in income by P in 1988 and is excluded from P's gross income. Foreign country R imposes a withholding tax of \$15 on the distribution in 1990. Under paragraph (c)(6)(i) of this section, the withholding tax in 1990 does not affect the characterization of the 1988 inclusion as passive income nor does it affect the characterization of the \$20 of taxes paid in 1988 as taxes paid with respect to passive income. No further parent expenses are allocable to the receipt of that distribution. In 1990, the foreign taxes paid (\$15) exceed the product of the highest United States tax rate and the amount of the inclusion reduced by taxes deemed paid in the year of inclusion ( $\$15 > [(.34 \times \$80) - \$20]$ ). Thus, under paragraph (c)(6)(iii) of this section,  $\$7.20 [(.34 \times \$80) - \$20]$  of the \$15 withholding tax paid in 1990 is treated as taxes related to passive income and the remaining  $\$7.80 [\$15 - \$7.20]$  of the withholding tax is treated as related to general limitation income.

**Example (6).** The facts are the same as in Example (5) except that S distributes the \$80 in 1989 rather than 1990 and the distribution is made during the pre-filing period with respect to P's 1988 tax year. Under paragraph (c)(6)(ii) of this section both the \$20 tax paid by S in 1988 and the \$15 withholding tax paid by P in 1989 are considered in determining whether the section 951(a) inclusion for 1988 is high-taxed income. Thus, because the total amount of foreign taxes paid with respect to the 1988 inclusion exceeds the amount determined by multiplying the highest United States rate for 1988 by the amount of the inclusion reduced by allocable parent expenses ( $\$35 > \$27.20 (.34 \times \$80)$ ), the section 951(a) inclusion in 1988 is treated as general limitation income and the entire \$35 of tax (the \$20 of 1988 taxes and the \$15 of 1989 taxes) is treated as taxes related to general limitation income.

**Example (7).** S, a controlled foreign corporation incorporated in foreign country R, is a wholly-owned subsidiary of P, a domestic corporation. For 1988, P is required under section 951(a) to include in gross income \$80 attributable to the earnings and profits of S for such year, all of which is foreign personal holding company income that is passive rent or royalty income. S does not make any distributions in 1988. Foreign income taxes paid by S for 1988 that are deemed paid by P for such year under section 960(a) with respect to the section 951(a) inclusion equal \$20. Twenty dollars (\$20) of P's expenses are properly allocated to the section 951(a) inclusion. In 1989, during P's pre-filing period, foreign country R redetermines the tax liability of S for 1987 to be \$30. Under paragraph (c)(8) of this section the entire \$30 of foreign tax is taken into account in determining if the inclusion is high-taxed. The inclusion is considered to be high-taxed because the foreign income tax paid with respect to the section 951(a) inclusion exceeds the highest United States tax rate multiplied by the amount of income after allocation of parent expenses

( $\$30 > \$27.20 (.34 \times \$80)$ ). Thus, P's section 951(a) inclusion for 1988 is included in P's general limitation, and the \$20 of taxes attributable to that inclusion are treated as taxes related to general limitation taxes. \$10 will be added to S's pool of general limitation taxes in 1989.

**Example (8).** S, a controlled foreign corporation, is a wholly-owned subsidiary of P, a domestic corporation. P and S are calendar year taxpayers. In 1987, S's only earnings consist of \$200 of passive income that is foreign personal holding company income that is earned in a foreign country X. Under country X's tax system, the corporate tax on particular earnings is reduced on distribution of those earnings and no withholding tax is imposed. In 1987, S pays \$100 of foreign tax. P does not elect to exclude this income from subpart F under section 954(b)(4) and includes \$200 in gross income (\$100 of net foreign personal holding company income and \$100 of the section 78 amount). At the time of the inclusion, the income is considered to be high-taxed income under paragraphs (c)(1) and (c)(6)(i) of this section and is general limitation income to P. S does not distribute any of its earnings in 1987. In 1988, S has no earnings. On December 31, 1988, S distributes the \$100 of earnings from 1987. At that time, S receives a \$50 refund from X attributable to the reduction of the country X corporate tax imposed on those earnings. Under paragraph (c)(7)(i) of this section, P must redetermine whether the 1987 inclusion should be considered to be high-taxed income. By taking into account the reduction in foreign tax, the inclusion would not have been considered high-taxed income. Therefore, P must redetermine its foreign tax credit for 1987 and treat the inclusion and the taxes associated with the inclusion as passive income and taxes. P must follow the appropriate section 905(c) procedures.

**Example (9).** The facts are the same as in Example (8) except that P elects to apply section 954(b)(4) to S's passive income that is subpart F income. Although the income is not considered to be subpart F income, it remains passive income until distribution. In 1988, S distributes \$150 to P. The distribution is a dividend to P because S has \$150 of accumulated earnings and profits (the \$100 of earnings in 1987 and the \$50 refund in 1988). P has no expenses allocable to the dividend from S. In 1988, the income is subject to the high-tax kick-out rules under paragraph (c)(7)(iii) of this section. The income is passive income to P because the foreign taxes paid and deemed paid by P with respect to the income do not exceed the highest United States tax rate on that income.

**Example (10).** The facts are the same as in Example (8) except that the distribution in 1988 is subject to a withholding tax of \$25. Under paragraph (c)(7)(i) of this section, P must redetermine whether the 1987 inclusion should be considered to be high-taxed income because there is a net \$25 reduction of foreign tax. By taking into account both the reduction in foreign corporate tax and the withholding tax, the inclusion would continue to be considered high-taxed income. P must follow the appropriate section 905(c) procedures. P

must redetermine its foreign tax credit for 1987, but the inclusion and the \$75 taxes (\$50 of deemed paid tax and \$25 withholding tax) will continue to be treated as general limitation income and taxes.

**Example (11).** (i) S, a controlled foreign corporation operating in country G, is a wholly-owned subsidiary of P, a domestic corporation. P and S are calendar year taxpayers. Country G imposes a tax of 50 percent on S's earnings. Under country G's system, the foreign corporate tax on particular earnings is reduced on distribution of those earnings to 30 percent and no withholding tax is imposed. Under country G's law, distributions are treated as made pro rata from each year's earnings. For 1987, S's only earnings consist of passive income that is earned in foreign country G. S has taxable income of \$110 for United States purposes and \$100 for country G purposes. Country G, therefore, imposes a tax of \$50 on the 1987 earnings of S. P does not elect to exclude this income from subpart F under section 954(b)(4) and includes \$110 in gross income (\$60 of net foreign personal holding company income and \$50 of the section 78 amount). At the time of the inclusion, the income is considered to be high-taxed income under paragraph (c) of this section and is general limitation income to P. S does not distribute any of its taxable income in 1987.

(ii) In 1988, S earns general limitation income that is not subpart F income. S again has \$110 in taxable income for United States purposes and \$100 in taxable income for country G purposes, and S pays \$50 of tax to foreign country G. In 1989, S has no taxable income or earnings. On December 31, 1989, S distributes \$60 of earnings and receives a refund of foreign tax of \$24. Country G treats the distribution of earnings as pro rata from the earnings accumulated in 1987 and 1988. However, under paragraph (c)(7)(ii) of this section, the distribution, and, therefore, the reduction of tax is treated as first attributable to the \$60 of passive earnings attributable to income previously taxed in 1987. However, because, under foreign law, only 40 percent of the \$50 of foreign taxes on the passive earnings can be refunded, \$20 of the \$24 foreign tax refund reduces foreign taxes on passive earnings. The other \$4 of the tax refund reduces the general limitation taxes from \$50 to \$46 (even though for United States purposes the \$60 distribution is entirely out of passive earnings).

(iii) Under paragraph (c)(7) of this section, P must redetermine whether the 1987 inclusion should be considered to be high-taxed income. By taking into account the reduction in foreign tax, the inclusion would not have been considered high-taxed income ( $\$30 < .34 \times \$110$ ). Therefore, P must redetermine its foreign tax credit for 1987 and treat the inclusion and the taxes associated with the inclusion as passive income and taxes. P must follow the appropriate section 905(c) procedures.

**Example (12).** Controlled foreign corporation S is a wholly owned subsidiary of domestic corporation P. S is incorporated in foreign country X. Under country X's tax system, the foreign corporate tax on particular earnings is reduced on distribution

and no withholding tax is imposed. In 1987, S has \$200 of foreign personal holding company income that is passive income that is subject to a foreign tax of \$100. P does not elect section 954(b)(4) with respect to that income. S has no earnings and profits in 1988. In 1988, S distributes the earnings and profits attributable to the 1987 income on a date that is 30 days before P files its return for the taxable year of inclusion and S receives a \$50 refund of foreign tax on the distribution. P may file its return for the year of inclusion to reflect the decrease in foreign tax or file an amended return to reflect the decrease in foreign tax if P does not reflect the decrease in its original return. The pre-filing exception does not apply when there is a reduction in foreign taxes imposed because, under the rules of paragraph (c)(7)(i) of this section and section 905(c), P must redetermine its foreign tax credit for the year of inclusion and must redetermine whether the inclusion should be considered high-taxed income.

(d) **High withholding tax interest.** The term "high withholding tax interest" means any interest if such interest is subject to a withholding tax of a foreign country or a possession of the United States and the rate of tax applicable to such interest is at least 5 percent. For purposes of the preceding sentence, a withholding tax is any tax imposed by a foreign country or possession of the United States that is determined on a gross basis. A withholding tax shall not be considered to be determined on a gross basis if the tax is not the final tax payable on the interest income, but is merely a prepayment or credit against a final foreign tax liability determined on a net basis on the interest alone or on interest and other income. High withholding tax interest does not include any interest described as export financing interest (as defined in section 904(d)(2)(G) and paragraph (h) of this section).

(e) **Financial services income—(1) In general.** [Reserved]

(2) **Active financing income—(i) Income included.** For purposes of paragraph (e)(1) and (e)(3) of this section, income is active financing income only if it is described in any of the following subdivisions.

(A) Income that is of a kind that would be insurance income as defined in section 953(a) (including related party insurance income as defined in section 953(c)(2)) and determined without regard to those provisions of section 953(a)(1)(A) that limit insurance income to income from countries other than the country in which the corporation was created or organized.

(B) Income from the investment by an insurance company of its unearned premiums or reserves ordinary and necessary to the proper conduct of the insurance business, income from providing services as an insurance

underwriter, income from insurance brokerage or agency services, and income from loss adjuster and surveyor services.

(C) Income from investing funds in circumstances in which the taxpayer holds itself out as providing a financial service by the acceptance or the investment of such funds, including income from investing deposits of money and income earned investing funds received for the purchase of traveler's checks or face amount certificates.

(D) Income from making personal, mortgage, industrial, or other loans.

(E) Income from purchasing, selling, discounting, or negotiating on a regular basis, notes, drafts, checks, bills of exchange, acceptances, or other evidences of indebtedness.

(F) Income from issuing letters of credit and negotiating drafts drawn thereunder.

(G) Income from providing trust services.

(H) Income from arranging foreign exchange transactions, or engaging in foreign exchange transactions.

(I) Income from purchasing stock, debt obligations, or other securities from an issuer or holder with a view to the public distribution thereof or offering or selling stock, debt obligations, or other securities for an issuer or holder in connection with the public distribution thereof, or participating in any such undertaking.

(J) Income earned by broker-dealers in the ordinary course of business (such as commissions) from the purchase or sale of stock, debt obligations, commodities futures, or other securities or financial instruments and dividend and interest income earned by broker-dealers on stock, debt obligations, or other financial instruments that are held for sale.

(K) Service fee income from investment and correspondent banking.

(L) Income from interest rate and currency swaps.

(M) Income from providing fiduciary services.

(N) Income from services with respect to the management of funds.

(O) Bank-to-bank participation income.

(P) Income from providing charge and credit card services or for factoring receivables obtained in the course of providing such services.

(Q) Income from financing purchases from third parties.

(R) Income from gains on the disposition of tangible or intangible personal property or real property that was used in the active financing

business (as defined in paragraph (e)(3)(i) of this section) but only to the extent that the property was held to generate or generated active financing income prior to its disposition.

(S) Income from hedging gain with respect to other active financing income.

(T) Income from providing traveller's check services.

(U) Income from servicing mortgages.

(V) Income from finance leasing that would not qualify as active leasing income under section 954(c)(2)(A).

(W) High withholding tax interest that would otherwise be described as active financing income.

(X) Income from providing investment advisory services, custodial services, agency paying services, collection agency services, and stock transfer agency services.

(Y) Any similar item of income that is disclosed in the manner provided in the instructions to the Form 1118 or 1116 or that is designated as a similar item of income in guidance published by the Internal Revenue Service.

(3) *Financial services entities*—(i) *In general.* The term "financial services entity" means an individual or entity that is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business (active financing business) for any taxable year. Except as provided in paragraph (e)(3)(ii) of this section, a determination of whether an entity is a financial services entity shall be done on an entity-by-entity basis. An individual or entity is predominantly engaged in the active financing business for any year if for that year 80 percent of its gross income is income described in paragraph (e)(2)(i) of this section. For this purpose, gross income includes all income realized by an individual or entity, whether includible or excludible from gross income under other operative provisions of the Code, but excludes gain from the disposition of stock of a corporation that prior to the disposition of its stock is related to the transferor within the meaning of section 267(b). For this purpose, income received from a related person that is a financial services entity shall be excluded if such income is characterized under the look-through rules of section 904(d)(3) and § 1.904-5. In addition, income received from a related person that is not a financial services entity but that is characterized as financial services income under the look-through rules shall be excluded. Any income received from a related person that is characterized under the look-through rules and that is not otherwise excluded by this paragraph will retain its character either as active financing

income or other income in the hands of the recipient for purposes of determining if the recipient is a financial services entity and if the income is financial services income to the recipient.

(ii) *Special rule for affiliated groups.* In the case of any corporation that is not a financial services entity under paragraph (e)(3)(i) of this section, but is a member of an affiliated group (as defined in section 1504(a) without regard to section 1504(b)(3)), such corporation will be deemed to be a financial services entity if the affiliated group as a whole meets the requirements of section (e)(3)(i) of this section. For purposes of determining if the affiliated group meets the requirements of paragraph (e)(3)(i) of this section the rules of this paragraph (e)(3)(ii) apply. The income of the group will not include any income from transactions with other members of the group. Leasing income of any member of the group will not be considered active financing income if any member of the recipient's group satisfies the active trade or business requirements of section 954(c)(2)(A), and the regulations thereunder, with respect to that income. Passive income will not be considered to be active financing income merely because that income is earned by a member of the group that is a financial services entity without regard to the rule in this paragraph (e)(3)(ii).

(iii) *Treatment of partnerships and other pass-through entities*—(A) *Rule.* For purposes of determining whether a partner (including a partnership that is a partner in a second partnership) is a financial services entity, all of the partner's income shall be taken into account, except that income that is excluded under paragraph (e)(3)(i) of this section shall not be taken into account. Thus, if a partnership is determined to be a financial services entity none of the income of the partner received from the partnership that is characterized under the look-through rules shall be included for purpose of determining if the partner is a financial services entity. If a partnership is determined not to be a financial services entity, then income of the partner from the partnership that is characterized under the look-through rules will be taken into account (unless such income is financial services income) and such income will retain its character either as active financing income or as other income in the hands of the partner for purposes of determining if the partner is a financial service entity and if the income is financial services income to the partner. If a partnership is a financial services entity and the partner's income from the partnership is characterized as financial services

income under the look-through rules, then, for purposes of determining a partner's foreign tax credit limitation, the income from the partnership shall be considered to be financial services income to the partner regardless of whether the partner is itself a financial services entity. The rules of this paragraph (e)(3)(iii) will apply for purposes of determining whether an owner of an interest in any other pass-through entity the character of the income of which is preserved when such income is included in the income of the owner of the interest is a financial services entity.

(B) *Examples.* The principles of paragraph (e)(3)(iii) of this section are illustrated by the following examples.

*Example (1).* PS is a domestic partnership operating in branch form in foreign country X. PS has two equal general partners, A and B. A and B are domestic corporations that each operate in branch form in foreign countries Y and Z. All of A's income, except that derived through PS, is manufacturing income. All of B's income, except that derived through PS, is active financing income. A and B's only income from PS are distributive shares of PS's income. PS is a financial services entity and all of its income is financial services income. The income from PS is excluded in determining if A or B are financial services entities. Thus, A is not a financial services entity because none of A's income is active financing income and B is a financial services entity because all of B's income is active financing income. However, both A and B's distributive shares of PS's taxable income consist of financial services income even though A is not a financial services entity.

*Example (2).* PS is a domestic partnership operating in foreign country X. A and B are domestic corporations that are equal general partners in PS and, therefore, the look-through rules apply for purposes of characterizing A's and B's distributive shares of PS's income. Fifty (50) percent of PS's gross income is active financing income that is not high withholding tax interest. The active financing income includes income that also meets the definition of passive income and income that meets the definition of general limitation income. The other 50 percent of PS's income is from manufacturing. PS is, therefore, not a financial services entity. A's and B's distributive shares of partnership taxable income consist of general limitation manufacturing income and active financing income. Under paragraph (c)(3)(i) of this section, the active financing income shall be financial services income to A or B if either A or B is determined to be a financial services entity. If A or B is not a financial services entity, the distributive shares of income from PS will not be financial services income to A or B and will consist of passive and general limitation income. All of the income from PS is included in determining if A or B are financial services entities.

(4) *Definition of incidental income*—(i) *In general*—(A) *Rule.* Incidental

income is income that is integrally related to active financing income of a financial services entity. Such income includes, for example, income from precious metals trading and commodity trading that is integrally related to futures income. If securities, shares of stock, or other types of property are acquired by a financial services entity as an ordinary and necessary incident to the conduct of a active financing business, the income from such property will be considered to be financial services income but only so long as the retention of such property remains an ordinary or necessary incident to the conduct of such business. Thus property, including stock, acquired as the result of, or in order to prevent, a loss in an active financing business upon a loan held by the taxpayer in the ordinary course of such business will be considered ordinary and necessary to the conduct of such business, but income from such property will be considered financial services income only so long as the holding of such property remains an ordinary and necessary incident to the conduct of such business. If an entity holds such property for five years or less then the property is considered held incident to the financial services business. If an entity holds such property for more than five years, a presumption will be established that the entity is not holding such property incident to its financial services business. An entity will be able to rebut the presumption by demonstrating that under the facts and circumstances it is not holding the property as an investment. However, the fact that an entity holds the property for more than five years and is not able to rebut the presumption that it is not holding the property incident to its financial services business will not affect the characterization of any income received from the property during the first five years as financial services income.

(B) *Examples.* The following examples illustrate the application of paragraph (e)(4)(i) of this section.

*Example (1).* X is a financial services entity within the meaning of paragraph (e)(3)(i) of this section. In 1987, X made a loan in the ordinary course of its business to an unrelated foreign corporation, Y. As security for that loan, Y pledged certain operating assets. Those assets generate income of a type that would be subject to the general limitation. In January 1989, Y defaulted on the loan and forfeited the collateral. During the period X held the assets, X earned operating income generated by those assets. This income was applied in partial satisfaction of Y's obligation. In 1993, X sold the forfeited assets. The sales proceeds were in excess of the remainder of Y's obligation. The

operating income received in the period from 1989 to 1993 and the income on the sale of the assets in 1993 are financial services income of X.

*Example (2).* The facts are the same as in *Example (1)*, except that instead of pledging its operating assets as collateral for the loan, Y pledged the stock of its operating subsidiary Z. In 1993 X sold the stock of Z in complete satisfaction of Y's obligation. X's income from the sale of Z stock in satisfaction of Y's obligation is financial services income.

*Example (3).* P, a domestic corporation, is a financial services entity within the meaning of paragraph (e)(3)(i) of this section. P holds a United States dollar denominated debt (the "obligation") of the Central Bank of foreign country X. The obligation evidences a loan of \$100 made by P to the Central Bank. In 1988, pursuant to a program of country X, P delivers the obligation to the Central Bank which credits 70 units of country X currency to M, a country X corporation. M issues all of its only class of capital stock to P. M invests the 70 units of country X currency in the construction and operation of a new hotel in X. In 1994, M distributes 10 units of country X currency to P as a dividend. P is not able to rebut the presumption that it is not holding the stock of M incident to its financial services business. The dividend to P is, therefore, not financial services income.

(ii) *Income that is not incidental income.* Income that is attributable to non-financial activity is not incidental income within the meaning of paragraph (e)(4)(i) and (ii) of this section solely because such income represents a relatively small proportion of the taxpayer's total income or that the taxpayer engages in non-financial activity on a sporadic basis. Thus, for example, income from data processing services provided to related or unrelated parties or income from the sale of goods or non-financial services (for example travel services) is not financial services income, even if the recipient is a financial services entity.

(5) *Exceptions.* Financial services income does not include income that is:

- (i) [Reserved];
- (ii) [Reserved]; and
- (iii) Dividends from noncontrolled section 902 corporations as defined in section 904(d)(2)(E) and paragraph (g) of this section.

(f) *Shipping income.* The term "shipping income" means any income received or accrued by any person that is of a kind that would be foreign base company shipping income (as defined in section 954(f) and the regulations thereunder). Shipping income does not include any dividends received or accrued from a noncontrolled section 902 corporation or any income that is financial services income.

(g) *Noncontrolled section 902 corporation—(1) Definition.* Except as

otherwise provided, the term "noncontrolled section 902 corporation" means any foreign corporation with respect to which the taxpayer meets the stock ownership requirements of section 902(a) or, for purposes of applying the look-through rules described in section 904(d)(3) and § 1.904-5, the taxpayer meets the requirements of section 902(b). A controlled foreign corporation shall not be treated as a noncontrolled section 902 corporation with respect to any distributions out of its earnings and profits for periods during which it was a controlled foreign corporation. In the case of a partnership owning a foreign corporation, the determination of whether a taxpayer meets the ownership requirements of section 902(a) or (b) will be made with respect to the partner's indirect ownership, and not the partnership's direct ownership, in the foreign corporation.

(2) *Treatment of dividends from each separate noncontrolled section 902 corporation—(i) In general.* Except as otherwise provided, a separate foreign tax credit limitation applies to dividends received or accrued by a corporation from each noncontrolled section 902 corporation. Any dividend distribution made by a noncontrolled section 902 corporation out of earnings and profits attributable to periods in which the shareholder did not meet the stock ownership requirements of section 902(a) or section 902(b) shall be treated as distributions made by a noncontrolled section 902 corporation.

(ii) *Special rule for dividends received by a controlled foreign corporation.* If—

(A) Stock in a foreign corporation is owned by a controlled foreign corporation,

(B) There are two or more shareholders of that controlled foreign corporation, and

(C) The ownership requirements of section 902(b) with respect to the foreign corporation are met by at least one of the United States shareholders of the controlled foreign corporation, then any dividends received by the controlled foreign corporation from the foreign corporation shall be treated in their entirety to the controlled foreign corporation as dividends from a noncontrolled section 902 corporation, notwithstanding that all the United States shareholders of the controlled foreign corporation do not meet the requirements of section 902(b). Any income received or accrued by a United States shareholder of a controlled foreign corporation described in the preceding sentence that is attributable to a dividend paid by a foreign corporation shall be considered to be

passive income if the shareholder's interest in that foreign corporation does not satisfy the requirements of section 902(b).

(iii) *Special rules for high withholding tax interest.* If a taxpayer receives or accrues a dividend distribution from a noncontrolled section 902 corporation out of earnings and profits attributable to high withholding tax interest earned or accrued by the noncontrolled section 902 corporation, any gross basis foreign tax (as defined in paragraph (d) of this section) imposed on such interest, to the extent that the taxes are imposed at a rate in excess of 5 percent, shall not be treated as foreign taxes for purposes of determining the amount of foreign taxes deemed paid or accrued by the taxpayer under section 902. The preceding sentence shall have no effect upon the determination of the amount of earnings and profits of a noncontrolled section 902 corporation.

(iv) *Treatment of inclusions under section 1293.* [Reserved]

(3) *Special rule for controlled foreign corporations.* Distributions from a controlled foreign corporation shall be treated as dividends from a noncontrolled section 902 corporation, and therefore not subject to the look-through rules of § 1.904-5, to the extent that the distribution is out of earnings and profits for periods during which the controlled foreign corporation was not a controlled foreign corporation.

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

*Example (1).* A and B are domestic corporations. A owns 90 percent of the stock of C, a foreign corporation and B owns the remaining 10 percent of the C stock. C is a controlled foreign corporation. A and B are United States shareholders. C owns 20 percent of the stock of D, a foreign corporation, not a controlled foreign corporation, that is incorporated in a different country than C. D is a noncontrolled section 902 corporation with respect to C and A, but not with respect to B. In 1987, C has foreign personal holding company income of \$1000, \$100 of which is attributable to a dividend from D. The remainder of the foreign personal holding company income is passive income. Assume that gross income and net income are equal and that C pays no foreign taxes on its foreign personal holding company income. In 1987, A and B have section 951(a)(1)(A) inclusions of \$900 and \$100, respectively, attributable to the foreign personal holding company income. Under paragraph (g)(2)(ii) of this section, the \$900 included by A consists of \$810 passive income and \$90 of income attributable to a dividend from a noncontrolled section 902 corporation. The \$100 included by B in gross income is characterized as passive income in its entirety although \$10 of the \$100 is attributable to the dividend from D, and, as to

C, that dividend is characterized as a dividend from a noncontrolled section 902 corporation. As to B, the \$10 is characterized as passive income because B does not meet the ownership requirements of section 902(b) with regard to D.

*Example (2).* In 1987, A, a domestic corporation, owned 9 percent of the stock of B, a foreign corporation. In 1988, A acquired an additional 20 percent of the stock of B. Thus, in 1988, B is a noncontrolled section 902 corporation with regard to A. In 1989, A acquired an additional 25 percent of the stock of B. A acquired no additional stock in 1990. In 1989 and 1990, A owned 54 percent of the stock of B. For 1989 and 1990, B is a controlled foreign corporation in which A is a United States shareholder. B has no subpart F income in 1989 or 1990. In 1990, B pays a dividend of \$3,000 to A. One thousand dollars (\$1,000) of the dividend is attributable to earnings and profits from 1987, \$1,000 is attributable to earnings and profits from 1988, and \$1,000 is attributable to earnings and profits from 1989. Under paragraph (g)(1) of this section, the \$1,000 attributable to the earnings and profits from 1989 is subject to the look through rules of section 904(d)(3) and § 1.904-5(c)(4) and is characterized in A's hands according to those rules. Under paragraph (g)(3) of this section, the \$2,000 attributable to the 1987 and 1988 earnings and profits is treated as income subject to a separate limitation for dividends from a noncontrolled section 902 corporation (B corporation).

*Example (3).* M owns 40 percent of the voting stock of foreign corporation N. N is a noncontrolled section 902 corporation. In 1987, N earns \$2,000 of gross interest income and incurs \$1,700 of interest expense. N incurs no other expenses and earns no other income. One thousand dollars (\$1,000) of the interest income is subject to a 10 percent withholding tax and is, therefore, high withholding tax interest. N's earnings and profits are \$200 (\$2,000 gross interest income less \$1,700 interest expense less \$100 withholding tax). N pays the full \$200 out as a dividend. M receives \$80 (40 percent of the \$200). Under paragraph (g)(3) of this section, \$50 (\$100 - 5% × \$1,000) of the \$100 withholding tax is not treated as a foreign tax for purposes of determining the amount of foreign taxes deemed paid by M under section 902. M's deemed paid credit with respect to the \$80 dividend it receives is, therefore, reduced from \$40 (\$100 × \$80/\$200) to \$20 (\$50 × \$80/\$200).

(h) *Export financing interest—(1) Definitions—(i) Export financing interest.* The term "export financing interest" means any interest derived from financing the sale (or other disposition) for use or consumption outside the United States of any property that is manufactured, produced, grown, or extracted in the United States by the taxpayer or a related person, and not more than 50 percent of the fair market value of which is attributable to products imported into the United States. For purposes of this paragraph, the term "United States"

includes the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(ii) *Fair market value.* For purposes of this paragraph, the fair market value of any property imported into the United States shall be its appraised value, as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation. For purposes of determining the foreign content of an item of property imported into the United States, see section 927 and the regulations thereunder.

(iii) *Related person.* For purposes of this paragraph, the term "related person" has the meaning given it by section 954(d)(3) except that such section shall be applied by substituting "the person with respect to whom the determination is being made" for "controlled foreign corporation" each place it applies.

(2) *Treatment of export financing interest.* Except as provided in paragraph (h)(3) of this section, if a taxpayer derives export financing interest from an unrelated person, then that interest shall be treated as general limitation income.

(3) *Interaction of export financing interest and related person factoring income—(i) Export financing interest that is also related person factoring income.* Export financing interest shall be treated as passive income if that income is also related person factoring income. For this purpose related person factoring income is—

(A) Income received or accrued by a controlled foreign corporation (other than a financial services entity) that is income described in section 864(d)(6) (income of a controlled foreign corporation from a loan for the purpose of financing the purchase of inventory property or services of a related person); or

(B) Income received or accrued by any person (other than a financial services entity) that is income described in section 864(d)(1) (income from a trade or service receivable acquired from a related person).

(ii) *Export financing interest that is received or accrued by a financial services entity.* [Reserved]

(iii) *Export financing interest that is high-withholding tax interest.* [Reserved]

(iv) *Examples.* The following examples illustrate the operation of this paragraph (h)(3).

*Example (1).* Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation P. S has accumulated cash reserves. P has uncollected trade and service

receivables of foreign obligors. P sells the receivables at a discount ("factors") to S. The income derived by S on the receivables is related person factoring income. The income is also export financing interest. Because the income is related person factoring income, the income is passive income to S.

**Example (2).** [Reserved]

**Example (3).** Domestic corporation S is a wholly-owned subsidiary of domestic corporation P. S has accumulated cash reserves. P has uncollected trade and service receivables of foreign obligors. P factors the receivables to S. The income derived by S on the receivables is related person factoring income. The income is also export financing interest. The income will be passive income to S.

**Example (4).** The facts are the same as in Example (3) except that instead of factoring P's receivables, S finances the sales of P's goods by making loans to the purchasers of P's goods. The interest derived by S on these loans is export financing interest and is not related person factoring income. The income will be general limitation income to S.

(v) *Income eligible for section 864(d)(7) exception (same country exception) from related person factoring treatment—(A) Income other than interest.* If any foreign person that is not a financial services entity receives or accrues income that is described in section 864(d)(7) (income on a trade or service receivable acquired from a related person in the same foreign country as the recipient) and such income would also meet the definition of export financing interest if section 864(d)(1) applied to such income (income on a trade or service receivable acquired from a related person treated as interest), then the income shall be considered to be export financing interest and shall be treated as general limitation income.

(B) *Interest income.* If export financing interest is received or accrued by any foreign person and that income would otherwise be treated as related person factoring income under section 864(d)(6) if section 864(d)(7) did not apply, section 904(d)(2)(A)(iii)(II) shall apply, and the interest shall be treated as general limitation income unless the interest is received or accrued by a financial services entity.

(C) *Examples.* The following examples illustrate the operation of paragraph (h)(4)(iii) (A) and (B) of this section.

**Example (1).** Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation P. Controlled foreign corporation T is a wholly-owned subsidiary of controlled foreign corporation S. S and T are incorporated in country M. In 1987, P sells tractors to T, which T sells to X, a foreign corporation organized in country M. The tractors are to be used in country M. T has uncollected trade receivables from X that it factors to S. The income derived by S from the receivables is not derived in an active

financing business, and S is not a financial services entity. The income is not related person factoring income because it is described in section 864(d)(7) (income eligible for the same country exception). Because the income derived by S from the receivables would meet the definition of export financing interest if the income were described in section 864(d)(1), the income is considered to be export financing interest and is, therefore, general limitation income to S.

**Example (2).** [Reserved]

**Example (3).** Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation P. Controlled foreign corporation T is a wholly-owned subsidiary of controlled foreign corporation S. S and T are incorporated in country M. S is not a financial services entity. In 1987, P sells tractors to T, which T sells to X, a foreign partnership that is organized in country M and is related to S and T. S makes a loan to X to finance the tractor sales. The interest earned by S from financing the sales is described in section 864(d)(7) and is export financing interest. Therefore, the income shall be general limitation income to S.

**Example (4).** [Reserved]

(i) *Interaction of section 907(c) and income described in this section.* If a person receives or accrues income that is income described in section 907(c) (relating to oil and gas income), the rules of section 907(c) and the regulations thereunder, as well as the rules of this section, shall apply to the income. Thus, for example, if a taxpayer receives or accrues a dividend distribution from two separate noncontrolled section 902 corporations out of earnings and profits attributable to income received or accrued by the noncontrolled section 902 corporations that is income described in section 907(c), the rules provided in section 907 shall apply separately to the dividends received from each noncontrolled section 902 corporation. The reduction in amount allowed as foreign tax provided by section 907(a) shall therefore be calculated separately for dividends received or accrued by the taxpayer from each separate noncontrolled section 902 corporation.

(j) *Special rule for certain currency gains and losses.* Any currency gain or loss computed under § 1.985-3T(d)(2) will be allocated among the separate categories of income on the basis of foreign source gross income in that category before the application of the section 904(d)(2)(A)(iii)(III) (the exception from passive income for high-taxed income).

(k) *Priority rules.* [Reserved]

**§ 1.904-5 Look-through rules as applied to controlled foreign corporations and other entities.**

(a) *Definitions.* For purposes of section 904(d)(3) and this section, the following definitions apply:

(1) The term "separate category" means, as the context requires, any category of income described in section 904(d)(1) (A), (B), (C), (D), (E), (F), (G), (H), or (I) and in § 1.904-4 (b), (d), (e), (f), and (g), or any category of earnings and profits to which income described in such provisions is attributable.

(2) The term "controlled foreign corporation" has the meaning given such term by section 957 (taking into account the special rule for certain captive insurance companies contained in section 953(c)).

(3) The term "United States shareholder" has the meaning given such term by section 951(b) (taking into account the special rule for certain captive insurance companies contained in section 953(c)), except that for purposes of this section, a United States shareholder shall include any member of the controlled group of the United States shareholder. For this purpose the controlled group is any member of the affiliated group within the meaning of section 1504(a)(2) except that 50 percent shall be substituted for 80 percent wherever it appears in section 1504(a)(2).

(b) *In general.* Except as otherwise provided in section 904(d)(3) and this section, dividends, interest, rents, and royalties received or accrued by a taxpayer from a controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as general limitation income.

(c) *Rules for specific types of inclusions and payments—(1) Subpart F inclusions—(i) Rule.* Any amount included in gross income under section 951(a)(1)(A) shall be treated as income in a separate category to the extent the amount so included is attributable to income received or accrued by the controlled foreign corporation that is described as income in such category. For purposes of this paragraph, the priority rules of § 1.904-4(k) shall apply prior to application of the rules of this paragraph.

(ii) *Examples.* The following examples illustrate the application of this paragraph (c)(1):

**Example (1).** Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. S earns \$200 of net income, \$85 of which is foreign base company shipping income, \$15 of which is foreign personal holding company income, and \$100 of which is non-subpart F general limitation income. No foreign tax is imposed on the income. One hundred dollars (\$100) of S's income is subpart F income taxed currently to P under section 951(a)(1)(A). Because \$85 of the subpart F inclusion is attributable to shipping income of S, \$85 of the subpart F inclusion is shipping income to P. Because \$15

of the subpart F inclusion is attributable to passive income of S, \$15 of the subpart F inclusion is passive income to P.

*Example (2).* [Reserved]

*Example (3).* [Reserved]

*Example (4).* Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation P. S owns 40 percent of foreign corporation A, 45 percent of foreign corporation B, 30 percent of foreign corporation C and 20 percent of foreign corporation D. A, B, C, and D are noncontrolled section 902 corporations. In 1987, S's only income is a \$100 dividend from each foreign corporation. Assume that S pays no foreign taxes and has no expenses. All \$400 of the income is foreign personal holding company income and is included in P's gross income. P must include \$100 in its separate limitation for dividends from A, \$100 in its separate limitation for dividends from B, \$100 in its separate limitation for dividends from C, and \$100 in its separate limitation for dividends from D.

(2) *Interest—(i) In general.* Any interest that is received or accrued from a controlled foreign corporation by a taxpayer that is a United States shareholder in such foreign corporation shall be treated as income in a separate category to the extent it is allocable to income of the controlled foreign corporation in that category. If related

person interest (as defined in this paragraph (c)(2)(ii)) is received or accrued from a controlled foreign corporation by two or more persons, the amount of interest received or accrued by each person that is allocable to any separate category of income shall be determined by multiplying the amount of related person interest allocable to that separate category of income by a fraction. The numerator of the fraction is the amount of related person interest received or accrued by that person and the denominator is the total amount of related person interest paid or accrued by the controlled foreign corporation.

(ii) *Allocating expenses including interest paid to a related person.* If interest is paid or accrued by a controlled foreign corporation to any United States shareholder in such corporation (or to any other related person) and the look-through rules apply ("related person interest"), such related person interest and other expenses of a controlled foreign corporation shall be allocated and apportioned in the following manner.

(A) Gross income in each separate category shall be determined:

(B) Any expenses that are definitely related to less than all classes of gross income, including unrelated person interest (as defined in paragraph (c)(2)(ii)(E) of this section) that is directly allocated to income from a specific property, shall be allocated and apportioned under the principles of § 1.861-8 to income in each separate category;

(C) Related person interest shall be allocated to and shall reduce (but not below zero) the amount of passive foreign personal holding company income as determined after the application of paragraph (c)(2)(ii)(B) of this section;

(D) To the extent that related person interest exceeds passive foreign personal holding company income as determined after the application of paragraph (c)(2)(ii)(B) and (C) of this section, the related person interest shall be allocated under the rules of this paragraph to separate categories other than passive income. If under § 1.861-8, the gross income method of allocating interest expense is elected, related person interest shall be allocated as follows:

$$\frac{\text{Related person interest} - \text{Related person interest allocated under paragraph (c)(2)(ii)(C)}}{\text{Total gross income (other than passive)}}$$

If under § 1.861-8, the asset method of allocating interest expense is elected,

related person interest shall be

allocated according to the following formula:

$$\frac{\text{Related person interest} - \text{Related person interest allocated under paragraph (c)(2)(ii)(C)}}{\text{Value of total assets (other than passive)}}$$

(E) Any other expenses (including unrelated person interest that is not directly allocated to income from a specific property) that are not definitely related expenses or that are definitely

related to all classes of gross income shall be apportioned under the rules of this paragraph to reduce income in each separate category. For this purpose, unrelated person interest is all interest

other than related person interest. If the taxpayer elects to use the gross income method to apportion the expense, then the expense shall be apportioned according to the following formula:

$$\text{Expense apportionable to a separate category} = \text{Expense} \times \frac{\text{Gross income in a separate category (minus related person interest allocated under paragraph (c)(2)(ii)(C) if the category is passive)}}{\text{Total gross income minus related person interest allocated to passive income under paragraph (c)(2)(ii)(C)}}$$

If the taxpayer uses the asset method to apportion the expense, then the expense shall be apportioned according to the following formula:

$$\text{Expense apportionable to a separate category} = \frac{\text{Expense} \times \left( \frac{\text{Value of assets in a separate category (minus related person debt allocated to passive assets if the category is passive)}}{\text{Value of total assets minus related person debt allocated to passive assets}} \right)}{1}$$

(iii) *Definitions*—(A) *Value of assets and reduction in value of assets and gross income.* For purposes of paragraph (c)(2)(ii)(D) and (E) of this section, the value of total assets is the value of assets in all categories (determined under the principles of § 1.861-8). See § 1.861-8 to determine the reduction in value of assets and gross income for

purposes of apportioning additional third person interest expense that is not directly allocated when some interest expense has been directly allocated. For purposes of this paragraph and paragraph (c)(2)(ii)(E) of this section, any reduction in the value of assets for indebtedness that relates to interest allocated under paragraph (c)(2)(ii)(C) of

this section is made before determining the average of asset values. For rules relating to the averaging of reduced asset values see § 1.861-8.

(B) *Related person debt allocated to passive assets.* For purposes of paragraph (c)(2)(ii)(E) of this section, related person debt allocated to passive assets is determined as follows:

$$\text{Related person debt allocated to the passive category} = \frac{\text{Total related person debt} \times \left( \frac{\text{Related person interest allocable to passive income under paragraph (c)(2)(ii)(C)}}{\text{All related person interest}} \right)}{1}$$

For this purpose, the term "total related person debt" means the sum of the principal amounts of obligations of a controlled foreign corporation owed to any United States shareholder of such corporation or to any related entity (within the meaning of paragraph (g) of this section) determined at the end of the taxable year.

(iv) *Examples.* The following examples illustrate the operation of this paragraph (c)(2).

*Example (1).* (i) Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. In 1987, S earns \$200 of foreign personal holding company income that is passive income. S also earns \$100 of foreign base company sales income that is general limitation income. S has \$2000 of passive assets and \$2000 of general limitation assets. In 1987, S makes a \$150 interest payment to P with respect to a \$1500 loan from P. S also pays \$100 of interest to an unrelated person on a \$1000 loan from that person. S has no other expenses. S uses the asset method to allocate interest expense.

(ii) Under paragraph (c)(2)(ii)(C) of this section, the \$150 related person interest payment is allocable to S's passive foreign personal holding company income. Therefore, the \$150 interest payment is passive income to P. Because the entire related person interest payment is allocated to passive income under paragraph (c)(2)(ii)(C) of this section, none of the related person interest payment is allocable to general limitation income under paragraph (c)(2)(ii)(D) of this section. Under paragraph (c)(2)(iii)(B) of this section, the entire amount of the related person debt is allocable to passive assets (\$1500 = \$1500 × \$150/\$150). Under paragraph (c)(2)(ii)(E) of this section, \$20 of interest expense paid to an unrelated person is allocated to passive income (\$20 = \$100 × (\$2000 - \$1500)/(\$4000 - \$1500)).

Eighty dollars (\$80) of the interest expense paid to an unrelated person is allocated to general limitation income (\$80 = \$100 × \$2000/(\$4000 - \$1500)).

*Example (2).* The facts are the same as in *Example (1)*, except that S uses the gross income method for allocating interest expense. Under paragraph (c)(2)(ii)(E) of this section, the unrelated person interest expense would be allocated on a gross income method. Therefore, \$33 of interest expense paid to unrelated persons would be allocated to passive income (\$33 = \$100 × (\$200 - \$150)/(\$300 - \$150)) and \$67 of interest expense paid to unrelated persons would be allocated to general limitation income (\$67 = \$100 × \$100/(\$300 - \$150)).

*Example (3).* (i) The facts are the same as in *Example (1)*, except that S has an additional \$50 of third person interest expense that is directly allocated to income from a specific property that produces only passive income. The principal amount of indebtedness to which the interest relates is \$500. S also has \$50 of additional non-interest expenses that are not definitely related expenses and that are allocated on an asset basis.

(ii) Under paragraph (c)(2)(ii)(B) of this section, the \$50 of directly allocated third person interest is first allocated to reduce the passive income of S. Under paragraph (c)(2)(ii)(C) of this section, the \$150 of related person interest is allocated to the remaining \$150 of passive income. Under paragraph (c)(2)(iii)(B) of this section, all of the related person debt is allocated to passive assets. (\$1500 = \$1500 × \$150/\$150).

(iii) Under paragraph (c)(2)(ii)(E) of this section, the non-interest expenses that are not definitely related are allocated on the basis of the asset values reduced by the allocated related person debt. Therefore \$10 of these expenses are allocated to the passive category (\$50 × (\$2000 - \$1500)/(\$4000 - \$1500)) and \$40 are allocated to the

general category (\$50 × (\$2000/(\$4000 - \$1500))).

(iv) In order to allocate third person interest between the categories of assets, the value of assets in a separate category must also be reduced under the principles of § 1.861-8 by the indebtedness relating to the specifically allocated interest. Therefore, under paragraph (c)(2)(iii)(B) of this section, the value of assets in the passive category for purposes of allocating the additional third person interest = 0 (\$2000 minus \$500 (the principal amount of the debt, the interest payment on which is directly allocated to specific interest producing properties) minus \$1500 (the related person debt allocated to passive assets)). Under paragraph (c)(2)(ii)(E) of this section, all \$100 of the non-definitely related third person interest is allocated to the general limitation (\$100 = \$100 × \$2000/(\$4000 - \$500 - \$1500)).

*Example (4).* (i) Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. In 1987, S earns \$100 of foreign personal holding company income that is passive income. S also earns \$100 of foreign base company sales income that is general limitation income. S has \$1000 of general limitation assets and \$1000 of passive assets. In 1987, S makes a \$150 interest payment to P on a \$1500 loan from P and has \$20 of general and administrative expenses (G & A) that under the principles of § 1.861-8 is treated as directly allocable to all of P's gross income. S also makes a \$25 interest payment to an unrelated person on a \$250 loan from the unrelated person. S has no other expenses. S uses the asset method to allocate interest expense. S uses the gross income method to allocate G & A.

(ii) Under paragraph (c)(2)(ii)(B) of this section, \$100 of the interest payment to P is allocable to S's passive foreign personal holding company income. Under paragraph (c)(2)(ii)(D) of this section, the additional \$50 of related person interest expense is

allocated to general limitation income (\$50 = \$50 × \$1000/\$1000). Under paragraph (c)(2)(iii)(B) of this section, related person debt allocated to passive assets equals \$1000 (\$1000 = \$1500 × \$100/\$150).

(iii) Under paragraph (c)(2)(ii)(E) of this section, none of the \$25 of interest expense paid to an unrelated person is allocated to passive income (\$0 = \$25 × (\$1000 - \$1000)/(\$2000 - \$1000). Twenty-five dollars (\$25) of the interest expense paid to an unrelated person is allocated to general limitation income (\$25 = \$25 × \$1000/(\$2000 - \$1000)). Under paragraph (c)(2)(ii)(E) of this section, none of the G & A is allocable to S's passive foreign personal holding company income (\$0 = \$20 × (\$100 - \$100)/(\$200 - \$100)). All \$20 of the G & A is allocable to S's general limitation income (\$20 = \$20 × \$100/(\$200 - \$100)).

*Example (5).* The facts are the same as in *Example (4)*, except that S uses the gross income method to allocate interest expense. As in *Example (4)*, \$100 of the interest payment to P is allocated to passive income under paragraph (c)(2)(ii)(C) of this section. Under paragraph (c)(2)(ii)(D) of this section, the additional \$50 of related person interest expense is allocated to general limitation income (\$150 = 100 × \$100/\$100). Under paragraph (c)(2)(ii)(E) of this section, none of the unrelated person interest expense and none of the G & A is allocated to passive income, because after the application of paragraph (c)(2)(ii)(C) of this section, no passive income remains in the passive income category.

*Example (6).* Controlled foreign corporation T is a wholly-owned subsidiary of S, a controlled foreign corporation. S is a wholly-owned subsidiary of P, a domestic corporation. S is not a financial services entity. S and T are incorporated in the same country. In 1987, P sells tractors to T, which T sells to X, a foreign corporation that is related to both S and T and is organized in the same country as S and T. S makes a loan to X to finance the tractor sales. Assume that the interest earned by S from financing the sales is export financing interest that is neither related person factoring income nor foreign personal holding company income. The export financing interest earned by S is, therefore, general limitation income. S earns no other income. S makes a \$100 interest payment to P. The \$100 of interest paid is allocable under the look-through rules of paragraph (c)(2)(ii) of this section to the general limitation income earned by S and is therefore general limitation income to P.

(3) *Rents and Royalties.* Any rents or royalties received or accrued from a controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as income in a separate category to the extent they are allocable to income of the controlled foreign corporation in that category under the principles of § 1.861-8.

(4) *Dividends—(i) Look-through rule.* Any dividend paid or accrued out of the earnings and profits of any controlled foreign corporation, shall be treated as income in a separate category in

proportion to the ratio of the portion of earnings and profits attributable to income in such category to the total amount of earnings and profits of the controlled foreign corporation. For purposes of this paragraph, the term "dividend" includes any amount included in gross income under section 951(a)(1)(B) as a pro rata share of a controlled foreign corporation's increase in earnings invested in United States property.

(ii) *Special rule for dividends attributable to certain loans.* If a dividend is distributed to a taxpayer by a controlled foreign corporation, that controlled foreign corporation is the recipient of loan proceeds from a related look-through entity (within the meaning of paragraph (i) of this section), and the purpose of such loan is to alter the characterization of the dividend for purposes of this section, then, to the extent of the principal amount of the loan, the dividend shall be characterized with respect to the earnings and profits of the related person lender rather than with respect to the earnings and profits of the dividend payor. A loan will not be considered made for the purpose of altering the characterization of a dividend if the loan would have been made or maintained on substantially the same terms irrespective of the dividend. The determination of whether a loan would have been made or maintained on substantially the same terms irrespective of the dividend will be made taking into account all the facts and circumstances of the relationship between the lender and the borrower. Thus, for example, a loan by a related party lender to a controlled foreign corporation that arises from the sale of inventory in the ordinary course of business will not be considered a loan made for the purpose of altering the character of any dividend paid by the borrower.

(iii) *Examples.* The following examples illustrate the application of this paragraph (c)(4).

*Example (1).* Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. In 1987, S has earnings and profits of \$1,000, \$600 of which is attributable to general limitation income that is not subpart F income and \$400 of which is attributable to dividends received by S from a noncontrolled section 902 corporation, T. T is incorporated and operates in the same country as S, and S has a 50 percent ownership interest in T. In December of 1987, S pays a dividend of \$200, all of which is attributable to earnings and profits earned in 1987. Six-tenths of the dividend, \$120, is treated as general limitation income because six-tenths of S's earnings and profits are attributable to general limitation income. Four-tenths of the dividend, \$80, is treated as

income subject to a separate limitation for dividends from a noncontrolled section 902 corporation because four-tenths of S's earnings and profits are attributable to dividends from T, a noncontrolled section 902 corporation.

*Example (2).* A, a United States person, has been the sole shareholder in controlled foreign corporation X since its organization on January 1, 1963. Both X and A are calendar year taxpayers. X's earnings and profits for 1963 through the end of 1987 totaled \$3,000. A sells his stock in X at the end of 1987 and realizes a gain of \$4,000. Of the total \$4,000 gain, \$3,000 (A's share of the post-1962 earnings and profits) is includible in A's gross income as a dividend and is subject to the look-through rules including the transition rule of § 1.904-7(a) with respect to the portion of the distribution out of pre-87 earnings and profits. The remaining \$1,000 of the gain is includible as gain from the sale or exchange of the X stock and is passive income to A.

(d) *Effect of exclusions from subpart F income—(1) De minimis amount of subpart F income.* [Reserved]

(2) *Exception for certain income subject to high foreign tax.* For purposes of the dividend look-through rule of paragraph (c)(4)(i) of this section, an item of net income that would otherwise be passive income (after application of the priority rules of § 1.904-4 (k)) and that is received or accrued by a controlled foreign corporation shall be treated as general limitation income, and the earnings and profits attributable to such income shall be treated as general limitation earnings and profits, if the taxpayer establishes to the satisfaction of the Secretary that such income was subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum rate of tax specified in section 11 (with reference to section 15, if applicable). The preceding sentence has no effect on amounts (other than dividends) paid or accrued by a controlled foreign corporation to a United States shareholder of such controlled foreign corporation to the extent those amounts are allocable to passive income of the controlled foreign corporation.

(3) *Examples.* The following examples illustrate the application of this paragraph.

*Example (1).* [Reserved]

*Example (2).* [Reserved]

(e) *Treatment of subpart F income in excess of 70 percent of gross income—(1) Rule.* If the sum of a controlled foreign corporation's gross foreign base company income (determined without regard to section 954(b)(5)) and gross insurance income for the taxable year exceeds 70 percent of the gross income, then all of the controlled foreign

corporation's gross income shall be treated as foreign base company income and, thus, included in a United States shareholder's gross income. However, the inclusion in gross income of an amount that would not otherwise be subpart F income does not affect its character for purposes of determining whether the income is within a separate category. The determination of whether the controlled foreign corporation's gross foreign base company income and gross insurance income exceeds 70 percent of gross income is made before the exception for certain income subject to a high rate of foreign tax.

(2) *Example.* The following example illustrates the application of this paragraph.

*Example.* Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. S earns \$100, \$75 of which is foreign personal holding company income and \$25 of which is non-subpart F services income. S is not a financial services entity. S's gross and net income are equal. Under the 70 percent full inclusion rule of section 954(b)(3)(B), the entire \$100 is foreign base company income currently taxable to P under section 951. Because \$75 of the \$100 section 951 inclusion is attributable to S's passive income, \$75 of the inclusion is passive income to P. The remaining \$25 of the inclusion is treated as general limitation income to P because \$25 is attributable to S's general limitation income.

(f) *Modification of look-through rules for certain income—(1) High withholding tax interest.* If a taxpayer receives or accrues interest from a controlled foreign corporation that is a financial services entity, and the interest would be described as high withholding tax interest if section 904(d)(3) and paragraph (c)(2) of this section (the look-through rules for interest) did not apply, then the interest shall be treated as high withholding tax interest to the extent that the interest is allocable under section 904(d)(3) and paragraph (c)(2)(i) of this section to financial services income of the controlled foreign corporation. The amount treated as high-withholding tax interest under this paragraph (f)(1) shall not exceed the interest, or equivalent income, of the payor that would be taken into account in determining the financial services income of the payor if the look-through rules applied.

(2) *Dividends from a noncontrolled section 902 corporation.* If a United States shareholder that is a corporation receives or accrues income from a controlled foreign corporation that is attributable to dividends from a noncontrolled section 902 corporation, such income shall be subject to a separate limitation for such dividends except as provided in § 1.904-4(g)(2)(ii)

(relating to dividends from a foreign corporation with respect to which the United States shareholder does not meet the stock ownership requirements of section 902).

(3) *Distributions from a FSC.* Income received or accrued by a taxpayer that, under the rules of paragraph (c)(4) of this section (look-through rules for dividends), would be treated as foreign trade income or as passive income that is qualified interest and carrying charges (as defined in section 245(c)), and that is also a distribution from a FSC (or former FSC), shall be treated as a distribution from a FSC (or former FSC).

(4) *Example.* The following example illustrates the operation of paragraph (f)(1) of this section.

*Example.* Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. S is a financial services entity. In 1988, S earns \$80 of interest that meets the definition of financial services income and \$20 of high withholding tax interest. S makes a \$100 interest payment to P. The interest payment to P is subject to a withholding tax of 15 percent. Twenty dollars (\$20) of the interest payment to P is considered to be high withholding tax interest because, under section 904(d)(3), it is allocable to the high withholding tax interest earned by S. The remaining eighty dollars (\$80) of the interest payment is also treated as high withholding tax interest to P because, under paragraph (f)(1) of this section, interest that is subject to a high withholding tax but would not be considered to be high withholding tax interest under the look-through rules of paragraph (c)(2) of this section, shall be treated as high withholding tax interest to the extent that the interest would have been treated as financial services interest income under the look-through rules of paragraph (c)(2)(i) of this section.

(g) *Application of look-through rules to certain domestic corporations.* The principles of section 904(d)(3) and this section shall apply to any foreign source interest, rents, and royalties that are paid by one United States corporation to another related United States corporation. For this purpose, two United States corporations are considered to be related if one owns, directly or indirectly, stock possessing 50 percent or more of the total voting power of all classes of stock of the other corporation or 50 percent or more of the total value of the corporation. In addition, two United States corporations shall be considered related if the same United States shareholders own, directly or indirectly, stock possessing 50 percent or more of the total voting power of all classes of stock or 50 percent of the total value of each corporation. For purposes of this paragraph, the constructive stock ownership rules of section 318 apply.

(h) *Application of look-through rules to partnerships and other pass-through entities—(1) General rule.* Except as provided in paragraph (h)(2) of this section, a partner's distributive share of partnership income shall be characterized as income in a separate category to the extent that the distributive share is a share of income earned or accrued by the partnership in such category. Payments to a partner described in section 707 (e.g., payments to a partner not acting in capacity as a partner) shall be characterized as income in a separate category to the extent that the payment is attributable under the principles of § 1.861-8 and this section to income earned or accrued by the partnership in such category, if the payments are interest, rents, or royalties that would be characterized under the look-through rules of this section if the partnership were a foreign corporation, and the partner who receives the payment owns 10 percent or more of the value of the partnership. A payment by a partnership to a member of the controlled group (as defined in paragraph (a)(3) of this section) of the partner shall be characterized under the look-through rules of this section if the payment would be a section 707 payment entitled to look-through treatment if it were made to the partner.

(2) *Exception for certain partnership interests—(i) Rule.* Except as otherwise provided, if any limited partner or corporate general partner owns less than 10 percent of the value in a partnership, the partner's distributive share of partnership income from the partnership shall be passive income to the partner, and the partner's distributive share of partnership deductions from the partnership shall be allocated and apportioned under the principles of § 1.861-8 only to the partner's passive income from that partnership.

(ii) *Exceptions.* To the extent a partner's distributive share of income from a partnership is a share of high withholding tax interest received or accrued by the partnership, that partner's distributive share of partnership income will be high withholding tax interest regardless of the partner's level of ownership in the partnership. If a partnership interest described in paragraph (h)(2)(i) of this section is held in the ordinary course of a partner's active trade or business, the rules of paragraph (h)(1) of this section shall apply for purposes of characterizing the partner's distributive share of the partnership income. A partnership interest will be considered to be held in the ordinary course of a

partner's active trade or business if the partner (or a member of the partner's affiliated group of corporations (within the meaning of section 1504(a) and without regard to section 1504(b)(3))) engages (other than through a less than 10 percent interest in a partnership) in the same or related trade or business as the partnership.

(3) *Income from the sale of a partnership interest.* [Reserved]

(4) *Value of a partnership interest.* For purposes of paragraphs (i), (h)(1), and (h)(2) of this section, a partner will be considered as owning 10 percent of the value of a partnership for a particular year if the partner has 10 percent of the capital and profits interest of the partnership. Similarly, a partnership (first partnership) is considered as owning 50 percent of the value of another partnership (second partnership) if the first partnership owns 50 percent of the capital and profits interests of another partnership. For this purpose, value will be determined at the end of the partnership's taxable year.

(i) *Application of look-through rules to related entities—(1) In General.* Except as provided in paragraph (i)(2) of this section, the principles of this section shall apply to distributions and payments that are subject to the look-through rules of section 904(d)(3) and this section from a controlled foreign corporation (or other entity described in paragraph (h) of this section) (look-through entities) to a related look-through entity. Two look-through entities shall be considered to be related to each other if one owns, directly or indirectly, stock possessing more than 50 percent of the total voting power of all classes of voting stock of the other entity or more than 50 percent of the total value of such entity. In addition, two look-through entities are related if the same United States shareholders own, directly or indirectly, stock possessing 50 percent or more of the total voting power of all voting classes of stock (in the case of a corporation) or 50 percent or more of the total value of each look-through entity. In the case of a corporation, value shall be determined by taking into account all classes of stock. In the case of a partnership, value shall be determined under the rules in paragraph (h)(4) of this section. For purposes of this section, indirect ownership shall be determined under section 31B and the regulations thereunder.

(2) *Exception for distributive shares of partnership income.* In the case of tiered partnership arrangements, a distributive share of partnership income will be characterized under the look-through rules of section 904(d)(3) and

this section if the partner meets the requirements of paragraph (h)(1) of this section with respect to the partnership (first partnership), whether or not the income is received through another partnership or partnerships (second partnership) and whether or not the first partnership and the second partnership are considered to be related under the rules of paragraph (i)(1) of this section.

(3) *Special rule for payments from foreign parents to domestic subsidiaries.* [Reserved]

(j) *Look-through rules applied to passive foreign investment company inclusions.* [Reserved]

(k) *Ordering rules—(1) In general.* The rules of paragraph (k)(2) of this section apply for purposes of determining the character of income received or accrued by a person from a related person if the payor or another related person also receives or accrues income from the recipient and the look-through rules apply to the income in all cases.

(2) *Specific rules.* For purposes of characterizing income under this paragraph, the following types of income are characterized in the order stated:

- (i) Rents and royalties;
- (ii) Interest;
- (iii) Subpart F inclusions and distributive shares of partnership income;
- (iv) Dividend distributions.

If an entity is both a recipient and a payor of income described in any one of the categories described in (k)(2) (i) through (iv) of this section, the income received will be characterized before the income that is paid. In addition, the amount of interest paid or accrued, directly or indirectly, by a person to a related person shall be offset against and eliminate any interest received or accrued, directly or indirectly, by a person from that related person before application of the ordering rules of this paragraph. In a case in which a person pays or accrues interest to a related person, and also receives or accrues interest indirectly from the related person, the smallest interest payment is eliminated and the amount of all other interest payments are reduced by the amount of the smallest interest payment.

(1) *Examples.* The following examples illustrate the application of paragraphs (g), (h), (i), and (k) of this section.

*Example (1).* S and T, controlled foreign corporations, are wholly-owned subsidiaries of P, a domestic corporation. S and T are incorporated in two different foreign countries and T is a financial services entity. In 1987, S earns \$100 of income that is general limitation foreign base company sales income. After expenses, including a \$50 interest payment to T, S's income is subject to foreign tax at an effective rate of 40

percent. P elects to exclude S's \$50 of net income from subpart F under section 954(b)(4). T earns \$350 of income that consists of \$300 of subpart F financial services income and \$50 of interest received from S. The \$50 of interest is foreign personal holding company income in T's hands because section 954(c)(3)(A)(i) (same country exception for interest payments) does not apply. The \$50 of interest is also general limitation income to T because the look-through rules of paragraph (c)(2)(i) of this section apply to characterize the interest payment. Thus, with respect to T, P includes in its gross income \$50 of general limitation foreign personal holding company income and \$300 of financial services income.

*Example (2).* [Reserved]

*Example (3).* P, a domestic corporation, wholly-owns S, a domestic corporation that is a 80/20 corporation. In 1987, S's earnings consist of \$100 of foreign source shipping income and \$100 of foreign source high withholding tax interest. S makes a \$100 foreign source interest payment to P. The interest payment to P is subject to the look-through rules of paragraph (c)(2)(i) of this section, and is characterized as shipping income and high withholding tax interest to the extent that it is allocable to such income in S's hands.

*Example (4).* PS is a domestic partnership that is the sole shareholder of controlled foreign corporation S. PS has two general partners, A and B. A and B each have a greater than 10 percent interest in PS. PS also has two limited partners, C and D. C has a 50 percent interest in the partnership and D has a 9 percent interest. A, B, C and D are all United States persons. In 1987, S has \$100 of general limitation non-subpart F income on which it pays no foreign tax. S pays a \$100 dividend to PS. The dividend is the only income of PS. Under the look-through rule of paragraph (c)(4) of this section, the dividend to PS is general limitation income. Under paragraph (h)(1) of this section, A's, B's, and C's distributive shares of PS's income are general limitation income. Under paragraph (h)(2) of this section, because D is a limited partner with a less than 10 percent interest in PS, D's distributive share of PS's income is passive income.

*Example (5).* [Reserved]

*Example (6).* P, a domestic corporation, owns 100 percent of the stock of S, a controlled foreign corporation, and S owns 100 percent of the stock of T, a controlled foreign corporation. S has \$100 of passive foreign personal holding company income from unrelated persons and \$100 of general limitation income. S also has \$50 of interest income from T. S pays T \$100 of interest. Under paragraph (k)(2) of this section, the \$100 interest payment from S to T is reduced for limitation purposes to the extent of the \$50 interest payment from T to S before application of the rules in paragraph (c)(2)(ii) of this section. Therefore, the interest payment from T to S is disregarded. S is treated as if it paid \$50 of interest to T, all of which is allocable to S's passive foreign personal holding company income. Therefore the \$50 interest payment from S to T is passive income.

*Example (7).* P, a domestic corporation, owns 100 percent of the stock of S, a controlled foreign corporation. S owns 100 percent of the stock of T, a controlled foreign corporation and 100 percent of the stock of U, a controlled foreign corporation. In 1988, T pays S \$5 of interest, S pays U \$10 of interest and U pays T \$20 of interest. Under paragraph (k)(2) of this section, the interest payments from S to U must be offset by the amount of interest that S is considered as receiving indirectly from U and the interest payment from U to T is offset by the amount of the interest payment that U is considered as receiving indirectly from T. The \$10 payment by S to U is reduced by \$5, the amount of the interest payment from T to S that is treated as being paid indirectly by U to S. Similarly, the \$20 interest payment from U to T is reduced by \$5, the amount of the interest payment from S to U that is treated as being paid indirectly by T to U. Therefore, under paragraph (k)(2) of this section, T is treated as having made no interest payment to S, S is treated as having paid \$5 of interest to U, and U is treated as having paid \$15 to T.

*Example (8).* (i) P, a domestic corporation, owns 100 percent of the stock of S, a controlled foreign corporation, and S owns 100 percent of the stock of T, a controlled foreign corporation. In 1987, S earns \$100 of passive foreign personal holding income and \$100 of general limitation non-subpart F sales income from unrelated persons and \$100 of general limitation non-subpart F interest income from a related person, W. S pays \$150 of interest to T. T earns \$200 of general limitation sales income from unrelated persons and the \$150 interest payment from S. T pays S \$100 of interest.

(ii) Under paragraph (k)(2) of this section, the \$100 interest payment from T to S reduces the \$150 interest payment from S to T. S is treated as though it paid \$50 of interest to T. T is treated as though it made no interest payment to S.

(iii) Under paragraph (k)(2)(ii) of this section, the remaining \$50 interest payment from S to T is then characterized. The interest payment is first allocable under the rules of paragraph (c)(2)(ii)(C) of this section to S's passive income. Therefore, the \$50 interest payment to T is passive income. The interest income is foreign personal holding company income in T's hands. T, therefore, has \$50 of subpart F passive income and \$200 of non-subpart F general limitation income.

(iv) Under paragraph (k)(2)(iii) of this section, subpart F inclusions are characterized next. P has a subpart F inclusion with respect to S of \$50 that is attributable to passive income of S and is treated as passive income to P. P has a subpart F inclusion with respect to T of \$50 that is attributable to passive income of T and is treated as passive income to P.

*Example (9).* (i) P, a domestic corporation, owns 100 percent of the stock of S, a controlled foreign corporation, and S owns 100 percent of the stock of T, a controlled foreign corporation. P also owns 100 percent of the stock of U, a controlled foreign corporation. In 1987, S earns \$100 of passive foreign personal holding company income and \$200 of non-subpart F general limitation income from unrelated persons. S also

receives \$150 of dividend income from T. S pays \$100 of interest to T and \$100 of interest to U. U earns \$300 of non-subpart F general limitation income and the \$100 of interest received from S. U pays a \$100 royalty to T. T earns the \$100 interest payment received from S and the \$100 royalty received from U.

(ii) Under paragraph (k)(2)(i) of this section, the royalty paid by U to T is characterized first. Assume that the royalty is directly allocable to U's general limitation income. Also assume that the royalty is not subpart F income to T. With respect to T, the royalty is general limitation income.

(iii) Under paragraph (k)(2)(ii) of this section, the interest payments from S to T and U are characterized next. This characterization is done without regard to any dividend income received by S because, under paragraph (k)(2) of this section, dividends are characterized after interest payments from a related person. The interest payments are first allocable to S's passive income under paragraph (c)(2)(ii)(C) of this section. Therefore, \$50 of the interest payment to T is passive and \$50 of the interest payment to U is passive. The remaining \$50 paid to T is general limitation income and the remaining \$50 paid to U is general limitation income. All of the interest payments to T and U are subpart F foreign personal holding company income to both recipients.

(iv) Under paragraph (k)(2)(iii) of this section, P has a \$100 subpart F inclusion with respect to T that is characterized next. Fifty dollars (\$50) of the subpart F inclusion is passive income to P because it is attributable to the passive income portion of the interest income received by T from S, and \$50 of the inclusion is treated as general limitation income to P because it is attributable to the general limitation portion of the interest income received by T from S. Under paragraph (k)(2)(iii) of this section, P also has a \$100 subpart F inclusion with respect to U. Fifty dollars (\$50) of the subpart F inclusion is passive income to P because it is attributable to the passive portion of the interest income received by U from S, and \$50 of the inclusion is general limitation income to P because it is attributable to the general limitation portion of the interest income received by U from S.

(v) Under paragraph (k)(2)(iv) of this section, the \$150 distribution from T to S is characterized next. One-hundred dollars (\$100) of the distribution is out of earnings and profits attributable to previously taxed income. Therefore, only \$50 is a dividend that is subject to the look-through rules of paragraph (d) of this section. The \$50 dividend is attributable to T's general limitation income and is general limitation income to S in its entirety.

*Example (10).* (i) P, a domestic corporation, owns 100 percent of the stock of S, a controlled foreign corporation, and S owns 100 percent of the stock of T, a controlled foreign corporation. P also owns 100 percent of the stock of U, a controlled foreign corporation. S, T and U are all incorporated in the same foreign country. In 1987, S earns \$100 of passive foreign personal holding income and \$200 of general limitation non-subpart F income from unrelated persons. S pays \$100 of interest to T and \$100 of interest

to U. U earns \$300 of general limitation non-subpart F income and the \$100 of interest received from S. T's only income is the \$100 interest payment received from S.

(ii) Under paragraph (k)(2)(ii) of this section, the interest payments from S to T and U are characterized first. The interest payments are first allocated under the rule of paragraph (c)(2)(ii)(C) of this section to S's passive income. Therefore, under that provision and paragraph (c)(2)(i) of this section, \$50 of the interest payment to T is passive income to T and \$50 of the interest payment to U is passive income to U. The remaining \$50 paid to T is general limitation income and the remaining \$50 paid to U is general limitation income.

(iii) Under paragraph (k)(2)(iii) of this section, any subpart F inclusion of P is determined and characterized next. Under paragraph (g) of this section, paragraphs (c)(2)(i) and (c)(2)(ii) apply not only for purposes of determining the separate category of income of S to which the interest payments from S to T and U are allocable but also for purposes of determining the subpart F income of T and U. Although the interest payments from S to T and U are "same country" interest payments that would otherwise be excludible from T's and U's subpart F income under section 954(c)(3)(A)(i), section 954(c)(3)(B) provides that the exception for same country payments between related persons shall not apply to the extent such payments have reduced the subpart F income of the payor. In this case, \$50 of the \$100 interest payment from S to T reduced S's subpart F income and \$50 of the \$100 interest payment from S to U reduced the remaining \$50 of S's subpart F income. Therefore, T has \$50 of subpart F income that is passive income and U has \$50 of subpart F income that is passive income. P includes \$100 of subpart F income in gross income that is passive income to P.

(iv) The remaining \$50 of interest paid by S to T and the remaining \$50 of interest paid by S to U is not subpart F income to T or U because it did not reduce S's subpart F income and is therefore eligible for the same country exception.

(m) *Application of section 904(g)—(1) In general.* For purposes of determining the portion of an interest payment that is allocable to income earned or accrued by a controlled foreign corporation from sources within the United States under section 904(g)(3), the rules in paragraph (m)(2) of this section apply. For purposes of determining the portion of a dividend paid or accrued by a controlled foreign corporation that is treated as from sources within the United States under section 904(g)(4), the rules in paragraph (m)(4) of this section apply. For purposes of determining the portion of an amount included in gross income under section 951(a) that is attributable to income of the controlled foreign corporation from sources within the United States under section 904(g)(2), the rules in paragraph (m)(5) of this section apply. In order to

determine whether section 904(g) applies, section 904(g)(5) (exception if controlled foreign corporation has a de minimis amount of United States source income) shall be applied to the total amount of earnings and profits of a controlled foreign corporation for a taxable year without regard to the characterization of those earnings under section 904(d).

(2) *Treatment of interest payments.* If interest is received or accrued by a United States shareholder or a person related to a United States shareholder (within the meaning of paragraph

(c)(2)(ii) of this section) from a controlled foreign corporation, the interest shall be considered to be allocable to income of the controlled foreign corporation from sources within the United States for purposes of section 904(d) to the extent that the interest is allocable under paragraph (c)(2)(ii)(C) of this section to passive income that is from sources within the United States. If related person interest is less than or equal to passive income, the related person interest will be allocable to United States source passive income based on the ratio of United States

source passive income to total passive income. To the extent that related person interest exceeds passive income, and, therefore, is allocated under paragraph (c)(2)(ii)(D) of this section to income in a separate category other than passive, the following formulas apply in determining the portion of the interest payment that is from sources within the United States. If the taxpayer uses the gross income method to allocate interest, the portion of the interest payment from sources within the United States is determined as follows:

The amount of the interest payment allocated to the separate category under paragraph (c)(2)(ii)(D) of this section

Gross income from United States sources in that category

Gross income from all sources in that category

If the taxpayer uses the asset method to allocate interest, then the portion of

the interest payment from sources

within the United States is determined as follows:

The amount of the interest payment allocated to the separate category under paragraph (c)(2)(ii)(D) of this section

Value of domestic assets in that category

Value of total assets in that category

For purposes of this paragraph, the value of assets in a separate category is the value of assets as determined under the principles of § 1.861-8. See § 1.861-8 for purposes of determining the value of assets and gross income in a separate category as reduced for indebtedness the interest on which is directly allocated.

(3) *Examples.* The following examples illustrate the application of this paragraph.

*Example (1).* Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. In 1988, S pays P \$300 of interest. S has no other expenses. In 1988, S has \$3000 of assets that generate \$650 of foreign source general limitation sales income and a \$1000 loan to an unrelated foreign person that generates \$20 of foreign source passive interest income. S also has a \$4000 loan to an unrelated United States person that generates \$70 of United States source passive income and \$4000 of inventory that generates \$100 of United States source general limitation income. S uses the asset method to allocate interest expense. The following chart summarizes S's assets and income:

|                   | Foreign     | U.S.        | Totals       |
|-------------------|-------------|-------------|--------------|
| <b>Assets:</b>    |             |             |              |
| Passive.....      | 1000        | 4000        | 5000         |
| General.....      | 3000        | 4000        | 7000         |
| <b>Total.....</b> | <b>4000</b> | <b>8000</b> | <b>12000</b> |

Under paragraph (c)(2)(ii)(C) of this section, \$90 of the related person interest payment is allocable to S's passive income. Under paragraph (m)(2) of this section, \$70 is from sources within the United States and \$20 is from foreign sources. Under paragraph (c)(2)(ii)(D) of this section, the remaining \$210 of the related person interest payment is allocated to general limitation income. Under paragraph (m)(2) of this section, \$120 of the remaining \$210 is treated as income from sources within the United States (\$120 = \$210 × \$4000/\$7000) and \$90 is treated as income from foreign sources. (\$90 = \$210 × \$3000/\$7000).

*Example (2).* The facts are the same as in Example (1) except that S uses the gross income method to allocate interest expense. The first \$90 of related person interest expense is allocated to passive income in the same manner as in Example (1). Under paragraph (c)(2)(ii)(D) of this section, the remaining \$210 of the related person interest expense is allocated to general limitation income. Under paragraph (m)(2) of this section, \$28 of the remaining \$210 is treated as income from United States sources (\$28 = \$210 × \$100/\$750) and \$182 is treated as income from foreign sources (\$182 = \$210 × \$650/\$750).

*Example (3).* Controlled foreign corporation S is a wholly-owned subsidiary of P, a domestic corporation. In 1988, S pays \$300 of interest to P. S has no other expenses. S uses the asset method to allocate interest expense. In 1988, S has \$4000 of assets that generate \$650 of foreign source general limitation manufacturing income and a \$1000 loan to an unrelated foreign person that generates \$100 of foreign source passive interest income. S has \$500 of shipping assets that generate \$200 of foreign source shipping income and \$500 of shipping assets that generate \$200 of United States source shipping income. S also has a \$1000 loan to an unrelated United States person that generates \$100 of United States source passive income. S's passive income is not also described as shipping income. The following chart summarizes S's assets and income:

|                   | Foreign     | U.S.        | Totals      |
|-------------------|-------------|-------------|-------------|
| <b>Assets:</b>    |             |             |             |
| Passive.....      | 1000        | 1000        | 2000        |
| Shipping.....     | 500         | 500         | 1000        |
| General.....      | 4000        | 0           | 4000        |
| <b>Total.....</b> | <b>5500</b> | <b>1500</b> | <b>7000</b> |
| <b>Income:</b>    |             |             |             |
| Passive.....      | 100         | 100         | 200         |
| Shipping.....     | 200         | 200         | 400         |
| General.....      | 650         | 0           | 650         |
| <b>Total.....</b> | <b>950</b>  | <b>300</b>  | <b>1250</b> |

Under paragraph (c)(2)(ii)(C) of this section, \$200 of the related person interest payment is allocable to S's passive income. Under paragraph (m)(2) of this section, \$100

of this amount is from foreign sources and \$100 is from sources within the United States.

Under paragraph (c)(2)(ii)(D) of this section, \$80 of the remaining \$100 of the related person interest payment is allocated to general limitation income ( $\$80 = \$100 \times \$4000 / \$5000$ ) and \$20 is allocated to shipping income ( $\$20 = \$100 \times \$1000 / \$5000$ ).

Under paragraph (m)(2) of this section, none of \$80 of the interest payment allocated to general limitation income is treated as income from United States sources ( $\$0 = \$80 \times \$0 / \$4000$ ). Therefore, the entire \$80 is treated as income from foreign sources.

Under paragraph (m)(2) of this section, \$10 of the \$20 of the interest payment allocated to the shipping income is treated as income from United States sources ( $\$10 = \$20 \times \$500 / \$1000$ ) and \$10 of the \$20 is treated as income from foreign sources ( $\$10 = \$20 \times \$500 / \$1000$ ).

*Example (4).* The facts are the same as in *Example (3)* except that S uses the gross income method to allocate interest expense. The interest allocated to passive income under paragraph (c)(2)(ii)(C) of this section is the same, \$200, \$100 from United States sources and \$100 from foreign sources.

Under paragraph (c)(2)(ii)(D) of this section, the remaining \$100 of related person interest is allocated between the shipping and general limitation categories based on the gross income in those categories. Therefore, \$38 of the remaining \$100 interest payment is allocated to shipping income ( $\$38 = \$100 \times \$400 / (\$1250 - \$200)$ ) and \$62 is treated as allocated to general limitation income ( $\$62 = \$100 \times \$650 / (\$1250 - \$200)$ ).

Under paragraph (m)(2) of this section, \$16 of the \$38 allocable to shipping income is treated as income from United States sources ( $\$16 = \$38 \times \$200 / \$400$ ) and \$16 is treated as income from foreign sources ( $\$16 = \$38 \times \$200 / \$400$ ).

Under paragraph (m)(2) of this section, all of the \$62 allocated to general limitation income is treated as income from foreign sources ( $\$62 = \$62 \times \$650 / \$650$ ).

#### (4) Treatment of dividend payments—

(i) *Rule.* Any dividend or distribution treated as a dividend under this section that is received or accrued by a United States shareholder from a controlled foreign corporation shall be treated as income in a separate category derived from sources within the United States in proportion to the ratio of the portion of the earnings and profits of the controlled foreign corporation in the corresponding separate category from United States sources to the total amount of earnings and profits of the controlled foreign corporation in that separate category.

(ii) *Determination of earnings and profits from United States sources.* In order to determine the portions of earnings and profits from United States sources and from foreign sources within each separate category, related person interest shall be allocated to the United States source portion of income in a separate category by applying the rules of paragraph (m)(2) of this section. Other

expenses shall be allocated by applying the rules of paragraph (c)(2)(ii) of this section separately to the United States source income and the foreign source income in each category. For example, unrelated person interest expense that is allocated among categories of income based upon the relative amounts of assets in a category must be allocated between United States and foreign source income within each category by applying the rules of paragraph (c)(2)(ii)(E) of this section separately to United States source and foreign source assets in the separate category.

(iii) *Example.* The following example illustrates the application of this paragraph.

*Example.* Controlled foreign corporation, S, is a wholly owned subsidiary of P, a domestic corporation. S is a financial services entity. In 1987, S has \$100 of non-subpart F general limitation earnings and profits and \$100 of non-subpart F financial services income. None of the general limitation earnings and profits are from sources within the United States, and \$50 of the financial services earnings and profits are from United States sources. In 1988, S earns \$300 of non-subpart F general limitation earnings and profits and \$500 of non-subpart F financial services earnings and profits. One hundred dollars (\$100) of the general limitation earnings and profits are from sources within the United States. None of the financial services earnings and profits are from United States sources. In 1988, S pays P a \$500 dividend. Under paragraph (c)(4) of this section, \$200 of the dividend is attributable to general limitation earnings and profits ( $\$200 = \$500 \times \$400 / \$1000$ ). Under this paragraph (m)(3), the portion of the dividend that is attributable to general limitation earnings and profits from sources within the United States is \$50 ( $\$200 \times \$100 / \$400$ ). Under paragraph (c)(4) of this section, \$300 of the dividend is attributable to financial services earnings and profits ( $\$300 = \$500 \times \$600 / \$1000$ ). Under this paragraph (m)(3), the portion of the dividend that is attributable to financial services earnings and profits from sources within the United States is \$25 ( $\$300 \times \$50 / \$600$ ).

(5) *Treatment of subpart F inclusions—(i) Rule.* Any amount included in the gross income of a United States shareholder of a controlled foreign corporation under section 951(a) shall be treated as income subject to a separate limitation that is derived from sources within the United States to the extent such amount is attributable to income of the controlled foreign corporation in the corresponding category of income from sources within the United States. In order to determine a controlled foreign corporation's taxable income and earnings and profits from sources within the United States in each separate category, the principles of paragraph (m)(4)(ii) of this section shall apply.

(ii) *Example.* The following example illustrates the application of this paragraph (m)(5).

*Example.* Controlled foreign corporation S is a wholly-owned subsidiary of domestic corporation, P. In 1987, S earns \$100 of subpart F foreign personal holding company income that is passive income. Of this amount, \$40 is derived from sources within the United States. S also earns \$50 of subpart F general limitation income. None of this income is from sources within the United States. Assume that S pays no foreign taxes and has no expenses. P is required to include \$150 in gross income under section 951(a). Of this amount, \$60 will be foreign source passive income to P and \$40 will be United States source passive income to P. Fifty dollars (\$50) will be foreign source general limitation income to P.

(6) *Treatment of section 78 amount.* For purposes of treating taxes deemed paid by a taxpayer under section 902(a) and section 960(a)(1) as a dividend under section 78, taxes that are paid or accrued with respect to United States source income in a separate category shall be treated as United States source income in that separate category.

(7) *Coordination with treaties.* [Reserved]

(n) *Order of application of sections 904 (d) and (g).* In order to apply the rules of this section, section 904(d)(1) shall first be applied to the controlled foreign corporation to determine the amount of income and earnings and profits derived by the controlled foreign corporation in each separate category. The income and earnings and profits in each separate category that is from United States sources shall then be determined. Sections 904(d)(3), 904(g), and this section shall then be applied for purposes of characterizing and sourcing income received, accrued, or included by a United States shareholder in the controlled foreign corporation that is attributable or allocable to income or earnings and profits of the controlled foreign corporation.

(o) *Effective date.* Section 904(d)(3) and this section apply to distributions and section 951 inclusions of earnings and profits of a controlled foreign corporation (or other entity to which this section applies) derived during the first taxable year of the controlled foreign corporation (or other entity) beginning after December 31, 1986, and thereafter, and to payments made by a controlled foreign corporation (or other entity) during such taxable years, without regard to whether the corresponding taxable year of the recipient of the distribution or payment or of one or more of the United States shareholders of the controlled foreign corporation begins after December 31, 1986.

**§ 1.904-6 Allocation of taxes.**

(a) *Allocation of taxes to a separate category or categories of income—(1) In general—(i) Taxes related to a separate category of income.* The amount of foreign taxes paid or accrued with respect to a separate category of income (including United States source income) shall include only those taxes that are related to income in that separate category. Taxes are related to income if the income is included in the base upon which the tax is imposed. If, for example, foreign law exempts certain types of income from foreign taxes, or certain types of income are exempt from foreign tax under an income tax convention, then no taxes are considered to be related to such income for purposes of this paragraph. As another example, if foreign law provides for a specific rate of tax with respect to certain types of income (e.g., capital gains), or certain expenses, deductions, or credits are allowed under foreign law only with respect to a particular type of income, then such provisions shall be taken into account in determining the amount of foreign tax imposed on such income. A withholding tax (unless it is a withholding tax that is not the final tax payable on the income as described in § 1.904-4(d)) is related to the income from which it is withheld. A tax that is imposed on a base that includes more than one separate category of income is considered to be imposed on income in all such categories, and, thus, the taxes are related to all such categories included within the foreign country or possession's taxable income base.

(ii) *Apportionment of taxes related to more than one separate category.* If a tax is related to more than one separate category, then, in order to determine the amount of the tax paid or accrued with respect to each separate category, the tax shall be apportioned on an annual basis among the separate categories on the basis of the following formula:

$$\begin{array}{l} \text{Foreign tax related} \\ \text{to more than one} \\ \text{separate category} \end{array} \times \frac{\begin{array}{l} \text{Net income subject} \\ \text{to that foreign tax} \\ \text{included in a} \\ \text{separate category} \end{array}}{\begin{array}{l} \text{Net income subject} \\ \text{to that foreign tax} \end{array}}$$

For purposes of apportioning foreign taxes among the separate categories, gross income is determined under the law of the foreign country or a possession of the United States to which the foreign income taxes have been paid or accrued. Gross income, as determined under foreign law, in the passive category shall first be reduced by any related person interest expense that is

allocated to the income under the principles of section 954(b)(5) and § 1.904-5(c)(2)(ii)(C) (adjusted gross passive income). Gross income in all separate categories (including adjusted gross passive income) is next reduced by deducting any expenses, losses, or other amounts that are deductible under foreign law that are specifically allocable to the gross amount of such income under the laws of that foreign country or possession. If expenses are not specifically allocated under foreign law then the expenses will be apportioned under the principles of foreign law but only after taking into account the reduction of passive income by the application of section 954(b)(5). Thus, for example, if foreign law provides that expenses will be apportioned on a gross income basis, the gross income amounts will be those amounts determined under foreign law except that, in the case of passive income, the amount will be adjusted gross passive income. If foreign law does not provide for the direct allocation or apportionment of expenses, losses, or other deductions to a particular category of income, then the principles of § 1.861-8 and section 954(b)(5) shall apply in allocating such expenses, losses, or other deductions to gross income as determined under foreign law after reduction of passive income by the amount of related person interest allocated to passive income under section 954(b)(5) and § 1.904-5(c)(2)(ii)(C). For example, the principles of § 1.861-8 apply to require definitely related expenses to be directly allocated to particular categories of gross income and provide the methods of apportioning expenses that are definitely related to more than one category of gross income or that are not definitely related to any particular category of gross income. For this purpose, the apportionment of expenses required to be made under § 1.861-8 need not be made on other than a separate company basis. The rules in this paragraph apply only for purposes of the apportionment of taxes among separate categories of income and do not affect the computation of a taxpayer's foreign tax credit limitation with respect to a specific category of income.

(iii) *Apportionment of taxes for purposes of applying the high-tax income test.* If taxes have been allocated and apportioned to passive income under the rules of paragraph (a)(1) (i) or (ii) of this section, the taxes must further be apportioned to the groups of income described in § 1.904-4(c) (3), (4) and (5) for purposes of determining if the group is high-taxed

income. Taxes will be related to income in a particular group under the same rules as those in paragraph (a)(1) (i) and (ii) of this section except that those rules shall be applied by substituting the term "group" for the term "category."

(2) *Treatment of certain dividends from noncontrolled section 902 corporations.* If a taxpayer receives or accrues a dividend from a noncontrolled section 902 corporation, and if the Commissioner establishes that there is an agreement, express or implied, that such dividend is paid out of a designated pool of earnings of the foreign corporation, then only the foreign taxes imposed on that pool of earnings will be considered to be taxes related to the dividend.

(b) *Application of paragraph (a) to sections 902 and 960—(1) Determination of foreign taxes deemed paid.* If, for the taxable year, there is included in the gross income of a domestic corporation under section 951 an amount attributable to the earnings and profits of a controlled foreign corporation for any taxable year and the amount included consists of income in more than one separate category of the controlled foreign corporation, then the domestic corporation shall be deemed to have paid only a portion of the taxes paid or accrued, or deemed paid or accrued, by the controlled foreign corporation that are allocated to each separate category to which the inclusion is attributable. The portion of the taxes allocated to a particular separate category that shall be deemed paid by the United States shareholder shall be equal to the taxes allocated to that separate category multiplied by the amount of the inclusion with respect to that category (as determined under § 1.904-5(c)(1)) and divided by the earnings and profits of the controlled foreign corporation with respect to that separate category (in accordance with § 1.904-5(c)(2)(ii)). The rules of this paragraph (b)(1) also apply for purposes of computing the foreign taxes deemed paid of United States shareholders of controlled foreign corporations under section 902.

(2) *Distributions received from foreign corporations that are excluded from gross income under section 959(b).* The principles of this paragraph shall be applied to—

(i) Any portion of a distribution received from a first-tier corporation by a domestic corporation that is excluded from the domestic corporation's gross income under section 959(a) and § 1.959-1, and

(ii) Any portion of a distribution received from an immediately lower-tier

corporation by a second- or first-tier corporation that is excluded from such foreign corporation's gross income under section 959(b) and § 1.959-2, if such distribution is treated as a dividend pursuant to § 1.960-2(a).

(3) *Application of section 78.* For purposes of treating taxes deemed paid by a taxpayer under section 902(a) and section 960(a)(1) as a dividend under section 78, taxes that were allocated to income in a separate category shall be treated as income in that same separate category.

(4) *Increase in limitation.* The amount of the increase in the foreign tax credit limitation allowed by section 960(b) and § 1.960-4 shall be determined with regard to the applicable category of income under section 904(d).

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

*Example (1).* M, a domestic corporation, conducts business in foreign country X. M earns \$400 of shipping income, \$200 of general limitation income and \$200 of passive income as determined under foreign law. Under foreign law, none of M's expenses are directly allocated or apportioned to a particular category of income. Under the principles of § 1.861-8, M allocates \$75 of directly allocable expenses to shipping income, \$10 of directly allocable expenses to general limitation income, and no such expenses to passive income. M also allocates expenses that are not directly allocable to a specific class of gross income—\$40 to shipping income, \$20 to general limitation income, and \$20 to passive income. Therefore, for purposes of paragraph (a) of this section, M has \$285 of net shipping income, \$170 of net general limitation income, and \$180 of net passive income. Country X imposes tax of \$100 on a base that includes M's shipping income and general limitation income. Country X exempts passive income from tax. The tax paid by M is related to M's shipping and general limitation income. The \$100 tax is apportioned between those limitations. Thus, M is considered to have paid \$63 of X tax on its shipping income ( $\$100 \times \$285 / \$455$ ) and \$37 of tax on its general limitation income ( $\$100 \times \$170 / \$455$ ). None of the X tax is allocated to M's passive income.

*Example (2).* The facts are the same as in example (1) except that X does not exempt all passive income from tax but only exempts interest income. M's passive income consists of \$100 of gross dividend income, to which \$10 of expenses that are not directly allocable are apportioned, and \$100 of interest income, to which \$10 of expenses that are not directly allocable are apportioned. The \$90 of net dividend income is subject to X tax, and \$90 of net interest income is exempt from X tax. M pays \$130 of tax to X. The \$130 of tax is related to M's general, shipping, and passive income. The tax is apportioned among those limitations as follows: \$68 to shipping income ( $\$130 \times \$285 / \$545$ ) \$41 to general limitation income ( $\$130 \times \$170 / \$545$ ), and \$21 to passive income ( $\$130 \times \$90 / \$545$ ).

*Example (3).* P, a domestic corporation, owns 100 percent of S, a controlled foreign corporation organized in country X. S owns 100 percent of T, a controlled foreign corporation that is also organized in country X. Country X grants group relief to S and T. In 1987, S earns \$100 of income and T incurs an \$80 loss. Under country X's group relief provisions, only \$20 of S's income is subject to country X tax. Country X imposes a 30 percent tax on this income (\$6). P includes \$100 of S's income in gross income under section 951. Six dollars (\$6) of foreign tax is related to that income for purposes of section 960.

*Example (4).* P, a domestic corporation, owns 100 percent of S, a controlled foreign corporation organized in country X and 100 percent of T, a controlled foreign corporation organized in country Y. T has \$200 of gross manufacturing general limitation income and \$50 of passive income. T also pays S \$100 for shipping T's goods, a price that may be justified under section 482. T has no other expenses and S has no other income or expense. T's income and earnings and profits are the same. Foreign country X does not tax S on its shipping income. Foreign country Y taxes all of T's income at a rate of 20 percent. Under the law of foreign country Y, T is only allowed a \$50 deduction for the payment to S. Therefore, for foreign law purposes, T has \$150 of manufacturing income and earnings and profits and \$50 of passive income and earnings and profits upon which it pays \$40 of tax. Under the principles of foreign law, \$30 of that tax is imposed on the general limitation manufacturing income and \$10 of the tax is imposed on passive income. Therefore, the foreign effective rate on the general limitation income is 30 percent and the foreign effective rate on the passive income is 20 percent. T has \$100 of general limitation income and \$50 of passive income and pays \$30 of general limitation taxes and \$10 of passive taxes. S has \$100 of shipping income and pays no foreign tax.

*Example (5).* R, a domestic corporation, owns 50 percent of T, a foreign corporation that is not a controlled foreign corporation and that is organized in foreign country X. R licenses certain property to T. T then relicenses this property to a third person. In 1987, T paid R a royalty of \$100 all of which is treated as passive income to R because it was not an active royalty as defined in § 1.904-4(b)(2). R has \$10 of expenses associated with the royalty income and no foreign tax was imposed on the royalty so the high-tax kickout does not apply. In 1988, the Commissioner determined that the correct arm's length royalty was \$150 and under the authority of section 482 reallocated an additional \$50 of income to R for 1987. Under a closing agreement with the Commissioner, R elected the benefits of Rev. Proc. 65-17 in relation to the income reallocated from R and established an account receivable from T. In 1988, T paid R an additional \$50 to reflect the section 482 adjustment and the account receivable that was established because of the adjustment. Foreign country X treats the \$50 payment in 1988 as a dividend by T and imposes a \$10 withholding tax on the payment. Under paragraph (a)(1) of this section, the \$10 of withholding tax is treated

as fully allocable to the \$50 payment because under foreign law the tax is imposed only on that income. For U.S. purposes, the income is not characterized as a dividend but as a repayment of a bona fide debt and therefore the \$50 of income is not required to be recognized by P in 1988. The \$10 of tax is treated as a tax on the \$50 of passive income included by P in 1987 pursuant to the section 482 adjustment rather than as taxes associated with a dividend from a noncontrolled section 902 corporation and the taxes are therefore taxes imposed on passive income.

*Example (6).* P, a domestic corporation, owns all of the stock of S, a controlled foreign corporation that is incorporated in country X. In 1989, S has \$100 of passive income, \$200 of dividends from a noncontrolled section 902 corporation and \$200 of general limitation income. S also has \$100 of related person interest expense and \$100 of other expenses that under foreign law are directly allocable to the general limitation income of S. S has no other expenses. Country X imposes a tax of 25% on all of the net income of S and S, therefore, pays \$75 in foreign tax. Under paragraph (a)(1)(ii) of this section, the passive income of S is first reduced by the amount of related person interest for purposes of determining the net amount for purposes of allocating the \$75 of tax. Under paragraph (a)(1)(ii) of this section, the general limitation income of S is reduced by the \$100 of other expenses. Therefore, \$50 of the foreign tax is allocated to the dividends from a noncontrolled section 902 corporation ( $\$25 = \$75 \times \$200 / \$300$ ), \$25 is allocated to the general limitation income of S ( $\$25 = \$75 \times \$100 / \$300$ ), and no taxes are allocated to S's passive income.

*Example (7).* R, a domestic corporation, owns preferred stock in T, a foreign corporation that is not a controlled foreign corporation, incorporated in foreign country X. R's stock represents 15 percent of the value of T. Dividends on the preferred stock are paid only out of certain designated passive investments of T. Foreign country X does not tax the passive income of T. Under paragraph (a)(2) of this section, no taxes will be considered to be related to any dividend paid by T to R.

*Example (8).* Domestic corporation P owns all of the stock of controlled foreign corporation S, which owns all of the stock of controlled foreign corporation T. All such corporations use the calendar year as the taxable year. Assume that earnings and profits are equal to net income and that the income amounts are identical under United States and foreign law principles. In 1987, T earns \$187.50 of gross passive income and \$62.50 of gross general limitation income and pays \$50 of foreign taxes. Assume that T incurs no other expenses. S earns no income in 1987 and pays no foreign taxes. For 1987, P is required under section 951 to include in gross income \$175 attributable to the earnings and profits of T for such year. One hundred and fifty dollars (\$150) of the subpart F inclusion is attributable to passive income earned by T, and \$25 of the subpart F inclusion is attributable to general limitation income earned by T. In 1988, T earns no

income and pays no foreign taxes. T pays a \$200 dividend to S, consisting of \$175 from its earnings and profits attributable to amounts required to be included in P's gross income with respect to T and \$25 from its other earnings and profits. Assume that no withholding taxes imposed with respect to the distribution from T to S. In 1988, S earns \$100 of gross general limitation income and receives a \$200 dividend from T. S pays \$30 of foreign taxes. Assume that S incurs no other expenses. For 1988, P is required under section 951 to include in gross income \$22.50 attributable to the earnings and profits of S for such year. The entire subpart F inclusion is attributable to general limitation income earned by S. In 1988, S pays P a dividend of \$247.50, consisting of \$157.50 from its earnings and profits attributable to the amount required under section 951 to be included in P's gross income with respect to S, and \$67.50 from its other earnings and profits. The foreign income taxes deemed paid by P for 1987 and 1988 under section 960(a)(1) and section 902(a) are determined as follows upon the basis of the following facts and computations.

*T corporation  
(second-tier  
corporation):*

|  |        |
|--|--------|
| 1. Pre-tax earnings and profits:   |        |
| (a) Passive income (p.i.)  | 187.50 |
| Plus:  |        |
| (b) General limitation income (g.l.i.)   | 62.50  |
| (c) Total  | 250.00 |
| Less:  |        |
| (d) Foreign income taxes paid on or with respect to T's earnings and profits (20%) | 50.00  |
| (e) Earnings and profits   | 200.00 |
| 2. Allocation of taxes:  |        |
| (a) Foreign income taxes paid by T that are allocable to p.i. earned by T:         |        |
| Line 1(d) taxes  | 50.00  |
| Multiplied by:   |        |
| foreign law net p.i.   | 187.50 |
| Divided by:  |        |
| foreign law total net income   | 250.00 |
| Result   | 37.50  |

|  |        |
|--|--------|
| (b) Foreign income taxes paid by T that are allocable to g.l.i. earned by T:   |        |
| Line 1(d) taxes  | 50.00  |
| Multiplied by:   |        |
| foreign law net g.l.i.   | 62.50  |
| Divided by:  |        |
| foreign law total net income   | 250.00 |
| Result   | 12.50  |
| 3. T's earnings and profits:   |        |
| (a) Earnings and profits attributable to T's p.i.:   |        |
| Line 1(a) e & p  | 187.50 |
| Less: line 2(a) taxes  | 37.50  |
| Result   | 150.00 |
| (b) Earnings and profits attributable to T's g.l.i.:   |        |
| Line 1(b) e & p  | 62.50  |
| Less: line 2(b) taxes  | 12.50  |
| Result   | 50.00  |
| 4. Subpart F inclusion attributable to T:  |        |
| (a) Amount required to be included in P's gross income for 1987 under section 951 with respect to T that is attributable to T's p.i.   | 150.00 |
| (b) Amount required to be included in P's gross income for 1987 under section 951 with respect to T that is attributable to T's g.l.i. | 25.00  |
| 5. Foreign income taxes deemed paid by P under section 960(a)(1) with respect to T:  |        |
| (a) Taxes deemed paid that are attributable to T's subpart F inclusion that are attributable to T's p.i.:                              |        |
| Line 2(a) taxes  | 37.50  |
| Multiplied by:   |        |
| line 4(a) sec. 951 incl.   | 150.00 |
| Divided by: line 3(a) e & p  | 150.00 |
| Result   | 37.50  |

|   |        |
|---|--------|
| (b) Taxes deemed paid that are attributable to T's subpart F inclusion that are attributable to T's g.l.i.: |        |
| Line 2(b) taxes   | 12.50  |
| Multiplied by:  |        |
| line 4(b) sec. 951 incl.  | 25.00  |
| Divided by: line 3(b) e & p   | 50.00  |
| Result  | 6.25   |
| 6. Dividends paid to S:   |        |
| (a) Dividends attributable to T's previously taxed p.i.   | 150.00 |
| Plus:   |        |
| (b) Dividends attributable to T's previously taxed g.l.i.   | 25.00  |
| Plus:   |        |
| (c) Dividends from T's non-previously taxed earnings and profits attributable to p.i.                       | 0      |
| Plus:   |        |
| (d) Dividends from T's non-previously taxed earnings and profits attributable to g.l.i.                     | 25.00  |
| (e) Total dividends paid to S   | 200.00 |
| 7. Taxes deemed paid by S:  |        |
| (a) Taxes of T deemed paid by S for 1987 under section 902(b)(1) with regard to T's p.i.:                   |        |
| Line 2(a) taxes   | 37.50  |
| Multiplied by:  |        |
| line 6(c) dividend  | 0      |
| Dividend by: line 3(a) e & p  | 150.00 |
| Result  | 0      |
| (b) Taxes of T deemed paid by S for 1987 under section 902(b)(1) with regard to T's g.l.i.:                 |        |
| Line 2(b) taxes   | 12.50  |
| Multiplied by:  |        |
| line 6(d) dividend  | 25.00  |
| Dividend by: line 3(b) e & p  | 50.00  |
| Result  | 6.25   |

|   |        |
|---|--------|
| <i>S corporation</i><br>(first-tier corporation):   |        |
| 8. Pre-tax earnings and profits:  |        |
| (a) Dividends from T attributable to T's non-previously taxed p.i. ....                         | 0      |
| Plus:   |        |
| (b) Dividends from T attributable to T's non-previously taxed g.l.i. ....                       | 25     |
| Plus:   |        |
| (c) Dividends from T attributable to T's previously taxed p.i. ....                             | 150    |
| Plus:   |        |
| (d) Dividends from T attributable to T's previously taxed g.l.i. ....                           | 25     |
| Plus:   |        |
| (e) Passive income other than dividend from T... 0  |        |
| Plus:   |        |
| (f) General limitation income other than dividend from T .....                                  | 100.00 |
| (g) Total pre-tax earnings and profits .....  | 300.00 |
| (h) Foreign income taxes paid on or with respect to S's earnings and profits (10%) .....        | 30.00  |
| (i) Earnings and profits .....  | 270.00 |
| 9. Allocation of taxes:   |        |
| (a) Foreign income taxes paid by S that are allocable to non-previously taxed p.i. earned by S: |        |
| Line 8(h) taxes .....   | 30.00  |
| Multiplied by:  |        |
| foreign law line 8(a) & 8(e) p.i. amounts .....   | 0      |
| Divided by:   |        |
| foreign law total net income .....  | 300.00 |
| Result .....  | 0      |

|   |        |
|---|--------|
| (b) Foreign income taxes paid by S that are allocable to S's previously taxed p.i. received from T:   |        |
| Line 8(h) taxes .....   | 30.00  |
| Multiplied by:  |        |
| foreign law line 8(c) p.i. amount .....   | 150.00 |
| Divided by:   |        |
| foreign law total net income .....  | 300.00 |
| Result .....  | 15.00  |
| (c) Foreign income taxes paid by S that are allocable to non-previously taxed g.l.i. earned by S:     |        |
| Line 8(h) taxes .....   | 30.00  |
| Multiplied by:  |        |
| foreign law line 8(b) & line 8(f) g.l.i. amounts .....  | 125.00 |
| Divided by:   |        |
| foreign law total net income .....  | 300.00 |
| Result .....  | 12.50  |
| (d) Foreign income taxes paid by S that are allocable to S's previously taxed g.l.i. received from T: |        |
| Line 8(h) taxes .....   | 30.00  |
| Multiplied by:  |        |
| foreign law line 8(d) amount .....  | 25.00  |
| Divided by:   |        |
| foreign law total net income .....  | 300.00 |
| Result .....  | 2.50   |
| 10. (a) Non-previously taxed earnings and profits of S:   |        |
| Lines 8(a), 8(b), 8(e), & 8(f) e & p .....  | 125.00 |
| Less: lines 9(a) & 9(c) taxes .....   | 12.50  |
| Result .....  | 112.50 |
| (b) Portion of result in 10(a) attributable to S's p.i. ....  | 0      |
| (c) Portion of result in 10(a) attributable to S's g.l.i. ....  | 112.50 |

|   |        |
|---|--------|
| 11. (a) Previously taxed earnings and profits of S:   |        |
| Lines 8(c) and 8(d) e & p .....   | 175.00 |
| Less: lines 9(b) & 9(d) taxes .....   | 17.50  |
| Result .....  | 157.50 |
| (b) Portion of result in 11(a) attributable to T's p.i.:  |        |
| Line 8(c) .....   | 150.00 |
| Less: line 9(b) taxes .....   | 15.00  |
| Result .....  | 135.00 |
| (c) Portion of result in 11(a) attributable to T's g.l.i.:  |        |
| Line 8(d) .....   | 25.00  |
| Less: line 9(d) taxes .....   | 2.50   |
| Result .....  | 22.50  |
| 12. Subpart F inclusion attributable to S:  |        |
| (a) Amount required to be included in P's gross income for 1988 under section 951 with respect to S that is attributable to S's p.i. ....   | 0      |
| (b) Amount required to be included in P's gross income for 1988 under section 951 with respect to S that is attributable to S's g.l.i. .... | 22.50  |
| 13. Foreign income taxes deemed paid by P under section 960(a)(1) with respect to S:  |        |
| (a) Taxes deemed paid that are attributable to S's subpart F inclusion that are attributable to S's p.i.:                                   |        |
| Line 9(a) taxes .....   | 0      |
| Multiplied by:  |        |
| line 12(a) sec. 951 incl. ....  | 0      |
| Divided by: line 10(b) e & p .....  | 0      |
| Result .....  | 0      |
| (b) Taxes deemed paid that are attributable to S's subpart F inclusion that are attributable to S's g.l.i.:                                 |        |
| Line 9(c) taxes .....   | 12.50  |

|  |   |  |
|--|---|--|
| Multiplied by:<br>line 12(b) sec.<br>951 incl. .... 22.50  | Plus:<br>(iv) Consisting<br>of S's other<br>g.l.i. earnings<br>and profits ..... 67.50  | Divided by: line<br>10(c) e & p ..... 112.50   |
| Divided by: line<br>10(c) e & p ..... 112.50   |   | Result ..... 3.75  |
| Result ..... 2.50  | (v) Total section<br>902 dividend ..... 225.00  | (e) Foreign income<br>taxes paid by S<br>under section<br>960(a)(3)<br>deemed paid by<br>P with regard to<br>S's previously<br>taxed p.i.:<br>Line 9(b) taxes ..... 15.00  |
| (c) Foreign income<br>taxes deemed<br>paid by S<br>deemed paid by<br>P that are<br>allocable to S's<br>p.i.:<br>Line 7(a) taxes<br>deemed paid<br>by S ..... 0                   | (d) Total<br>dividends paid<br>to P ..... 247.50  | Multiplied by:<br>line 14(c)(i)<br>div. .... 135.00  |
| Multiplied by:<br>line 12(a) sec.<br>951 incl. .... 0  | 15. Foreign income<br>taxes deemed paid<br>by P under section<br>902 and section<br>960(a)(3) with<br>respect to S:<br>(a) Taxes paid by<br>S deemed paid<br>by P under<br>section 902(a)<br>with regard to<br>S's p.i.:<br>Line 9(a) taxes ..... 0 | Divided by: line<br>11(b) e & p ..... 135.00   |
| Divided by: line<br>10(b) e & p ..... 0  | Multiplied by:<br>line 14(c)(iii)<br>div. .... 0  | Result ..... 15.00   |
| Result ..... 0   | Divided by: line<br>10(b) e & p ..... 0   | (f) Foreign income<br>taxes paid by S<br>under section<br>960(a)(3)<br>deemed paid by<br>P with regard to<br>S's previously<br>taxed g.l.i.:<br>Line 9(d) taxes ..... 2.50                                       |
| (d) Foreign income<br>taxes deemed<br>paid by S<br>deemed paid by<br>P that are<br>allocable to S's<br>g.l.i.:<br>Line 7(b) taxes<br>deemed paid<br>by S ..... 6.25              | Result ..... 0  | Multiplied by:<br>line 14(c)(ii)<br>div. .... 22.50  |
| Multiplied by:<br>line 12(b) sec.<br>951 incl. .... 22.50  | (b) Taxes paid by<br>S deemed paid<br>by P under<br>section 902(a)<br>with regard to<br>S's g.l.i.:<br>Line 9(c) taxes ..... 12.50  | Divided by: line<br>11(c) e & p ..... 22.50  |
| Divided by: line<br>10(c) e & p ..... 112.50   | Multiplied by:<br>line 14(c)(iv)<br>div. .... 67.50   | Result ..... 2.50  |
| Result ..... 1.25  | Divided by: line<br>10(c) e & p ..... 112.50  | Summary:<br>Total taxes<br>deemed paid<br>by P under<br>section<br>960(a)(1) with<br>respect to—<br>Passive income<br>of S and T<br>included<br>under section<br>951 in income<br>of P:<br>Line 5(a) ..... 37.50 |
| 14. Dividends paid<br>to P:<br>(a) Dividends from<br>S attributable to<br>S's previously<br>taxed p.i. .... 0  | Result ..... 7.50   | Plus:<br>Line 13(a) ..... 0  |
| Plus:<br>(b) Dividends from<br>S attributable to<br>S's previously<br>taxed g.l.i. .... 22.50  | (c) Taxes deemed<br>paid by S<br>deemed paid by<br>P under section<br>902(a) with<br>regard to S's<br>p.i.:<br>Line 7(a)<br>deemed paid<br>taxes ..... 0  | Plus:<br>Line 13(c) ..... 0  |
| Plus:<br>(c) Dividends to<br>which section<br>902(a) applies:<br>(i) Consisting of<br>S's earnings<br>and profits<br>attributable to<br>T's previously<br>taxed p.i. .... 135.00 | Multiplied by:<br>line 14(c)(iii)<br>div. .... 0  | Result ..... 37.50   |
| Plus:<br>(ii) Consisting of<br>S's earnings<br>and profits<br>attributable to<br>T's previously<br>taxed g.l.i. .... 22.50   | Divided by: line<br>10(b) e & p ..... 0   | General<br>limitation<br>income of S<br>and T<br>included<br>under section<br>951 in income<br>of P:<br>Line 5(b) ..... 6.25   |
| Plus:<br>(iii) Consisting<br>of S's other<br>p.i. earnings<br>and profits ..... 0  | Result ..... 0  | Plus:<br>Line 13(b) ..... 2.50   |
|  | (d) Taxes deemed<br>paid by S<br>deemed paid by<br>P under section<br>902(a) with<br>regard to S's<br>g.l.i.:<br>Line 7(b)<br>deemed paid<br>taxes ..... 6.25   | Plus:<br>Line 13(d) ..... 1.25   |
|  | Multiplied by:<br>line 14(c)(iv)<br>div. .... 67.50   | Result ..... 10.00   |
|  |   | Total deemed<br>paid taxes<br>under section<br>960(a)(1) ..... 47.50   |

|   |       |
|---|-------|
| Total taxes deemed paid by P under section 902 and section 960(a)(3) attributable to passive income of S and T (line 15(e)) | 15.00 |
| Total taxes deemed paid by P under section 902 and section 960(a)(3) attributable to general limitation income of S and T:  |       |
| Line 15(b)  | 7.50  |
| Plus:   |       |
| Line 15(d)  | 3.75  |
| Plus:   |       |
| Line 15(f)  | 2.50  |
| Result  | 13.75 |

#### § 1.904-7 Transition rules.

(a) *Characterization of distributions and section 951(a)(1)(B) inclusions of earnings of a controlled foreign corporation accumulated in taxable years beginning before January 1, 1987 during taxable years of both the payor controlled foreign corporation and the recipient which begin after December 31, 1986—(1) In general.* Income derived by a foreign corporation in taxable years beginning before January 1, 1987, is characterized in the foreign corporation's hands under section 904(d)(1)(A) (separate limitation interest income), or section 904(d)(1)(E) (general limitation income) (prior to their amendment by the Tax Reform Act of 1986 (the Act)) after application of the de minimis rule of former section 904(d)(3)(C) (prior to its amendment by the Act). When, in a taxable year after the effective date of the Act, earnings and profits attributable to such income are distributed, or included in the gross income of a United States shareholder under section 951(a)(1)(B), the ordering rules of section 904(d)(3)(D) and § 1.904-5(c)(4), shall be applied in determining initially the character of the income of the distributee or United States shareholder. Thus, a proportionate amount of a distribution described in this paragraph will be initially characterized as separate limitation interest income in the hands of the distributee based on the ratio of the separate limitation interest earnings and profits out of which the dividend was

paid to the total earnings and profits out of which the dividend was paid. The distribution or section 951(a)(1)(B) inclusion must then be recharacterized in the hands of the distributee or United States shareholder on the basis of the following principles:

(i) Distributions and section 951(a)(1)(B) inclusions that are initially characterized as separate limitation interest income shall be treated as passive income;

(ii) Distributions and section 951(a)(1)(B) inclusions that are initially characterized as old general limitation income shall be treated as general limitation income, unless the taxpayer establishes to the satisfaction of the Commissioner that the distribution or section 951(a)(1)(B) inclusion is attributable to:

(A) Earnings and profits accumulated with respect to shipping income, as defined in section 904(d)(2)(D) and § 1.904-4(f), or

(B) In the case of a financial services entity, earnings and profits accumulated with respect to financial services income, as defined in section 904(d)(2)(C)(ii) and § 1.904-4(e)(1).

(2) *Limitation on establishing the character of earnings and profits.* In order for a taxpayer to establish that distributions or section 951(a)(1)(B) inclusions that are attributable to general limitation earnings and profits of a particular taxable year beginning before January 1, 1987, are attributable to shipping or financial services earnings and profits, the taxpayer must establish the amounts of foreign taxes paid or accrued with respect to income attributable to those earnings and profits that are to be treated as taxes paid or accrued with respect to shipping or financial services income, as the case may be, under section 904(d)(2)(I). Conversely, in order for a taxpayer to establish the amounts of general limitation taxes paid or accrued in a taxable year beginning before January 1, 1987, that are to be treated as taxes paid or accrued with respect to shipping or financial services income, as the case may be, the taxpayer must establish the amount of any distributions or section 951(a)(1)(B) inclusions that are attributable to shipping or financial services earnings and profits. For purposes of establishing the amounts of general limitation taxes that are to be treated as taxes paid or accrued with respect to shipping or financial services income, the principles of § 1.904-6 shall be applied.

(b) *Application of look-through rules to distributions (including deemed distributions) and payments by an*

*entity to a recipient when one's taxable year begins before January 1, 1987 and the other's taxable year begins after December 31, 1986—(1) In general.* This paragraph provides rules relating to the application of section 904(d)(3) to payments made by a controlled foreign corporation or other entity to which the look-through rules apply during its taxable year beginning after December 31, 1986, but received in a taxable year of the recipient beginning before January 1, 1987. The paragraph also provides rules relating to distributions (including deemed distributions) or payments made by a controlled foreign corporation to which section 904(d)(3) (as in effect before the Act) applies during its taxable year beginning before January 1, 1987, and received in a taxable year of the recipient beginning after December 31, 1986.

(2) *Payor of interest, rents, or royalties is subject to the Act and recipient is not subject to the Act.* If interest, rents, or royalties are paid or accrued on or after the start of the payor's first taxable year beginning on or after January 1, 1987, but prior to the start of the recipient's first taxable year beginning on or after January 1, 1987, such interest, rents, or royalties shall initially be characterized in accordance with section 904(d)(3) and § 1.904-5. To the extent that interest payments in the hands of the recipient are initially characterized as passive income under these rules, they will be treated as separate limitation interest in the hands of the recipient. To the extent that rents or royalties in the hands of the recipient are initially characterized as passive income under these rules, they will be recharacterized as general limitation income in the hands of the recipient.

(3) *Recipient of interest, rents, or royalties is subject to the Act and payor is not subject to the Act.* If interest, rents, or royalties are paid or accrued before the start of the payor's first taxable year beginning on or after January 1, 1987, but on or after the start of the recipient's first taxable year beginning after January 1, 1987, the income in the recipient's hands shall be initially characterized in accordance with former section 904(d)(3) (prior to its amendment by the Act). To the extent interest income is characterized as separate limitation interest income under these rules, that income shall be recharacterized as passive income in the hands of the recipient. Rents or royalties will be characterized as general limitation income.

(4) *Recipient of dividends and subpart F inclusions is subject to the Act and payor is not subject to the Act.* If

dividends are paid or accrued or section 951(a)(1) inclusions occur before the start of the first taxable year of a controlled foreign corporation beginning on or after January 1, 1987, but on or after the start of the first taxable year of the distributee or United States shareholder beginning on or after January 1, 1987, the dividends or section 951(a)(1) inclusions in the hands of the distributee or United States shareholder shall be initially characterized in accordance with former section 904(d)(3) (including the ordering rules of section 904(d)(3)(A)). Therefore, under former section 904(d)(3)(A), dividends are considered to be paid or derived first from earnings attributable to separate limitation interest income. To the extent the dividend or section 951(a)(1) inclusion is initially characterized under these rules as separate limitation interest income in the hands of the distributee or United States shareholder, the dividend or section 951(a)(1) inclusion shall be recharacterized as passive income in the hands of the distributee or United States shareholder. The portion, if any, of the dividend or section 951(a)(1) inclusion that is not characterized as passive income shall be characterized according to the rules in paragraph (a) of this section. Therefore, a taxpayer may establish that income that would otherwise be characterized as general limitation income is shipping or financial services income. Rules comparable to the rules contained in section 904(d)(2)(I) shall be applied for purposes of characterizing foreign taxes deemed paid with respect to distributions and section 951(a)(1) inclusions covered by this paragraph (b)(4).

(5) *Examples.* The following examples illustrate the application of this paragraph (b).

*Example (1).* P is a domestic corporation that is a fiscal year taxpayer (July 1-June 30). S, a controlled foreign corporation, is a wholly-owned subsidiary of P and has a calendar taxable year. On June 1, 1987, S makes a \$100 interest payment to P. Because the payment is made after January 1, 1987 (the first day of S's first taxable year beginning after December 31, 1986), the look-through rules of section 904(d)(3) apply to characterize the payment made by S. To the extent, however, that the interest payment to P is allocable to passive income earned by S, the payment will be included in P's separate limitation for interest as provided in former section 904(d)(1)(A).

*Example (2).* P is a domestic corporation that is a calendar year taxpayer. S, a controlled foreign corporation, is a wholly-owned subsidiary of P and has a July 1-June 30 taxable year. On June 1, 1987, S makes a \$100 interest payment to P. Because the payment is made prior to July 1, 1987 (the first day of S's first taxable year beginning after

December 31, 1986), the look-through rules of section 904(d)(3) do not apply. Assume that, under former section 904(d)(3), the interest payment would be characterized as separate limitation interest income. For purposes of determining P's foreign tax credit limitation, the interest payment will be passive income as provided in section 904(d)(1)(A).

*Example (3).* The facts are the same as in Example (2) except that on June 1, 1987, S makes a \$100 dividend distribution to P. Because the dividend is paid prior to July 1, 1987 (the first day of S's first taxable year beginning after December 31, 1986), the look-through rules of section 904(d)(3) do not apply. Assume that, under former section 904(d)(3), S's earnings and profits for the taxable year ending June 30, 1987, consist of \$200 of earnings attributable to general limitation income and \$75 of earnings attributable to separate limitation interest income. The portion of the dividend that is attributable to S's separate limitation interest and is treated as separate limitation interest income under former section 904(d)(3) is \$75. The remaining \$25 of the dividend is treated as general limitation income under former section 904(d)(3). For purposes of determining P's foreign tax credit limitation, \$75 of the dividend will be recharacterized as passive income. The remaining \$25 of the dividend will be characterized as general limitation income, unless P can establish that the general limitation portion is attributable to shipping or financial services income.

(c) *Installment sales.* If income is received or accrued by any person on or after the effective date of the Act (as applied to such person) that is attributable to a disposition of property by such person with regard to which section 453 or section 453(A) applies (installment sale treatment), and the disposition occurred prior to the effective date of the Act, that income shall be characterized according to the rules of §§ 1.904-4 through 1.904-7.

(d) *Special effective date for high withholding tax interest earned by persons with respect to qualified loans described in section 1201(e)(2) of the Act.* For purposes of characterizing interest received or accrued by any person, the definition of high withholding tax interest in § 1.904-6(d) shall apply to taxable years beginning after December 31, 1986, except as provided in section 1201(e)(2) of the Act.

(e) *Treatment of certain recapture income.* Except as otherwise provided, if income is subject to recapture under section 585(c), the income shall be general limitation income. If the income is recaptured by a taxpayer that is a financial services entity, the entity may treat the income as financial services income if the taxpayer establishes to the satisfaction of the Secretary that the deduction to which the recapture amount is attributable is allocable to financial services income. If the taxpayer establishes to the satisfaction

of the Secretary that the deduction to which the recapture amount is attributable is allocable to high-withholding tax interest income, the taxpayer may treat the income as high-withholding tax interest.

Lawrence B. Gibbs,  
Commissioner of Internal Revenue.

Approved: June 27, 1988.

O. Donaldson Chapoton,  
Assistant Secretary of the Treasury.  
[FR Doc. 88-15978 Filed 7-15-88; 8:45 am]  
BILLING CODE 4830-01-M

## 26 CFR Parts 1 and 602

[T.D. 8215]

### Special Allocation Rules for Certain Asset Acquisitions

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations relating to allocation rules for certain asset acquisitions under section 1060 of the Internal Revenue Code of 1986 ("Code"). The temporary regulations provide guidance concerning the application of section 1060 and also modify certain rules relating to stock purchases treated as asset purchases under section 338 of the Code. In addition, the temporary regulations coordinate the application of section 755 with the rules of section 1060. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the Federal Register.

**EFFECTIVE DATE:** These regulations are effective July 18, 1988. These temporary regulations under section 1060 generally apply to asset acquisitions made after May 6, 1986. The reporting requirements apply to asset acquisitions (and to certain adjustments of consideration) occurring in a taxable year for which the due date (including extensions of time) of the income tax return or return of income is on or after September 13, 1988.

**FOR FURTHER INFORMATION CONTACT:** Judith C. Winkler of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T (Telephone 202-566-3458, not a toll-free number). For information concerning the temporary regulations under section 755, contact Robert E. Shaw of the Legislation and Regulations Division,

Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T (Telephone 202-566-3297, not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 533). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545-1021. The estimated average burden associated with the collection of information in this regulation is 1.05 hours per respondent or recordkeeper.

For further information concerning this collection of information, and where to submit comments on this collection of information and the accuracy of the estimated burden and suggestions for reducing this burden, please refer to the preamble to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the *Federal Register*.

##### Background

This document adds new temporary regulations §§ 1.167(a)-5T, 1.755-2T, 1.1031(d)-1T, and 1.1060-1T to part 1 of Title 26 of the Code of Federal Regulations and amends § 1.338(b)-3T. The new temporary regulations implement section 1060 of the Code. Section 1060 was added to the Code by section 641 of the Tax Reform Act of 1986 (Pub. L. No. 99-514; 100 Stat. 2282).

##### Explanation of Provisions

###### Introduction

For tax purposes, the sale of a going trade or business for a lump sum amount is viewed as a sale of each individual asset rather than a single capital asset. Both the purchaser and the seller must allocate the purchase price for the acquisition among the assets transferred. The seller must allocate the purchase price among the assets to determine the amount and character of its realized gain or loss on the sale. The purchaser's allocation determines its basis in each asset and will affect its amount of allowable depreciation, cost depletion, or amortization deductions, its realized gain or loss on a subsequent sale of those assets, and may have other tax consequences.

Section 1060(a) provides that, in the case of an applicable asset acquisition, the seller and the purchaser each must

allocate the consideration among the assets transferred in the same manner as the amounts are allocated under section 338(b)(5) (relating to certain stock purchases treated as asset acquisitions). Thus, the seller and the purchaser are required to allocate consideration under the residual method in order to make the respective determinations of the amount of gain or loss from the transfer of each asset and the basis in each asset acquired.

Prior to the enactment of section 1060, there was considerable controversy between taxpayers and the Internal Revenue Service concerning the allocation of the purchase price among assets of a going business. The controversy principally was due to the difficulty in establishing the value of goodwill and going concern value. Section 1060, by mandating the application of the residual method of allocation as prescribed in the regulations under section 338(b)(5), alleviates this controversy since the residual method does not require a separate determination of the value of goodwill and going concern value. Instead, under the residual method any "premium" paid in excess of the total fair market value of the purchased assets (other than goodwill or going concern value) is treated as payment for goodwill or going concern value. The mandatory application of the residual method of allocation also eliminates disparities in purchase price allocations that existed, prior to the enactment of section 1060, between asset purchases and stock purchases treated as asset purchases under section 338.

Section 1060(b) requires the seller and the purchaser to report certain information in connection with an applicable asset acquisition. The information reporting requirements are intended to encourage compliance with the substantive rules of section 1060 and to assist the Internal Revenue Service in identifying returns which are likely to involve an attempt to amortize goodwill or going concern value.

The temporary regulations define the term "applicable asset acquisition," provide rules for allocating consideration under the residual method among the assets transferred (including increases or decreases in consideration occurring after the purchase date), and implement the reporting requirements of section 1060(b).

###### Applicable Asset Acquisition

An "applicable asset acquisition" is any transfer, whether direct or indirect, or a group of assets constituting a trade or business with respect to which the purchaser's basis is determined wholly

by reference to the consideration paid for the assets. (However, a transfer does not fail to be an applicable asset acquisition solely because section 1031 (relating to like-kind exchanges) applies to a portion of the assets.) Under § 1.1060-1T(b), a group of assets constitutes a trade or business if the use of such assets would constitute an active trade or business for purposes of section 355 or if their character is such that goodwill or going concern value could under any circumstances attach to such assets. A group of assets which constitutes a trade or business in the hands of the seller or the purchaser will constitute a trade or business for purposes of section 1060. Thus, for example, a purchaser cannot avoid the application of section 1060 by arguing that he will not use the assets of an acquired business in the same business. All the facts and circumstances surrounding the transaction are taken into account in determining whether a group of assets constitutes a trade or business. Factors to be considered include related transactions between the purchaser and seller such as a lease agreement, covenant not to compete, management contract, or other similar agreement between purchaser and seller (or managers, directors, owners, or employees of the seller); and the excess, if any, of the total consideration over the aggregate book value of the tangible and intangible assets (other than goodwill and going concern value) as shown in the purchaser's financial accounting books and records.

The temporary regulations provide rules for the allocation of consideration when a portion of the group of assets, which constitutes a trade or business under section 1060, is exchanged for other assets in a transaction to which section 1031 applies. The like-kind property and other property or money which is treated as transferred in exchange for the like-kind property are excluded from the allocation rules of section 1060. The temporary regulations include rules for determining the amount of the other property or money which is treated as transferred in exchange for the like-kind property. A conforming amendment (new § 1.1031(d)-1T) is made to the section 1031 regulations. When finalized, the new paragraph will follow § 1.1031(d)-1(e). Rules relating to the transfer of a partnership interest are prescribed in new § 1.755-2T.

###### Allocation of Consideration

Section 1.1060-1T (d) and (e) prescribes the method by which the seller and purchaser must allocate consideration among the assets

transferred. The method of allocation is substantially the same as the method of allocation prescribed in § 1.338(b)-2T (relating to the allocation of adjusted grossed-up basis among the assets of the target corporation when a section 338 election is made).

Section 1.1060-1T(d) identifies four classes of assets, which are identical to the four classes of assets identified in § 1.338(b)-2T. "Class I assets" are cash, deposits in banks, and similar items. "Class II assets" are certificates of deposit, U.S. government securities, certain marketable stocks and securities, foreign currency, and similar items. "Class IV assets" are intangible assets in the nature of goodwill and going concern value. All assets not described above, specifically including accounts receivable, are "Class III assets." As a general rule, a proportionate method of allocation is prescribed for the allocation of consideration within each class of assets, although a residual method of allocation is prescribed for allocation among the asset classes, allocation beginning with the lowest numbered class. After consideration is reduced by the amount of Class I assets, it is allocated among Class II assets in proportion to their fair market values as of the purchase date, and then among Class III assets in such proportion, and finally to Class IV assets. Thus, consideration is allocated within each of asset classes II and III to the extent of the fair market value of the assets in that class, with any remaining amount allocated to the next class of assets. The unallocated amount of consideration remaining after allocation among the Class III assets is allocated to Class IV assets, intangible assets in the nature of goodwill and going concern value.

The amount of consideration allocated to an asset, other than assets in the nature of goodwill and going concern value, cannot exceed its fair market value on the purchase date. The "fair market value" of an asset is its fair market value determined without regard to mortgages, liens, pledges, or other liabilities. However, the amounts assigned as fair market values by the seller, but not the purchaser, are subject to rules similar to section 7701(g) (relating to fair market value in the case of property subject to nonrecourse indebtedness).

The amount of consideration allocated to an asset is also subject to any applicable limitations under the Code or general principles of tax law. Thus, for example, the amount of the consideration allocated by a purchaser to a player contract described in section

1056 cannot exceed the limitation imposed by that section.

In connection with the examination of a return, the Internal Revenue Service may challenge the taxpayer's determination of the fair market value of any asset by any appropriate method and take into account all factors, including any lack of adverse tax interests between the parties. For example, in certain cases the Internal Revenue Service may make an independent showing of the value of goodwill and going concern value as a means of calling into question the validity of the taxpayer's valuation of other assets.

#### *Subsequent Adjustments to Consideration*

Section 1.1060-1T(f) provides rules for the allocation of increases or decreases in consideration of either the purchaser or seller that occur after the purchase date. Increases in consideration are allocated among the assets in accordance with the general allocation rules set forth in § 1.1060-1T(d), subject to the limitation rules contained in § 1.1060-1T(e). Thus, in general, the aggregate amount of consideration allocated to an asset may not exceed the asset's fair market value on the purchase date, except for assets in the nature of goodwill and going concern value.

The rule for decreases in consideration is similar to the one for increases, except that decreases are allocated to assets in the reverse of the order in which consideration is allocated under § 1.1060-1T(d). Thus, as a general rule, decreases are allocated first among assets in the nature of goodwill and going concern value to the extent of the consideration previously allocated to them, and then as a decrease in the consideration previously allocated to other acquired assets.

The regulations provide that, if an asset has been disposed of, depreciated, amortized, or depleted by the purchaser before an increase (or decrease) in consideration is taken into account, the increase (or decrease) in consideration otherwise allocable to such asset by the purchaser is properly taken into account under principles of tax law applicable when part of the cost of an asset (not previously reflected in its basis) is paid (or reduced) after the asset has been disposed of, depreciated, amortized, or depleted. For purposes of this rule, an asset is considered to have been disposed of to the extent that its allocable portion of a decrease in consideration would reduce the purchaser's basis in that asset below zero.

The regulations provide a special rule analogous to § 1.338(b)-3T(g) for allocating an increase (or decrease) in consideration that directly relates to the income produced by a particular intangible asset, such as a patent, copyright, or secret process ("contingent income assets"), as long as the increase (or decrease) in consideration is related to such contingent income asset and does not relate to other assets. Subject to the fair market value and other limitations in § 1.1060-1T(e), the increase (or decrease) in consideration is first allocated to the contingent income asset and then to other assets. Solely for purposes of applying the fair market value and other limitations to a contingent income asset, its fair market value shall be redetermined when the increase (or decrease) is taken into account. (For purposes of this redetermination, only those circumstances that resulted in the increase (or decrease) in consideration are taken into account.) In appropriate cases, the Internal Revenue Service may apply the principles of this provision to reallocate an increase (or decrease) in consideration among some of the assets to the extent such allocation is necessary to reflect properly the consideration that relates to each of those assets.

#### *Reporting Requirements*

Section 1.1060-1T(h) of the temporary regulations implements section 1060(b) by requiring that the seller and the purchaser in an applicable asset acquisition each report on Form 8594 specific information about the allocation of consideration among the assets transferred. Each must file Form 8594 with its income tax return or return of income for the taxable year that includes the purchase date. This reporting requirement applies to asset acquisitions occurring in a taxable year for which the due date (including extensions of time) of the income tax return or return of income is on or after September 13, 1988.

Information that must be reported on Form 8594 includes:

- The name, address, and taxpayer identification number of the purchaser and the seller;
- The purchase date;
- The total consideration of the assets;
- The amount of consideration allocated to each class of assets and the aggregate fair market value of assets of each class;
- A statement as to whether the purchaser and seller agreed upon the

fair market value of the assets in a sales contract;

f. The useful life of each Class III intangible, amortizable asset; and

g. A statement as to whether, in connection with the acquisition of the group of assets, the purchaser also obtained a license or covenant not to compete or entered into a lease agreement, an employment contract, a management contract, or similar arrangement with the seller (or managers, directors, owners, or employees of the seller).

The purchaser or seller is required to make a supplemental statement on Form 8594 concerning increases (or decreases) in the amount of consideration allocated to an asset if such increases (or decreases) in consideration occur after the end of its taxable year that includes the purchase date. Form 8594, reporting the increase (or decrease) in consideration, must be filed with the return for the taxable year in which the increase (or decrease) is taken into account if the due date of that return (including extensions of time) is on or after September 13, 1988.

Interim procedures provide that, if Form 8594 is not available to the general public, the purchaser and the seller must furnish the information required under § 1.1060-1T(h) by filing with their income tax returns acquisition statements (as the case may be) which include the information required under § 1.1060-1T(h)(3).

#### *Coordination of Sections 1060 and 167*

This document adds a new temporary regulation under section 167 to provide rules for computing the depreciable basis of any property which is included in an applicable asset acquisition under section 1060. The basis for depreciation of such a depreciable asset cannot exceed the amount of consideration allocated to that asset under section 1060 and § 1.1060-1T. When the final regulations are promulgated, this new paragraph will become part of § 1.167(a)-5.

#### *Amendments to § 1.338(b)-3T*

In response to public comment, this document amends § 1.338(b)-3T(g)(1)(ii), the special rule for allocating an increase (or decrease) in adjusted grossed-up basis that directly relates to the income produced by a "contingent income asset," such as a patent, and does not relate to other assets. For purposes of applying the various limitation rules to the contingent income asset, its fair market value is redetermined when the increase (or decrease) in adjusted grossed-up basis is taken into account. The rule has been

amended to clarify that this redetermination is of the asset's fair market value on the purchase date and that, for purposes of this redetermination, only those circumstances that resulted in the increase (or decrease) in consideration are taken into account.

#### *Coordination of Sections 1060 and 755*

The principles of section 1060 apply to any transfer of an interest in a partnership to which section 743(b) or section 732(d) applies, but only for the purpose of determining the amount of the transferee partner's basis adjustment that must be allocated to goodwill and going concern value (hereinafter referred to as "goodwill") under section 755. Temporary regulation § 1.755-2T provides rules for determining the fair market value of partnership property and provides that these values must be used for purposes of allocating basis under § 1.755-1. Under § 1.755-2T(b)(1), the fair market value of partnership property other than goodwill is determined on the basis of all the facts and circumstances.

Section 1.755-2T(b)(2) provides that the fair market value of a partnership's goodwill is deemed to equal the amount (not below zero) which if assigned to partnership goodwill would result in a liquidating distribution to the transferee partner equal to such partner's basis for the transferred partnership interest if all partnership property were sold for its fair market value and the proceeds of that sale were distributed to the partners. The Service is currently studying whether to provide additional regulations to address any situations in which a different method of valuing goodwill would be more accurate, and invites comment on such situations and alternative rules for valuing goodwill.

Consistent with the purpose of section 1060, the temporary regulation is intended to overrule the decision in *United States v. Cornish*, 348 F.2d 175 (9th Cir. 1965). Although the regulation provides a new procedure for determining the value of goodwill, § 1.755-2T(d) provides that the requirements of the temporary regulation will be deemed to be satisfied with respect to any transfer made before July 15, 1988 if the amount of any basis adjustment under section 743(b) or section 732(d) made as a result of such transfer that is allocated to each item of partnership property other than goodwill does not exceed the amount equal to the difference between the transferee partner's share of the partnership basis of such property and the partner's share of the fair market value of such property.

Except as provided in § 1.755-2T, section 1060 does not affect the determination of a transferee partner's share of the basis of partnership property or the determination of the basis of property distributed by the partnership.

#### *Special Analyses*

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

#### *Drafting Information*

The principal author of the temporary regulations under sections 167, 338, 1031, and 1060 is Judith C. Winkler of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. The principal author of the temporary regulations under section 755 is Robert E. Shaw of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

#### *List of Subjects*

##### *26 CFR 1.61-1—1.281-4*

Income taxes, Taxable income, Deductions, Exemptions.

##### *26 CFR 1.301-1—1.383-3*

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

##### *26 CFR 1.701-1—1.771-1*

Income taxes, Partnerships.

##### *26 CFR 1.1001-1—1.1102-3*

Income taxes, Gain and loss, Basis, Nontaxable exchanges.

##### *26 CFR PART 602*

Reporting and recordkeeping requirements.

#### *Adoption of Amendments to the Regulations*

Accordingly, Parts 1 and 602 of Title 26 of the Code of Federal Regulations are amended as follows:

# **PART 1—INCOME TAX: TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986**

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

Authority: 26 U.S.C. 7805; \* \* \* § 1.338(b)-3T is also issued under 26 U.S.C. 338; \* \* \* § 1.755-2T is also issued under 26 U.S.C. 755; \* \* \* § 1.1060-1T is also issued under 26 U.S.C. 1060.

**Par. 2.** There is added in the appropriate place a new § 1.1060-1T. The new section reads as follows:

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

(a) *Scope*—(1) *In general.* This section prescribes rules relating to the requirements of section 1060, which, in the case of an applicable asset acquisition, requires the transferor (the "seller") and the transferee (the "purchaser") each to allocate the consideration paid or received in the transaction among the assets transferred in the same manner as amounts are allocated under section 338(b)(5) (relating to the allocation of adjusted grossed-up basis among the assets of the target corporation when a section 338 election is made). In the case of an applicable asset acquisition described in paragraph (b)(1) of this section, sellers and purchasers must allocate the consideration under the residual method, as described in paragraph (d) of this section, in order to determine, respectively, the amount realized from, and the basis in, each of the transferred assets. Subsequent adjustments to the consideration for the transferred assets must be allocated under the residual method in the manner described in paragraph (f) of this section. For rules relating to an applicable asset acquisition that is the transfer of a partnership interest, see § 1.755-2T.

(2) *Effective date.* This section applies with respect to any acquisition of assets that occurs after May 6, 1986, unless it occurs pursuant to a binding contract in effect on May 6, 1986, and at all times thereafter. The reporting requirements of this section apply to asset acquisitions occurring in a taxable year for which the due date (including extensions of time) of the income tax return or return of income is on or after September 13, 1988. See paragraph (h) of this section for special effective dates for certain reporting requirements.

(3) *Outline of topics.* In order to facilitate the use of this section, this paragraph (a)(3) lists the paragraphs, subparagraphs, and subdivisions contained in this section.

(a) *Scope.*

- (1) In general.
- (2) Effective date.
- (3) Outline of topics.
- (b) Applicable asset acquisition.
  - (1) In general.
  - (2) Assets constituting a trade or business.
  - (3) Examples.
  - (4) Like-kind exchange.
- (c) Definitions.
  - (1) Consideration.
  - (2) Fair market value.
  - (3) Purchase date.
- (d) Allocation of consideration among assets under the residual method.
  - (1) Reduction in the amount of consideration for cash and other items designated by the Internal Revenue Service.
  - (2) Assets other than Class I assets.
    - (i) Class II assets.
    - (ii) Class III assets.
    - (iii) Class IV assets.
- (e) Certain limitations and special rules for consideration allocable to an asset.
  - (1) Allocation not to exceed fair market value.
  - (2) Other limitations.
  - (3) Liabilities taken into account in determining amount realized on subsequent disposition.
  - (4) Internal Revenue Service authority.
- (f) Subsequent adjustments to consideration.
  - (1) In general.
  - (2) Allocation of increases in consideration.
    - (i) In general.
    - (ii) Effect of disposition or depreciation of assets by purchaser.
  - (3) Allocation of decreases in consideration.
    - (i) In general.
    - (ii) Effect of disposition of assets or reduction of basis below zero.
  - (4) Specific allocation of increases (or decreases) in consideration to certain contingent income assets.
    - (i) Patents and similar property.
    - (ii) Specific allocation.
  - (5) Internal Revenue Service authority.
- (g) Examples.
- (h) Applicable asset acquisition reporting requirements.
  - (1) In general.
  - (2) Time and manner of reporting.
    - (i) In general.
    - (ii) Additional reporting requirement.
  - (3) Interim procedures.
    - (i) Asset acquisition statement.
    - (ii) Supplemental asset acquisition statement.
    - (iii) Taxpayer identification number.
- (b) *Applicable asset acquisition*—(1) *In general.* An "applicable asset acquisition" is any transfer, whether direct or indirect, of a group of assets if (i) the assets transferred constitute a trade or business in the hands of either the seller or the purchaser and (ii) except as provided in paragraph (b)(4) of this section, the purchaser's basis in the transferred assets is determined wholly by reference to the purchaser's consideration.
  - (2) *Assets constituting a trade or business.* For purposes of this section, a

group of assets constitutes a trade or business if the use of such assets would constitute an active trade or business for purposes of section 355. Even though a group of assets may not qualify as an active trade or business for purposes of section 355, it will constitute a trade or business for purposes of this section if its character is such that goodwill or going concern value could under any circumstances attach to such group. In making this determination, all the facts and circumstances surrounding the transaction shall be taken into account. Factors to be considered include:

(i) The existence of an excess of the total consideration over the aggregate book value of the tangible and intangible assets purchased (other than goodwill and going concern value) as shown in the financial accounting books and records of the purchaser; and

(ii) Related transactions, including lease agreements, licenses, covenants not to compete, employment contracts, management contracts, or other similar agreements between the purchaser and seller (or managers, directors, owners, or employees of the seller) in connection with the transfer.

(3) *Examples.* Paragraph (b) (1) and (2) of this section may be illustrated by the following examples:

*Example (1).* S is a high grade machine shop that manufactures microwave connectors in limited quantities. It is a successful company with a reputation within the industry and among its customers for manufacturing unique, high quality products. Its tangible assets consist primarily of ordinary machinery for working metal and plating. It has not secret formulas or patented drawings of value. P is a company that designs, manufactures, and markets electronic components. It wants to establish an immediate presence in the microwave industry, an area in which it previously has not been engaged. P is acquiring assets of a number of smaller companies and hopes that these assets will collectively allow it to offer a broad product mix. P acquires the assets of S in order to augment its product mix and to promote its presence in the microwave industry. P will not use the assets acquired from S to manufacture microwave connectors. The assets transferred are assets which constitute a trade or business in the hands of the seller. Thus, P's purchase of S's assets is an applicable asset acquisition. The fact that P will not use the assets acquired from S to continue the business of S does not affect this conclusion.

*Example (2).* S, a sole proprietor who operates a restaurant, leases the building housing the restaurant and sells all its restaurant equipment to P. S's use of the building and the restaurant equipment constitute a trade or business. P begins operating a restaurant in the building it leases from S. Because the assets transferred together with the asset leased are assets

which constitute a trade or business, P's purchase of S's assets is an applicable asset acquisition.

**Example (3).** The S corporation conducts various business enterprises including a retail store in State X that conducts activities that meet the active trade or business requirements for purposes of section 355. P is a minority shareholder of S. In complete redemption of P's stock in S held by P within the meaning of section 302(b)(3), S distributes to P all the assets of S used in S's retail business in State X. The distribution of S's assets in redemption of P's stock is treated as a sale or exchange, and P's basis in the assets transferred is determined wholly by reference to the consideration paid, the S stock. Thus, S's distribution of assets constituting a trade or business to P is an applicable asset acquisition.

#### (4) Like-kind exchange.

Notwithstanding the fact that a portion of a group of assets which constitute a trade or business is exchanged for like-kind property, the transaction nevertheless may constitute an applicable asset acquisition. For purposes of this subparagraph (4), like-kind property means any property permitted by section 1031, 1035, or 1036 to be received without the recognition of gain or loss. For purposes of determining whether the transaction constitutes an applicable asset acquisition, (i) the fact that, by reason of section 1031(d), the purchaser's basis in the group of assets is not determined wholly by reference to the consideration paid is disregarded, and (ii) whether the assets transferred constitute a trade or business is determined by taking into account all the assets transferred (including the like-kind property). If an applicable asset acquisition includes like-kind property, then for purposes of allocating consideration among the assets under paragraph (d) of this section, the like-kind property exchanged and any other property or money which is treated as transferred in exchange for the like-kind property are excluded. The basis in and the gain or loss recognized from the like-kind property exchanged and the other property (if any) which is treated as transferred in exchange for the like-kind property is determined under section 1031. For purposes of this section, the amount of money and other property that is treated as transferred in exchange for the like-kind property is equal to so much of the amount of money and the fair market value of other property as does not exceed the difference between the fair market values of the like-kind properties exchanged. The money and other property that are treated as transferred in exchange for the like-kind property (and which are excluded from the assets to which section 1060 applies) are

considered to come from the following assets in the following order: first from Class I assets, then from Class II assets, then from Class III assets, and then from Class IV assets. For this purpose, liabilities assumed (or to which the like-kind property or other property that is part of the like-kind exchange is subject) are treated as Class I assets. See *Example (3)* in paragraph (g) of this section for an example of the application of section 1060 to a single transaction which is, in part, a like-kind exchange.

(c) **Definitions**—(1) *Consideration.* The purchaser's consideration is the cost of the assets acquired in the applicable asset acquisition. The seller's consideration is the amount realized from the applicable asset acquisition under section 1001(b).

(2) *Fair market value.* Generally, the fair market value of an asset is its gross fair market value (i.e., fair market value determined without regard to mortgages, liens, pledges, or other liabilities). However, for purposes of determining the amount of the seller's gain or loss, the fair market value of any property subject to a nonrecourse indebtedness shall be treated as being not less than the amount of such indebtedness. (For purposes of the preceding sentence, a liability that was incurred by reason of the acquisition of the property is disregarded to the extent that such liability was not taken into account in determining the seller's basis in such property.)

(3) *Purchase date.* The purchase date is the date on which the applicable asset acquisition occurs.

(d) *Allocation of consideration among assets under the residual method*—(1) *Reduction in the amount of consideration for cash and other items designated by the Internal Revenue Service.* Consideration is first reduced by the amount of Class I assets (if any) transferred by the seller. Class I assets are cash, demand deposits and like accounts in banks, savings and loan associations (and other depository institutions), and other similar items designated in the Internal Revenue Bulletin by the Internal Revenue Service. The amount of the consideration remaining after the reduction is to be allocated to the other assets transferred.

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

in proportion to the fair market values of such Class III assets on that date, and finally to Class IV assets.

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

(ii) *Class III assets.* Class III assets are all assets (other than Class I, II, and IV assets), both tangible and intangible (whether or not depreciable, depletable, or amortizable), including furniture and fixtures, land, buildings, equipment, accounts receivable, and covenants not to compete.

(iii) *Class IV assets.* Class IV assets are intangible assets in the nature of goodwill and going concern value.

(e) *Certain limitations and special rules for consideration allocable to an asset*—(1) *Allocation not to exceed fair market value.* The amount of consideration allocated to an asset (other than Class IV assets) shall not exceed the fair market value of that asset on the purchase date.

(2) *Other limitations.* The amount of consideration allocated to an asset is subject to any applicable limitations under the Code or general principles of tax law. For example, if the applicable asset acquisition is a transaction described in section 1056(a) (relating to basis limitation for player contracts transferred in connection with the sale of a franchise), the amount of consideration the purchaser may allocate to a contract for the services of an athlete shall not exceed the limitation imposed by that section.

(3) *Liabilities taken into account in determining amount realized on subsequent disposition.* In determining the amount realized on a subsequent sale or other disposition of property acquired by the purchaser, the entire amount of any liability included in determining the purchaser's consideration is considered to be an amount taken into account in determining the purchaser's basis in property which secures such liability for purposes of applying § 1.1001-2(a). Thus, if a liability is included in the purchaser's consideration, § 1.1001-2(a)(3) shall not prevent the amount of such liability from being treated as discharged within the meaning of § 1.1001-2(a)(4) as a result of the purchaser's sale or disposition of the property which secures such liability.

(4) *Internal Revenue Service authority.* In connection with the examination of a return, the Internal

Revenue Service may challenge the taxpayer's determination of the fair market value of any asset by any appropriate method and take into account all factors, including any lack of adverse tax interests between the parties. For example, in certain cases the Internal Revenue Service may make an independent showing of the value of goodwill and going concern value as a means of calling into question the validity of the taxpayer's valuation of other assets.

(f) *Subsequent adjustments to consideration*—(1) *In general.* If there is an increase or a decrease in consideration of either the seller or the purchaser after the purchase date that must be taken into account in order to adjust or redetermine, under applicable principles of tax law, the seller's amount realized with respect to, or the purchaser's cost of, the assets transferred, then such increase or decrease is allocated by the seller or the purchaser among the assets pursuant to this paragraph (f).

(2) *Allocation of increases in consideration*—(i) *In general.* An increase in consideration is allocated under paragraph (d) of this section among the assets transferred. Amounts allocable to an asset (or with respect to an asset disposed of by the purchaser) are subject to the fair market value limitation and other limitations in paragraph (e) of this section. Except as provided in paragraph (f)(4)(ii) of this section, for the purpose of applying paragraph (e) of this section, the fair market value is the fair market value on the purchase date.

(ii) *Effect of disposition or depreciation of assets by purchaser.* If an asset has been disposed of, depreciated, amortized, or depleted by the purchaser before an increase in consideration is taken into account, the increase in consideration otherwise allocable to such asset by the purchaser shall be taken into account under principles of tax law applicable when part of the cost of an asset (not previously reflected in its basis) is paid after the asset has been disposed of, depreciated, amortized, or depleted.

(3) *Allocation of decreases in consideration*—(i) *In general.* A decrease in consideration is allocated in the following order: (A) first, as a reduction in the amount previously allocated to Class IV assets, (B) second, as a reduction in the amount previously allocated to Class III assets in proportion to their fair market values, and (C) finally, as a reduction in the amount previously allocated to Class II assets in proportion to their fair market values. Decreases in consideration

allocated to an asset shall not exceed the amount of consideration previously allocated to that asset. Except as provided in paragraph (f)(4)(ii) of this section (relating to patents and similar property), the fair market value is the fair market value on the purchase date.

(ii) *Effect of disposition of assets or reduction of basis below zero.* If an asset has been disposed of, depreciated, amortized, or depleted by the purchaser before a decrease in consideration is taken into account, the decrease in the purchaser's consideration otherwise allocable to such asset shall be taken into account under principles of tax law applicable when the cost of an asset (previously reflected in basis) is reduced after the asset has been disposed of or depreciated, amortized, or depleted. For purposes of this subdivision (ii), an asset is considered to have been disposed of to the extent that its allocable portion of the decrease in consideration would reduce its basis below zero.

(4) *Specific allocation of increases (or decreases) in consideration to certain contingent income assets*—(i) *Patents and similar property.* The specific allocation under paragraph (f)(4)(ii) of this section of an increase (or decrease) in consideration applies if (A) the increase (or decrease) is the result of a contingency that directly relates to income produced by a particular intangible asset ("contingent income asset"), such as a patent, a secret process, or a copyright, and (B) the increase (or decrease) is related to such contingent income asset and not to other assets. Consideration as initially determined, and any increase (or decrease) in consideration to which this specific allocation rule does not apply, are allocated among the assets (including contingent income assets) in accordance with the provisions of paragraph (f) (2) and (3) of this section.

(ii) *Specific allocation.* Subject to the fair market value and other limitations in paragraph (e) of this section, any increase (or decrease) in consideration to which this subdivision (ii) applies is allocated first, specifically to the contingent income asset to which the increase (or decrease) relates and, then, under paragraph (f) (2) (or 3)) of this section. Solely for purposes of applying the fair market value and other limitations to a contingent income asset, the fair market value of such asset on the purchase date shall be redetermined when the increase (or decrease) is taken into account. (For purposes of this redetermination, only those circumstances that resulted in the increase (or decrease) in consideration are taken into account.) This redetermination does not affect the fair

market value limitations or other limitations as they apply to other transferred assets.

(5) *Internal Revenue Service authority.* In connection with the examination of a return, the Internal Revenue Service, in appropriate cases, may apply the principles of paragraph (f)(4) of this section to allocate an increase (or decrease) in consideration among particular assets to the extent such allocation is necessary to reflect properly the consideration that relates to each of those assets.

(g) *Examples.* The provisions of paragraphs (b), (d), (e), and (f) of this section may be illustrated by the following examples:

*Example (1).* (i) On January 1, 1987, S, a sole proprietor, sells to P, a corporation, a group of assets which constitute a trade or business under paragraph (b)(2) of this section. P pays S \$2,000 in cash and assumes \$1,000 in liabilities. Thus, the total consideration is \$3,000.

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

| Asset class | Asset                                 | Fair market value |
|-------------|---------------------------------------|-------------------|
| II          | Portfolio of marketable securities .. | \$400             |
|             | Total Class II.....                   | 400               |
| III         | Furniture and fixtures .....          | 800               |
|             | Building.....                         | 800               |
|             | Land.....                             | 200               |
|             | Equipment.....                        | 400               |
|             | Accounts receivable .....             | 100               |
|             | Covenant not to compete.....          | 100               |
|             | Total Class III.....                  | 2,400             |

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

(iv) The amount allocated to the Class IV assets (assets in the nature of goodwill and going concern value) is \$200 (i.e., \$2,600-\$2,400).

*Example (2).* (i) Assume the same facts as in *Example (1)*. Assume further that P and S each use the calendar year as the taxable year, and that, on June 1, 1989, P filed a claim against S alleging fraud in the sale of all the assets.

(ii) On January 1, 1991, S refunds \$300 of the purchase price to P in a settlement of the 1989 lawsuit.

(iii) Under paragraph (f)(3)(i) of this section, both S and P take into account the \$300 decrease in consideration and allocate it among the assets. First, since \$200 of consideration previously was allocated to goodwill and going concern value, \$200 of the decrease in consideration is allocated to that asset. The remaining decrease in consideration (\$100) is allocated to the Class III assets in proportion to their fair market values on the purchase date as follows:

| Asset                   | Fair market value | Allocation fraction | Decrease in consideration (\$100 x Col. (2)) |
|-------------------------|-------------------|---------------------|--|
| Furniture and fixtures  | \$800             | 800/2,400           | \$33.33                                      |
| Building                | 800               | 800/2,400           | 33.33  |
| Land                    | 200               | 200/2,400           | 8.33   |
| Equipment               | 400               | 400/2,400           | 16.67  |
| Accounts receivable     | 100               | 100/2,400           | 4.17   |
| Covenant not to compete | 100               | 100/2,400           | 4.17   |
| Total                   | 2,400             |                     | 100.00                                       |

(iv) In summary, the redetermined consideration that S received for the group of assets is \$2,700 after taking into account the decrease in consideration. After allocating the decrease, P's and S's redetermined consideration is as follows:

| Asset                              | Original consideration | Decrease in consideration | Redetermined consideration |
|------------------------------------|------------------------|---------------------------|----------------------------|
| Portfolio of marketable securities | \$400.00               | \$0.00                    | \$400.00                   |
| Furniture and fixtures             | 800.00                 | 33.33                     | 766.67                     |
| Building                           | 800.00                 | 33.33                     | 766.67                     |
| Land                               | 200.00                 | 8.33                      | 191.67                     |
| Equipment                          | 400.00                 | 16.67                     | 383.33                     |
| Accounts receivable                | 100.00                 | 4.17                      | 95.83                      |
| Covenant not to compete            | 100.00                 | 4.17                      | 95.83                      |
| Goodwill and going concern value   | 200.00                 | 200.00                    | 0.00                       |
| Total                              | 3,000.00               | 300.00                    | 2,700.00                   |

(v) Assume that, as a result of deductions under section 168, P's adjusted basis in the equipment immediately before the decrease in consideration is zero. P, therefore, treats the equipment as if it were disposed of before the decrease is taken into account. In 1991, P recognizes income of \$16.67, the character of which is determined under the principles of *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952), and the tax benefit rule.

**Example (3).** (i) On January 1, 1987, A transfers assets X, Y, and Z worth \$1,000 to B in exchange for the assets D, E, and F, worth \$100 plus \$1,000 cash.

(ii) Assume the exchange of assets constitutes an exchange of like-kind property to which section 1031 applies. Assume also that goodwill or going concern value could under any circumstances attach to each group of assets and, therefore, each group constitutes a trade or business under section 1060.

(iii) Assume the fair market values of the assets and the amount of money transferred are as follows:

| Asset         | Fair market value |
|---------------|-------------------|
| <b>By A</b>   |                   |
| X             | \$400             |
| Y             | 400               |
| Z             | 200               |
| Total         | 1,000             |
| <b>By B</b>   |                   |
| D             | 40                |
| E             | 30                |
| F             | 30                |
| Cash (amount) | 1,000             |
|               | 1,100             |

(iv) Under paragraph (b)(4) of this section, for purposes of allocating consideration under paragraph (d) of this section, the like-kind assets exchanged and any money or other property which are treated as transferred in exchange for the like-kind property are excluded from the application of section 1060.

(v) Since assets X, Y, and Z and like-kind property, they are excluded from the application of the section 1060 allocation rules.

(vi) Since assets D, E, and F are like-kind property, they are excluded from the application of the section 1060 allocation rules. In addition, \$900 of the \$1,000 cash B gave to A for A's like-kind assets is treated as transferred in exchange for the like-kind property in order to equalize the fair market values of the like-kind assets. Therefore, \$900 of the cash is excluded from the application of the section 1060 allocation rules.

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

(ix) A, as transferee of assets D, E, and F, gave consideration only for assets to which section 1031 applies. Therefore, the allocation rules of section 1060 and paragraph (d) of this section are not applied to determine the bases of the assets A received.

(x) B, as transferor of assets D, E, and F, received consideration only for assets to which section 1031 applies. Therefore, the allocation rules of section 1060 do not apply in determining B's gain or loss.

(xi) B, as transferee of assets X, Y, and Z, gave A \$100 that must be allocated under section 1060 and paragraph (d) of this section. Since B received from A no Class I, II or III assets to which section 1060 applies, the \$100

consideration is allocated by B to Class IV assets (assets in the nature of goodwill and going concern value).

**Example (4).** (i) On January 1, 1989, S, a sole proprietor, sells to P a group of assets which constitutes a trade or business under paragraph (b)(2) of this section. S, who plans to retire immediately, also executes a covenant not to compete in P's favor. P pays S \$3,000 in cash and assumes \$1,000 in liabilities. Thus, the total consideration is \$4,000.

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

| Asset class | Asset                              | Fair market value |
|-------------|------------------------------------|-------------------|
| II          | Portfolio of marketable securities | \$500             |
|             | Total Class II                     | 500               |
| III         | Furniture and fixtures             | 800               |
|             | Building                           | 800               |
|             | Land                               | 200               |
|             | Equipment                          | 400               |
|             | Construction contract              | 200               |
|             | Covenant not to compete            | 900               |
|             | Total Class III                    | 3,300             |

(iii) P and S each allocate the consideration in the transaction among the assets transferred under paragraph (d) of this section in accordance with the agreed upon fair market values of the assets, so that \$500 is allocated to Class II assets, \$3,300 is allocated to Class III assets, and \$200 (\$4,000 total consideration less \$3,800 allocated to asset classes I, II and III) is allocated to the Class IV assets (assets in the nature of goodwill and going concern value).

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

**(h) Applicable asset acquisition reporting requirements—(1) In general.** The seller and the purchaser in an applicable asset acquisition each shall report information concerning the amount of consideration in the transaction and its allocation among the assets transferred. They also must report information concerning subsequent adjustments to consideration. For reporting requirements relating to the transfer of the partnership interest, see § 1.755-2T(c).

(2) *Time and manner of reporting*—(i) *In general.* The seller and the purchaser each must file asset acquisition statements on Form 8594 with their income tax returns or returns of income for the taxable year that includes the purchase date. This reporting requirement applies to asset acquisitions that occur in a taxable year for which the due date (including extensions of time) of the income tax return or return of income is on or after September 13, 1988.

(ii) *Additional reporting requirement.* If the amount of consideration allocated to any asset by the seller or the purchaser is increased (or decreased) after the taxable year that includes the purchase date, the seller or purchaser making the increase (or decrease) shall file a supplemental asset acquisition statement on Form 8594 with the income tax return or return of income for the taxable year in which the increase (or decrease) is properly taken into account. This reporting requirement applies to an increase (or decrease) in the amount of consideration allocated to any asset that is properly taken into account in a taxable year for which the due date (including extensions of time) of the income tax return or return of income is on or after September 13, 1988, even if the seller or purchaser may not have been required to file an asset acquisition statement for the taxable year that included the purchase date because of the effective date rule in paragraph (h)(2)(i) of this section.

(3) *Interim procedures*—(i) *Asset acquisition statement.* If Form 8594 has not been made available to the general public, an asset acquisition statement prepared by the seller or purchaser (as the case may be) shall be filed in lieu of Form 8594. This statement must:

(A) Be identified prominently as an "ASSET ACQUISITION STATEMENT UNDER SECTION 1060".

(B) State the name, address, and taxpayer identification number of the purchaser and the seller.

(C) State the purchase date.

(D) State the total amount of consideration for the assets.

(E) List the amount of Class I assets and list separately the aggregate fair market values of the Class II and the Class III assets.

(F) State whether the amount of Class I assets and the fair market values listed for asset Classes II and III were agreed upon in a sales contract or in some other written document signed by both parties.

(G) List for each of asset Classes I, II, III, and IV the aggregate amount of consideration allocated to the assets in the class.

(H) State whether the purchaser and seller provided for an allocation of the purchase price in the sales contract or in some other written document signed by both parties.

(I) List each Class III intangible amortizable asset, its fair market value, its useful life, and the amount of consideration allocated to it.

(J) State whether, in connection with the acquisition of the group of assets, the purchaser also obtained a license or a covenant not to compete or entered into an employment contract, a lease agreement, management contract, or similar arrangement with the seller (or managers, directors, owners, or employees of the seller). Specify the type of such agreement, and state the maximum amount of consideration (exclusive of interest) paid or to be paid pursuant to the agreement. The maximum amount of consideration paid (or to be paid) pursuant to the agreement is determined by assuming that any contingencies contemplated by the agreement are met or otherwise resolved in a manner that will maximize the consideration paid or to be paid. If the maximum amount of consideration cannot be determined as of the close of the taxable year in which the applicable asset acquisition occurs, then state the manner in which the amount of consideration is to be computed and the period over which it is to be paid.

(ii) *Supplemental asset acquisition statement.* If Form 8594 is not available to the general public, a supplemental asset acquisition statement prepared by the seller or purchaser (as the case may be) shall be filed in lieu of that form. This statement must:

(A) Be identified prominently as a "SUPPLEMENTAL ASSET ACQUISITION STATEMENT UNDER SECTION 1060 FOR [insert name of purchaser or seller]".

(B) Contain the information required under paragraph (h)(3)(i) (B), (C), and (D) of this section.

(C) List for each of asset Classes I, II, III, and IV the aggregate amount of consideration previously allocated to the assets in the class.

(D) State the amount of and the reason for the increase (or decrease) in the consideration.

(E) List for each of asset Classes I, II, III, and IV the redetermined aggregate amount of consideration allocated to the assets in each class.

(F) State the form number of the return and tax year or years for which the original and any supplemental asset acquisition statements were filed. (If an original or supplemental asset acquisition statement was not filed

because the reporting requirements were not in effect, so state.)

(iii) *Taxpayer identification number.* For provisions concerning the requesting and furnishing of identifying numbers, see section 6109 and the regulations thereunder.

**Part. 3.** Immediately after § 1.167(a)-5, there is added a new § 1.167(a)-5T to read as follows:

**§ 1.167(a)-5T Application of section 1060 to section 167 (temporary).**

In the case of an acquisition of a combination of depreciable and nondepreciable property for a lump sum in an applicable asset acquisition to which section 1060 applies, the basis for depreciation of the depreciable property cannot exceed the amount of consideration allocated to that property under section 1060 and § 1.1060-1T.

**§ 1.338(b)-3T [Amended]**

**Par. 4.** Section 1.338(b)-3T is amended as follows:

1. The second sentence in paragraph (g)(1)(ii) is amended by removing the words "may be redetermined as of the time" and by adding in their place the words "at the beginning of the day after the acquisition date shall (may, in the case of qualified stock purchases for which the acquisition date is before September 16, 1988 be redetermined)".

2. A new sentence is added after the second sentence of paragraph (g)(1)(ii). The new sentence reads as set forth below.

3. *Example (6) (v)* in paragraph (j) is revised to read as set forth below.

4. *Example (7) (iii)* in paragraph (j) is amended by adding the following new sentence at the end thereof: "(For purposes of this redetermination, only those circumstances that resulted in the decrease to AGUB are taken into account.)"

5. A new *Example (8)* is added to paragraph (j) to read as set forth below.

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

(g) *Special rule for allocation of increases (or decreases) in adjusted grossed-up basis to specific assets*—(1) *Patents and similar property.* \* \* \*

(ii) *Specific allocation.* \* \* \* (For purposes of this redetermination, only those circumstances that resulted in the increase (or decrease) to adjusted grossed-up basis are taken into account.) \* \* \*

(j) *Examples.* \* \* \*  
*Example (6).* \* \* \*

(v) Assume that on January 1, 1990, the fair market value of the secret process is redetermined to be \$52. (For purposes of this redetermination, only those circumstances that resulted in the increase to AGUB are taken into account.)

*Example (8).* The facts are the same as in Example (6) except that the intangible Class III asset is a patent instead of a secret process. The redetermination of the fair market value of the patent on January 1, 1990, is made without regard to the decrease in the remaining life of the patent because that is not a circumstance that resulted in the increase in AGUB.

**Par. 5.** Immediately after § 1.755-1, there is added a new § 1.755-2T to read as follows:

**§ 1.755-2T Coordination of sections 755 and 1060 (temporary).**

(a) *Coordination with section 1060—*  
(1) *In general.* If there is a basis adjustment to which this section applies—

(i) The fair market value of each item of partnership property must be determined under this section; and

(ii) The rules of § 1.755-1 must be applied using the values so determined.

(2) *Application of this section.* This section applies to any basis adjustment made under section 743(b) (relating to certain transfers of interests in a partnership) or section 732(d) (relating to certain partnership distributions), if assets of the partnership constitute a trade or business for purposes of section 1060(c).

(b) *Determining the fair market value of partnership property—*(1) *Property other than that in the nature of goodwill or going concern value.* For purposes of this section, the fair market value of each item of partnership property (other than property in the nature of goodwill or going concern value) shall be determined on the basis of all the facts and circumstances.

(2) *Property in the nature of goodwill or going concern value.* For purposes of paragraph (a) of this section, the fair market value of partnership property in the nature of goodwill or going concern value (referred to hereinafter in this section as goodwill) shall be deemed to equal the amount (not below zero) which if assigned to such property would result in a liquidating distribution to the transferee partner equal to such partner's basis for the transferred partnership interest immediately after the transfer (reduced by the amount, if any, of such basis that is attributable to partnership liabilities) if—

(i) All partnership property were sold

immediately after such transfer for an amount equal to the fair market value of such property (as determined under this section), and

(ii) The proceeds of that sale were, after the payment of all partnership liabilities (within the meaning of section 752 and the regulations thereunder), distributed to the partners.

(c) *Cross-reference.* See §§ 1.732-1(d)(3) and 1.743-1(b)(3) for rules requiring a transferee partner to attach a statement to such partner's return showing the computation of the special basis adjustment and the partnership properties to which the adjustment is allocated under section 755.

(d) *Effective date.* This section applies to any basis adjustment under section 743(b) made as a result of any transfer of a partnership interest made after May 6, 1986, unless such transfer is made pursuant to a binding contract that was in effect on May 6, 1986, and at all times thereafter prior to such transfer.

However, the requirements of this section shall be deemed to be satisfied with respect to any transfer made on or before July 15, 1988, if the amount of any basis adjustment under section 743(b) or section 732(d) made as a result of such transfer that is allocated to each item of partnership property (other than goodwill) does not exceed the amount equal to the difference between the transferee partner's share of the partnership basis of such property and such partner's share of the fair market value of such property.

(e) *Example.* The provisions of this section may be illustrated by the following example which assumes that the assets of the partnership constitute a trade or business under section 1060 and that the partnership has an election in effect under section 754 at the time of the sale of the partnership interest.

*Example (1).* A is a member of partnership ABC. ABC has three assets: a building with a fair market value of \$2,000,000, equipment with a fair market value of \$800,000 and goodwill. ABC has no liabilities. A has a one-third interest in partnership capital and profits. A sells his partnership interest to D for \$1,000,000. Under paragraph (b)(2) of this section, the fair market value of goodwill is deemed to equal the value that must be assigned to goodwill in order for the partnership to distribute \$1,000,000 to D if it were to sell all of its property at fair market value (in the case of goodwill, its assigned value) and completely liquidate after D's purchase of A's partnership interest. In order for D, a one-third partner, to receive a liquidating distribution of \$1,000,000, the partnership would have to sell all partnership property for a total of \$3,000,000. The fair market value of partnership property other

than goodwill is \$2,800,000. Therefore, goodwill must be assigned a value of \$200,000 (\$3,000,000 - \$2,800,000) in order for D to receive a liquidating distribution of \$1,000,000. Accordingly, D's section 743(b) basis adjustment must be allocated under § 1.755-1 using a fair market value of \$200,000 for goodwill.

**Par. 6.** Immediately after § 1.1031(d)-1, there is added a new § 1.1031(d)-1T to read as follows:

**§ 1.1031(d)-1T Coordination of section 1060 with section 1031 (temporary).**

If the properties exchanged under section 1031 are part of a group of assets which constitute a trade or business under section 1060, the like-kind property and other property or money which are treated as transferred in exchange for the like-kind property shall be excluded from the allocation rules of section 1060. However, section 1060 shall apply to property which is not like-kind property or other property or money which is treated as transferred in exchange for the like-kind property. For application of the section 1060 allocation rules to property which is not part of the like-kind exchange, see § 1.1060-1T (b), (d), and (g) *Example (3)*.

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

**Par. 7.** The authority citation for 26 CFR Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

**§ 602.101(c) [Amended]**

**Par. 8.** Section 602.101(c) is amended by inserting in the appropriate place in the table "1.1060-1T . . . 1545-1021".

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,  
Commissioner of Internal Revenue.

Approved: July 8, 1988.

O. Donaldson Chapoton,  
Assistant Secretary of the Treasury.  
[FR Doc. 88-16095 Filed 7-15-88; 8:45 am]  
BILLING CODE 4830-01-M

# Bureau of Alcohol, Tobacco and Firearms

## 27 CFR Part 4

[T.D. ATF-275; Ref: Notice No. 656]

### Alcoholic Content Statements on Labels of Wine, and the Related Type Size Requirements

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF) is amending the regulations in 27 CFR Part 4, by providing that statements of alcoholic content on labels of wine may appear in an abbreviated form, and in a form other than that currently prescribed. The Bureau is also increasing the maximum allowable type size for such alcoholic content statements from two millimeters to three millimeters. ATF believes the amended regulations will facilitate trade between domestic and foreign markets, particularly with the European Economic Community (EEC), by promoting harmonization of labeling requirements. In addition, the amended regulations will continue to provide the consumer with adequate information as to the alcoholic content of the wine product.

**EFFECTIVE DATE:** August 17, 1988.

#### FOR FURTHER INFORMATION CONTACT:

James P. Ficareta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202-566-7626).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 5 (e) and (f) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205 (e) and (f), provides, in general terms, that wine labeling and advertising shall not contain any statement which is false, deceptive, misleading, or is likely to mislead the consumer regarding the product. In addition, section 5 (e) and (f) authorizes the Secretary to prescribe such regulations as will provide the consumer with adequate information as to the identity and quality of the product except that, as specified in section 5(e), statements of alcoholic content on labels of wine are required only for products containing more than 14 percent of alcohol by volume. Section 5(f) prohibits statements of, or statements likely to be considered as

statements of, alcoholic content of wines in advertising.

Regulations which implement the provisions of section 5 (e) and (f), as they relate to wine, are set forth in Title 27, Code of Federal Regulations (CFR), Part 4. Requirements for statements of alcoholic content on wine labels are prescribed in § 4.36(b). In essence, if a specific alcoholic content is to be disclosed, it shall appear as "Alcohol \_\_\_\_% by volume." If a range is to be utilized, the alcoholic content statement shall read as "Alcohol \_\_\_\_% to \_\_\_\_% by volume."

The size of type requirements for the alcoholic content statements mentioned above are prescribed in § 4.38(b). Specifically, § 4.38(b)(3) reads as follows:

Alcoholic content statements shall not appear in script, type, or printing larger or more conspicuous than 2 millimeters nor smaller than 1 millimeter on labels of containers having a capacity of 5 liters or less and shall not be set off with a border or otherwise accentuated.

#### Petition

ATF received a petition, dated January 29, 1988, filed by the Wine Institute, requesting that § 4.36(b) and 4.38(b) be amended. The Wine Institute is an industry association of California wineries representing 538 California winery members.

Specifically, the petitioners requested that § 4.36(b)(1) be amended to permit the alcoholic content statement to appear in an abbreviated form as "Alc. \_\_\_\_% vol," as an alternative to "Alcohol \_\_\_\_% by volume." Similarly, they requested that § 4.36(b)(2) be amended to permit the alcoholic content statement, when given as a range, to appear as "Alc. \_\_\_\_% to \_\_\_\_% vol," as an alternative to "Alcohol \_\_\_\_% to \_\_\_\_% by volume."

The Wine Institute also requested that § 4.38(b)(3) be amended, increasing the maximum allowable type size for alcoholic content statements from two millimeters to three millimeters.

According to the petitioners, the European Economic Community (EEC), which presently includes 12 Member States, has established regulations that make the disclosure of alcoholic content on wine labels mandatory as of May 1, 1988, and that prescribe the form, and type size in which the alcoholic content statements may be made on wine labels.

Under the new EEC regulations, the alcoholic content figure must be followed by "% vol" and may be preceded by, among other alternatives, the abbreviation "alc." The petitioners noted that "[T]his requirement renders wine containers labeled in compliance

with BATF regulations unacceptable for shipment to the EEC without relabeling. The necessity of relabeling would be obviated by amending the regulation [§ 4.36(b)] to accommodate EEC language."

Regarding the type size of alcoholic content statements, the EEC now requires such statements to appear in printing no smaller than three millimeters. Current U.S. regulations (§ 4.38(b)) require that the alcoholic content statement appear in printing *not larger* than two millimeters. Again, wine containers labeled in compliance with U.S. regulations would be unacceptable for shipment to the EEC, and would have to be relabeled.

The petitioners stated that adoption of their proposed amendments would result in cost savings to U.S. wineries, since wines for export would not have to be relabeled in order to comply with EEC requirements. Further, wineries would not have to design new labels solely for products intended for sale in the EEC.

Subsequent to the filing of the Wine Institute petition, the Bureau received a letter (dated February 23, 1988) on behalf of the National Association of Beverage Importers, Inc. (NABI), supporting the Wine Institute petition. NABI is an industry association representing more than 100 member companies that import over 90% of all alcoholic beverages brought into the U.S.

#### Notice No. 656

Consequently, ATF published a notice in the *Federal Register* (Notice No. 656, March 25, 1988; 53 FR 9775), proposing to amend § 4.36(b) by providing that the alcoholic content statement may appear in an abbreviated form. However, the words "alcohol" and/or "volume," if abbreviated, shall be shown as "alc." (alc) and/or "vol." (vol), respectively. ATF believes that consumers can easily recognize the words that these abbreviations represent.

The Bureau also proposed to amend § 4.36(b) to provide for the alcoholic content to be disclosed on the label in a form other than that currently prescribed. Examples of such statements included, "\_\_\_\_% alcohol by volume," "\_\_\_\_% alcohol/volume," "alcohol \_\_\_\_% volume," and "alcohol \_\_\_\_% to \_\_\_\_% volume." Again, if the words "alcohol" and/or "volume" are to be abbreviated, they shall be shown as "alc." (alc) and/or "vol." (vol), respectively.

Finally, the Bureau proposed to amend § 4.38(b)(3), by raising the maximum allowable type size for statements of alcoholic content from two millimeters

to three millimeters. The comment period for Notice No. 656 closed on April 25, 1988.

#### Analysis of Comments

In response to Notice No. 656, the Bureau received five comments. Four of the five comments supported the proposals made in the notice, and were submitted by—the French Federation des Exportateurs de Vins et de Spiritueux (FEVS), a private organization of more than 500 members representing all aspects of the French wine and spirits industry; the Federation Internationale des Industries et du Commerce en Gros des Vins Spiritueux, Eaux-de-vie et Liqueurs (FIVS), on behalf of its members (56 associations in 24 countries); the Embassy of the Federal Republic of Germany, on behalf of the Republic, and; Heublein, Inc.

The opposing comment was submitted by the Center for Science in the Public Interest (CSPI). Of the three proposals made in Notice No. 656, CSPI objected to the one which would permit the alcoholic content statement to appear in an abbreviated form. Specifically, CSPI opposed the Bureau's proposal to permit the abbreviation of the word "alcohol" as "alc." (alc). In essence, CSPI contended that this proposal "makes the [alcoholic content] disclosure inherently smaller, less conspicuous, and more likely to be overlooked altogether" by consumers. Furthermore, CSPI stated that consumers may not be able to recognize the abbreviated form, and may be confused by it.

In regard to CSPI's first concern, the Bureau does not believe that permitting the statement of alcoholic content to appear in an abbreviated form would result in its being "overlooked" by consumers. Under the labeling regulations (§ 4.32), statements of alcoholic content, including the use of the designation "table" (light) wine, are considered to be mandatory information and, as such, must comply with the requirements of § 4.38 as to legibility, size of type, etc. In addition, the regulations in § 4.32(a)(3) specify that statements of alcoholic content must appear on the brand (front) label. Thus, whether the word "alcohol" in the alcoholic content statement is spelled out, or abbreviated, the regulations require it to appear on the front label, legibly and conspicuously.

As to CSPI's second concern, the Bureau is aware of the possibility that consumers might not be able to easily recognize the abbreviated form of the word "alcohol" depending, however, on how the word is abbreviated. For example, although "al." is recognized as an acceptable abbreviation for the word

"alcohol," the Bureau believes that consumers may be confused by it. Thus, as indicated in Notice No. 656, when the Bureau has permitted the alcoholic content of the wine to be disclosed on the label in an abbreviated form, only the abbreviations "alc." (alc) and "vol." (vol) were acceptable. This qualification was also included in the Bureau's notice of proposed rulemaking.

Therefore, based on the above, the Bureau is adopting the regulations as proposed in the notice of proposed rulemaking.

#### Executive Order 12291

In compliance with Executive Order 12291, 46 FR 13193 (1981), ATF has determined that this regulation 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 geographic regions; or
- (c) 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.

#### Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects 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 final rule will not have a significant economic impact on a substantial number of small entities.

#### Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1512-0482. The estimated average burden associated with the collection of information in this final rule is 1 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Information Programs Branch, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for ATF.

#### Drafting Information

The author of this document is James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

#### List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

#### Authority and Issuance

27 CFR Part 4—Labeling and Advertising of Wine is amended as follows:

#### PART 4—[AMENDED]

Paragraph 1. The authority citation for 27 CFR Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.36 is amended by revising the first sentence of paragraphs (b)(1) and (b)(2) as follows:

#### § 4.36 Alcoholic content.

(b) \* \* \*

(1) "Alcohol \_\_\_\_ % by volume," or similar appropriate phrase; *Provided*, that if the word "alcohol" and/or "volume" are abbreviated, they shall be shown as "alc." (alc) and/or "vol." (vol), respectively. \* \* \*

(2) "Alcohol \_\_\_\_ % to \_\_\_\_ % by volume," or similar appropriate phrase; *Provided*, that if the word "alcohol" and/or "volume" are abbreviated, they shall be shown as "alc." (alc) and/or "vol." (vol), respectively. \* \* \*

Par. 3 Section 4.38(b)(3) is revised to read as follows:

#### § 4.38 General requirements.

(b) \* \* \*

(3) Alcoholic content statements shall not appear in script, type, or printing larger or more conspicuous than 3 millimeters nor smaller than 1 millimeter on labels of containers having a capacity of 5 liters or less and shall not

be set off with a border or otherwise accentuated.

Signed: May 26, 1988.

Stephen E. Higgins,  
Director.

Approved: June 23, 1988.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 88-16084 Filed 7-15-88; 8:45 am]

BILLING CODE 4810-31-M

## VETERANS ADMINISTRATION

### 38 CFR Part 36

#### Loan Guaranty; Collection of Late Fees and Interest Penalties on VA Funding Fees

**AGENCY:** Veterans Administration.

**ACTION:** Final regulatory amendments.

**SUMMARY:** The Veterans Administration (VA) is amending its loan guaranty regulations (38 CFR Part 36) to provide for timely collection and deposit of loan guaranty funding fees. These regulatory amendments enable the VA to bring its loan guaranty program into conformance with other Federal loan programs.

**EFFECTIVE DATE:** These regulatory amendments are effective August 17, 1988.

**FOR FURTHER INFORMATION CONTACT:**

Mr. George Moerman, Assistant Director for Loan Policy (264), Loan Guaranty Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW, Washington, DC 20420 (202) 233-3042.

**SUPPLEMENTARY INFORMATION:** On October 13, 1987, the VA published in the *Federal Register* (52 FR 37973) a proposed regulatory amendment to 38 CFR 36.4254(d) and 38 CFR 36.4312(e). Public comments were requested on a proposal to provide for timely collection and deposit of the VA loan guaranty funding fee. A 15-day deadline from date of loan closing is established with penalty and interest payments assessed for late payment. Please refer to the October 15, 1987, *Federal Register* for a complete discussion of the proposed regulations.

The VA received one comment on the proposal. The commenter expressed appreciation for agency efforts to follow existing government policy as exemplified by the conduct of other agencies and believed that such consistency would eliminate confusion and facilitate lender understanding of VA's requirements. The commenter is concerned that adequate flexibility in assessing the late charges be exercised

in adjudicating individual problems in an equitable manner in light of recent changes to the funding fee program. The VA shares these concerns; necessary precautions and administrative flexibility will be exercised to protect lenders from late charges for errors that are beyond the lender's control.

The Administrator hereby certifies that these final regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 and 612. The provision concerning the assessment of late fees and interest against lenders will affect lenders only in those cases in which the lender fails to take timely action to deposit the funding fee. To prevent this from occurring, prudent loan guaranty practice dictates that the VA assess late fees and interest. Assessment of these late fees and interest will also assure that the VA Loan Guaranty Program is consistent with similar Federal loan programs. As only a relatively small percentage of VA guaranteed loans are held by small entities, these final regulatory amendments will not significantly affect small entities. Pursuant to 5 U.S.C. 605(b), these final regulatory amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Administrator has also determined that these final regulatory amendments are not a "major rule" within the meaning of Executive Order 12291. They will not have an annual effect on the economy of \$100 million or more, and will not cause a major increase in costs or prices for consumers or individual industries; nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program Numbers are 64.114 and 64.119.

#### List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—Housing and community development, Manufactured homes, Veterans.

These amendments are made final under the authority granted the Administrator by U.S.C. 210(c), 1820 and 1829 of title 38.

Approved: June 16, 1988.

Thomas K. Turnage,  
Administrator.

38 CFR Part 36, Loan Guaranty, is amended as follows:

#### PART 36—[AMENDED]

1. In § 36.4232, paragraph (e) is revised to read as follows:

#### § 36.4232 Allowable fees and charges—manufactured home unit.

(e)(1) Subject to the limitations set out in paragraphs (e)(3) and (e)(4) of this section, a fee of 1 percent of the total loan amount must be paid to the Administrator before a manufactured home unit loan will be eligible for guarantee. All or part of the fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S.C. 1829(a))

(2) The lender is required to pay to the Administrator the fee described in paragraph (e)(1) of this section within 15 days after loan closing. Any lender closing a loan, subject to the limitations set out in paragraphs (e)(3) and (e)(4) of this section, who fails to submit timely payment of this fee will be subject to a late charge equal to 4 percent of the total fee due. If payment of the 1 percent fee is more than 30 days after loan closing, interest will be assessed at a rate set in conformity with the Department of Treasury's Fiscal Requirements Manual. This interest charge is in addition to the 4 percent late charge, but the late charge is not included in the amount on which interest is computed. This interest charge is to be calculated on a daily basis beginning on the date of closing, although the interest will be assessed only on funding fee payments received more than 30 days after closing.

(Authority: 38 U.S.C. 210(c))

(3) The fee described in paragraph (e)(1) of this section shall not be collected from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) nor from a surviving spouse described in section 1829(b) of title 38, United States Code.

(Authority: 38 U.S.C. 1829(b))

(4) Collection of the loan fee in this section does not apply to loans closed prior to August 17, 1984, between October 1 and October 15, 1987, inclusive, between November 16 and December 20, 1987, inclusive, nor to loans closed after September 30, 1989.

(Authority: 38 U.S.C. 1829(c))

2. In § 36.4254 paragraph (d) is revised to read as follows:

**§ 36.4254 Fees and charges.**

(d)(1) Notwithstanding the provisions of paragraph (c) of this section and subject to the limitations set out in paragraphs (d)(3) and (d)(4) of this section, a fee or 1 percent of the total loan amount must be paid to the Administrator before a combination manufactured home and lot loan (or a loan to purchase a lot upon which a manufactured home owned by the veteran will be placed) will be eligible for guaranty. All or part of such fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S.C. 1829(a))

(2) The lender is required to pay to the Administrator the fee described in paragraph (d)(1) of this section within 15 days after loan closing. Any lender closing a loan, subject to the limitations set out in subparagraphs (d)(3) and (d)(4) of this paragraph, who fails to submit timely payment of this fee will be subject to a late charge equal to 4 percent of the total fee due. If payment of the 1 percent fee is made more than 30 days after loan closing, interest will be assessed at a rate set in conformity with the Department of Treasury's Fiscal Requirements Manual. This interest charge is in addition to the 4 percent late charge, but the late charge is not included in the amount on which interest is computed. This interest charge is to be calculated on a daily basis beginning on the date of closing, although the interest will be assessed only on funding fee payments received more than 30 days after closing.

(Authority: 38 U.S.C. 210(c))

(3) The fee described in paragraph (d)(1) of this section shall not be collected from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) nor from a surviving spouse described in

section 1829(b) of title 38, United States Code.

(Authority: 38 U.S.C. 1829(b))

(4) Collection of the loan fee in this paragraph does not apply to loans closed prior to August 17, 1984, between October 1, and October 15, 1987, inclusive, between November 16 and December 20, 1987, inclusive, nor to loans closed after September 30, 1989.

(Authority: 38 U.S.C. 1829(c))

3. In § 36.4312, paragraph (e) is revised to read as follows:

**§ 36.4312 Charges and fees.**

(e)(1) Subject to the limitations set out in paragraphs (e)(3) and (e)(4) of this section, a fee of 1 percent of the total loan amount must be paid to the Administrator before a home or condominium loan will be eligible for guaranty or insurance. All or part of such fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S.C. 1829(a))

(2) The lender is required to pay to the Administrator the fee described in paragraph (e)(1) of this section within 15 days after loan closing. Any lender closing a loan, subject to the limitations set out in paragraphs (e)(3) and (e)(4) of this section, who fails to submit timely payment of this fee will be subject to a late charge equal to 4 percent of the total fee due. If payment of the 1 percent fee is made more than 30 days after loan closing, interest will be assessed at a rate set in conformity with the Department of Treasury's Fiscal Requirement Manual. This interest charge is in addition to the 4 percent late charge, but the late charge is not included in the amount on which interest is computed. This interest charge is to be calculated on a daily basis beginning on the date of closing, although the interest will be assessed only on funding fee payments received more than 30 days after closing.

(Authority: 38 U.S.C. 210(c))

(3) The fee described in paragraph (d)(1) of this section shall not be collected from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) nor from a surviving spouse described in

section 1829(b) of title 38, United States Code.

(Authority: 38 U.S.C. 1829(b))

(4) Collection of the loan fee in this paragraph does not apply to loans closed prior to August 17, 1984, between October 1, and October 15, 1987, inclusive, between November 16 and December 20, 1987, inclusive, nor to loans closed after September 30, 1989.

(Authority: 38 U.S.C. 1829(c))

[FR Doc. 88-16016 Filed 7-15-88; 8:45 am]

BILLING CODE 8320-01-M

**38 CFR Part 36**

**Loan Guaranty; Increase in the Maximum Allowable Amount the VA Will Reimburse a Loan Holder for Legal Services Incurred in Terminating a Loan**

**AGENCY:** Veterans Administration.

**ACTION:** Final Regulatory Amendment.

**SUMMARY:** The Veterans Administration (VA) is amending its loan guaranty regulations (38 CFR Part 36) by increasing from \$350 to \$700 the maximum allowable amount the VA will reimburse a loan holder for the cost of trustee's fees and legal services incurred by the holder in terminating a VA guaranteed home loan. The amendment is the result of the increased cost of legal services. It will allow the VA to reimburse a loan holder for the cost of, or a greater portion of the cost of, retaining the experienced legal counsel needed for the timely termination of a VA guaranteed home loan.

**EFFECTIVE DATE:** August 17, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Raymond L. Brodie, Assistant Director for Loan Management (261), Loan Guaranty Service, Department of Veterans Benefits, 810 Vermont Avenue, NW., Washington, DC, 20420, (202) 233-3668.

**SUPPLEMENTARY INFORMATION:** On January 19, 1988, the VA published in the Federal Register (53 FR 1378) a proposed regulatory amendment to 38 CFR 4276(b) and 36.4313(b). Public comments were requested on a proposal to increase from \$350 to \$700 the maximum allowable amount the VA will reimburse a loan holder for the cost of trustee's fees and legal services incurred by the holder in terminating a VA-guaranteed loan. Please refer to the January 19, 1988, Federal Register for a complete discussion of the proposed amendment.

The VA received five comments on the proposal. Four commenters favored

it while the fifth suggested that the VA should consider a varying schedule of allowable fees to allow for amounts of compensation which are customary in the different states. He stated that while the proposed increase was a step in the right direction, \$700 could be insufficient to compensate the lender in full for the attorney's fees incurred in judicial foreclosures.

The VA's position is that the increase in the maximum allowable amount will allow the VA to reimburse a loan holder for the cost of, or a greater portion of the cost of, retaining counsel needed for terminating a VA-guaranteed loan. The VA's reimbursement of the loan holder is not intended to completely cover the cost of liquidating the property in every case. The amount paid by a lender to its legal counsel is not addressed by VA regulation and is therefore left solely to the discretion of the lender and its counsel.

The Administrator hereby certifies that this final regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Raising the maximum the VA can reimburse loan holders will enable holders to more easily retain experienced legal counsel to foreclose loans. However, it will not have a significant economic impact because only actual costs paid may be reimbursed, and holders do not ordinarily incur costs in excess of the reimbursable amount. Also, holders of most VA guaranteed loans are not small entities. Pursuant to 5 U.S.C. 605(b), this proposed regulatory amendment is, therefore, exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

The Administrator has also determined that this final regulatory amendment is not a "major rule" within the meaning of Executive Order 12291, entitled Federal Regulation. It will not have an annual effect on the economy of \$100 million or more; it will not cause a major increase in costs or prices for consumers or individual industries; and it will not have 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.

The Catalog of Federal Domestic Assistance Program Numbers are 64.114 and 64.119.

#### List of Subjects in 38 CFR Part 36

Condominiums, Handicapped,  
Housing loan programs—housing and

community development, Manufactured homes, Veterans.

This amendment is made final under the authority granted the Administrator by sections 210(c) and 1820(a) of title 38, United States Code.

Approved: June 16, 1988.

Thomas K. Turnage,  
Administrator.

38 CFR Part 36, Loan Guaranty, is amended as follows:

#### PART 36—[AMENDED]

##### § 36.4276 [Amended]

1. In § 36.4276(b) remove the words "\$350" wherever they appear and insert the words "\$700" in their place.

##### § 36.4313 [Amended]

2. In § 36.4313(b) remove the words "\$350" wherever they appear and insert the words "\$700" in their place.

[FR Doc. 88-16017 Filed 7-15-88; 8:45 am]

BILLING CODE 8320-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 84-281; FCC 88-135]

#### Radio Broadcasting Services; Foreign Clear Channels

**AGENCY:** Federal Communications Commission.

**ACTION:** Second Report and Order; Reaffirmation of Rules.

**SUMMARY:** In response to the *Further Notice of Proposed Rule Making*, the Commission adopted the *Second Report and Order* reaffirming rules establishing new full-time AM stations on the foreign Class I-A channels. These rules place important emphasis on technical criteria, but do not incorporate non-technical acceptance criteria on applications for new full-time stations on the foreign clears. The Commission also directed the staff to resume the processing of applications for AM stations on the 14 foreign clear channels that had been suspended pending the completion of this proceeding. This action provides the best approach to provide for the filing of applications by any interested party, including minorities and noncommercial applicants. This can bring needed services promptly where there is interest in doing so and the allocation situation permits.

**FOR FURTHER INFORMATION CONTACT:**  
Freda Lippert Thyden, Policy and Rules

Division, Mass Media Bureau, (202) 254-3394.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Second Report and Order*, in MM Docket No. 84-281, FCC 88-135, adopted April 6, 1988 and released June 8, 1988.

The full text of this Commission document 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 the *Second Report and Order* may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street NW., Washington, DC 20037.

#### Summary of Second Report and Order

1. For many years, nighttime use of 14 frequencies designated as Canadian, Mexican and Bahamian Class I-A clear channels had been precluded in large parts of the United States by international agreements. These agreements imposed limitations on the nighttime use of these channels that far exceeded that necessary to avoid interference. However, new agreements which had been or were being negotiated in 1984 were based solely on protection from interference. As a result, it became possible to use these frequencies more extensively at night in the United States. Consequently, the Commission sought comment on their most effective use. Initially, the Commission proposed rules similar to those then employed for the 25 U.S. Class I-A clear channels which required applicants to meet both technical and non-technical acceptance criteria.

2. The Commission conducted a number of intensive and wide ranging studies to determine the pattern of use of the foreign clear channels and the degrees to which they might be available for the establishment of new full-time stations. These studies indicated that the majority of opportunities to establish new stations would occur in unserved or underserved areas. Therefore, the Commission concluded in its *Report and Order* that the need to impose new service-based criteria designed to encourage filings in such areas no longer existed. Further, since the ownership-based non-technical acceptance criteria were designed as an exception to the service based criteria, the Commission concluded there was no need to provide an alternative basis for accepting applications based on the nature of the applicant.

3. In the *Report and Order* (50 FR 24515, June 11, 1985) the Commission

also adopted rules permitting most of the daytime-only stations on the foreign clear channels to operate at night. Because it did not want to preclude opportunities that might be available to establish new full-time stations on these channels, it provided an initial five year period during which interference protection would not have to be afforded the nighttime operations of the former daytime-only stations.

4. The National Black Media Coalition (NBMC) sought judicial review of the *Report and Order*. The Court of Appeals agreed with NBMC that the Commission's action did not fully comply with the requirements of the Administrative Procedure Act. Additionally, the court held that the Commission's action had to be set aside because unpublished data was used in reaching the conclusions in the *Report and Order*, and it remanded the matter to the Commission. Since neither NBMC nor any other party had sought review of the portion of the decision granting nighttime operation to the daytime-only stations of the foreign clear channels, this aspect of the proceeding is no longer before the Commission.

5. Pursuant to the Court of Appeals' remand, the Commission issued the *Further Notice of Proposed Rule Making* (52 FR 31432, Aug. 20, 1987) reopening this proceeding to determine what policies with respect to these newly available channels we should adopt. Interested parties were invited to comment on a proposal to accept new applications to use the newly available foreign clear channels based solely on technical criteria (i.e. based on interference considerations) and thereby dispense with the imposition of non-technical acceptance criteria.

6. To ensure a solid technical foundation for its recommendation, the Commission performed new and more extensive engineering studies regarding the current pattern of use of these frequencies, and it attached them to the *Further Notice*. These studies further supported the proposition that opportunities to establish new full-time stations on these channels are limited. Interested parties were asked to comment on these studies.

7. After a careful review of the record in this proceeding, we have decided not to adopt rules which would impose non-technical acceptance criteria on applications for new full time stations on the newly available foreign Class I-A

clear channels. Since our studies show that the vast majority of opportunities for establishing new full time stations already exists in areas with limited or no service, there is no compelling justification for the imposition of service based criteria to encourage applicants to apply in these unserved or underserved areas.

8. CPB has provided a list of markets which it says lacks effective public radio service and where new station allegedly could be established. We have examined each of these markets. Our studies show that in the majority of cases it would not be possible to locate a new AM station in the markets identified in CPB's list. We have also carefully reviewed NPR's concerns regarding the maps relied on by the Commission in performing the studies and, in particular, its objections to the scale of the maps and the handwork done in their preparation. The maps were not intended to reflect each and every technical parameter that could possibly relate to where new stations could be located nor were they designed to take into account certain specific technical factors which must be borne in mind by individual applicants in determining whether a station is feasible in a given location. First, any proposed station would have to be located at some distance from the cross-hatched areas on the map so that no prohibited overlap with existing station contours would occur. Second, there are important nighttime restrictions which it was not possible to depict. Actual locations could not be used because there was no way to know where a party might desire to locate a new station.

9. In terms of the studies themselves, we continue to believe they accurately reflect the pattern of use on these channels. It is true that using measured conductivity values, where they are available, could give a more precise picture of an individual station's coverage. However, such data do not exist in most cases. It was appropriate to rely on Figure M3 in making the studies, and the possible up-dating of Figure M3 some years hence is not a basis for questioning the validity of the Commission's existing methodology. As for NPR's criticisms of the maps involved, the scale of the maps used by the Commission provided sufficiently reliable results. Furthermore, even if a particular applicant through individual

measurement analyses might be able to locate a station in an area that is already congested, this hardly constitutes sufficient reason for the adoption of non-technical criteria across-the-board.

10. Our review of the situation affecting these frequencies convinces us that there are relatively few opportunities to establish new full-time stations and that most of these opportunities are outside the more populated areas. While there may be some exceptions, that fact does not warrant the imposition of non-technical acceptance criteria. Similarly, there is no reason to provide an alternative basis for filings if applicants already had qualified under the principal technical non-interference criteria.

11. It is important to emphasize that the absence of the non-technical acceptance criteria will not limit minorities and noncommercial broadcasters from applying for new stations in either the few urban areas capable of providing an available frequency or in the unserved and underserved areas. Because of the abundant availability of spectrum in most of these areas, minorities and noncommercial applicants are likely to face little competition. On the other hand, applying the ownership-based criteria without applying the service-based criteria would, in effect, limit the acceptance of applications for use of the foreign clear channels exclusively to minority and non-commercial applicants. As a practical matter, imposing non-technical acceptance criteria may result in frequencies lying fallow and, consequently, in the public being deprived of new AM radio service in the few areas where full time opportunities exist.

#### Authority Citation

12. This action reaffirms 47 CFR Secs. 73.21, 73.24, 73.25, 73.51, 73.99, 73.182, 73.183, and 73.3571.

13. Authority for the action taken is contained in §§ 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303.

#### List of Subjects in 47 CFR Part 73

##### Radio broadcasting.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-16092 Filed 7-15-88; 8:45 am]

BILLING CODE 6712-01-M

# Proposed Rules

Federal Register

Vol. 53, No. 137

Monday, July 18, 1988

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Ch. 1

[Summary Notice No. PR-88-6]

#### Petition for Rulemaking; Summary

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

**ACTION:** Extension of comment period on petition for rulemaking.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of a petition requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations. The

FAA published the petition in the Federal Register on June 2, 1988 (53 FR 20124), with the comment period closing August 1, 1988. Based on a request for extension of the comment period, the FAA is extending the comment period for an additional 30 days.

**DATE:** Comments on the petition must identify the petition docket number, 25591, and must be received on or before: August 31, 1988.

**ADDRESSES:** Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. 25591, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

**SUPPLEMENTARY INFORMATION:** The FAA has received a request for extension of

the comment period on the subject proposal from the Experimental Aircraft Association (EAA). In its request, the EAA states that the annual EAA convention, held in Oshkosh, Wisconsin, hosts a great number of ultralight owners, operator and manufacturers attending its annual convention. This year between July 29 and August 5, a forum will be planned for those owners, operators, manufacturers and interested parties of ultralight aircraft attending the EAA convention, in order to provide them with an opportunity to evaluate these proposed regulations. The EAA asserts that a forum of this type will place the public in a better position to understand the scope of the proposal and also to evaluate their position relevant to it. The extended comment period will give the public an opportunity to prepare meaningful comments and for the FAA to receive knowledgeable and informed input.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 12, 1988.  
Denise D. Hall,  
Manager, Program Management Staff.

#### PETITIONS FOR RULEMAKING

| Docket No. | Petitioner                                | Regulations affected | Description of petition  |
|------------|---|----------------------|--|
| 25591      | United States Ultralight Association, Inc | Part 103             | To amend the regulations for powered, fixed-wing ultralight vehicles in order to modify the definition; to establish mandatory airman certification, vehicle registration and marking; and, in the case of two-place ultralights, to establish standards for pilot's knowledge, experience, medical fitness; and for the airworthiness of the vehicle. |

[FR Doc. 88-16030 Filed 7-15-88; 8:45 am]  
BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 88-CE-17-AD]

#### Airworthiness Directives; Cessna Models T210L, T210M, T210N, P210N and T303 Airplanes

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

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This Notice proposes to adopt a new Airworthiness Directive (AD) applicable to certain Cessna

Models T210L, T210M, T210N, P210N and T303 airplanes that are equipped with Slick Aircraft Products Division, Unison Industries, Inc., Model 6220 or 6224 pressurized magnetos. The proposed AD would require repetitive inspections and pre-flight checks to detect magneto moisture contamination. This action is prompted by numerous reports of contaminated magnetos which could result in engine stoppage and forced landing of the airplane. The inspections and checks specified in this proposal would preclude this situation from occurring.

**DATE:** Comments must be received on or before August 17, 1988.

**ADDRESSES:** Slick Aircraft Products Division, Unison Industries, Inc., Service

Bulletin SB 1-88, dated April 1, 1988, and 4200/6200 Series Aircraft Magnetos Maintenance and Overhaul Instructions, Form L-1037-C-2, dated October, 1985, applicable to this AD may be obtained from Slick Aircraft Products Division, Unison Industries, Inc., 530 Blackhawk Park Avenue, Rockford, Illinois 61108, telephone (815) 965-4700, or may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-17-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location

between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

**FOR FURTHER INFORMATION CONTACT:** Mr. Melvin Taylor, Chicago Aircraft Certification Office, ACE-115C, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7134.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

**Availability of NPRMs**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 88-CE-17-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**Discussion**

The FAA has received numerous reports of internal moisture contamination of Slick Aircraft Products Division, Unison Industries, Inc., Models 6220 and 6224 pressurized magnetos used on Cessna Models T210L, T210M, T210N, P210N and T303 airplanes. Evidence of moisture is shown by corrosion of some internal metal components, indications of electrical arcing or tracking near the center of the distributor block, decomposition of non-metallic components indicated a gummy or powdery substances, and/or traces of water pooling.

Two accidents have been reported in which dual magneto failure occurred resulting in forced landings. Examination of these magnetos revealed

long term deterioration with evidence of moisture contamination. It was also revealed that these magnetos had not been inspected per the airplane manufacturer's maintenance instructions, which require several internal magneto inspections before the 500 hour inspection and/or overhaul interval recommended by Slick Aircraft Products Division. Of the airplanes involved, one had flown through rain at the time of failure and the other had previous flights in rain conditions.

The Models 6220 and 6224 pressurized magnetos are identical in design to other approved models except for changes necessary for pressurization. Several thousand of these other non-pressurized magnetos have been in service with no reported moisture contamination problems. All of the reported incidents of internal magneto moisture contamination have occurred on turbocharged engines such as are used on Cessna Models T210L, T210M, T210N, P210N and T303 airplanes. Approximately 50% of these reports occurred after the recommended 500 hour inspection and/or overhaul interval. Nearly 30% occurred between 400 and 500 hours. Long term deterioration was reported in most of these reports, indicating a lack of internal magneto inspections.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being proposed requiring initial and repetitive inspections for evidence of moisture contamination, and repair as necessary on Cessna Models T210L, T210M, T210N, P210N and T303 airplanes equipped with Slick Aircraft Products Division, Unison Industries, Inc., Models 6220 or 6224 pressurized magnetos. The FAA has determined there are approximately 3,500 airplanes affected by the proposed AD. The maximum annual cost per affected airplane is estimated to be \$160. The annual total estimated cost of this inspection for the fleet is \$280,000. Few, if any, small entities are expected to own more than one affected airplane.

The regulations set forth in this notice would be promulgated pursuant to 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 regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the

provisions of Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the 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 the following new AD:

**Cessna:** Applies to Models T210L, T210M, T210N, P210N and T303 (all serial numbers) airplanes, certified in any category, that are equipped with Slick Aircraft Products Division, Unison Industries, Inc. Model 6220 or 6224 pressurized magnetos.

**Compliance:** Required as indicated, unless already accomplished.

To preclude magneto moisture contamination, which could result in dual magneto failure, engine stoppage, and forced landing, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, accomplish the following:

(1) Revise the "NORMAL PROCEDURES" section of the Airplane Flight Manual (AFM) or the airplane Pilot's Operating Handbook (POH), by inserting the AFM/POH Supplement, dated April 1, 1988, provided in Appendix 1 of the AD.

(2) Fabricate and install on the instrument panel in clear view of the pilot a placard with letters not less than 1/10 inches in height with the following wording:

"PRIOR TO EACH FLIGHT, CONDUCT MAGNETO CHECKS IN ACCORDANCE WITH AFM/POH SUPPLEMENT DATED APRIL 1, 1988."

and operate the airplane accordingly.

(3) The requirements of paragraph (a)(2) of this AD may be accomplished by the owner/operator of any airplane owned or operated

by him. The person accomplishing these actions must make the appropriate airplane maintenance record entry per FAR 43.9 and 91.173.

(b) Within the next 50 hours time-in-service after the effective date of this AD, inspect the airplanes in accordance with paragraph III of Slick Aircraft Products Division Service Bulletin SB 1-88, dated April 1, 1988, and:

(1) For airplanes operating for compensation or hire, at intervals not to exceed 100 hours TIS after the initial inspection, inspect the Model 6220 or 6224, as applicable, pressurized magnetos in accordance with Paragraph III of Slick Aircraft Products Division Service Bulletin SB 1-88, dated April 1, 1988. Prior to further flight repair any defects found in accordance with the instructions contained in the above referenced service bulletin.

(2) For airplanes operating under FAR 91, after the initial inspection, at each annual inspection, inspect the Model 6220 or 6224, as applicable, pressurized magnetos in accordance with Paragraph III of Slick Aircraft Products Division Service Bulletin SB 1-88, dated April 1, 1988. Prior to further flight repair any defects found in accordance with the instructions contained in the above referenced service bulletin.

(c) Airplanes may be flown in accordance with provisions of FAR 21.197 to a base where the requirements of this AD may be accomplished.

(d) The 100 hour TIS repetitive inspection interval specified in paragraph (b) of this AD may be extended up to an additional 10 hours TIS to allow compliance with previously scheduled maintenance.

(e) An equivalent means of compliance with the requirements of this AD may be used, if approved by the Manager, Chicago Aircraft Certification Office, ACE-115C, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Slick Aircraft Products Division, Unison Industries, Inc. 530 Blackhawk Park Avenue, Rockford, Illinois 61108 or may examine these documents at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Washington, DC, on July 8, 1988.

M.C. Beard,

Director of Airworthiness, AWS-1.

#### Appendix 1

FAA approved supplement to the pilot's operating handbook and FAA approved airplane flight manual for cessna models P210, TU206, TP206, T207, T210, T303, T310, 320, 335, 340, 401, 402, and 414 Series aircraft

Reg. No. \_\_\_\_\_

Ser. No. \_\_\_\_\_

This Supplement must be attached to the FAA Approved Airplane Flight Manual when the airplane is modified by the installation of Model 6220 and 6224 magnetos. The information contained herein supplements or

supersedes the basic manual only in those areas listed. For limitations, procedures and performance information not contained in this supplement, consult the basic Airplane Flight Manual.

FAA approved: \_\_\_\_\_

W.F. Horn, Manager, Chicago Aircraft Certification Office, FAA Central Region  
Date: \_\_\_\_\_

#### Section II. Limitations

No change.

#### Section III. Emergency Procedures

No change.

#### Section IV. Normal Operating Procedures

##### Before Takeoff

Perform a magneto check of each engine at 1700 RPM as follows. Move ignition switch first to R position and note RPM. Next move switch back to both to clear the other set of plugs. Then move switch to the L position, note RPM and return the switch to the Both position. RPM drop should not exceed 150 RPM on either magneto or show greater than 50 RPM differential between magnetos. If there is doubt concerning operation of the ignition system, RPM checks at higher engine speeds will usually confirm whether a deficiency exists.

##### Caution

Many non-ignition system factors influence engine performance during a magneto check, and the replacement or repair of ignition components may not remedy problems in all cases. After verifying that all non-ignition system related causes for problems have been explored, proceed with the inspection procedures as stated below. If the magneto check exceeds either of the above limits, both magnetos must be disassembled and inspected in accordance with Section III 100 hour inspection of Slick Aircraft Products Division, Unison Industries, Inc., Service Bulletin SB 1-88 dated April 1, 1988 or FAA approved equivalent. An absence of RPM drop may be an indication of faulty grounding of one side of the ignition system or should be cause for suspicion that the magneto timing is set in advance of the setting specified. Check ignition ground and magneto timing.

FAA Approved \_\_\_\_\_

Date: \_\_\_\_\_

[FR Doc. 88-16033 Filed 7-15-88; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1 and 602

[LR-119-86]

#### Section 1060—Allocation Rules for Certain Asset Acquisitions

AGENCY: Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations portion of this issue of the *Federal Register*, the Internal Revenue Service is issuing temporary regulations to provide guidance to taxpayers concerning the application of the allocation rules for certain asset acquisitions under section 1060 to taxpayers generally and to partnerships. The text of the new sections also serves as the comment document for this notice of proposed rulemaking.

#### DATES: Proposed Effective Date:

The regulations are proposed to apply generally to any applicable asset acquisition made after May 6, 1986, unless such acquisition is pursuant to a binding contract which was in effect on May 6, 1986, and at all times thereafter. The reporting requirements apply to asset acquisitions (and to certain adjustments of consideration) occurring in a taxable year for which the due date (including extensions of time) of the income tax return or return of income is on or after September 13, 1988.

#### Date for Comments and Requests for a Public Hearing

Written comments and requests for a public hearing must be delivered or mailed by September 16, 1988.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [LR-119-86], Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Judith C. Winkler of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) or telephone 202-566-3458 (not a toll-free number). For information concerning the temporary regulations under section 755, contact Robert E. Shaw of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, (Attention: CC:LR:T) or telephone 202-566-3297 (not a toll free number).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1990 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent

to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for the Internal Revenue Service, with copies to the Internal Revenue Service at the address previously specified.

The collection of information in this regulation is in section 26 CFR 1.1060-1T(h). This information is required by the Internal Revenue Service pursuant to section 1060. This information will be used to verify that the purchaser and the seller are complying with section 1060 by allocating the consideration among the assets pursuant to the residual method of allocation. The likely respondents are businesses or other for-profit institutions and small businesses or organizations.

Estimated total annual reporting and/or recordkeeping burden: 21,053 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 1.05 hours.

Estimated number of respondents and/or recordkeepers: 20,000.

Estimated annual frequency of responses: One time generally.

#### Background

Temporary regulations published in the Rules and Regulations portion of this issue of the *Federal Register* add new temporary regulations §§ 1.167(a)-5T, 1.755-2T, 1.1031(d)-1T, and 1.1060-1T, to Part 1 of Title 26 of the Code of Federal Regulations (CFR), and amend § 1.338(b)-3T. The final regulations that are proposed to be based on these temporary regulations would be added to Part 1 of Title 26 of the CFR. Those final regulations would provide guidance on the allocation of consideration among the assets transferred in an applicable asset acquisition. Section 1060 was added by section 641 of the Tax Reform Act of 1986 (Pub. L. No. 99-514; 100 Stat. 2085). For the text of the new temporary regulations, see T.D. 8215, published in the Rules and Regulations portion of this issue of the *Federal Register*. The preamble to the temporary regulations explains the regulations.

#### Special Analyses

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that

this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required.

#### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the *Federal Register*.

#### Drafting Information

The principal author of the proposed regulations under section 167, 338, 1031, and 1060 is Judith C. Winkler of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. The principal author of the proposed regulations under section 755 is Robert Shaw of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88-16096 Filed 7-15-88; 8:45 am]

BILLING CODE 4830-01-M

### VETERANS ADMINISTRATION

#### 38 CFR Part 21

#### Veterans Education; Forfeiture of Education Benefits

**AGENCY:** Veterans Administration.

**ACTION:** Proposed regulations.

**SUMMARY:** A veteran can forfeit his or her education benefits by engaging in subversive activities or, in limited circumstances, committing fraud or treasonable acts. The regulation concerning forfeiture of education benefits indicates that forfeiture is governed by various VA regulations. However, the regulations which are referenced do not deal with forfeiture. This proposal will correct that error.

**DATES:** Comments must be received on or before August 17, 1988. Comments will be available for public inspection until August 29, 1988.

**ADDRESSES:** Send written comments, suggestions, or objections to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until August 29, 1988.

**FOR FURTHER INFORMATION CONTACT:** June C. Schaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service (225), Department of Veterans Benefits, (202) 233-2092.

**SUPPLEMENTARY INFORMATION:** The VA rarely has to invoke the regulation dealing with forfeiture of education benefits. Nevertheless, it is a requirement of law. If the regulation ever has to be invoked, it is essential that it be correct. Accordingly, the proposal would amend § 21.4007 to state the correct regulations which govern forfeiture of benefits.

The VA has determined that this proposed regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a \$100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no 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.

The Administrator of Veterans Affairs has certified that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the proposed regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

**List of Subjects in 38 CFR Part 21**

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: June 15, 1988.

Thomas K. Turnage,  
Administrator.

**PART 21—[AMENDED]**

38 CFR Part 21 is proposed to be amended by revising § 21.4007 to read as follows:

**§ 21.4007 Forfeiture.**

The rights of a veteran or eligible person to receive educational assistance allowance or special training allowance are subject to forfeiture under the provisions of §§ 3.900, 3.901 (except paragraph (c)), 3.902 (except paragraph (c)), 3.903, 3.904, 3.905 and 19.2 of this chapter.

(Authority: 38 U.S.C. 3503, 3504, and 3505)

[FR Doc. 88-16019 Filed 7-15-88; 8:45 am]

BILLING CODE 8320-01-M

**DEPARTMENT OF DEFENSE****48 CFR Part 242****Federal Acquisition Regulation Supplement; Indirect Cost Rates**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice of withdrawal of proposed rule.

**SUMMARY:** The proposed rule published at 52 FR 6177, March 2, 1987 concerning proposed changes to DFARS Subpart 242.7 to: (a) extend the auditor determination of final indirect cost rates procedures to all commercial contractor locations where DoD has the predominant interest and (b) assign the auditor the responsibility for determining billing rates for all contractor locations, has been withdrawn by the Defense Acquisition Regulatory Council. On June 20, 1988 the Deputy Secretary of Defense directed that the responsibility for the determination of interim billing and final indirect cost rates at major contractor locations be assigned to the Contracting Officer. Therefore, the proposed rule is no longer necessary and is hereby withdrawn. Based on the foregoing, DAR Case 85-259 is closed. This notice is for information purposes only. No further comments are solicited for this action.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 88-16046 Filed 7-15-88; 8:45 am]

BILLING CODE 3810-01-M

**48 CFR Ch. 2, Appendix I****Federal Acquisition Regulation Supplement; Appendix I, DD Form 250**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule and request for comments.

**SUMMARY:** The Defense Acquisition Regulatory Council is considering a change to Appendix I of the DFARS that will require contractors to include unit prices on DD Form 250s when the end item will be shipped to a contractor as Government Furnished Property (GFP). **DATE:** Comments on the proposed rule should be submitted in writing to the DAR Council at the address shown below no later than September 16, 1988, to be considered in developing a final rule. Please cite DAR Case 88-12 in all correspondence related to this subject.

**ADDRESS:** Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

**SUPPLEMENTARY INFORMATION:****A. Background**

Government property, in recent years, has come under scrutiny from the DoD Inspector General, the General Accounting Office, and Congress because of a perception of property mismanagement both within DoD and at DoD contractors' plants. In response, the Office of the Secretary of Defense initiated a Task Force to develop a more effective financial accounting and management control system for Government property. This proposed coverage implements one aspect of the Task Force recommendations for development of accounting and management systems for Government property under the control of contractors.

Specifically, the contractor will be required to list the unit price on DD 250s for those deliverables which will be

shipped to a contractor as Government Furnished Property (GFP). The inclusion of the unit prices on DD Form 250s is a major step in the establishment of an improved property accounting and management system.

Use of the DD Form 250 appears to be the most effective and efficient means of establishing this requirement since the DD Form 250 is already a contractual requirement for purposes of inspection and acceptance, and the unit price would already be established in Section B of the contract. Comments are solicited for purposes of determining if there are any other alternatives that can be used to meet this requirement.

**B. Regulatory Flexibility Act**

The proposed coverage is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because most small entities do not have contractual requirements to provide end items as Government-Furnished Property to other contractors.

**C. Paperwork Reduction Act**

Contractors must already provide a lot of the contractual data for a part on the DD 250. The contractor already has the unit price information available from its contract with the Government. Providing the unit price information encompasses nothing more than typing the unit price amount on the DD 250. This is considered to be an insignificant burden and therefore not subject to OMB approval under 44 U.S.C. 3501 et seq.

**List of Subjects in 48 CFR Chapter 2, Appendix I**

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed to amend 48 CFR Chapter 2, Appendix I, as follows:

1. The authority citation for 48 CFR Chapter 2, Appendix I, continues to read as follows:

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

**Appendix I—Material Inspection and Receiving Report****I-301 [Amended]**

2. I-301 is amended by revising under the section entitled "Block 19" paragraph (a) to read as follows:

I-301 Preparation Instructions.

\* \* \* \* \*

Block 19—UNIT PRICE. The contractor may, at his option, enter unit prices on all MIRR copies, except as a minimum:

(a) The contractor shall enter unit prices on all MIRR copies for each item of property fabricated or acquired for the Government and delivered to a contractor as Government-Furnished Property (GFP). The line items (from Block 150) shall be priced using the prices from Section B of the contract or, if not available, estimated prices. The estimated price should be the contractor's estimate of what the items will cost the Government. When the price is estimated, enter an "E" after the unit price.

\* \* \* \* \*

[FR Doc. 88-16047 Filed 7-15-88; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 552

#### Denial of a Petition for Rulemaking

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Denial of a petition for rulemaking.

**SUMMARY:** This notice denies a petition filed by Leroy Lanier requesting that this agency promulgate a rule requiring vehicle manufacturers to repair or repurchase defective motor vehicles from consumers, and authorizing consumer suits to enforce that requirement. NHTSA is denying this petition because the National Traffic and Motor Vehicle Safety Act already requires manufacturers to provide a remedy for defective motor vehicles. Section 154 of that Act requires a manufacturer to repair, repurchase, or replace each of its motor vehicles that is determined either to contain a safety-related defect, or to be in noncompliance with a Federal motor vehicle safety standard. Further, the agency lacks the authority to authorize consumers suits.

**FOR FURTHER INFORMATION CONTACT:** Joan F. Tilghman, Office of Chief

Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366-2992.

**SUPPLEMENTARY INFORMATION:** In a petition dated October 16, 1987, Mr. Leroy Lanier (petitioner) requested that the National Highway Traffic Safety Administration (NHTSA) issue a rule to protect new motor vehicles and the first purchasers of these vehicles (1) by establishing a repair or repurchase remedy for consumers whose vehicles are found to be defective, and (2) by authorizing consumers to file civil actions to enforce that remedy. The petitioner suggested that NHTSA model this rule after section 111 (a) and (b) of the National Traffic and Motor Vehicle Safety Act (Vehicle Safety Act). (15 U.S.C. 1400 (a) and (b).) That provision creates a remedy for distributors or dealers who purchase noncomplying or defective motor vehicles from a manufacturer or distributor. If a new motor vehicle purchase and possessed by a distributor or dealer is found either to be in noncompliance or to contain a safety defect, then the party from whom the distributor or dealer purchased the vehicle either must repurchase it or furnish the parts necessary to remedy the noncompliance or defect. If the manufacturer or distributor elects the latter course, then it also must reimburse the distributor or dealer both for the reasonable value of installing the parts, and for a prorated percentum of the distributor's or dealer's selling price of the vehicle. If the manufacturer or distributor refuses to comply with these requirements, then the buyer is authorized to sue the seller to recover actual damages, court costs, and reasonable attorney's fees.

In support of his petition, Mr. Lanier included addenda documenting a history of his experience with a model year 1984 vehicle, including information of various remedial actions he pursued within the private community.

NHTSA is denying Mr. Lanier's petition for several reasons. First much of the redress he seeks already is provided in the Vehicle Safety Act.

Sections 151-154 of the statute state, in pertinent part, that if either (1) a vehicle manufacturer or (2) the Secretary of Transportation determine that a motor vehicle does not comply with a Federal safety standard, or contains a safety-related defect, the manufacturer must notify the vehicle's owner or most recent, known purchaser, and supply one of the following remedies:

- (a) Repair the vehicle;
- (b) Replace the vehicle without charge with an identical or reasonably equivalent vehicle; or
- (c) Refund the vehicle's purchase price in full, less a reasonable allowance for depreciation.

While the statute attaches some other conditions to the operation of these remedy provisions, it essentially supplies the relief that the petitioner is seeking, with respect to safety-related problems. The statute does not authorize the agency to direct these remedies when the alleged defect does not relate to safety. The Vehicle Safety Act also authorizes the agency to seek judicial enforcement of the vehicle manufacturer's notification and remedy obligations.

Second, the agency lacks the authority to authorize consumer to seek judicial enforcement of a manufacturer's remedy obligations. Only Congress may provide that authority. Congress did not provide that authority in enacting the mandatory recall and remedy provisions in 1974. It did, however, authorize any interested person to petition the agency to hold a hearing on the question of whether a manufacturer has reasonably met his recall and remedy obligations.

For the preceding reasons, NHTSA denies Mr. Lanier's petition.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718, (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50)

Issued on July 12, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-16088 Filed 7-15-88; 8:45 am]

BILLING CODE 4910-59-M

# Notices

Federal Register

Vol. 53, No. 137

Monday, July 18, 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

### Federal Grain Inspection Service

#### Design Criteria and Operational Performance Specifications for Grain Constituent Measuring Instruments Using Near Infrared Spectroscopy

**AGENCY:** Federal Grain Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces that the Administrator of the Federal Grain Inspection Service (FGIS) has tentatively approved and is requesting comments on "Design Criteria and Operational Performance Specifications for Grain Constituent Measuring Instruments Using Near Infrared Spectroscopy." This notice also provides information concerning procedures that FGIS will follow in approving such equipment.

**DATES:** Comments to be postmarked on or before August 15, 1988.

**ADDRESSES:** Comments must be submitted in writing to Lewis Lebakken, Jr., Management Improvement and Information Programs, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454, telephone (202) 475-3428.

All comments received will be made available for public inspection at the above address located at 14th & Independence Avenue, SW., Washington, DC, during regular business hours.

**SUPPLEMENTARY INFORMATION:** The FGIS Type Evaluation Handbook instructions require that prior to the establishment of new or amended design criteria and performance standards for grain inspection or sampling equipment, comments shall be solicited by publishing a notice in the Federal Register. This notice is

published in accordance with those instructions. Interested parties may obtain copies of the design criteria and operational performance specifications from: Federal Grain Inspection Service, Standardization Division, Quality Control Branch, P.O. Box 20285, Kansas City, MO 64195 (816) 374-7585.

The Administrator has tentatively approved new design criteria and performance standards for grain inspection and sampling equipment using near infrared spectroscopy and is seeking comments concerning the criteria and standards from the public.

We believe it is vitally important to formally adopt new design criteria as soon as possible, and to immediately begin the process of approving near infrared spectroscopy instruments for the determination of oil, protein, and moisture in soybeans.

Companies requesting approval of equipment for use in official inspection shall submit their requests to the Quality Control Branch, Standardization Division, P.O. Box 20285, Kansas City, MO 64195 in accordance with the procedures detailed in the Type Evaluation Handbook. Copies of the Type Evaluation Handbook are available from the Standardization Division.

Because of limited facilities and staff and the urgency of approving such near infrared spectroscopy instruments, requests for approval by FGIS of these instruments will take priority over all other approval requests between July 1, 1988, and March 1, 1989. Any manufacturer or representative seeking approval of near infrared spectroscopy instrumentation for official inspection of soybeans by March 1, 1989, shall submit a request for type evaluation by September 1, 1988. Two instruments of each model accepted for type evaluation shall be made available to the Quality Control Branch by October 1, 1988. Companies will be limited to two models each in the initial tests commencing October 1, 1988.

Date: July 12, 1988.

W. Kirk Miller,

Administrator.

[FR Doc. 88-16027 Filed 7-15-88; 8:45 am]

BILLING CODE 3410-EN-M

## Forest Service

### Woewodski Island Implementation Analysis; Tongass National Forest, AK

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) for the Implementation Analysis of Woewodski Island on the Petersburg Ranger District. The Notice of Intent for this project, which was formerly called the Whiskey Timber Sale EIS, was published in *Federal Register* (Vol. 51, No. 91) on May 12, 1986. This Notice of Intent revises the Whiskey Timber Sale notice to reflect the expanded scope of the EIS and update for issuing the Final EIS.

**ADDRESSES:** Written comments and suggestions concerning the analysis should be sent to Peter M. Tennis, Petersburg District Ranger, Stikine Area, Tongass National Forest, P.O. Box 1328, Petersburg, Alaska 99833, by October 31, 1988.

#### FOR FURTHER INFORMATION CONTACT:

Questions about the proposed action and EIS should be directed to David C. Schmitt, Timber Management Assistant, Petersburg Ranger District, Stikine Area, Tongass National Forest, phone 907-772-3871.

**SUPPLEMENTARY INFORMATION:** An environmental analysis was done for the Whiskey Timber Sale which considered a range of action alternatives and a "No Action" alternative. This analysis was documented in an Environmental Assessment (EA) in April, 1985. Alternative locations for a Log Transfer Facility (LTF) were also considered and documented in the same EA. This facility will allow equipment to be landed on the island and logs to be transferred from land to saltwater and subsequently towed to a mill.

Extensive scoping and public review occurred over a 14 month period during IDT analysis of sale alternatives and preparation of the EA. The original analysis indicated that the proposed project would not have a significant effect on the human environment. The decision to prepare an Environmental Impact Statement for Woewodski Island was made after considering public

comments received through the scoping process.

Additional public involvement and review took place while the EIS was being prepared. A Draft EIS for Woewodski Island was issued on June 1, 1987. It considered a "No Action" alternative and a range of action alternatives that would harvest from 10 to 40 MMBF of timber and associated road construction. A formal public comment period followed the release of the Draft EIS from June 1 to August 15, 1987. A notice of availability for the Draft EIS was published in the *Federal Register* (Vol. 52, No. 118) on June 19, 1987.

Federal, State, and local agencies; potential purchasers; and other individuals or organizations who have been, or who may be, interested in, or affected by, the decision were invited to participate in the scoping process for both the EA and the EIS.

The Final EIS is scheduled to be completed by October 1988. The Forest Service is required to respond in the Final EIS to the comments received during the review period for the Draft EIS (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

Douglas K. Barber, Forest Supervisor, Stikine Area, Tongass National Forest, Petersburg, Alaska, is the responsible official.

**Douglas K. Barber,**  
Forest Supervisor.

Date: July 8, 1988.

[FR Doc. 88-16012 Filed 7-15-88; 8:45 am]  
BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* International Trade Administration.

*Title:* Caribbean Basin Initiative Investment Survey.

*Form Numbers:* Agency—ITA-734P, OMB—0625-0193.

*Type of Request:* Extension of the expiration date of a currently approved collection.

*Burden:* 200 respondents; 67 reporting hours.

*Average Hours Per Response:* 20 minutes.

*Needs and Uses:* As a member of the Operations Subcommittee for the Interagency Caribbean Basin Initiative (CBI) Task Force, the International Trade Administration (ITA) is responsible for implementing the survey. This survey of companies that have made equity investment in CBI beneficiary countries (1) measures the impact and effectiveness of U.S. and Caribbean government investment and trade promotion programs, (2) identifies problems and opportunities by country and industrial sector, and (3) indicates where additional effort is required to achieve the goals outlined by the President's Caribbean Basin Initiative.

*Affected Public:* Businesses or other for profit; small businesses or organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* John Griffen, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: July 11, 1988.

**Edward Michals,**

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-16066 Filed 7-15-88; 8:45 am]

BILLING CODE 3510-CW-M

## Foreign-Trade Zones Board

[Order No. 389]

### Resolution and Order Approving the Application of the Community Development Foundation for a Foreign-Trade Zone in Findlay, OH, and a Subzone at Sites in Findlay and Moraine, OH

#### Resolution and Order

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Pursuant to the authority granted in the Foreign-Trade Zones Act of January 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 Community Development Foundation, an Ohio non-profit corporation, filed with the Foreign-Trade Zones Board (the Board) on October 7, 1986, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Findlay, Ohio, adjacent to the Toledo Customs port of entry, and special-purpose subzone sites at the tire manufacturing plant of Cooper Tire and Rubber Company in Findlay, Ohio, and at its distribution facility in Moraine, Ohio, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and, finding that the general-purpose zone proposal is in the public interest, and that the special-purpose subzone proposal would be in the public interest if approval were given subject to certain restrictions, approves the general-purpose zone and approves the special-purpose subzone subject to the following conditions:

1. Cooper Tire shall elect privileged foreign status (19 CFR 146.65) on foreign steel tire cord (not classifiable as a textile product) and foreign steel mill products prior to manipulation or manufacturing, if the same items are being produced by a domestic plant.

2. Cooper Tire shall make Customs entry for consumption on any foreign textile products, including polyester tire cord, prior to admission into the subzone for manipulation or manufacturing, so that there will be no exemption from quota, visa or license requirements applicable to foreign textile products in the subzone.

3. Cooper Tire shall elect privileged foreign status on any foreign merchandise that is subject to antidumping or countervailing duty orders at the time of admission to the subzone.

As the general-purpose zone 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 the the commencement of any manufacturing operation within the general-purpose 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.

**Foreign-Trade Zones Board,  
Washington, DC**

*Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in Findlay, Ohio, With Subzone Sites in Findlay and Moraine, Ohio*

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 Community Development Foundation (the Grantee), an Ohio non-profit corporation, has made application (filed October 7, 1986, FTZ Docket 31-86, 51 FR 37617) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Findlay, Ohio, adjacent to the Toledo Customs port of entry, and a special-purpose subzone for the tire manufacturing and distribution facilities of Cooper Tire and Rubber Company in Findlay and Moraine, Ohio;

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) would be satisfied and that the proposal would be in the public interest if approval is given subject to the condition in the resolution accompanying this action;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone and subzone, designated on the records of the Board as Zone No. 151 and Subzone No. 151A, 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, and to those stated in the resolution accompanying this action, and also to the following express conditions and limitations:

Operation of the foreign-trade zone and subzone 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 and subzone sites in the performance of their official duties.

The grant does not include authority for manufacturing within the general-purpose zone, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the general-purpose zone, and any new manufacturing within the subzone.

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 6th day of July 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. 88-16097 Filed 7-15-88; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 25-88]

**Proposed Foreign-Trade Zone,  
Muskogee, OK; Application and Public  
Hearing**

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Muskogee City-County Port Authority (Port Authority), requesting authority to establish a

general-purpose foreign-trade zone in Muskogee, Oklahoma, within the Muskogee Station of the Tulsa Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 28, 1988. The Port Authority is authorized to make the proposal under Title 81, section 1106, of the Oklahoma Statutes.

The proposed general-purpose foreign-trade zone will involve 14 acres located within the Port Authority's industrial park at the Port of Muskogee at Port & Industrial Park Service Road and the Port Access Road. The site contains over 94,000 square feet of storage space for warehousing operations.

The application contains evidence of the need for zone services in the Muskogee area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of paper products, machinery and parts, gauges and lighting equipment. Specific manufacturing approvals are not being sought at this time. Requests will be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Rimmer, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, 5850 San Felipe Street, Houston, Texas 77057-3012; and Colonel Frank M. Patete, District Engineer, U.S. Army Engineer District Tulsa, P.O. Box 61, Tulsa, Oklahoma 74121-0061.

As part of its investigation, the examiners, committee will hold a public hearing on August 10, 1988, beginning at 1 p.m., at Meeting Room "B," Muskogee Civic Center.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by August 1. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through September 9, 1988.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Muskogee City-County Port Authority  
Offices, Rt. 6, Port 50, Muskogee,  
Oklahoma 74401

Office of the Executive Secretary,  
Foreign-Trade Zones Board, U.S.  
Department of Commerce, Room 1529,  
14th and Pennsylvania Avenue, NW.,  
Washington, DC 20230.

Dated: July 11, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-16098 Filed 7-15-88; 8:45 am]

BILLING CODE 3510-18-M

## National Bureau of Standards

[Docket No. 80335-8138]

### NBS Manufacturing Technology Centers Program

**AGENCY:** National Bureau of Standards, Commerce.

**ACTION:** Notice: Announcing program to fund cooperative agreements for manufacturing technology centers.

**SUMMARY:** The purpose of this notice is to inform potential applicants of a Program to fund Cooperative Agreements for Manufacturing Technology Centers. The National Bureau of Standards (NBS) is establishing a special Program for Manufacturing Technology Centers to provide seed money and technical assistance on a one-time basis to assist non-profit organizations.

Closing Date for Applications:  
Applications will be accepted until  
September 16, 1988.

**ADDRESS:** Applicants must submit one signed original plus two (2) copies of their proposal along with the Standard Form 424 as referenced under the provisions of Attachment M of OMB Circular A-110 to: NBS Manufacturing Technology Centers Program, National Engineering Laboratory, National Bureau of Standards, Room B-119, Technology Building, Gaithersburg, MD 20899.

**FOR FURTHER INFORMATION CONTACT:** To receive additional Program information telephone Dr. John W. Lyons, Director of the National Engineering Laboratory, (301) 975-2300.

**SUPPLEMENTARY INFORMATION:** The National Bureau of Standards will provide one-time seed money to not more than three non-profit organizations for the operation of Manufacturing Technology Centers (MTC) serving different U.S. geographic regions. The goal of the Manufacturing Technology Centers is to accelerate the transfer of advanced manufacturing technology to U.S. industry (especially small and

medium-sized companies) and to assist firms in improving their productivity and competitiveness. Each center will be capable of applying advanced manufacturing techniques to the needs of manufacturers located in its region and demonstrate its capability to transfer specific advanced manufacturing technologies developed at the National Bureau of Standards' Automated Manufacturing Research Facility. Applicants must identify the technologies to be demonstrated and transferred by the proposed center.

To accomplish the technology transfer mission effectively, each center shall be active in assisting the adoption of advanced manufacturing techniques by U.S. industry. Each center shall work with firms within its region to improve their manufacturing and process capabilities. The services of the center shall be available to firms located in its state, in its region, and elsewhere. Also, each center is expected to amplify (leverage) its regional efforts so its technology transfer experience will have national impact.

The transfer of pragmatic technology applications is the primary objective rather than performance of basic research. This task requires that each center must: (1) Inform and educate the industrial firms in its region; (2) demonstrate the applicability of advanced technology to these firms; (3) actively assist firms to evaluate their requirements; (4) assist with implementation of desired applications; (5) support work force training and retraining; and (6) amplify appropriate transfer experiences to a relevant national audience. Each center shall operate as an active agent in precipitating technology transfer, rather than operating as a passive agent that only provides information.

Each MTC will be operated by a nonprofit organization which already may exist or may be incorporated specifically for this purpose. NBS will support the operating budget of each center for the purpose of carrying out this program on an equal matching-funds basis with the host organization providing the remaining financial support. The matching share must meet the criteria in Attachment E of OMB Circular A-110. The funds provided by NBS may be used for capital and operating and maintenance expenses. NBS will provide technical and financial support for the Program, and will assist each center with its planning and implementation activities for this Program during the time that the centers are receiving seed monies. NBS will monitor the performance of each center in meeting its technology transfer

mission and in fulfilling its fund-matching requirements for this Program.

A national competition will be held during 1988 to make the Operating Awards. It is anticipated that up to three Operating Awards of up to \$1.5 million each will be made. The amount of NBS investment in each Program will depend upon the particular requirements and plans for the Program, as well as the availability of NBS funds. No further appropriations will be sought for this Program.

The purpose of the Manufacturing Technology Centers Program is to accelerate the diffusion of productivity-enhancing advanced manufacturing technology to U.S. industry (especially small and medium-sized companies). This purpose will be achieved through the:

- (1) Rapid transfer to industry of new specific advanced manufacturing technologies including those developed at the NBS Automated Manufacturing Research Facility;
- (2) Active participation from industry, universities, Federal/State government, and NBS in the Program;
- (3) Efforts to make new manufacturing technology and processes available and usable by U.S.-based industries, especially small and medium-sized companies;
- (4) Dissemination of scientific, engineering, and management information about manufacturing to industrial firms including small and medium-sized manufacturing companies; and
- (5) Utilization where appropriate of the technical expertise and capability that exist in Federal laboratories other than NBS, when centers and the laboratories find it to be in their mutual interest.

### Proposal Review Process

NBS will provide all proposals to a Merit Review Panel organized by the National Research Council which will evaluate the proposals. NBS will consider the evaluations of the Merit Review Panel and make a selected number of Operating Awards, to the extent feasible and within limitations of available funds. Applications should be in sufficient detail to permit NBS to evaluate the proposal under the criteria set forth in the six general categories below:

#### (a) Program Relevance

(1) The specific advanced manufacturing technologies including those developed at the NBS Automated Manufacturing Research Facility which will be demonstrated and transferred to

a wide range of companies and enterprises in the region and whenever possible, small and medium-size manufacturers.

*(b) Technical Capability*

(1) Relevant experience and education of the full-time key technical staff.

(2) Adequacy of the facilities and equipment to support the proposed Program.

(3) Proximity and availability of staff to service the targeted industrial base.

(4) Adequacy of the work force training and retraining activities.

(5) Relevance of the applicants' technical capabilities to the needs of the regional industrial base.

*(c) Market Requirements*

(1) Appropriateness of the regional target user groups; i.e., the identification, analysis, and justification of the regional industries to be served. This includes an assessment of the needs and receptivity of these groups to technology transfer efforts.

(2) Appropriateness and potential effectiveness of the Program in producing technology transfer to the target industries. Where the service area of the center includes firms from other states, the approach for linking with these states to serve these markets should be detailed.

(3) Appropriateness of national audience; i.e., identification, and analysis of national audience that would be most usefully served.

(4) Appropriateness and effectiveness of the center's programs, plans, and mechanisms (e.g., plan for allocating intellectual property rights) for producing technology transfer to a larger national audience.

(5) Budget, personnel, and facility allocations to the program activities.

*(d) Regional Relationships*

(1) Demonstrated linkages with regional/state/local economic development and extension organizations.

(2) Demonstrated linkages with regional industrial, educational, and training organizations.

(3) Demonstrated interest of the region (local, state, industrial, or other entities) in improving its manufacturing capabilities.

(4) Geographic location of the proposed center vis-a-vis the concentration of target industries, the location of other centers and similar Programs and the technical focus of the other centers.

*(e) Organization and Management Staff*

(1) Appropriateness of the legal and organizational structure proposed for facilitating technology transfer.

(2) Appropriateness of the full-time staffing levels of management and technical personnel, and the quality of this staff's manufacturing, marketing, and technology transfer experience.

(3) Record among the management team for attracting top personnel and for raising funds with industry, industrial associations, and state/local governmental bodies.

(4) Record of the management team in building successful organizations and the team's commitment to technology transfer.

*(f) Funding*

(1) Stability and duration of the Applicant's matching funding commitments.

(2) Percent of operating costs guaranteed by the Applicant.

(3) Ability to continue to operate when NBS funds terminate.

The enumerated criteria will be equally weighted. To be considered for an Operating Award, a proposal must receive at least 70 percent of the evaluation points from each of the categories above.

**Additional Requirements**

Applicants are reminded that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment. Except where declared by law or approved by the head of agency, no award of Federal funds shall be made to an applicant who is delinquent on a Federal debt until the delinquent account is made current or satisfactory arrangements are made between affected agencies and the debtor. The grantee will administer the grant in accordance with OMB Circular A-110.

**Classification**

This document is not a major rule requiring a regulatory analysis under Executive Order 12291 because it will not have an annual impact on the economy of \$100 million or more, nor will it result in a major increase in costs or prices for any group, nor have a significant adverse effect 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 is not a major federal action requiring an environmental assessment under the National Environmental Policy Act. The NBS Manufacturing Technology Centers

Program does not involve the mandatory payment of any matching funds from a state or local government, and does not affect directly any state or local government. Accordingly, NBS has determined that Executive Order 12372 is not applicable to the NBS Manufacturing Technology Centers program. This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. This notice contains a collection of information requirements subject to the Paperwork Reduction Act which have been approved by the Office of Management and Budget under control number 0693-0005 for use through September 1989. The NBS Manufacturing Technology Centers Program is being carried out under the authority of 15 U.S.C. 1525, 15 U.S.C. 3705 and 3706, and Department of Commerce Organization Order 30-2A.

Ernest Ambler,

Director, National Bureau of Standards.

Dated: July 12, 1988.

[FR Doc. 88-16035 Filed 7-15-88; 8:45 am]

BILLING CODE 3510-13-M

**National Oceanic and Atmospheric Administration**

**Coastal Zone Management; Federal Consistency Appeal by Paul Copenhagen From an Objection by the New York State Department of State**

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of appeal.

On April 4, 1988, the Secretary of Commerce received a notice of appeal from Paul Copenhagen (Appellant). Appellant is appealing to the Secretary under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1456(c)(3)(A), and the Department's implementing regulations, 15 CFR Part 930, Subpart H. The appeal arises from an objection by the New York State Department of State to Appellant's consistency certification for the construction of a retaining wall in Greece, New York, on Lake Ontario.

On May 23, 1988, the Department received a request from Appellant for a stay of the appeal pending negotiations with the State. The State had no objection, and the Department accordingly granted a six-month stay. If the stay expires without resolution of the issues under dispute and Appellant then perfects the appeal by submittal of a brief and supporting data and

information, the Department will publish notices in the *Federal Register* and a local newspaper soliciting public comments on the issues raised in the appeal.

**FOR ADDITIONAL INFORMATION CONTACT:** Stephanie S. Campbell, Attorney/Advisor, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: July 11, 1988.

William E. Evans,

*Under Secretary for Oceans and Atmosphere.*

[FR Doc. 88-16037 Filed 7-15-88; 8:45 am]

BILLING CODE 3510-08-M

#### **Coastal Zone Management; Federal Consistency Appeal by Sucesion Alberto Bachman From an Objection by the Puerto Rico Planning Board**

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of appeal.

On March 18, 1988, Sucesion Alberto Bachman (Appellant), through counsel, filed with the Secretary of Commerce a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's (Department) implementing regulations, 15 CFR Part 930, Subpart H (1987). The appeal arises from and objection by the Puerto Rico Planning Board (PRPB) to the Appellant's certification that his proposed installation of a swimmer's protection barrier at Palomino Island would be consistent with Puerto Rico's coastal management program. The PRPB's objection precludes the U.S. Army Corps of Engineers from issuing to the Appellant a permit to perform these activities pending the outcome of the Appellant's appeal.

If the Appellant perfects the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the *Federal Register* and a local newspaper.

**FOR ADDITIONAL INFORMATION CONTACT:** Sydney Anne Minnerly, Attorney-Advisor, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric

Administration U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: July 11, 1988.

William E. Evans,

*Under Secretary for Oceans and Atmosphere.*

[FR Doc. 88-16036 Filed 7-15-88; 8:45 am]

BILLING CODE 3510-08-M

#### **Intent To Conduct Scoping Meetings and Prepare Draft Environmental Impact Statement on Proposed Estuarine Research Reserve Components, Chesapeake Bay, MD**

**AGENCY:** National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

**ACTION:** Notice of intent to conduct scoping meeting and prepare draft environmental impact statement.

**SUMMARY:** The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), intends to conduct scoping meetings and prepare a draft environmental impact statement (DEIS) on the designation of the proposed Chesapeake Bay Estuarine Research Reserve components in the State of Maryland, in accordance with the provisions of the National Environmental Policy Act (NEPA) and section 315 of the Coastal Zone Management Act (CZMA). Designation of these reserve components would protect approximately 1,500 acres of important estuarine habitat in Talbot, Hartford, Prince Georges and Anne Arundel Counties.

**Discussion:** This estuarine reserve proposal is currently being developed in consultation with the State of Maryland, Federal agencies and affected public groups. The proposal, as a Federally-assisted action, has been reviewed by the Maryland Department of State Planning, in accordance with OMB Circular A-95.

The proposed Chesapeake Bay National Estuarine Research Reserve is a multiple-site reserve which will total five components. The Monie Bay component was designated in 1985. Three other sites have been selected through a set of criteria for site selection and these include Adkins Marsh/Kingston Landing, Otter Point Creek and Jug Bay. The fifth component, a middle bay site, will be nominated and selected by the end of 1989.

The Office of Ocean and Coastal Resource Management will hold scoping meetings at the following time and places:

Wednesday, August 10, 1988 at 7:00 p.m.—Easton Town Building, Second Floor, 14 South Harrison Street, Easton, Maryland 21601 (comments on Adkins Marsh/Kingston Landing).

Tuesday, August 16, 1988 at 7:00 p.m.—Equitable Bank Building, First Floor Conference Room, 220 South Main Street, Belair, Maryland 21014 (comments on Otter Point Creek).

Thursday, August 18, 1988 at 7:00 p.m.—Prince Georges County Administration Building, Council Hearing Room, First Floor, Upper Marlboro, Maryland 20772 (comments on Jug Bay).

Interested parties who wish to submit suggestions, comments, or substantive information concerning the scope or content of this proposed environmental impact statement are invited to attend. Parties who wish to respond in writing should do so by August 29, 1988. The DEIS will be prepared in compliance with the Council on Environmental Quality (CEQ) regulations (FR Vol. 43 November 29, 1978).

Comments may be submitted in writing or by telephone to: Ms. Cheryl Graham, Project Assistant, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235 (telephone 202/673-5122).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Estuarine Reserves)

Date: July 12, 1988.

John J. Carey,

*Deputy Assistant Administrator, National Ocean Service.*

[FR Doc. 88-16034 Filed 7-15-88; 8:45 am]

BILLING CODE 3510-08-M

#### **National Telecommunications and Information Administration**

##### **Institute for Telecommunications Sciences; Establishment of Core Research Advisory Committee**

**AGENCY:** National Telecommunications and Information Administration (NTIA), Commerce.

**ACTION:** Notice of establishment.

**SUMMARY:** Notice is hereby given that the Secretary of Commerce, after consultation with the General Services Administration, has determined that the establishment of an Institute for Telecommunication Sciences (ITS) Core

Research Advisory Committee is in the public interest and will enhance the Department's performance of legally-imposed duties.

**DATES:** The Committee's charter will be filed no sooner than 15 days from August 2, 1988.

**ADDRESS:** Interested persons are invited to submit comments or inquiries regarding the establishment of the Committee to: Policy Coordination Division, Office of Policy Coordination and Management, NTIA/DOC, 14th and Constitution Avenue, NW., Room 4890, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Jack Gleason, Chief, Policy Coordination Division, NTIA, at the address given above; telephone 202/377-1835; or Suzette Kern, Committee Management Analyst, DOC; telephone 202/377-0142.

**SUPPLEMENTARY INFORMATION:** The committee will advise the Assistant Secretary of Commerce for Communications and Information on the basic research programs and services of ITS and its related technology transfer and cooperative research programs. In this role, the committee will suggest areas where neither private industry nor academic institutions are performing basic research which could lead to the development and use of new telecommunications technologies by U.S. industry. The committee will make recommendations as to how the results of that research should be disseminated to the private sector.

The committee will consist of approximately nine members representative of the scientific and technological disciplines which ITS employs in its research. We anticipate that three members will be from the private sector, three from academic institutions, and three from other Federal departments and agencies. Members will be appointed by the Secretary of Commerce so as to assure a balanced representation.

The Committee will function solely as an advisory body, in compliance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2.

**Authority:** 15 U.S.C. 272(11-13, 18); sec. 5 E.O. 12046, 43 FR 13349, 3 CFR, 1979 Comp., pp. 164-165.

Date: July 12, 1988.

Alfred C. Sikes,

Administrator.

[FR Doc. 88-16051 Filed 7-15-88; 8:45 am]

BILLING CODE 3510-60-M

## DEPARTMENT OF DEFENSE

### Defense Communications Agency

#### Systems of Records; Privacy Act

**AGENCY:** Defense Communications Agency, DoD.

**ACTION:** Notice for public comment.

**SUMMARY:** The Defense Communications Agency proposes to add a new system of records to its inventory of record systems subject to the Privacy Act of 1974.

**DATE:** This proposed action will be effective August 17, 1988, unless comments are received which would result in a contrary determination.

**ADDRESS:** Send any comments to Ms. Susan Chadick, Deputy General Counsel, Code H105, Defense Communications Agency, Washington, DC 20305-2000. Telephone: 202-692-2270; Autovon: 222-2770.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Chadick at the above address and telephone number.

**SUPPLEMENTARY INFORMATION:** The Defense Communications Agency systems of records notice 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 22608) May 29, 1985 (Compilation)

FR Doc. 86-13778 (51 FR 22111) June 18, 1986

A new system report, as required by 5 U.S.C. 552a(o) of the Privacy Act of 1974 was submitted on July 6, 1988, to the Administrator, Office of Information and Regulatory Affairs, OMB; the President of the Senate; and the Speaker of the House of Representatives, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals" dated December 12, 1985 (50 FR 52730, December 24, 1985).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 12, 1988.

K317.01

#### SYSTEM NAME:

Mishap Report.

#### SYSTEM LOCATION:

Facilities Engineering and Building Services Branch, Code H317, Headquarters, Defense Communications Agency (DCA), 8th and South Courthouse Road, Arlington, VA 22204.

#### CATEGORY OF INDIVIDUALS COVERED BY THE SYSTEM:

Those DCA civilian and military employees who receive a job-related injury or illness.

#### CATEGORY OF RECORDS IN THE SYSTEM:

Name, social security number, age and sex of employee injured, the Department, Agency, Branch, date and time of injury, nature of injury/illness, brief description of injury and corrective action taken.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 CFR 1960.2; Pub. L. 91-596; Executive Orders 12196 and 9397, DoD Instruction 6055.1

#### PURPOSE(S):

The Mishap Report establishes the requirements and responsibilities for reporting all mishaps which result in injury, occupational illness, and/or property damage, or which interrupt or interfere with the orderly progress of normal DCA activities. The information contained in the report will be used for mishap prevention purposes only.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the "Blanket Routine Uses" set forth at the beginning of DCA's listing of records system notices.

#### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

##### STORAGE:

Currently paper records are stored in file folders, however in the future computer storage will also be used.

##### RETRIEVABILITY:

Information is retrieved by the name, social security number, and date of injury.

##### SAFEGUARDS:

Records are filed in a secure file system, accessible only to authorized personnel who clearly have a need to know the information. Doors are locked at night and the building has security guards.

##### RETENTION AND DISPOSAL:

Records are not permanent. They are retained for at least five years following the end of the calendar year to which they relate and then destroyed.

##### SYSTEM MANAGER AND ADDRESS:

DCA Safety and Occupational Health Manager, Facilities Engineering and Building Services Branch, Code H317,

Headquarters, DCA, 8th and South Courthouse Road, Arlington, VA 22204.

#### NOTIFICATION PROCEDURE:

Requests from individuals should be addressed to Facilities Engineering and Building Services Branch, Code H317, Headquarters, DCA, 8th and South Courthouse Road, Arlington, VA 22204. The full name of the injured person and the date of injury will be required to determine if the system contains a record. The requestor may visit the Facilities Engineering and Building Services Branch, Code H317 during normal working hours to obtain information on whether the system contains records pertaining to him or her.

#### RECORD ACCESS PROCEDURES:

Access may be obtained through the Facilities Engineering and Building Services Branch, Code H317, Headquarters, DCA. The address is listed above.

#### CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

#### RECORD SOURCE CATEGORIES:

Names and other personal information on those individuals in the system are obtained/gathered by supervisors of injured employees, recorded on DCA Form 73 and 74, and forwarded to the Safety and Health Manager, Facilities Engineering and Building Services Branch, Code H317.

#### EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 88-16059 Filed 7-15-88; 8:45 am]

BILLING CODE 3810-01-M

### DEPARTMENT OF EDUCATION

#### Notice Of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before August 17, 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. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Margaret B. Webster (202) 732-3915.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) 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 Webster at the address specified above.

Dated: July 12, 1988.

Carlos U. Rice,

Director for Information Technology Services.

#### Office of Postsecondary Education

**Type of Review:** EXISTING

**Title:** Procedures and Criteria for Recognition of Accrediting Agencies

**Frequency:** Once every five years

**Affected Public:** State or local governments; non-profit institutions

**Reporting Burden:**

**Responses:** 30

**Burden Hours:** 2,400

**Recordkeeping:**

**Recordkeepers:** 86

**Burden Hours:** 86

**Abstract:** National and regional accrediting agencies submit petitions to the Department addressing the procedures and criteria for the

Secretary's recognition of accrediting agencies.

#### Office of Postsecondary Education

**Type of Review:** EXTENSION

**Title:** Application for Fulbright-Hays Seminars Abroad Program

**Frequency:** Annually

**Affected Public:** Individuals or households

**Reporting Burden:**

**Responses:** 1,000

**Burden Hours:** 1,000

**Recordkeeping:**

**Recordkeepers:** 0

**Burden Hours:** 0

**Abstract:** This form will be used by individuals to apply for grants under the Fulbright-Hays Seminars Abroad Program. The Department will use the information to select educators to participate in the program.

[FR Doc. 88-16014 Filed 7-15-88; 8:45 am]

BILLING CODE 4000-01-M

### DEPARTMENT OF ENERGY

#### Idaho Operations Office; Refractory Materials Research and Development

**AGENCY:** Department of Energy.

**ACTION:** Solicitation for Financial Assistance applications No. DE-PS07-88ID12782.

**SUMMARY:** The U.S. Department of Energy, Idaho Operations Office, is seeking to assist research and development of new refractory materials, or improvements to existing refractory materials. This research is to be directed towards those refractories utilized by the aluminum, glass, cement, and iron and steel industries. The research and development to be assisted must lead to reduced energy consumption in the end-use industries. The objective of this solicitation is to support projects for the development of new or improved refractory materials which will lead to reduction of energy consumption in one or more of the above end-use industries of .01 quadrillion BTU annually by providing commercially viable technology that will enhance the competitive position of the domestic end-use industries. This enhancement may be through major gains in manufacturing productivity, process cost reduction, and/or product quality improvement. These objectives will be accomplished by entering into cost-shared financial assistance agreements with the applicants selected. Multi-year, multi-phased projects are anticipated with a total of approximately \$6.0 million to be

available over the five-year program period. DOE anticipates four awards for the initial phase of the projects; however, this number may vary. Applications must state that the potential energy savings of the proposed project is a minimum of .01 quadrillion BTU annually by the end-use industry. Applications must show a cost share which will be provided by the applicant in each phase of the project.

Applications must also evidence the commitment of a refractory producer and an end-user, either by virtue of being the applicant or by a letter of commitment to the project. Private industry, educational institutions, nonprofit organizations, individuals, and other organizations are invited to respond to this announcement. Applications from Federal Agencies and/or laboratories owned, operated, or under the cognizance of the Federal Government will not be considered for selection and should not respond.

**DATES:** This solicitation is expected to be available to interested parties by mid-July. Applications are due October 17, 1988.

**CONTACTS:** Potential applicants desiring to receive a copy of this solicitation should provide a written request to: Elizabeth M. Bowhan, Contracts Management Division, U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402.

Issued at Idaho Falls, Idaho on July 6, 1988.

H. Brent Clark,

Director, Contracts Management Division.

[FR Doc. 88-16105 Filed 7-15-88; 8:45 am]

BILLING CODE 6450-01-M

## Economic Regulatory Administration

[ERA Docket No. 88-17-NG]

### National Energy Systems, Inc.; Order Granting Blanket Authorization to Import Natural Gas

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of Order Granting Blanket Authorization to Import Natural Gas.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting National Energy Systems, Inc. (National Energy), blanket authorization to import natural gas. The order issued in ERA Docket No. 88-17-NG authorizes National Energy to import up to 146 Bcf of 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 Federal holidays.

Issued in Washington, DC, July 13, 1988.

Constance L. Buckley,

Acting Director, Natural Gas Division, Office of Fuels Programs.

[FR Doc. 88-18106 Filed 7-15-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 87-63-NG]

### National Steel Corporation; Order Granting Blanket Authorization to Import Natural Gas From Canada

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of Order Granting Blanket Authorization to Import Natural Gas from Canada.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting National Steel Corporation (National) blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 87-63-NG authorizes National to import up to 50 Bcf of Canadian natural gas for use at its Great Lakes Steel plant through a proposed new pipeline to be constructed under the Detroit River. The term of the authorization granted is two years, 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 Federal holidays.

Issued in Washington, DC, July 13, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-16115 Filed 7-15-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 88-36-NG]

### Petro-Canada Hydrocarbons, Inc.; Application to Extend Blanket Authorization To Import Natural Gas From Canada

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of Application for Extension of Blanket Authorization to Import Natural Gas.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on June 26, 1988, of an application filed by Petro-Canada Hydrocarbons Inc. (PCH) requesting that the blanket authorization previously granted in DOE/ERA Opinion and Order No. 100 (Order No. 100), issued January 3, 1986 (ERA Dkt. No. 85-29-NG), be amended to extend its term for one year beginning on March 2, 1989, the expiration of its current import authorization, through the period ending March 3, 1990. PCH's existing blanket import authorization allows it to import up to a maximum of 150 Bcf of Canadian natural gas. Under the extension requested, PCH would be authorized to import volumes not to exceed in the aggregate 75 Bcf of Canadian natural gas over a one-year period.

Quarterly reports filed with the ERA indicate that PCH has imported 2.1 Bcf of natural gas under its current import authorization as of April 1, 1988.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATE:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than August 17, 1988.

#### FOR FURTHER INFORMATION:

Laraine A. Moore, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:** PCH is a wholly-owned subsidiary of Petro-Canada Inc. (PCI). The gas would continue to be supplied by PCI or such other supply sources as may become available and sold by PCH on a short-term or spot basis to local gas distribution companies, natural gas pipelines, and direct sale customers in California, the Pacific Northwest, the Middle West, and other areas in the U.S. as market opportunities develop. PCH will act either as agent of PCI or will

itself resell gas it has purchased. The specific terms of each import and sale would be negotiated on an individual basis including the price and volumes. PCH intends to use existing pipeline facilities to transport the gas.

In support of its application, PCH asserts that the proposed extension of its existing blanket import authorization is not inconsistent with the public interest since the extension requested would assure gas consumers expanded access to competitively-priced Canadian gas.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

The ERA will condition any authorization issued in this proceeding on the filing of quarterly reports to facilitate ERA monitoring of the operation and effectiveness of the blanket program.

#### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments

received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., August 17, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice

to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of PCH's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 11, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs,  
Economic Regulatory Administration.

[FR Doc. 88-16107 Filed 7-15-88; 8:45 am]

BILLING CODE 6450-01-M

#### Office of Hearings and Appeals

##### Cases Filed; Week of May 20, Through May 27, 1988

During the Week of May 20 through May 27, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.  
July 8, 1988.

#### LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 20 through May 27, 1988]

| Date         | Name and location of applicant    | Case No. | Type of submission   |
|--------------|-----------------------------------|----------|--|
| May 25, 1988 | Glen Milner, Seattle, WA          | KFA-0189 | Appeal of an Information Request Denial. If granted: The May 10, 1988 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and Glen Milner would receive a fee waiver for information regarding types of towing vehicles and/or tractors used for the transport of nuclear weapons. |
| May 27, 1988 | Mary Ellen Walsh, Schenectady, NY | KFA-0190 | Appeal of an Information Request Denial. If granted: Mary Ellen Walsh would receive access to information of names of individuals at the Knolls Atomic Power Laboratory who were alleged to have possible overexposure to radiation and the results of any safety audits performed during the 30 days prior to April 11, 1988.       |

## REFUND APPLICATIONS RECEIVED

[Week of May 20 to May 27, 1988]

| Date received             | Name of refund proceeding/name of refund applicant | Case No.  |
|---------------------------|--|---|
| 5/20/88 thru 5/27/88..... | Crude Oil Refund, Applications Received.....       | RF-272-57075<br>thru<br>RF272-58083   |
| 5/20/88 thru 5/27/88..... | Gulf Oil Refund, Applications Received.....        | RF300-6908<br>thru<br>RF300-7061  |
| 5/20/88 thru 5/27/88..... | ARCO Refund Applications Received.....             | RF304-3099<br>thru<br>RF304-3112<br>and<br>RF304-2587<br>thru<br>RF304-2620 |

[FR Doc. 88-16112 Filed 7-15-88; 8:45 am]

BILLING CODE 6450-01-M

**Cases Filed; Week of June 3 Through June 10, 1988**

During the Week of June 3 through June 10, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with

the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of

publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Richard T. Tedrow,  
*Acting Director, Office of Hearings and Appeals.*

July 1, 1988.

## LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 3 through June 10, 1988]

| Date              | Name and location of applicant           | Case No.      | Type of submission  |
|-------------------|--|---------------|---|
| June 6, 1988..... | American Air Filter, Louisville, KY..... | KFA-0192..... | Appeal of an Information Request Denial. If granted: The April 28, 1988 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded and American Air Filter would receive access to certain bid abstracts.   |
| Do. ....          | Arkansas, Little Rock, AR.....           | KEA-0001..... | Appeal of Energy Conservation Program Decision. If granted: The May 25, 1988 Decision issued to Arkansas by the DOE's Dallas Support Office denying funding under the State Energy Conservation Program, 10 C.F.R. Part 420, for a photovoltaic demonstration project at Meadowcreek, Inc. would be reversed. |

## REFUND APPLICATIONS RECEIVED

[Week of June 3 to June 10, 1983]

| Date                     | Name  | Case No.   |
|--------------------------|---|--|
| 5/6/86.....              | Farmington & 8 Mile Mobil.....              | RF225-11031  |
| 8/12/86.....             | Knight Oil Company.....                     | RF225-11030  |
| 6/3/88 thru 6/10/88..... | Crude Oil Refund Applications Received..... | RF272-58784<br>thru<br>RF272-60371   |
| 6/3/88 thru 6/10/88..... | Gulf Oil Refund, Applications Received..... | RF300-7178<br>thru<br>RF300-7446   |
| 6/3/88 thru 6/10/88..... | Arco Refund, Applications Received.....     | RF304-2653<br>thru<br>RF304-2686<br>thru<br>RF304-3112<br>thru<br>RF304-3161 |
| 6/6/88.....              | Benest Propane Company.....                 | RF265-2672   |
| 6/6/88.....              | Milligan Bros. Propane Co.....              | RF265-2673   |
| 6/6/88.....              | Milligan Bros. Propane Co.....              | RF265-2674   |
| 6/6/88.....              | Milligan Bros. Propane Co.....              | RF265-2675   |
| 6/6/88.....              | Benden Bros. Oil Co.....                    | RF265-2676   |
| 6/6/88.....              | Lucky's Sales & Service.....                | RF265-2677   |
| 6/7/88.....              | Ozark Gas & Appliance Co.....               | RF265-2678   |
| 6/7/88.....              | Farmers Coop. Grain & Supply.....           | RF265-2679   |
| 6/9/88.....              | Reilly's Coin-op Car Wash.....              | RF238-87   |
| 6/9/88.....              | Torrid Gas Company, Inc.....                | RF225-11032  |

## REFUND APPLICATIONS RECEIVED—Continued

[Week of June 3 to June 10, 1983]

| Date    | Name            | Case No.   |
|---------|-----------------|------------|
| 6/10/88 | Gibson LP, Inc. | RF265-2680 |

[FR Doc. 88-16113 Filed 7-15-88; 8:45 am]  
BILLING CODE 6450-01-M

**Cases Filed; Week of June 10 Through June 17, 1988**

During the Week of June 10 through June 17, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with

the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 C.F.R. Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of

publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.  
July 1, 1988.

**Richard T. Tedrow,**  
*Acting Director, Office of Hearings and Appeals.*

## LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 10 through June 17, 1988]

| Date          | Name and location of applicant                     | Case No. | Type of submission  |
|---------------|--|----------|---|
| June 13, 1988 | The Augusta Chronicle/Augusta Herald, Augusta, GA. | KFA-0193 | Appeal of an Information Request Denial. If granted: The May 13, 1988 Freedom of Information Request Denial issued by the DOE Inspector General would be rescinded and the newspapers would receive access to the Inspector General's report on severance payments by the Du Pont Company to employees of the Savannah River Plant. |
| Do            | Harold Fine, Corrales, NM                          | KFA-0194 | Appeal of an Information Request Denial. If granted: Mr. Harold Fine would receive access to certain DOE information which the DOE Inspector General withheld pursuant to various Freedom of Information Act exemptions   |
| June 14, 1988 | Richard M. Neal, Jr. M.D., Lawndale, CA.           | KFA-0195 | Appeal of an Information Request Denial. If granted: The May 19, Freedom of Information Request Denial issued by the DOE Executive Secretariat would be rescinded and Dr. Neal would receive access to information on the Advisory Committee for Biology and Medicine of the U.S. Atomic Energy Commission (1947-1951).             |
| June 17, 1988 | Salomon, Inc., Washington, DC                      | KEF-0109 | Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures, pursuant to 10 C.F.R., Part 205, Subpart V, in connection with the Consent Order entered into with Salomon, Inc.   |
| Do            | Suffolk County, Long Island, NY, Washington, DC.   | KFA-0196 | Appeal of an Information Request Denial. If granted: Suffolk County, Long Island, NY would receive access to certain DOE information.   |

## REFUND APPLICATIONS RECEIVED

[Week of June 10 to June 17, 1988]

| Date                 | Name                                    | Case No.                        |
|----------------------|---|---------------------------------|
| 6/10/88 thru 6/17/88 | Crude Oil Refund, Applications Received | RF272-60372 thru<br>RF272-61670 |
| 6/10/88 thru 6/17/88 | Gulf Oil Refund, Applications Received  | RF300-7447 thru<br>RF300-7590   |
| 6/10/88 thru 6/17/88 | Arco Refund, Applications Received      | RF304-3162 thru<br>RF304-3242   |
| 6/13/88              | Veterans Petroleum Service              | RF265-2681                      |
| 6/14/88              | DeMeyers Service Station                | RF265-2683                      |
| 6/14/88              | Farm Supply, Inc.                       | RF265-2682                      |
| 6/14/88              | Landings Car Wash                       | RF225-11033                     |
| 6/14/88              | Landings Car Wash                       | RF225-11034                     |
| 6/14/88              | Monroe Holt                             | RF225-11035                     |
| 6/14/88              | Monroe Holt                             | RF225-11036                     |
| 6/14/88              | Heist Implement Company                 | RF265-2684 thru<br>RF265-2686   |
| 6/14/88              | Heist Implement Company                 | RF265-2686                      |
| 6/16/88              | Vanguard Petroleum Corp.                | RF308-2                         |
| 6/20/88              | Mendon Gas & Electric Co.               | RF265-2687                      |

[FR Doc. 88-16114 Filed 7-15-88; 8:45 am]  
BILLING CODE 6450-01-M

# Issuance of Decisions and Orders; Week of May 9 Through May 13, 1988

During the week of May 9 through May 13, 1988, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

## Petition for Special Redress

*Oklahoma, 5/13/88, KEG-0032*

The DOE issued a Decision and Order concerning a Petition for Special Redress filed by the State of Oklahoma. The State sought approval to use Stripper Well funds for a project previously found by the DOE's Assistant Secretary for Conservation and Renewable Energy to be inconsistent with the terms of the Stripper Well Settlement Agreement. After reviewing Oklahoma's proposal to grant \$100,000 to Waynoka Manufacturing, the DOE decided to disapprove the Oklahoma Petition. The DOE found that the project, which would use Stripper Well funds for the design and production of fiberglass vaults, was an economic development program and did not provide energy-related benefits to injured consumers of petroleum products. Accordingly, Oklahoma's Petition for Special Redress was denied.

## Refund Applications

*APCO Oil Corp./B.J. Brooks Oil Co., 5/10/88, RF83-136*

The DOE issued a Decision and Order concerning an Application for Refund filed by B.J. Brooks Oil Company. Brooks, a motor gasoline and distillate fuel oil reseller, sought a portion of the settlement fund obtained by the DOE through a consent order entered into with its supplier, APCO Oil Corporation. The DOE determined that Brooks met the criteria for a refund, but had not made an adequate showing of injury to merit a refund in excess of the \$5,000 small claims threshold. Specifically, the DOE found that the approximated cost bank data submitted by Brooks in support of its injury claim was not acceptable because it included cost and revenue components for refined products other than motor gasoline. Accordingly, Brooks was awarded a small claims refund of \$5,000 plus \$3,168 in accrued interest.

## Request for Modification and/or Rescission

*New York, 5/13/88, KER-0040*

The DOE issued a Decision and Order regarding a Motion for Reconsideration filed by the State of New York. The State's Motion sought reconsideration of a DOE denial of a Petition for Special Redress that the State had filed previously. *New York, 17 DOE ¶ 82,503 (1988)*. In *New York*, the DOE concluded that the State's proposal to use \$5,000,000 of its Stripper Well funds to start a Not-for-Profit Energy Conservation Financing Fund was not consistent with the terms of the Stripper Well Settlement Agreement. In denying the State's Motion for Reconsideration of *New York*, the DOE found that the project would not be completed for 12 years and that this period exceeds the Stripper Well requirement of timely restitution. Specifically, the DOE found that ten years is a reasonable sunset period for Stripper Well programs. Therefore, the Motion for Reconsideration was denied.

## Supplemental Order

*Apex Oil Company, 5/10/88, KRX-0053*

The DOE considered a request for review of a Special Report Order issued to Apex Oil Company, requiring the firm to provide the DOE with information concerning its crude oil transactions during the period January 1, 1978 through March 31, 1978 and from February 1, 1979 through January 27, 1981. The SRO directed the firm to provide that information in 60 days. In its request for review, Apex stated that the SRO was burdensome and that in any event, it would need additional time to provide the specified information. After fully reviewing the type of information that Apex was directed to provide, the DOE found that the SRO was not unduly burdensome, and that most of the documents involved should already be in existence. Accordingly, the request to withdraw the SRO was denied. However, the DOE found that in view of the considerable amount of material that the firm was directed to provide and the fact that Apex was involved in a bankruptcy proceeding, it should be granted additional time to comply with the SRO. The firm was therefore granted an additional 60 days in which to provide the material related to the earlier period and 120 additional days to provide responses pertaining to the latter period.

*Bernard G. Gordon, et al., 5/13/88, RF272-5045 et al.*

The DOE issued a Decision and Order granting refunds from crude oil

overcharge funds to 49 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the petroleum products it claimed and was therefore presumed injured. The sum of the refunds granted in this Decision is \$938. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

*Charles A. Johns, et al., 5/9/88, RF272-9650 et al.*

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision was \$2,626.

*Christian Haaland A/S, et al., 5/13/88, RD272-0244 et al.*

A group of thirty States and two Territories of the United States (collectively "the States") filed Motions for Discovery relating to Applications for Refund filed by 58 foreign flagship carriers. In their refund applications, the foreign flagship carriers request refunds from the crude oil monies currently available for disbursement by the Office of Hearings and Appeals under 10 CFR Part 205, Subpart V, for injury incurred in purchases of domestically refined petroleum products during the period August 19, 1973 through January 27, 1981. In the motions for Discovery, the States sought information in support of their position that foreign flagship carriers are not entitled to a refund. Since the issues raised by the States in these refund proceedings are identical, OHA consolidated its consideration of the States' Motions for Discovery. In considering the States' discovery requests, OHA determined that conventional discovery is not appropriate in the context of a refund proceeding under Subpart V but that the States had raised certain matters critical to OHA's evaluation of the underlying Applications for Refund. Accordingly,

the States' Motions for Discovery were dismissed. However, OHA ordered additional pleadings by the foreign flagship carriers and the States concerning: (1) Whether "export sales" are eligible for refunds as a matter of law; and (2) whether the carriers were able to pass through crude oil overcharges under the regulatory regime of the Federal Maritime Commission.

*Crystal Oil Company/Crystal-U.S.A., Inc., 5/11/88, RF136-1*

Crystal-USA, Inc., filed a request for a refund from a consent order fund made available by Crystal Oil Company. Crystal-USA filed that request on behalf of Crystal Petroleum Company, a wholly owned subsidiary of Crystal Oil Company until February 1977, when it was purchased by Crystal-USA. The basis of the refund request was Crystal Petroleum Company's purchase of motor gasoline from Crystal Oil Company. The DOE found that no refund was warranted from the Crystal Oil Company consent order fund, since the relevant consent order settled only alleged crude oil violations and Crystal Petroleum Company did not purchase any crude oil from Crystal Oil Company. The DOE further found that Crystal Petroleum Company was not eligible for a Subpart V crude oil refund based on its gasoline purchases because it did not show that it incurred any injury as a result of those purchases. Accordingly, the refund application was denied.

*George Brown et al., 5/12/88, RF272-7005 et al.*

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and each calculated its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is \$2,539.

*Gilpatrick Ranch, et al., 5/13/88, RF272-7111 et al.*

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various activities. With the exception of some agricultural

applicants who used estimates to determine their volume claims, all of the applicants relied on actual purchase records from the crude oil price control period. Each applicant was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is \$1,797.

*La Gloria Oil & Gas Company/Racetrac Petroleum, Inc., 5/13/88, RF263-29*

The DOE issued a Decision and Order granting a refund from the La Gloria Oil & Gas Company Consent Order Fund to Racetrac Petroleum, Inc. The DOE determined that the firm's approximated cost banks were sufficient to support most of the refund claimed, and, based upon the competitive disadvantage methodology, determined that the firm was eligible for a refund of \$21,112 (\$11,483 principal plus \$9,674 interest).

*M.C. Barnes, et al., 5/13/88, RF272-7180 et al.*

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 26 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities. Each applicant calculated its volume claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is \$671.

*Marathon Petroleum Company/East Side Oil Company, 5/12/88, RF250-2712, RF250-2713*

The DOE issued a Decision and Order concerning two Applications for Refund filed by East Side Oil Company, a retailer of motor gasoline and middle distillates covered by a consent order that the agency entered into with Marathon Petroleum Company. The Applicant limited its claim to 35 percent of its allocable share and therefore was not required to demonstrate injury. The refund approved in this Decision is \$13,940 in principal and \$2,257 in interest.

*Marathon Petroleum Company/Plymouth Oil, Inc., 5/11/88, RF250-2745*

The DOE issued a Decision and Order denying Plymouth Oil's Application for Refund filed in the Marathon Petroleum Company special refund proceeding. Plymouth was denied a refund because

its entire claim was based on middle distillate purchases made after the July 1, 1976 decontrol date for middle distillates.

*Mobil Oil Corp./Girling & Coutts, 5/13/88, RF225-11024*

The DOE issued a Supplemental Order concerning a refund granted to Girling & Coutts in *Mobil Oil Corp./Girling & Coutts*, 17 DOE ¶ 85,388 (1988). The DOE determined that the refund granted to the applicant had been based on an understatement of the firm's purchases from Mobil. Therefore, an additional refund of \$34, representing \$27 of principal and \$7 of interest, was granted to the firm on the basis of the additional gallons purchased.

*Mobil Oil Corp./Meenan Oil Co., Inc., 5/10/88, RF225-9205*

The DOE issued a Decision and Order concerning the Application for Refund filed by Meenan Oil Co., Inc., seeking a portion of the funds remitted by Mobil Oil Corp. pursuant to a consent order entered into by Mobil with the DOE. Meenan purchased 79,074,284 gallons of middle distillates from Mobil during the consent order period. After applying a competitive disadvantage analysis to the information submitted by Meenan, the DOE found that the firm had purchased a portion of the Mobil middle distillates at below market prices. Consequently, the refund amount for middle distillates was limited to an amount equal to the gallons of product purchased at above market prices multiplied by the per gallon refund rate. The refund granted totals \$15,930, representing \$12,808 in principal and \$3,122 in interest.

*Mobil Oil Corporation/R.L. Vallee, Inc., et al., 5/10/88, RF225-6672 et al.*

The DOE issued a Decision granting three Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling \$9,934 (\$7,987 principal plus \$1,947 interest).

*Mobil Oil Corp./Simonson Oil Co., Inc., 5/9/88, RF225-10039, RF225-10040, RF225-10041*

The DOE issued a Decision and Order granting an Application for Refund from the Mobil Oil Corporation escrow account filed by Simonson Oil Co., Inc., a reseller of Mobil refined petroleum products. In its refund application, Simonson elected to submit

documentation that it was injured by Mobil's pricing practices. The DOE found that the firm's negative cost banks through September 1, 1974 indicated that the firm had passed through any motor gasoline overcharges incurred prior to that date. The DOE concluded that Simonson was therefore eligible to receive the full volumetric refund amount only for its purchases of Mobil motor gasoline made after September 1, 1974. The refund amount was \$4,180. Because this amount is less than the \$5,000 small claims level and because the firm had not attempted to demonstrate injury concerning its Mobil middle distillates and motor oil purchases, the DOE also granted Simonson a refund based on its purchases of those products in the amount of \$625. The DOE further granted the firm interest of \$1,171.

*Northwest Pipeline Corp./Home Petroleum Corp., 5/11/88, RF116-9*

In this Decision, OHA approved a refund application filed by Home Petroleum Corporation in the Northwest Pipeline Corporation refund proceeding. Home purchased 5,622,300 gallons of natural gasoline from Northwest during the consent order period. OHA found that Home paid above market prices for 89 percent of the gallons that it purchased from Northwest, and incurred substantial amounts of gross and net excess costs. OHA therefore granted Home a refund of \$10,913 which equals the numbers of gallons that Home purchased times the per gallon refund rate of \$0.001941. Home also receives accrued interest of \$3,961.

*Osceola County Secondary Road Department, 5/9/88, RF272-6672*

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Osceola County Secondary Road Department (Osceola) based on its documented purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Osceola used petroleum products in the maintenance of county roads. The firm was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The sum of Osceola's refund granted in this Decision is \$130.

*St. Joseph Public Schools, et al., 5/12/88, RF272-88 et al.*

The DOE issued a Decision and Order granting refunds to seven public school districts that filed Applications for Refund under OHA's Subpart V crude oil overcharge refund proceedings. The DOE found that the applicants had provided sufficient evidence of the

volume of refined petroleum products that they purchased during the period August 19, 1973 through January 27, 1981. As end-user of petroleum products, the applicants were presumed to have been injured as a result of the crude oil overcharges. The total of the refunds granted was \$697.

*Standard Oil Co. (Indiana)/Grand Traverse Band of Ottawa & Chippewa Indians Inter-Tribal Council of Michigan, Inc., 5/12/88, RQ251-448, RQ251-443*

The DOE issued a Decision and Order granting the refund applications filed by the Grand Traverse Band of Ottawa & Chippewa Indians (the Grand Traverse Band) and the Inter-Tribal Council of Michigan, Inc. (Inter-Tribal Council) in the Standard Oil Co. (Indiana) second-stage refund proceeding. Each of the six federally recognized tribal organizations in Michigan requested permission to use its portion of its Amoco monies to found programs suited to the unique needs of its community. The DOE found that the programs provided restitution to injured consumers of petroleum products. Accordingly, the submissions were granted and the Grand Traverse Band and the Inter-Tribal Council were given refunds totalling \$17,305 (representing \$15,314 in principal and \$1,991 in interest).

*Standard Oil Co. (Indiana)/Indiana, 5/13/88, RM21-106*

The DOE issued a Decision and Order regarding a Motion for Modification filed by the State of Indiana in the Standard Oil Co. (Indiana) (Amoco II) second-stage refund proceeding. In its application, Indiana proposed to modify its use of \$67,296.73 in Amoco II funds. The State proposed that the funds be used to supplement funds previously granted by the DOE for a Fuel Saver Van program and for an Energy Conservation Financial Assistance program. The DOE approved Indiana's Motion for Modification, finding that the two programs for which the State proposed to spend additional funds would make restitution to injured consumers of petroleum products in the State.

*Steven W. Landers, et al., 5/9/88, RF272-933 et al.*

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 150 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the alleged crude oil overcharges. The sum

of the refunds granted in this Decision is \$4,211.

*UPG, Inc./Mobil Oil Corporation, 5/12/88, RF288-2*

Mobil Oil Corporation filed a refund application in the UPG, Inc. refund proceeding. Mobil purchased 8,612,562 gallons of gasoline from UPG in June 1979. Because of their isolated nature, these purchases appear to have been made on the spot market and would not ordinarily be eligible for a refund. Nevertheless, Mobil successfully demonstrated that the purchases were necessary for maintaining supplies to its base-period customers. Mobil also submitted documents to prove that it sustained a loss in selling the UPG products. The DOE therefore granted Mobil a refund of \$23,254, which equals the number of gallons that Mobil purchased times the volumetric rate of \$0.0027 per gallon. Mobil also receives accrued interest of \$2,170.

*Vickers Energy Corporation/Iowa, 5/12/88, RQ1-449*

The DOE issued a Decision and Order regarding an Application for Refund filed by the State of Iowa in the Vickers Energy Corporation second-stage refund proceeding. In the Decision, the DOE approved the disbursement of \$131,472 (\$72,984 in principal plus \$58,488 in interest) from the Vickers Energy Corp. escrow account for use for five distinct energy conservation programs that were approved in *Standard Oil Co. (Indiana)/Iowa*, 17 DOE ¶ 85,043 (1988).

*Warrens Heights City School et al., 5/12/88, RF272-5783 et al.*

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 20 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of petroleum products, and established its claim either by consulting actual purchase records or by estimating its consumption based on annual usage. As end-users, each applicant was presumed by the DOE to have been injured. The sum of the refunds granted in this Decision is \$4,766.

### Dismissals

The following submissions were dismissed:

| Name                              | Case No.    |
|-----------------------------------|-------------|
| Bootheel LP Gas Company .....     | RF139-21    |
| Cooper Tire and Rubber Co .....   | RF272-51452 |
| Farmers Union Central Exchange .. | RF272-47923 |
| St. Joseph Public Schools .....   | RF97-1      |
|                                   | RF272-11966 |

| Name                               | Case No.    |
|------------------------------------|-------------|
| West Iron County Public Schools... | RF272-16156 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

July 1, 1988.

Richard T. Tedrow,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 88-16108 Filed 7-15-88; 8:45 am]

BILLING CODE 6450-01-M

#### Issuance of Decisions and Orders; Week of May 16 Through May 20, 1988

During the week of May 16, through May 20, 1988 the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contain a list of submissions that were dismissed by the Office of Hearings and Appeals.

#### Requests for Exception

*Kasigluk, Inc., 5/19/88, KEE-0153*

The OHA issued a Decision and Order denying an Application for Exception filed by Kasigluk, Inc. of Kasigluk, Alaska. In the Order, the OHA found that Kasigluk had not demonstrated that it was experiencing a hardship, inequity or unfair distribution of burdens by having to file Form EIA-782B, the Reseller/Retailer Monthly Petroleum Products Sales Report. Accordingly the firm was instructed to continue filing the report.

*Webb's Oil Corporation, 5/17/88, KEE-0161*

Webb's Oil Corporation (Webb) filed an Application for Exception in which the firm sought to be relieved of the requirement to file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In reviewing the request, the DOE found that Webb would not suffer a hardship, inequity or unfair distribution of burdens by fulfilling its reporting obligation. Accordingly, exception relief was denied.

#### Motion for Discovery

*Mutual Petroleum Marketing Co., Inc., Mutual Petroleum Marketing Co., of California, Inc., Mutual Petroleum Marketing Co., of Texas, Inc., KRD-0340; Louisiana Bayou Oil Corporation, 5/19/88 KRH-0340*

Mutual Petroleum Marketing Co., Inc. (MPM), Mutual Petroleum Marketing Co., of California, Inc. (MPM-California), Mutual Petroleum Marketing Co., of Texas, Inc. (MPM-Texas). And Louisiana Bayou Oil Corporation (collectively referred to as Mutual) filed a Motion for Discovery and Motion for Evidentiary Hearing in connection with their Statements of Objections to the Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to Mutual on September 8, 1986. The DOE denied Mutual's request for contemporaneous construction and administrative record discovery concerning 10 CFR 212.186 (the layering regulation), 205.202 (the anti-circumvention regulation) and 210.62(c) (the normal business practice rule), citing numerous precedents for the denial of these requests. The DOE also denied Mutual's requests for discovery concerning clarification of the PRO, finding that the ERA's pleadings and workpapers already supplied to Mutual were sufficient for the companies to understand the allegations against them and to respond to the disputed issues in the case. Furthermore, the DOE found that some of Mutual's requests were not relevant to Mutual's arguments presented in the companies' Statements of Objections. The DOE granted Mutual 30 days in which to provide alternative matching for the ERA's matching of MPM's 1977 transactions concerning MPM's alleged Subpart F violations. Finally, the DOE granted Mutual's Motion for Evidentiary Hearing solely on the issues of the traditional and historical services provided by MPM-Texas, and the allocation of costs and revenues in the calculation of MPM-California's permissible average markup, including the effect of exchange transactions on those calculations.

#### Refund Applications

*Algona Municipal Utilities, 5/16/88, RF272-1267*

The DOE issued a Decision and Order, granting Algona Municipal Utilities' (Algona) Application for Refund from the DOE's Subpart V crude oil refund proceedings. Algona is a regulated public utility that claimed a refund based on its purchases of 6,993,551 gallons of petroleum products. The OHA has regarded refund applications filed by utility firms as

claims filed on behalf of utility customers. Thus, to the extent that utility customers were end-users of petroleum products, the OHA has applied the end-user presumption of injury to claims filed by public utilities. Based on this policy, the OHA granted Algona's refund request, with the condition that Algona pass through the refund to its customers. The total amount of refund approved in this Decision and Order is \$1,399.

*Aminoil U.S.A. Inc./Christian County Gas Company, RF139-37; L.H. Osting & Son, Inc., RF139-46; Miller LP Gas Service, 5/20/88, RF139-55*

The DOE issued a Decision and Order concerning Applications for Refund filed by Christian County Gas Company, L.H. Osting & Sons and Miller LP Gas Service in the Aminoil U.S.A., Inc. special refund proceeding. This firms submitted cost banks in excess of their refund claims and market price comparison in support of their claims for refunds exceeding \$5,000. After examining the firms' applications and supporting documentation, the DOE concluded that they should receive refunds totaling \$219,137, representing \$125,343 in principal and \$93,794 in interest.

*Aminoil U.S.A. Inc./Nelson Lutz D/B/A Lutz LP Gas Company, 5/17/88, RF139-40*

The DOE issued a Decision and Order concerning an Applications for Refund filed by Nelson Lutz d/b/a Lutz LP Gas Company (Lutz) in the Aminoil U.S.A., Inc. special refund proceeding. Lutz submitted cost banks in excess of its refund claims and market price comparison material in support of a refund of more than \$5,000. After examining Lutz's applications and supporting documentation, the DOE concluded that the firm should receive refund of \$112,684, representing \$64,476 in principal and \$48,208 in interest.

*Belridge Oil Co./Hawaii, 5/18/88, RQ-451*

The DOE issued a Decision and Order granting a second-stage refund application submitted by the State of Hawaii. Hawaii will use \$469 of Belridge Oil Co. monies to provide energy conservation information to the public.

*Burke Farms et al., 5/20/88, RF272-4960 et al.*

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products

for various agricultural activities, and each determined its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the petroleum products it claimed and was therefore presumed injured. The sum of the refunds granted in this Decision is \$1,596. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

*Conoco Inc./Armour Oil Co., 5/16/88, RF220-170*

The DOE issued a Decision and Order concerning an Application for Refund filed by Armour Oil Co., a purchaser of diesel fuel and motor gasoline from Conoco Inc. Armour's level of purchases resulted in a potential refund in excess of the \$5,000 small claims threshold amount. According to the methodology set forth in *Conoco Inc.*, 13 DOE ¶ 85,316 (1985), an applicant who claims a refund above the threshold amount must demonstrate that it maintained sufficient banks of unrecouped increased product costs for the products concerned throughout the consent order period. Despite being given an ample opportunity to do so, Armour was unable to make such a demonstration. The DOE therefore determined that Armour's refund should be limited to the \$5,000 threshold amount. The refund approved in this Decision totaled \$7,719, including interest.

*Conoco Inc./Genico Distributors, Inc., 5/17/88, RF220-363*

The DOE issued a Decision and Order granting an Application for Refund filed by Genico Distributors, Inc. in the Conoco Inc. special refund proceeding. *Conoco Inc.*, 13 DOE ¶ 85,316 (1985). Genico, a reseller/retailer of refined petroleum products, was eligible for a volumetric refund of \$11,767 on its motor gasoline purchases from Conoco and \$90 on its distillate purchases. After examining the firm's cost banks and applying a three-part competitive disadvantage test, the DOE concluded that Genico should receive a refund of \$4,254 on its motor gasoline purchases. Although Genico did not attempt to demonstrate injury on its distillate purchases, the DOE also granted it a refund on those purchases because the firm's combined principal refund amount fell below the \$5,000 small claims threshold. The total refund granted to Genico was \$6,256, representing \$4,344 in principal and \$1,912 in accrued interest.

*Gulf Oil Corporation/Ryder System, Inc., 5/18/88, RF40-1823*

The DOE issued a Decision and Order concerning an Application for Refund filed by Ryder System, Inc., the parent company of Ryder Truck Rental, Inc. (RTR), Truckstops Corporation of America (Truckstops), M & G Convoy, Inc. (M & G), and Commercial Carriers, Inc. (Commercial). Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), Ryder claimed a refund based on the 108,823,234 gallons of petroleum products that its subsidiaries purchased from Gulf during the consent order period. With respect to the 51,033,508 gallons purchased by RTR, the DOE found that the firm did not absorb any of Gulf's alleged overcharges, and thus that portion of Ryder's claim was denied. The DOE also found that Ryder sold 100% of Truckstops' common stock to the Standard Oil Company of Ohio in 1984 and thus was not the appropriate party to apply for a refund based on the 45,478,906 gallons of petroleum products that Truckstops purchased from Gulf. The DOE did approve the portion of Ryder's claim associated with the 12,210,820 gallons of Gulf products purchased by M & G and Commercial. Accordingly, Ryder was granted a refund of \$19,171, representing \$14,897 in principal and \$4,274 in accrued interest.

*Husky Oil Company/Petroenergy Corporation, 5/18/88, RF161-66*

The DOE issued a Decision and Order concerning an Application for Refund filed by Petroenergy Corporation, a reseller of Husky motor gasoline. Petroenergy submitted information which indicated that it purchased 107,918,236 gallons of motor gasoline from Husky during the consent order period. However, Petroenergy made the required showing of inquiry for only 71,987,795 gallons of Husky motor gasoline. Accordingly, Petroenergy was granted a refund of \$48,016, representing \$32,826 in principal plus \$15,190 in accrued interest.

*James Humpala & Sons, Inc. et al., 5/17/88, RF272-7367 et al.*

The DOE issued a Decision and Order granting refunds to 34 claimants that filed Applications for Refund in OHA's Subpart V crude oil overcharge refund proceedings. The DOE found that the applicants had provided sufficient evidence of the volume of refined petroleum products that they purchased during the period August 19, 1973 through January 27, 1981. The DOE also found that, as agricultural end-users of petroleum products, the applicants were injured as a result of the crude oil overcharges. The total of the refunds granted was \$930.

*John W. Hadley, et al., 5/16/88, RF272-602, et al.*

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 13 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural, manufacturing, school administration, or service activities. Each determined its purchase volume either on the basis of actual records or by reasonable estimates. Since the applicants were end-users of the petroleum products, they were presumed to have been injured by the alleged crude oil overcharges. The total amount of refund granted in this Decision is \$6,223.

*Michael H. Moore, et al., 5/18/88, RF272-946, et al.*

The DOE issued a Decision and Order granting eleven Applications for Refund filed in connection with the Subpart V crude oil refund proceedings. Each applicant purchased refined petroleum products during the period August 19, 1973 through January 27, 1981, and used the products for various agricultural activities. Five of the applicants determined their purchase volumes by using the USDA estimate for annual petroleum product consumption per acre among the nation's farmers for specific crops. The remaining applicants used estimation methods that the DOE approved in prior determinations. The sum of the refunds granted in this Decision is \$443.

*Mobil Oil Corporation/Clauss Heating Oils, Inc., et al., 5/16/88, RF225-5204, et al.*

The DOE issued a Decision and Order granting applications filed by seven purchasers of Mobil refined petroleum products in the Mobil Oil Corporation special refund proceeding. According to the procedures set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), each applicant was found to be eligible for a refund based on the volume of products it purchased from Mobil. The total amount of refunds approved in this Decision was \$18,724, representing \$15,055 in principal plus \$3,669 in accrued interest.

*Smithway Motor Xpress, Inc., 5/17/88, RF272-1008*

The DOE issued a Decision and Order dismissing an Application for Refund filed by Smithway Motor Xpress, Inc. (Smithway) in the Subpart V crude oil refund proceedings (Subpart V). The DOE dismissed Smithway's Application because Smithway had already been

approved for a refund from the Surface Transporters Escrow that was created by the Stripper Well Settlement Agreement. Under the terms of the Settlement Agreement, the applicant had to waive its right to a refund in any Subpart V crude oil proceeding. Accordingly, Smithway was ineligible for Subpart V crude oil refunds.

#### Dismissals

The following submissions were dismissed:

| Name               | Case No.                               |
|--------------------|--|
| Hart Oil Co.,..... | RF225-9533<br>RF225-9534<br>RF225-9535 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

July 1, 1988.

Richard T. Tedrow,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 88-16109 Filed 7-15-88; 8:45 am]

BILLING CODE 6450-01-M

#### Issuance of Proposed Decision and Order; Period of May 16 Through June 3, 1988

During the period of May 16 through June 3, 1988, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will

be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

July 8, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Petroleum Traders Corporation, Fort Wayne, IN, KEE-0163, Reporting Requirements

Petroleum Traders Corporation filed an Application for Exception from the provisions of filing Form EIA-782B. The Exception request, if granted, would permit Petroleum Traders Corporation to be exempt from filing this form. On June 1, 1988, the Department of Energy issued a Proposed Decision and Order which determined that the Exception request be denied.

[FR Doc. 88-16111 Filed 7-15-88; 8:45 am]

BILLING CODE 6450-01-M

#### Issuance of Decisions and Orders; Week of June 13 through June 17, 1988

During the week of June 13 through June 17, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

#### Appeals

Decker & Hallman, 6/16/88; KFA-0187

On May 20, 1988, Decker & Hallman, a law firm, filed an Appeal from a determination issued to the firm on April 23, 1988 by the Director of the Office of Oil and Gas of the Energy Information Administration (Director) of the Department of Energy. In that determination, the Director partially granted a request for information

pursuant to the Freedom of Information Act (FOIA), but withheld a master list of companies from which respondents to an Energy Information Administration survey are selected. In considering the Appeal, the DOE found that the Director's denial was based upon a misinterpretation of the scope of the Appellant's request for information. The Director interpreted the Appellant's request to include all potential respondents to the EIA survey, and not just the names and addresses of actual respondents to the survey, as originally requested by Decker & Hallman. Consequently, the case was remanded to the Director for a determination regarding the releasability of the names and addresses of the survey respondents.

William Albert Hewgley, 6/15/88; KFA-0186

William Albert Hewgley filed an Appeal from a determination issued to him by the Inspector General of the Department of Energy. In his determination, the Inspector General first found that 5 U.S.C. 552a (j)(2) and (k)(2) of the Privacy Act shielded from disclosure any documents Hewgley sought under that Act. The Inspector General then denied Mr. Hewgley's request for the same documents under the Freedom of Information Act on the ground that no documents responsive to his request are known to exist.

In considering the Appeal, the DOE contacted the FOI/Privacy Acts Specialist at the DOE Inspector General's Office and learned that some documents responsive to Mr. Hewgley's Original FOI/Privacy Acts Request do exist. Accordingly, the DOE remanded Mr. Hewgley's Request to the Office of the Inspector General for a new and thorough search for documents responsive to the Request. The DOE further ordered that the Inspector General either (i) promptly release any responsive documents to Mr. Hewgley or (ii) promptly issue a denial letter which adequately justifies the applicability of an exemption to each of the documents withheld.

#### Petitions for Special Redress

Mississippi, 6/13/88; KEG-0034

The DOE issued a Decision and Order concerning the Petitions for Special Redress filed by the State of Mississippi. Mississippi sought approval to use Stripper Well funds for a project which the DOE's Assistant Secretary for Conservation and Renewable Energy held to be inconsistent with the terms of the Stripper Well Settlement Agreement. The DOE approved the State's proposal

to use \$503,800 for a rail yard switching relocation project in Greenwood, Mississippi. The DOE determined that the project was remedial because it would result in smoother traffic flow, less idling time for motorists, and hence substantial fuel savings for the considerable number of motorists traveling through Greenwood. The DOE also found that the project was timely and part of a well-balanced restitutionary plan. In conclusion, the DOE found that Mississippi's program was permissible under the terms of the Settlement, Agreement and OHA precedent. Accordingly Mississippi's Petition for Special Redress was approved.

*Texas, 6/13/88; KEG-0033*

The DOE issued a Decision and Order concerning a Petition for Special Redress submitted by the State of Texas. The State sought approval to use Stripper Well monies for a project which the DOE's Assistant Secretary for Conservation and Renewable Energy held to be inconsistent with the terms of the Stripper Well Settlement Agreement. The DOE disapproved Texas' proposal to use \$8 million to conduct research related to enhanced oil recovery from oil reservoirs on State lands in Texas. In reaching this determination, the DOE found that the Texas proposal was not restitutionary because the primary beneficiaries of the proposal would be oil companies and certain owners of surface rights on State lands rather than injured consumers. The DOE concluded that oil companies and owners of surface rights were narrow economic interests that should not receive the lion's share of benefits that were intended to be distributed to consumers overcharged on purchases of petroleum products. Accordingly, Texas' Petition for Special Redress was denied.

#### **Request for Modification and/or Rescission**

*Arizona, 6/13/88; KER-0041*

The DOE issued a Decision and Order concerning the Motion for Reconsideration filed by the State of Arizona. The State sought reconsideration of a DOE determination that denied the Petition for Special Redress filed by Arizona concerning the use of Stripper Well funds for a proposed natural gas and electric utility assistance program which would use \$7 million of Stripper Well funds over a 2-year period. In its motion, Arizona demonstrated that the State's low-income elderly population would be the primary beneficiaries of the program. Accordingly, Arizona's Motion for Reconsideration was granted.

#### **Motions for Discovery**

*LaJet, Inc., 6/15/88; KRD-0011*

LaJet, Inc. (LaJet) filed a Motion for Discovery relating to a Proposed Remedial Order (PRO) issued to its predecessor in interest, North American Petroleum Company (NAPCO), by the Economic Regulatory Administration (ERA) on May 8, 1985. In the PRO, the ERA alleges that NAPCO entered into a series of processing agreements with Young Refining Company, a small refiner which had received 100% entitlements exception relief. According to the ERA, NAPCO entered into these agreements for the sole purpose of evading its entitlements purchase obligations. The firm's actions, asserts the ERA, violated 10 CFR 205.202 in that they circumvented the Entitlements Regulations set forth at 10 CFR 211.66 and 211.67. In its Motion for Discovery, LaJet sought the following items: (1) Documents and transcripts of testimony provided to DOE by or on behalf of Young concerning Young's processing agreements, purchase and sales of crude oil, and sales of refined product during the audit period; (2) workpapers explaining the manner in which the ERA computed violation and interest amounts set forth in the PRO; and (3) documents relating to the contemporaneous construction of certain DOE rulemakings and regulations. In considering LaJet's motion, the DOE first determined that the firm had already been provided with sufficient audit workpapers to understand and challenge the methodology employed by the ERA in computing the alleged violation amount and interest assessment. Next, the DOE found that LaJet's contemporaneous construction request was almost identical to that submitted by the firm in another case. Since the DOE had recently found the firm's request to be without merit in the other case, the DOE denied LaJet's request based on the reasons set forth in that other case. Finally, the DOE questioned the relevancy of submissions made by Young in exceptions proceedings in this case, pointing out the differences between the exceptions process and remedial order proceedings. The DOE then found that most of the material submitted by Young in its exceptions proceedings is publicly available. To the extent redactions have been made to any of the Young material because of confidentiality, the DOE held that LaJet had failed to identify specific deleted material they seek or attempt to establish that such deleted material constitutes relevant and material

evidence. Accordingly, the DOE denied LaJet's discovery motion.

*The Crude Company, Inc., 6/16/88; KRD-0440*

The Crude Company, Inc. (TCC) filed a Motion for Discovery in connection with a Proposed Remedial Order (PRO) issued to the firm on January 9, 1987. In the PRO, the ERA alleges that TCC resold crude oil at a price that exceeded its maximum allowable selling price, or maintained an average markup in excess of its permissible average markup (PAM), in violation of the DOE price regulations codified at 10 C.F.R. Part 212, Subparts F and L. In its Motion for Discovery, TCC propounded numerous requests for admissions, interrogatories, and requests for documents regarding the following issues: (1) The ERA's discretionary choice of TCC's imputed May 15, 1973 base price; (2) the ERA's use of separate inventory accounting to calculate TCC's product costs and banks; and (3) the ERA's calculation of TCC's PAM. A majority of these requests were denied because the firm failed to show that the discovery was necessary for it to obtain relevant and material factual evidence. Five requests for admissions were granted, however, because they sought material, factual information concerning the timing of TCC's first two successful offers for the resale of crude oil. In addition, the OHA determined that the production of additional information by the ERA would be helpful in determining whether the ERA properly used its prosecutorial discretion in establishing TCC's May 15 base price. Accordingly, the OHA ordered the ERA to submit information concerning the following three issues: (1) The reasonableness and scope of the ERA's efforts to locate TCC's nearest comparable outlet; (2) the comparability of TCC and the firm which the ERA claims was TCC's nearest comparable outlet; and (3) the reasonableness of the ERA's choice of TCC's May 15 base price.

#### **Refund Applications**

*Beacon Oil Company/Cash Oil Company of California, 6/17/88; RF238-8, RF238-75*

The DOE issued a Decision and Order concerning two Applications for Refund filed by Cash Oil Company of California (Cash) in the Beacon Oil Company special refund proceeding. On March 25, 1986, Mr. Clyde E. Harvey, the president of Cash, filed a refund claim; on October 15, 1988, Cash's counsel submitted a second Application for Refund which falsely stated that Cash had not filed a previous claim in the Beacon

proceeding. As an initial matter, the DOE dismissed the second application. The March 25, 1986 application was based only on Cash's purchases of Beacon motor gasoline during the August 19, 1973, through March 31, 1975 consent order period. Because Cash already had received credit refunds from Beacon based on those purchases, Cash's original claim was denied.

*Billings Freight Systems/Kensington Corp.*, 6/13/88; RF272-1172, RF272-1192

The DOE issued a Decision and Order granting two Applications for Refund from crude oil overcharge funds based on each Applicant's purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each Applicant submitted detailed documentation supporting its claim. As an end-user, each Applicant was entitled to receive a refund of its full volumetric share. The sum of the refunds granted in this Decision is \$3,337.

*Conoco, Inc./Gulf Oil Corporation*, 6/16/88; RF220-277

The DOE issued a Decision and Order concerning an Applications for Refund filed by Chevron Corporation on behalf of Gulf Oil Corporation. In its Application, Chevron sought refunds for Gulf's purchases of propane, butane and motor gasoline from Conoco Inc. during the period from January 1, 1973 through January 26, 1981. In the Decision and Order, the DOE determined that Gulf was a spot purchaser of motor gasoline from Conoco, had not shown injury, and was therefore not entitled to a refund for these purchases. With respect to Gulf's purchases of propane and butane, the DOE determined that Chevron was entitled to refunds of \$426 for propand and \$1 for butane. Including interest, the total refund granted in this Decision is \$599.

*Earl L. Passwaters et al.*, 6/13/88; RF272-6807 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 14 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of petroleum products, and established its claim either by consulting actual purchase records or by estimating its consumption. As end-users of the products they claimed, each applicant was found injured under the end-user presumption of injury. The sum of the refunds granted in this Decision is \$5,963.

*Giltner Public Schools, et al.*, 6/15/88; RF272-9623 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to eight applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various activities, and each determined its claim either by consulting actual purchase records or by a reasonable method of estimation. Each applicant was an end-user of the products it claimed and was therefore presumed by the DOE to have been injured. The sum of the refunds granted in this Decision is \$1,129. All of the Claimants will be eligible for additional refunds as additional crude oil overcharge funds become available. *Gulf Oil Corporation/Rice-Lindquist, Inc.*, 6/16/88; RF40-1484

Rice-Lindquist, Inc. (Rice) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Gulf Oil Corporation (Gulf). The DOE found that Rice demonstrated that it purchased Gulf motor gasoline, fuel oil and diesel fuel during the consent order period and that Rice was injured. Under the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), Rice was found entitled to receive a volumetric refund of \$57,547. In addition, the firm is entitled to receive accrued interest of \$16,509 for a total refund of \$74,056. However, the DOE concluded that it is not appropriate to issue the refund directly to Rice at the present time. Rice is a respondent in an on-going enforcement proceeding. This case is now on appeal to the Federal Energy Regulatory Commission. Pending the outcome of the enforcement proceeding, the DOE determined that the refund of \$74,056 should be deposited into a separate interest-bearing escrow account on behalf of Rice.

*Lockheed Air Terminal Inc./Northwest Airlines, Inc.*, 6/15/88; RF269-24

The DOE issued a Decision and Order granting a refund to Northwest Airlines on behalf of Republic Airlines in the Lockheed Air Terminal refund proceeding. Republic, which is now owned by Northwest, was an end-user of Lockheed's aviation fuel and was therefore presumed to have suffered injury as a result of Lockheed's alleged overcharges. Based on the amount by which Republic was allegedly overcharged, the DOE determined that Northwest was due a refund of \$31,695 (\$17,919 principal and \$13,776 interest).

*Marine Petroleum Company and Mars Oil Company/J.D. Streett & Company; Emro Marketing Company*, 6/15/88; RF139-15, RF139-18

The DOE issued a Decision and Order concerning Applications for Refund filed by J.D. Streett & Company and Emro Marketing Company in the Marine Petroleum Company and Mars Oil Company special refund proceeding. The firms are resellers who limited their refund requests to \$5,000 in principal or less and were, therefore, presumed to have been injured. The DOE determined that the firms should receive refunds totalling \$12,977, representing \$7,421 in principal and \$5,556 in interest. The refund granted J.D. Streett & Company was placed in an interest-bearing escrow account pending the outcome of an enforcement proceeding involving the firm.

*Mobil Oil Corporation/Fultroop Service Station et al.*, 6/17/88; RF225-58 et al.

The DOE issued a Decision granting eight Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers resellers, and end-users of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling \$26,433 (\$21,211 principal plus \$5,222 interest).

*Mobil Oil Corporation/Monroe Holt*, 6/17/88; RF225-11035, RF225-11036

The DOE issued a Decision granting an additional refund of \$198 to Monroe Holt from the Mobil Oil Corp. escrow account. Holt received a second refund because Mobil was able to provide gallonage figures for a gas station for which Holt no longer maintained records. Holt met the requirements set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), and therefore received an additional refund of \$198 (\$159 in principal and \$39 in interest).

*Mobil Oil Corp./Smith Oil Co., Inc.*, 6/17/88; RF225-8767, RF225-8768, RF225-8769, RF225-8770

The DOE issued a Decision and Order granting an Application for Refund filed by Smith Oil Co., Inc., in the Mobil Oil Corp. special refund proceeding. See *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Smith, a reseller-retailer of refined petroleum products, attempted to rebut the level-of-distribution presumption of injury for its purchases of Mobil motor gasoline. After examining the firm's cost banks and applying a three-part competitive disadvantage test, the DOE

concluded that Smith should receive a full volumetric refund on its motor gasoline purchases. Smith also claimed a refund on its middle distillate purchases from Mobil. The firm, however, did not attempt to demonstrate injury with regard to its middle distillate purchases. Therefore, that portion of its claim was denied. The total refund granted to Smith was \$6,416, representing \$5,148 in principal and \$1,268 in accrued interest.

*Pennzoil Co./West Virginia, 6/15/88; RM10-110*

The DOE issued a Decision and Order approving the Motion for Modification filed by the State of West Virginia in the second stage of the Pennzoil Co. special refund proceeding. West Virginia requested permission to use \$72,317 of its previously-approved Pennzoil funds for traffic light synchronization programs in four locations and for the continuation of its interstate highway program. The DOE found that West Virginia's programs were consistent with programs that the DOE approved in the past, and therefore approved the State's proposed modifications.

*Pinellas Suncoast/Transit Authority, 6/13/88; RF272-3504*

The DOE issued a Decision and Order granting an Application for Refund from crude oil overcharge funds based on the Applicant's purchases of refined petroleum products from August 19, 1973, through January 27, 1981. The Applicant used actual invoices to calculate its volume claim. Part of the claim was based on transmission fluid. The DOE determined that transmission fluid is derived from petroleum and is an eligible product in these proceedings. The DOE further determined that the Applicant should be presumed injured because it was an end-user of the gallons claimed. The refund granted in this Decision is \$295.

*Polcyn Farms et al., 6/13/88; RF272-5288 et al.*

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to four applicants based on their purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities and calculated its volume claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore found injured based upon the end-user presumption of injury. The sum of the refunds granted in this Decision is \$45.

*Seward & Harris Gin Co. Seward & Harris, 6/15/88; RF272-2364, RF272-2365*

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to two applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Seward & Harris Gin Co. used propane to operate its public cotton gin and Seward & Harris used various petroleum products in agricultural activities associated with the cultivation of cotton. Seward & Harris Gin Co. consulted actual fuel supplier invoices to determine its propane gallonage. Seward & Harris estimated its consumption based on the number of acres it farmed. Both applicants were end-users of the products they claimed and were therefore presumed by the DOE to have been injured. The sum of the refunds granted in this Decision is \$243. Both of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

*Townsend Bros., Inc., 6/13/88; RF272-1133*

The DOE issued a Decision and Order granting an Application for Refund from crude oil overcharge funds based on the Applicant's purchases of motor gasoline and propane during the period August 19, 1973 through January 27, 1981 (Settlement Period). Because the Applicant lacked gallonage figures, it based its claim on its gasoline and propane expenditures for the Settlement Period. Consequently, the DOE divided the Applicant's gasoline and propane expenditures by weighted average prices for gasoline and propane that the DOE accepted as reasonable in prior crude oil cases. As an end-user, the Applicant was entitled to receive a refund of its full volumetric share. The refund granted in this Decision is \$43.

#### Dismissals

The following submissions were dismissed:

*Name, and Case No.*

Don E. Keith Petroleum Products—RF238-31  
Torrid Gas Co., Inc.—RF225-11032

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy*

*Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.  
July 8, 1988.

[FR Doc. 88-16110 Filed 7-15-88; 8:45 am]  
BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[OSWER-FR-3415-6]

### Financial Assistance Program Eligible for Review

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability and review.

**SUMMARY:** The Environmental Protection Agency's (EPA) Office of Solid Waste and Emergency Response is announcing the availability of a new financial assistance program, "Source Reduction and Recycling Technical Assistance," for States to establish and expand source reduction and recycling technical assistance programs. This is a grant/cooperative agreement program designed to provide assistance to a limited number of States to develop or expand technical assistance programs that address the reduction of pollutants across all environmental media: air, land, surface water, ground water. The grants/cooperative agreements will be awarded under the authority of section 8001(a) of the Resource Conservation and Recovery Act (RCRA) and any State environmental Agency is eligible to apply.

#### FOR FURTHER INFORMATION CONTACT:

Jackie Krieger, Office of Solid Waste, Waste Minimization Staff (WH-565), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-6972.

**SUPPLEMENTARY INFORMATION:** In fiscal year 1988, Congress appropriated to EPA \$4 million for "incentive grants to States to establish and expand waste reduction technical assistance programs and for EPA to establish and operate a technical information clearinghouse." Of the total \$4 million, \$3 million will be awarded to States in cooperative agreements.

The Hazardous and Solid Waste Amendments (HSWA) of 1984 established a national policy declaring that, "wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. Waste that is nevertheless generated

should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment." EPA initially developed a program under HSWA, referred to as the waste minimization program, which focused on promoting source reduction and recycling activities that either: (1) Reduce the total volume of waste that would otherwise be subsequently treated, stored, or disposed; (2) reduce the toxicity of waste that would otherwise be subsequently treated, stored, or disposed; or (3) both, as long as reduction is consistent with the general goal of minimizing present and future threats to human health and the environment.

The waste minimization program originated under HSWA, including its definition and objectives, focused on applications to hazardous waste. However, EPA has expanded the scope of its policy and program to implement a source reduction and recycling program which extends to reducing the potential for environmentally harmful releases to all media, including air, land, surface water, and ground water. EPA stresses that source reduction, involving the reduction or elimination of releases through either production process changes or other source modifications, is a more desirable technique than recycling.

Under this multi-media program, EPA is taking action to build source reduction and recycling options into its decisionmaking and operating processes. EPA's strategy for implementing this program focuses on four areas:

- Focusing on the need for a preventative approach to environmental protection throughout government, industry and the public;
- Creating incentives for and eliminating barriers to source reduction and recycling;
- Supporting the development and implementation of State source reduction and recycling programs;
- Collecting and analyzing data essential to measure national progress on source reduction and recycling.

Because State agencies have more direct contact with generators and hence are more aware of their needs and problems, EPA believes that States working with local governments have the greatest opportunity to work directly with industries on source reduction and recycling. A primary goal of EPA's program is to support States in developing and implementing source reduction and recycling programs and to foster Federal/State information sharing and communication.

These grant/cooperative agreement funds are to be used specifically for establishing and expanding source reduction and recycling technical assistance programs in the States. The activities funded must be performed in the context of a State program—the development or expansion of an ongoing, complementary set of source reduction and recycling activities. Grant/cooperative agreement funds will be awarded to State environmental Agencies with programs in all stages of development, from established programs to programs needing start-up funds.

To apply for funds, State environmental agencies must:

- (1) Submit a Letter of Intent to participate, signed by the Agency Commissioner or Secretary, to the Grants Operations Branch at EPA (see address below by August 15, 1988, and
- (2) Submit a complete grant application package to the Grants Operations Branch, Grants Administration Division (PM-216F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, by September 30, 1988. Applications received after September 30, 1988 will not be considered for an award.

A grant/cooperative agreement application package will be available in July 1988. The package will contain an application, instructions for completing the application, and further information on EPA's source reduction and recycling program. Copies of the application package will be sent to State environmental Agencies. Additional copies will be available from Jackie Krieger of the Office of Solid Waste at the address listed above in the Further Information section.

This program is eligible for intergovernmental review under Executive Order 12372 and is subject to the review requirements of section 204 of the Demonstration Cities and Metropolitan Development Act. States must notify the following office writing within thirty days of this publication whether their State's official E.O. 12372 process will review applications in this program: Grants Policies and Procedures Branch, Grants Administration Division (PM-216F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Applicants must contact their State's Single Point of Contact (SPOC) for intergovernmental review as early as possible to determine if the program is subject to the State's official E.O. 12372 review process and what material must be submitted to the SPOC for review. In addition, applications including projects within a metropolitan area must be sent to the areawide/Regional/local planning

agency designated to perform metropolitan or Regional planning for the area for their review.

SPOCs and other reviewers should send their comments concerning applications to the Grants Operations Branch, Grants Administration Division (PM-216F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, no later than sixty days after receipt of an application/other required material for review.

Dated: July 5, 1988.

J.W. McGraw,

Assistant Administrator.

[FR Doc. 88-16073 Filed 7-15-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140097; FRL-3415-2]

#### Access to Confidential Business Information by the General Accounting Office

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The General Accounting Office (GAO) has requested access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 431 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** In a June 6, 1988, letter to the EPA Director for the Information Management Division of the Office of Toxic Substances, the GAO requested that the Agency provide specified GAO employees access to materials submitted to EPA under all sections of TSCA. The letter indicated that such access is necessary so that GAO can evaluate EPA's efforts to regulate the production of chemicals that deplete stratospheric ozone. Some of the information requested by GAO may be claimed or determined to be confidential.

In accordance with section 14(e) of TSCA and 40 CFR 2.306(h), EPA is required to provide TSCA to GAO in response to a properly authorized request.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide

GAO access to these CBI materials on a need-to-know basis. GAO has indicated that all access to TSCA by GAO will take place at EPA Headquarters. Clearance for access to TSCA CBI under this request is scheduled to expire on July 29, 1988.

EPA will inform GAO of the confidential status of the information in question, of the security procedures EPA follows to protect the information, and of the provisions of section 14 of TSCA, which set criminal penalties for unlawful disclosure of CBI.

Dated: July 6, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-16075 Filed 7-15-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140098; FRL-34153]

#### Access to Confidential Business Information by Columbia Cascade, Inc.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its subcontractor, Columbia Cascade, Incorporated (CCI) of Reston, VA for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

**DATE:** Access to the confidential data submitted to EPA will occur no sooner than July 28, 1988.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Chemical Substances Inventory, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under section 4, 6, 7, and 8 of TSCA.

Under contract no. 68-02-4281, subcontractor CCI, 12147 Stirrup Road, Reston, VA will assist the Office of Toxic Substances' Exposure Evaluation

Division in evaluating chemicals being proposed for manufacture for human and environmental exposure and release. Access authorization will be necessary so that the subcontractor may attend meetings where TSCA CBI will be discussed. CCI is working as a subcontractor under the General Sciences Corporation (GSC). Access to TSCA CBI by GSC was previously announced in the *Federal Register* of August 25, 1987 (52 FR 32053).

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide CCI access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters facilities.

Clearance for access to TSCA CBI under this contract is scheduled to expire on June 15, 1990.

CCI personnel will be required to sign non-disclosure agreements and will be required on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: July 6, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 88-16076 Filed 7-15-88; 8:45 am]

BILLING CODE 6560-50-M

#### FEDERAL COMMUNICATIONS COMMISSION

##### Advisory Committee on Advanced Television Service, Implementation Subcommittee

The time has been changed for the next meeting of the Implementation Subcommittee of the Advisory Committee on Advanced Television Service announced at 53 FR 26114 (pub. July 11, 1988). It now is scheduled for: July 20, 1988, 2:00 p.m., Commission Meeting Room (Room 856), 1919 M Street, NW., Washington, DC.

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. 88-16090 Filed 7-15-88; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 88-301; DA 88-898]

##### J. Hashtroudi, R. Pelissier, and U.S. Cellular Corp.; Order To Show Cause

**AGENCY:** Federal Communications Commission.

**ACTION:** Order to show cause and hearing designation order.

**SUMMARY:** Pursuant to § 1.91 of the Commission's Rules, Jalal Hashtroudi, Robert A. Pelissier, and U.S. Cellular Corporation (USCC), the partners of JHP Partnership, the nonwireline cellular license of Station KNKA483 in the Manchester-Nashua, New Hampshire MSA, have been ordered to show cause why an order of revocation should not be issued, or some other sanction be imposed. The reason for this action is that it appears the parties have violated § 22.39 of the Commission's Rules.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**DATES:** The Order was released on June 15, 1988. Notices of appearance by those named as parties in the Order were due July 5, 1988. The prehearing conference is August 18, 1988.

**FOR FURTHER INFORMATION CONTACT:** Susan Magnotti, Mobile Services Division, Common Carrier Bureau, (202) 632-6450.

**SUPPLEMENTARY INFORMATION:** The issues designated are as follows:

1. To determine the facts and circumstances surrounding the sale of Jenkins' partnership interest to USCC;

2. To determine the facts and circumstances of the "restarted partnership agreement" and the relationship between USCC and the other JHP partners;

3. Whether, in view of the evidence adduced under the foregoing issues, the non-wireline cellular license for the Manchester-Nashua, N.H., MSA has been the subject of one of more authorized transfers of control in violation of § 22.39 of the Commission's Rules;

4. Whether, in view of the evidence adduced on the foregoing issues, the non-wireline cellular license for the Manchester-Nashua, N.H., MSA should be revoked or some other sanction be imposed.

Gerald Brock,

Chief, Common Carrier Bureau.

[FR Doc. 88-16091 Filed 7-15-88; 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 section 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.: 224-200138**

**Title:** Port of Saipan Ground Lease Agreement.

**Parties:**

Commonwealth Ports Authority  
Antonio Salas Camacho d/b/a  
WestPac Freight

**Synopsis:** The agreement provides for the lease of certain land (Lot 032E 03, containing an area of 5,043 square meters) located at the Commercial Port of Saipan.

By Order of the Federal Maritime Commission.

Dated: July 13, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-16060 Filed 7-15-88; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Agency Forms Under Review

July 11, 1988.

#### Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment

period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

**DATE:** Comments must be received within fifteen working days of the date of publication in the **Federal Register**.

**ADDRESS:** Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:**

There is no form used in the collection of this information. The requirement involves a notification to the Federal Reserve which may be in a free-form letter. A copy of the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

**Proposal To Approve Under OMB Delegated Authority the Extension Without Revision of the Following Report**

1. Report title: Notification Pursuant to section 211.23(h) of Regulation K on Acquisitions Made by Foreign Banking Organizations

Agency form number: FR 4002

OMB Docket number: 7100-0110

Frequency: On occasion (estimated average of two per year)

Respondents: Foreign banking organizations

Estimated Number of Respondents: 160

Average hours per response: .5

Annual reporting hours: 160

Small businesses are not affected.

**General description of report:**

This report is required by law [12 U.S.C. 1844 and 3106], and confidential treatment may be requested.

Foreign banking organizations (FBOs) must inform the Board of shares acquired in companies engaged in activities in the U.S. and of direct and indirect U.S. activities commenced by a subsidiary of the FBO.

Board of Governors of the Federal Reserve System, July 11, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-16026 Filed 7-15-88; 8:45 am]

BILLING CODE 6210-01-M

### Banque Nationale de Paris; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) 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 commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be

received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 5, 1988.

**A. Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Banque Nationale de Paris*, Paris, France; to engage *de novo* through its subsidiary, BNP Leasing Corporation, Dallas, Texas, in leasing real property or acting as agent, broker, or adviser in leasing such property, provided that all such leasing shall comply with the requirements of § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 11, 1988.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 88-16023 Filed 7-15-88; 8:45 am]

BILLING CODE 6210-01-M

#### **RHNB Corp., 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 August 5, 1988.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *RHNB Corporation*, Rock Hill, South Carolina, to acquire 100 percent of the voting shares of MetroBank, N.A., Charlotte, North Carolina.

**B. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Tracorp, Inc.*, Tullahoma, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of The Traders National Bank, Tullahoma, Tennessee.

**C. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Worthington Bancshares, Inc.*, Indianapolis, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Worthington State Bank, Worthington, Indiana.

Board of Governors of the Federal Reserve System, July 11, 1988.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 88-16024 Filed 7-15-88; 8:45 am]

BILLING CODE 6210-01-M

#### **FEDERAL TRADE COMMISSION**

##### **Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules**

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the in the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

#### **TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 062788 AND 070888**

| Name of acquiring person, name of acquired person, name of acquired entity                           | PMN number | Date terminated |
|--|------------|-----------------|
| James H. Desnick, M.D., British Land Company plc, British Land of America Inc.                       | 88-1728    | 06/27/88        |
| Varlen Corporation, Precision Scientific, Inc., Precision Scientific, Inc.                           | 88-1905    | 06/27/88        |
| Optek Technology, Inc., TRW, Inc., Optoelectronics Division  | 88-1718    | 06/28/88        |
| Pekka Herlin, Michael Nicklous, 1) Flynn-Hill Elevator Corp. & 2) Curtis Elevator                    | 88-1750    | 06/28/88        |
| Lennox International Inc., Richard W. Snyder, SnyderGeneral Corporation                              | 88-1753    | 06/28/88        |
| VenTech Healthcare Corporation Inc., Avon Products, Inc., Foster Medical Corporation                 | 88-1758    | 06/28/88        |
| CSR Limited, Rinker Materials Corporation, Rinker Materials Corporation                              | 88-1770    | 06/28/88        |
| Hickson International PLC, Kerley Enterprises, Inc., Kerley Enterprises, Inc.                        | 88-1792    | 06/28/88        |
| Akzo N.V., Dr. K.C. Bae, My-K Laboratories, Inc.   | 88-1794    | 06/28/88        |
| Pope & Talbot, Inc., Georgia-Pacific Corporation, Georgia-Pacific Corporation                        | 88-1796    | 06/28/88        |
| Wasserstein, Perella & Co. Holdings, Inc., PA Holdings Corporation, PA Holdings Corporation          | 88-1805    | 06/28/88        |
| The Henley Group, Inc., PA Holding Corporation, PA Holding Corporation                               | 88-1806    | 06/28/88        |
| Wasserstein, Perella & Co. Holdings, Inc., IC Industries, Inc., Pneumo Abex Corporation              | 88-1810    | 06/28/88        |
| The Henley Group, Inc., IC Industries, Inc., Pneumo Abex Corporation                                 | 88-1811    | 06/28/88        |
| Olympia & York Developments Limited, Datarex Systems Inc., Datarex Systems Inc.                      | 88-1825    | 06/28/88        |
| Olympia & York Developments Limited, Datarex Systems Inc., Datarex Systems                           | 88-1831    | 06/28/88        |
| Galactic Resources Ltd., Homestake Mining Company, Homestake Mining Company                          | 88-1847    | 06/28/88        |
| Citicorp, Jet Florida, Inc., Jet Florida, Inc.   | 88-1852    | 06/28/88        |
| Sara Lee Corporation, Pannill Knitting Company, Incorporated, Pannill Knitting Company, Incorporated | 88-1853    | 06/28/88        |
| Sara Lee Corporation, Pannill Knitting Company, Incorporated, Pannill Knitting Company, Incorporated | 88-1858    | 06/28/88        |
| Kamilche Company, The Times Mirror Company, Certain timberlands of TM                                | 88-1871    | 06/28/88        |
| Kamilche Company, The Times Mirror Company, Certain timberlands of TM                                | 88-1872    | 06/28/88        |
| Irving Bank Corporation, Intercontinental Affiliates, DC-9T-I, Inc.                                  | 88-1887    | 06/28/88        |
| Saatchi & Saatchi Company PLC, Gartner Group, Inc., Gartner Group, Inc.                              | 88-1896    | 06/28/88        |

## TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 062788 AND 070888—Continued

| Name of acquiring person, name of acquired person, name of acquired entity   | PMN number | Date terminated |
|--|------------|-----------------|
| Saatchi & Saatchi Company PLC, Gartner Group, Inc., Gartner Group, Inc.  | 88-1897    | 06/28/88        |
| The Albert Fisher Group PLC, Grossman Paper Company, Grossman Paper Company  | 88-1846    | 06/29/88        |
| Bernard B. Kozloff, Diana Corporation, Ben Kozloff, Inc.   | 88-1851    | 06/29/88        |
| Rohto Pharmaceutical Co., Ltd., The Mentholatum Company, The Mentholatum Company                                   | 88-1780    | 06/30/88        |
| Bernard Lee House, University of Rochester, University of Rochester  | 88-1862    | 06/30/88        |
| Sulzer Brothers Limited, Intermedics, Inc., IMC Acquisition Corp.  | 88-1906    | 06/30/88        |
| Energy Development Partners, Ltd., Pyro Energy Corp., Enex Resources Corporation                                   | 88-1908    | 06/30/88        |
| Sulzer Brothers Limited, Intermedics, Inc., Intermedics, Inc.  | 88-1914    | 06/30/88        |
| Sulzer Brothers Limited, Intermedics, Inc., Intermedics, Inc.  | 88-1915    | 06/30/88        |
| Exxon Corporation, Bernard Lee House, Bernard Lee House  | 88-1937    | 06/30/88        |
| Rockwell International Corporation, Communication Machinery Corporation, Communication Machinery Corporation       | 88-1755    | 07/01/88        |
| Eastman Kodak Company, Interactive Systems Corporation, Interactive Systems Corporation                            | 88-1790    | 07/01/88        |
| Japan Storage Battery Co., Ltd., Enpak Incorporated, Enpak Incorporated  | 88-1843    | 07/01/88        |
| Pacific Dunlop Limited, Enpak Incorporated, Enpak Incorporated   | 88-1844    | 07/01/88        |
| Kramer Capital Partners, L.P., Mission Insurance Group, Inc., Mission American Insurance Company, Compac Insurance | 88-1849    | 07/01/88        |
| Mesulam Riklis, American Brands, Inc., E-II Holdings, Inc.   | 88-1854    | 07/01/88        |
| Innopac Inc., Jack Kaltman, Continental Extrusion Corp.  | 88-1885    | 07/01/88        |
| Integrated Resources, Inc., Equus Building Products, L.P., Equus Building Products, L.P.                           | 88-1902    | 07/01/88        |
| Huber + Suhner AG, Hercules Incorporated, Champlain Cable Corporation  | 88-1917    | 07/01/88        |
| Applied Magnetics Corporation, Magnetic Data, Inc., Magnetic Data, Inc.  | 88-1918    | 07/01/88        |
| Environmental Treatment and Technologies Corp., Anthony Mesiti, National Surface Cleaning, Inc.                    | 88-1933    | 07/01/88        |
| Kubota, Ltd., Ardent Computer Corporation, Ardent Computer Corporation   | 88-1936    | 07/01/88        |
| Hanil Development Co., Ltd., Calista Corporation, Calista Corporation  | 88-1966    | 07/01/88        |
| H Group Holding, Inc., Ramada Inc., Ramada Inc.  | 88-1779    | 07/05/88        |
| MCO Holdings, Inc., KaiserTech Limited, KaiserTech Limited   | 88-1797    | 07/05/88        |
| J.B. Poindexter, Durakon Industries, Inc., Jerr-Dan Corporation  | 88-1823    | 07/05/88        |
| MEDIQ Incorporated, Bank of New England Corporation, Financial Enterprises Corp.                                   | 88-1868    | 07/05/88        |
| Sumitomo Chemical Company, Ltd., Hispan Corporation, Hispan Corporation  | 88-1875    | 07/05/88        |
| Hercules Incorporated, Hispan Corporation, Hispan Corporation  | 88-1877    | 07/05/88        |
| Arabian Investment Banking Corp., [INVECORP] E.C., Ronald DeFusco, NYTSA Acquisition Corp.                         | 88-1901    | 07/05/88        |
| Erol Y. Beker, F. Browne Gregg, Consolidated Minerals, Inc.  | 88-1921    | 07/05/88        |
| Sameer Y. Zahr, F. Browne Gregg, Consolidated Minerals, Inc.   | 88-1922    | 07/05/88        |
| William A. Fickling, Jr., WAF Acquisition Corporation, WAF Acquisition Corporation                                 | 88-1924    | 07/05/88        |
| Ira M. Koger, Koger Properties, Inc., Koger Properties, Inc.   | 88-1938    | 07/05/88        |
| W.D. Company, Inc., Miller & Paine, M & P.   | 88-1945    | 07/05/88        |
| Eric F. Findlay, c/o Silcorp Limited, Charles Gallup, GalCorp  | 88-1947    | 07/05/88        |
| Mr. Peter W. May, Avery, Inc., Avery, Inc.   | 88-1952    | 07/05/88        |
| Mr. Peter W. May, Nelson Peltz, CJI Industries, Inc.   | 88-1953    | 07/05/88        |
| Ralph J. Roberts, SCI Associates, L.P., SCI Holdings, Inc.   | 88-1788    | 07/06/88        |
| Tele-Communications, Inc., SCI Associates, L.P., SCI Holdings, Inc.  | 88-1793    | 07/06/88        |
| Golden Nuggett, Inc., Del Webb Corporation, Del Webb Corporation   | 88-1814    | 07/07/88        |
| Emerson Electric Co., Low & Bonar PLC, One subsidiary and LB's Powertec Division                                   | 88-1832    | 07/07/88        |
| Bellsouth, Raychem Corporation, Raynet International, Inc.   | 88-1840    | 07/07/88        |
| Nelson Peltz (Triangle Industries, Inc.), Avery, Inc., Avery, Inc.   | 88-1879    | 07/07/88        |
| Golder, Thoma, Gressey Fund II, Intercole, Inc., Intercole, Inc.   | 88-1881    | 07/07/88        |
| King Broadcasting Company, Barry Silverstein, Coaxial Associates of St. Croix Limited Partnership                  | 88-1882    | 07/07/88        |
| Warner Communications Inc., R.E. Turner, Turner Broadcasting System, Inc.  | 88-1928    | 07/07/88        |
| Thomas J. Lutsey, The Coca-Cola Company, Nutri-Foods Int'l, Inc.   | 88-1951    | 07/07/88        |
| Boston Ventures Limited Partnership II, Berry Gordy, Motown Records Corporation                                    | 88-1808    | 07/08/88        |
| The Penn Central Corporation, Capital Wire and Cable Corporation, Capital Wire and Cable Corporation               | 88-1827    | 07/08/88        |
| Mr. Randolph W. Lenz, c/o KCS Industries, Inc., Kendavis Holding Company, Unit Rig & Equipment Co.                 | 88-1845    | 07/08/88        |
| Robert F. Browne, Kenneth G. Adams, c/o Adams Investment Company, Oklahoma Beverage Company                        | 88-1883    | 07/08/88        |
| Frank M. Late, Kenneth G. Adams, c/o Adams Investment Company, Oklahoma Beverage Company                           | 88-1884    | 07/08/88        |
| Japan Storage Battery Co., Ltd., Pacific Dunlop Limited, GNB Incorporated  | 88-1894    | 07/08/88        |
| Metallgesellschaft AG, Horsehead Industries, Inc., Horsehead Resource Development Company, Inc.                    | 88-1941    | 07/08/88        |
| Centel Corporation, United Telecommunications, Inc., United TeleSpectrum, Inc.                                     | 88-1960    | 07/08/88        |

## FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay, Contact  
Representative, Premerger Notification  
Office, Bureau of Competition, Room  
301, Federal Trade Commission,  
Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-16057 Filed 7-15-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND  
HUMAN SERVICES

## Centers for Disease Control

National Committee on Vital and  
Health Statistics Subcommittee on  
Ambulatory Care Statistics; Meeting

Action: Notice of Meeting.

In accordance with the Federal  
Advisory Committee Act (Pub. L. 92-  
463), notice is hereby given that the  
National Committee on Vital and Health  
Statistics Subcommittee on Ambulatory  
Care Statistics established pursuant to

42 U.S.C. 242k, section 306(k)(2) of the  
Public Health Service Act, as amended,  
announces the following meeting.

Name: National Committee on Vital  
and Health Statistics Subcommittee on  
Ambulatory Care Statistics.

Time and Date: 10:00 am-5:00 p.m.—  
August 15, 1988; 9:00 a.m.-5:00 p.m.—  
August 16, 1988.

Place: Hubert H. Humphrey Building,  
Room 337A, 200 Independence Avenue,  
SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting  
is for the Subcommittee to continue the  
review and revision of the Uniform

**Ambulatory Medical Care Minimum Data Set.**

**Contact Person for More Information:** Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2-12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7050.

Dated: July 12, 1988.

Elvin Hilyer,

*Associate Director for Policy Coordination, Centers for Disease Control.*

[FR Doc. 88-16071 Filed 7-15-88; 8:45 am]

BILLING CODE 4160-18-M

### Health Care Financing Administration (HSQ-161-N)

#### Meeting of the Advisory Panel on the Development of Uniform Needs Assessment Instrument(s)

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the second meeting of the Advisory Panel on the Development of Uniform Needs Assessment Instrument(s). The Panel is responsible for the development of a standard method to be used to evaluate the post-hospitalization needs of patients. The Panel was established as required by section 9305(h)(2) of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), Pub. L. 99-509. The meeting is open to the public.

**DATE:** August 3-4, 1988.

**TIME:** August 3, 8:30 a.m. to 5:00 p.m.; August 4, 8:00 a.m. to 11:00 a.m.

**ADDRESS:** Sheraton Santa Barbara Hotel and Spa, 1111 East Cabrillo Boulevard, Santa Barbara, California 93103.

**FOR FURTHER INFORMATION CONTACT:** Sue Nonemaker, (301) 966-6825.

**SUPPLEMENTARY INFORMATION:** Section 9305(c) of OBRA '86, in amending the Medicare definition of "hospital" in section 1861(e)(6) of the Social Security Act, and in enacting the new definition of "discharge planning process" in section 1861(ee), requires that hospitals, as a condition to participate in the Medicare program, provide discharge planning. Discharge planning activities vary and we currently lack a standardized method for evaluating a patient's need for health care after hospitalization. The development of a standardized method would allow more uniformity among those responsible for

discharge planning and improve determination of a patient's need for post-hospital services.

Section 9305(h) of OBRA '86 requires the Secretary to develop a uniform needs assessment instrument in consultation with an advisory panel made up of experts in the delivery of post-hospital extended care services, home health services, and long term care services. The panel is to include experts in the delivery of post-hospital extended care services, home health services, long term care services and representatives of physicians, Medicare beneficiaries, hospitals, skilled nursing facilities, home health agencies, long term care providers, and fiscal intermediaries. The Secretary has named Mr. Jay Rudman, Director of the Clinical Social Work Department at the University of California at Los Angeles Medical Center as chairman of the panel and appointed 17 members to the panel.

The panel will have several meetings at which it plans to:

- Develop a standard method to evaluate an individual's ability to function or engage in activities of daily living, the nursing and other care requirements necessary to meet health care needs, and the social and familial resources available to the individual;
- Construct the standard method so that it could be used by discharge planners, hospitals, nursing facilities, other health care providers and fiscal intermediaries in evaluating an individual's needs for post-hospital extended care; and
- Evaluate the advantages and disadvantages of using the tool as a basis for determining whether payment should be made for post-hospital extended care services and home health services which are provided to Medicare beneficiaries.

The Secretary must report to Congress no later than January 1, 1989 his recommendations for the appropriate use of a uniform needs assessment instrument to determine a beneficiary's need for post-hospital extended care.

At this meeting, the Advisory Panel will review topics that need to be considered in developing the standard method. Content areas will include: critical elements in the assessment of the elderly; functional assessment; behavioral and cognitive issues in assessment; nursing and other care considerations; measures of familial and community resources; and care setting considerations that pertain to a patient's need for skilled nursing or home health care. The items of discussion are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: July 12, 1988.

William L. Roper,

*Administrator, Health Care Financing Administration.*

[FR Doc. 88-16099 Filed 7-15-88; 8:45 am]

BILLING CODE 4120-01-M

### Social Security Administration

#### Finding Regarding Foreign Social Insurance or Pension System—Burundi

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Notice of finding regarding foreign social insurance or pension system—Burundi.

Finding: Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to any individual who is not a United States citizen or national for any month after he or she has been outside the United States for 6 consecutive months. This prohibition does not apply to such an individual where one of the exceptions described in section 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)) affects his or her case.

Section 202(t)(2) of the Social Security Act provides that, subject to certain residency requirements of section 202(t)(11), the prohibition against payment shall not apply to any individual who is a citizen of a country which the Secretary of Health and Human Services finds has in effect a social insurance or pension system which is of general application in such country and which:

- (a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and
- (b) Permits individuals who are United States citizens but not citizens of that country and who qualify for such benefits to receive those benefits, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

The Secretary of Health and Human Services has delegated the authority to make such a finding to the Commissioner of Social Security. The Commissioner has redelegated that authority to the Director of the International Policy Staff. Under that authority the Director of the International Policy Staff has approved a finding that Burundi, beginning July 1,

1967, does not have a social insurance system of general application in effect which pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death.

Accordingly, it is hereby determined and found that Burundi does not have in effect, beginning July 1, 1967, a social insurance system which meets the requirements of section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)) because it does not meet the requirements for general application.

**FOR FURTHER INFORMATION CONTACT:** J. Joseph Rausch, Room 1104, West High Rise Building, 6401, Security Boulevard, Baltimore, MD 21235, (301) 965-3567.

(Catalog of Federal Domestic Assistance Programs No. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security Survivors Insurance)

Dated: July 8, 1988.

Elizabeth K. Singleton,

Director, International Policy Staff.

Finding That Burundi Does Not Have A Social Insurance Or Pension System That Meets All The Conditions Of Section 202(t)(2) Of The Social Security Act

#### I. Background

There is no prior Section 202(t)(2) determination for Burundi. There is a copy of Burundi's former social security law (1962) in file as well as a completed SSA-142. There is no indication why a determination was not completed but a reasonable assumption would be that at the time, there were no beneficiaries of the United States Social Security system residing in Burundi. Currently, the Forbes listing shows one United States citizen beneficiary residing in Burundi.

#### II. Material Used in the Evaluation

1. Translation of excerpts from Burundi's Social Security Law #1/17 dated October 6, 1981.
2. SSA-142 information supplied by Burundi officials.
3. SSA-142 information supplied by the International Activities & Studies Staff (IASS).
4. Pages re Burundi from *Social Security Programs Throughout the World (SSPTW)*—1985.
5. Pages re Burundi from the *International Labor Organization's (ILO) Yearbook of Statistics*—1986.
6. Pages re Burundi from *The Statesman's Yearbook*—1986.
7. Pages re Burundi from *The World Almanac*—1985.
8. IPPTS's CL-10-2(g) file for Burundi.

#### III. Application of Section 202(t)(2) Criteria to the Social Insurance or Pension System of Burundi

##### A. The Country Must Have a Social Insurance or Pension System

As used in Section 202(t)(2) of the Social Security Act, a "social insurance system" means a governmental plan which pays

benefits as an earned right on the basis either of contributions to the plan or work in employment covered under the plan, without regard to financial need of the beneficiary. A "pension system" means a governmental plan which pays benefits based on residence or age, but without regard to the financial need of the beneficiary.

The Government of Burundi's social insurance system pays benefits based on contributions and employment, there is no requirement to consider financial need. (Ref. SSPTW-1985, Article 3 of the translation and item 3 of the SSA-142 completed by the National Institute of Social Security.)

Burundi does have a social insurance system within the meaning of Section 202(t)(2) of the Social Security Act.

##### B. The System Must Be in Effect

The system is considered in effect if it is in full operation with regard to taxes (or contributions) and payment of benefits or is in full operation with regard to taxes (or contributions) and payment is scheduled to begin at the earliest moment prescribed by law for acquiring earliest eligibility.

Contributions were first collected in 1957. (Ref. SSA-142 supplied by IASS and page 486 of the *International Labour Review*.) Contributions and credits under the 1957 scheme were incorporated first into the system enacted by the law of July 20, 1962 and subsequently by the law enacted October 16, 1981.

Although the 1962 law as translated is not clear on the length of coverage required for entitlement, articles 36 and 38 discuss the number of quarters of coverage required in a 20 quarter (5 year) period. Further, pages 488 and 489 of the *International Labour Review*, indicate a 5-year period for determining benefits. Article 69 of the 1962 law states that there will be no changes in the benefits under prior laws. Therefore, benefits are currently being paid.

The system is found to be in effect beginning July 1967 (this is based on enactment of the 1962 law and the 20-quarter period for determining benefits).

##### C. The System Must Be of General Application

A system is considered to be of general application if it covers a substantial portion of the paid labor force in industry and commerce, taking into consideration the industrial classification and size of the paid labor force and the population of the country, as well as occupational, size of employer and geographical limitations on coverage.

All geographic areas of the country are covered by the system (see both SSA-142's). All employed persons except casual or temporary labor are covered.

There is some discrepancy between the two SSA-142's in the figures used to identify the size of the labor force in industry and commerce and persons covered under the system. We are using the most favorable figures (those supplied by the National Institute of Social Security on the SSA-142) in this analysis even though past experience urges caution when rounded numbers are furnished.

The 75 percent ratio (75,000 covered in a commerce and industry workforce of 100,000)

if considered on its own would easily meet the requirement of "General Application". But, we must also consider the number of those covered and the industry and commerce workforce in relation to the total economically active population of the country.

*The Statesman's Yearbook* for 1986 provides a 1986 estimated population of 4,923,000 based on a 1979 census figure of 4,111,310. The 1986 ILO Yearbook of Statistics using "official estimates" for 1984 shows a total population of 4,520,572 and an economically active population of 2,752,070 or 60.9 percent. Using the same ratio of 60.9 percent to project a 1986 economically active population figure (60.9% of 4,923,000) provides an estimate of 2,998,107.

Based on the above figures, less than 3.4 percent of the economically active population is engaged in industry and commerce, only 2.5 percent of the economically active population is covered under the system and only 1.5 percent of the total population is covered under the system. Information in *The World Almanac-1985* and *The Statesman's Yearbook-1986* indicates there is little possibility of any expansion of the commerce and industry workforce in the future.

Based on the small percentage of the economically active population covered under the system, the social insurance system of Burundi is found not to be of general application.

Since Burundi's system does not meet the requirements of "General Application", we will reserve our decision on the other requirements of Section 202(t)(2).

#### IV. Determination

Burundi is found not to have a social insurance system that meets all the conditions of Section 202(t)(2) of the Social Security Act (is not of general application). This determination is effective with July 1967 (based on enactment of the 1962 law plus the 5 years of coverage needed for entitlement).

#### V. Publication

Notice of the finding is authorized for publication in the *Federal Register*.

Date: April 7, 1988.

Approved.

Elizabeth K. Singleton.

[FR Doc. 88-18050 Filed 7-15-88; 8:45 am]

BILLING CODE 4190-11-M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

[AA-650-08-4121-09]

### Departmental Long-Range Coal Lease Sale Planning Schedule; Deferring the Adoption of a Long-Range Plan

**SUMMARY:** This notice is to inform the public that the Department of the Interior will defer adoption of a long-range coal lease sale plan at this time. This decision, which is subject to annual

review by the Federal-State Coal Advisory Board, is based on current circumstances/conditions that indicate that there are sufficient quantities of marketable coal available to meet production needs in each of the coal production regions.

**FOR FURTHER INFORMATION CONTACT:**

Walter Rewinski, Chief, Division of Solid Mineral Leasing, Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240, Telephone (202) 343-6821.

**SUPPLEMENTARY INFORMATION:** In its report of February 1984, the Commission on Fair Market Value Policy for Federal Coal Leasing (Linowes Commission) recommended that the Government should establish and announce in a timely fashion a coal leasing schedule to promote predictability and stability of Federal leasing actions. The Commission further recommended that the Government should have the flexibility to change the timing of lease sales and the quantity of coal offered based on its assessment of emerging market conditions.

The Department, in its March 1984 response to the Commission, agreed with the Commission's recommendations and proposed to continue to maintain a long-range planning schedule for coal leasing and to seek the advice of the Federal-State Coal Advisory Board on this schedule. This proposal was formally adopted as part of the Department's final coal program decisions announced February 26, 1986. Specifically, the Department decided to develop a long-range plan that reflects regional and national coal market conditions, data needs, and budget constraints. Development of the plan is to include the recommendations of the individual regional coal teams on regional lease sale plans to the Board, which has the responsibility to formulate a coordinated Departmental plan that meets national needs and goals.

In the fall of 1987, each of the RCTs met to evaluate the need for the resumption of regional coal activity planning and for developing a regional lease sale plan. They had at their disposal, among other things, regional long-range market analyses that compared regional coal production needs against available capacity under two different scenarios (high and low) through the year 2005. Without exception, these market analyses revealed that the available productive capacity exceeded the projected production needs for the immediate future in each of the regions. The RCTs, based on these long-range regional

market analyses and other information presented at the RCT meetings by industry, the public, and the affected States, concluded that the resumption of the regional coal activity planning process was unnecessary at this time. Similarly, they did not believe that it was necessary to schedule regional coal lease sales for the near-term.

At the December 2, 1987, meeting of the Federal-State Coal Advisory Board, each of the RCTs summarized coal leasing activities in their respective regions and advised the Board of their conclusions regarding the resumption of regional activity planning and the scheduling of regional coal sales. The Board was also briefed on the national coal market outlook and Federal coal leasing activities that have taken place since 1984. Based on this information the Board agreed to recommend to the Secretary that adoption of a long-range Departmental lease sale planning schedule should be deferred at this time. The Board further recommended that it review this recommendation at least once per year. This annual review by the Board would insure consideration of emerging market conditions and the development of a proposed Departmental long-range plan, as necessary.

The Board's recommendation is accepted. Accordingly, the adoption of a Departmental long-range lease sale plan is deferred, subject to annual review by the Board. This decision will remain in effect until such time as a recommendation of a long range plan is received from the Board. At that time the Board's recommendation will be considered.

Date: July 11, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

**Bureau of Land Management**

[ES-970-08-4121-14-2410; MSES 12356]

**Proposed Reinstatement of a Terminated Oil and Gas Lease**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Reinstatement of terminated oil and gas lease MSES 12356.

**SUMMARY:** Terminated oil and gas lease MSES 12356 located in Wilkinson County, Mississippi, T. 4 N., R. 1 E., containing 648.64 acres.

**FOR FURTHER INFORMATION CONTACT:** Ms. Betty Beckham at (703) 461-1449.

**SUPPLEMENTARY INFORMATION:** Federal oil and gas lease MSES 12356 terminated

automatically by operation of law on August 1, 1986 (30 U.S.C. 188).

A petition for reinstatement of oil gas lease MSES 12356 was filed by James B. Furrh, Jr. (Lessee) under section 31D of the Mineral Leasing Act of 1920, as amended by the Federal Oil and Gas Royalty Management Act of 1982 (96 Stat. 2447).

The Lessee has met all the following requirements for reinstatement:

- (a) \$500..... Reimbursement of Departmental Administrative Cost.
- (b) \$5,841..... Back Rental Payments.
- (c) \$130..... Publication Cost.

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to \$5 per acre per year, and royalty will remain at 12½ percent provided the lease is producing within six months after receipt of notification of reinstatement. However, if the lease does not produce within the time allowed the royalty rate will follow procedures under Class II reinstatement of increased royalty rate of 16½ percent beginning August 1, 1986.

G. Curtis Jones, Jr.,

State Director.

[FR Doc. 88-16102 Filed 7-15-88; 8:45 am]

BILLING CODE 4310-GJ-M

**Fish and Wildlife Service**

**Receipt of Applications for Permits**

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-729096

Applicant: Lee Ralph Grater, Pueblo, CO

The applicant requests a permit to import one pair of captive-bred American peregrine falcons (*Falco peregrinus anatum*) from Mr. John Lejeune, Falcon Farms Ltd., British Columbia, Canada, for purposes of captive breeding and research.

PRT-729092

Applicant: Joseph Edward Fairchild, Sarasota, FL

The applicant requests a permit to export and reimport one captive-bred male leopard (*Panthera pardus*) for performance in a magician act, during which the applicant intends to educate the public with regard to the leopard's ecological role and conservation needs.

PRT-729258

Applicant: Merrill D. Martin, Oakland, CA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), to be culled from the captive herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-727165

Applicant: San Diego Zoological Society, San Diego, CA

The applicant requests a permit to import up to four Bawean deer [*Axis (=Cervus) porcinus kuhli*] from L. Ruhe KG, West Germany. These deer are not yet born, but are expected to be born to Bawean deer authorized for import under PRT-697337 and which are presently in pre-entry quarantine in West Germany.

PRT-729359

Applicant: Trunks &amp; Humps, Inc., Cut &amp; Shoot, TX

The applicant requests a permit to export one wild caught male Asian elephant (*Elephas maximus*) to Mike Hackenberger, Bowmanville, Ontario, Canada, for inclusion in a breeding program. This elephant has been in captivity since 1971.

PRT-729302

Applicant: Leslie Niehaus, Berlin Center, OH

The applicant requests a permit to purchase one female nene goose [*Nesochen (=Branta) Sandvicensis*] captive-bred at Sylvan Heights Waterfowl, Sylva, North Carolina, to pair with an existing male for propagation of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Dated: July 12, 1988.

S.M. Lawrence,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-16117 Filed 7-15-88; 8:45 am]

BILLING CODE 4310-AN-M

## National Park Service

## Concurrent Jurisdiction in Modoc, Siskiyou, Shasta, Marin, Monterey, and San Benito Counties, CA

AGENCY: National Park Service, Interior.  
ACTION: Notice.

Notice is hereby given that, effective April 12, 1988, current criminal jurisdiction was established over Federally owned or controlled lands and waters administered by the National Park Service within Lava Beds National Monument, Pinnacles National Monument, Point Reyes National Seashore, and the Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area.

Concurrent jurisdiction was conveyed for a five year period by the State of California to the National Park Service by the California State Lands Commission pursuant to Section 126 of the California Government Code, and accepted by Denis P. Galvin, Acting Director of the National Park Service, pursuant to applicable Federal statutory law.

Dated: July 7, 1988.

Denis P. Galvin,

Director, National Park Service.

[FR Doc. 88-16121 Filed 7-15-88; 8:45 am]

BILLING CODE 4310-70-M

## Olympic National Park; Concession Contract Negotiations; Log Cabin Resort, Inc., et al.

AGENCY: National Park Service, Interior.  
ACTION: Public notice.

**SUMMARY:** Public notice is hereby given that the National Park Service proposes to extend for 30 days the acceptance of applications for the concession opportunity at Olympic National Park now operated by Log Cabin Resort, Inc., to August 15, 1988, in lieu of 60 days following the notice which appeared in the *Federal Register*, Vol. 53, No. 93, Friday, May 13, 1988, pages 17118 and 17119.

**EFFECTIVE DATE:** August 15, 1988.

**ADDRESS:** Interested parties should contact the Regional Director, Pacific Northwest Region, 83 South King Street, Suite 212, Seattle, Washington 98104, for information as to the requirements of the proposed contract.

**SUPPLEMENTARY INFORMATION:** The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or

before August 15, 1988, to be considered and evaluated.

Dated: July 11, 1988.

Charles H. Odegaard,

Regional Director, Pacific Northwest Region.  
[FR Doc. 88-16118 Filed 7-15-88; 8:45 am]

BILLING CODE 4310-70-M

## Blackstone River Valley National Heritage Corridor; Massachusetts and Rhode Island; Blackstone River Valley National Heritage Corridor Commission; Meeting

Notice is hereby given in accordance with section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be Tuesday, July 19, 1988.

The Commission was established pursuant to Pub. L. 99-647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:30 p.m. in the William Howard Taft Room of the Uxbridge Inn, 20 North Main St., Uxbridge, Massachusetts, for the following reasons:

1. Swearing in of Commissioners;
2. Report of the Sub Committee on Operations including adoption of By Laws and consideration of establishing headquarters;
3. Report of the Sub Committee on Planning including discussion of procedures for preparing the Cultural Heritage and Land Management Plan;
4. Report of the Sub Committee on Administration including adoption of budget, staff hiring procedures, and job descriptions and discussion of interim director;
5. Report of the Electoral Sub Committee and election of office holders;
6. Appointments of new Sub-Committees;
7. Election of Sub-Committee Chairpersons.

It is anticipated that about fifty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from the Public Affairs Officer, National Park

Service, North Atlantic Region, 15 State St., Boston, MA 02109 (617) 565-8887.

Herbert S. Cabies, Jr.,  
Regional Director.

[FR Doc. 88-16119 Filed 7-15-88; 8:45 am]

BILLING CODE 4310-20-M

#### Lewis and Clark National Historic Trail Advisory Council Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Lewis and Clark National Historic Trail Advisory Council will be held August 6-7, 1988, beginning at 9 a.m. on August 6 at the Kirkwood Motor Inn, 800 South Third Street, Bismarck, North Dakota.

The council was originally established on June 26, 1979, pursuant to provisions of the National Trails System Act, 82 Stat. 919, 16 U.S.C. 1241 et seq., to advise the Secretary of the Interior on matters relating to the administration and development of the Lewis and Clark National Historic Trail.

Matters to be discussed at the meeting will include strategies for implementing the comprehensive management plan for the Lewis and Clark National Historic Trail and the status of development and management of the trail in each state.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting.

Further information concerning the meeting may be obtained from Thomas L. Gilbert, Division of External Affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402-221-3481 (FTS 864-3441). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Warren H. Hill,

Acting Regional Director, Midwest Region.

[FR Doc. 88-16120 Filed 7-15-88; 8:45 am]

BILLING CODE 4310-70-M

#### INTERSTATE COMMERCE COMMISSION

[Docket No. AB-290 (Sub-No. 24)]

#### Norfolk and Western Railway Co.—Abandonment—Between Frankfort and Linden in Clinton, Tippecanoe and Montgomery Counties, IN; Findings

The Commission has issued a certificate authorizing the Norfolk and Western Railway Company to abandon its 21.9-mile line of railroad between

Frankfort (milepost TS-209.3) and Linden (milepost TS-231.2) in Clinton, Tippecanoe, and Montgomery Counties, IN. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Noreta R. McGee,

Secretary.

[FR Doc. 88-16239 Filed 7-15-88; 8:45 am]

BILLING CODE 7035-01-M

#### DEPARTMENT OF JUSTICE

##### Antitrust Division

#### Notice Pursuant to the National Cooperative Research Act of 1984—Manville Corp.—Bird, Inc. Roofing Division Agreement

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. (the "Act"), Manville Corporation has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture, and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture and the venture's general area of planned activities are given below.

The parties to the venture are Manville Corporation and Bird, Inc. Roofing Division. The general area of the venture's planned activity is research relating to the economic, environmental and energy conservation benefits or recycling used asphalt

shingles for the production of new asphalt shingles.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-16064 Filed 7-15-88; 8:45 am]

BILLING CODE 4410-01-M

#### Office of Justice Programs

##### Law Enforcement Training and Technical Assistance Grant

**AGENCY:** Office for Victims of Crime, Office of Justice Programs, Department of Justice (DOJ).

**ACTION:** Notice of the availability of funds and request for applications for law enforcement training and technical assistance grants.

**SUMMARY:** Fiscal Year 1988 funds are available to provide regionally-based training and technical assistance to local and state law enforcement agencies in methods for and policies on responding to incidents of family violence. The Office for Victims of Crime (OVC) anticipates that \$400,000 will be made available to support these activities.

**DATE:** Applications for these funds must be received by August 15, 1988.

**ADDRESS:** Address applications to: Office for Victims of Crime, 633 Indiana Avenue, NW., Washington, DC 20531. Attention: Susan Stanley.

**FOR FURTHER INFORMATION CONTACT:** Susan Stanley (202) 272-6500.

##### SUPPLEMENTARY INFORMATION:

##### Background

On October 9, 1984, the President signed into law the Child Abuse Amendments of 1984 (Pub. L. 98-457, 42 U.S.C. 10401 et seq.). Title III of these Amendments, entitled the "Family Violence Prevention and Services Act" (the Act), enumerates the responsibilities of the Departments of Justice and Health and Human Services, pursuant to section 311 of the Act, "Law Enforcement Training and Technical Assistance Grants and Contracts." In order to enable the Department of Justice to carry out these responsibilities, funds are transferred from the Secretary of Health and Human Services to the Attorney General of the United States.

The overall purposes of the Act are to: assist states in efforts to prevent family violence; provide immediate shelter and related assistance for victims of family violence and their dependents; and provide technical assistance and training relating to family violence

programs for state and local public agencies (including law enforcement agencies), nonprofit organizations, and other persons seeking such assistance.

Section 311 of the Act provides for regionally-based training and technical assistance to personnel of local and state law enforcement agencies to provide them with the means for responding to incidents of family violence. The Act states that "applications which propose projects or programs which will develop, demonstrate, or disseminate information with respect to improved techniques for responding to incidents of family violence by law enforcement officers shall be given priority."

This announcement applies only to section 311 of the Act. Also, for purposes of this program announcement, the term "family violence", as defined in section 309 of the Act, means any act or threatened act of violence, including any forceful detention of any individual, which:

- a. Results or threatens to result in physical injury; and
- b. Is committed by a person against another individual (including an elderly person) to whom such person is or was related by blood or marriage or with whom such person is or was lawfully residing.

#### Statement of Problem

The problem of family violence has existed for generations, yet only recently has it begun to receive any degree of attention. The Reagan Administration focused special attention on this issue with initiation of the Attorney General's Task Force on Family Violence which issued its final report in September 1984. Based upon considerable research, including testimony received from public hearings held across the country, the Task Force reported that a law enforcement agency is usually the first and often the only agency called upon to intervene in family violence incidents. Public safety officers are in the forefront of the effort to preserve peace, even within families. But the Task Force discovered that—largely as a result of traditional community attitudes which considered violence within the family to be a private, less serious matter than violence between strangers—calls to police involving family violence are usually given a low priority. The Task Force research also indicated that in carrying out the community's priorities and law enforcement agency practices, police dispatchers and emergency call operators may often give the impression that a family violence call is a nuisance. Accordingly, minimal information is

requested from the caller and the dispatcher or emergency call operator assigns the call a low dispatch priority. As a result, the intervention by the patrol officer may be slow and inconsistent.

The FBI has reported that nearly 20 percent of all homicides in this country occur among family members. To reduce this high incidence of violence and prevent these tragic consequences, it is essential that all law enforcement agencies review their existing policies and publish operational procedures that establish family violence as a priority response. Implementation must begin with the police chief or sheriff and continue down the chain of command to the individual patrol officer. Consequently, patrol officers, and the officers who provide training both at the academies and within the departments, should understand the need for swift and responsive law enforcement intervention, the need to respond with caution and sensitivity toward the seriousness of the situation, the proper methods of screening and classifying family violence calls, and the appropriate referral and disposition of family violence victims and perpetrators.

The Attorney General's Task Force on Family Violence made several recommendations for the justice system, law enforcement and education and training. Among the recommendations were that:

1. Family violence should be recognized and responded to as a criminal activity.
2. Law enforcement agencies should publish operational procedures that establish family violence as a priority response and require officers to file written reports on these incidents. In addition, the operational procedures should require officers to perform a variety of activities to assist the victim.
3. Consistent with state law, the chief executive of every law enforcement agency should establish arrest as the preferred response in cases of family violence.
4. Law enforcement officials should maintain a current file of all protection orders valid in their jurisdiction.
5. Law enforcement officers should respond without delay to calls involving violations of protection orders.
6. Federal, state, and local government should train relevant personnel to diagnose and appropriately intervene in family violence cases.

A significant number of law enforcement agencies have made marked progress in addressing the recommendations and in responding to the handling of family violence incidents

since the report was issued. Many agencies have indicated their interest in further improving their operational procedures and response to family violence incidents.

In order to support efforts by state and local law enforcement agencies to improve their response to family violence incidents, the Office of Justice Programs is issuing this program announcement.

#### Purpose

In issuing this program announcement, the Office of Justice Programs, through awarding one to three grants from funds made available under the Act, seeks to provide training on domestic violence policies and procedures to the maximum number of law enforcement executives and mid-level managers possible.

Additionally, such training will utilize a curriculum which was developed under a previous grant made from these funds, wherein regional training sessions reached approximately 3% of this nation's law enforcement executives.

#### Program Description

The selected grantees will be required to perform the following tasks:

1. Implement a training program for state and local law enforcement management personnel, including sheriffs, chiefs of police and mid-level managers by conducting regional training sessions (no fewer than four) for law enforcement management personnel. The training program should utilize the training package developed under an award made in September, 1986, by the Office of Justice Programs to the Victim Services Agency in New York City. The project, "Training and Operational Procedures: A Coordinated Response to Domestic Violence," was funded under the provisions of the Family Violence Prevention and Services Act.
2. Develop a procedure and mechanism for responding to requests for information and assistance from various law enforcement agencies and serve as a broker and/or provider of technical assistance and expertise. A description of how individual technical assistance and information requests will be processed should be included.
3. Develop and utilize a multidisciplinary advisory board for project activities.
4. Consult with the developer of the above-noted training package and utilize their expertise so that the project will build on the progress which was made during the developmental phase.

**Selection Criteria**

The selection of the grantees will be based on:

1. Understanding of the problem. (10 points)
2. Appropriateness of program design and approach. (25 points)
3. Soundness of methodology. (30 points)
4. Financial and technical capability of the organization. (10 points)
5. Cost effectiveness. (10 points)
6. Accuracy and completeness of required information. (5 points)
7. The expertise and background of the employees assigned to the effort. (10 points)

**Funds Available**

\$400,000 will be available from the Office for Victims of Crime for the purpose of providing regionally-based training and technical assistance to local and state law enforcement agencies in methods for and policies on responding to incidents of domestic violence.

**Grant Period and Award Amount**

The cooperative agreements will be for eighteen (18) months and will cover 100% of the project costs (no matching funds required).

**Eligible Applicants**

Eligible applicants are private nonprofit organizations with law enforcement membership that have experience in providing training and technical assistance to law enforcement personnel on a national and/or regional basis. The Office for Victims of Crime will accept applications from eligible organizations, and will award one to three grants. However, a single grant award of up to \$400,000 to a consortium of national law enforcement organizations representing the program's primary target audience, i.e., law enforcement executives, would also be considered.

**Submission Deadlines**

Applications must be received by August 15, 1988. Applications which are hand delivered must be received by the close of business (5:00 p.m.).

**Applications**

Applicants should submit three (3) copies of their completed proposal by the deadline established above.

Submissions must include: A. A completed and signed Federal Assistance application on the current Standard Form 424. Copies of the required forms, and any information or clarification regarding them, may be obtained by writing or calling the Office

for Victims of Crime, National Victims Initiative Division, 633 Indiana Avenue, NW., Washington, DC, 20531. (202) 272-6500.

B. An abstract of the full proposal, not to exceed one page.

C. A program narrative of not more than fifteen (15) single-spaced typed pages should include:

1. A clear, concise statement of the issues surrounding the problem area. A discussion of the relationship of the proposed work to the existing training literature is also expected;

2. A clear statement of the project objectives including an approximation of the number of law enforcement personnel to be trained, a list of the major milestones of events, activities, products, and a timetable for completion;

3. A clear statement which describes the approach and strategy to be utilized in responding to each of the tasks identified in the program description (applicants should indicate how the training package will be individualized for the proposed target audience, and how the organization plans to maximize attendance at the training conferences);

4. The proposed organization and management plan to be used including, at a minimum, the staff of the project, with their experience, and the time commitments of key staff to individual project tasks. A full-time project director must be allocated to the project.

D. A proposed budget outlining all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, subcontracts, project advisory board costs and overhead, and a short narrative justification of each budgeted cost. It is anticipated that a subcontract relationship with the developer of the training curriculum may be established. If such a relationship is contemplated, a separate detailed budget should be submitted.

E. Copies of vitae for the professional staff which summarize education, research and training experience, and bibliographic information related to the proposed work. Detailed technical material that supports or supplements the description of the proposed effort, but is not integral to it, should be included in an appendix.

All three copies of the application must be sent or hand delivered to: Office for Victims of Crime, National Victims Initiative Division, 633 Indiana Avenue NW., Washington, DC, 20531, by the deadline established above.

**FOR FURTHER INFORMATION CONTACT:**

Susan Stanley, National Victims Initiative Division, (202) 272-6500. Information concerning model programs and practices is available from the

National Criminal Justice Reference Service, 1600 Research Boulevard, Rockville, Maryland 20850, 251-5000; and the National Victims Resource Center, Box 6000, Rockville, Maryland 20850, 251-5525.

**Notification Under Executive Order 12372**

This program, recently reauthorized and funded by Congress, provides support for training and technical assistance for law enforcement and other personnel to assist in addressing issues related to family violence. The Department of Health and Human Services, under whose authority these funds are transferred to the Department of Justice, excludes this program from coverage under Executive Order 12372. This training and technical assistance program is national in scope and the statutory requirement for "regionally based training" will be offered by the selected grantees in only a few cities/states nationwide. Therefore, the requirements of Executive Order 12372 are waived.

Jane Nady Burnley,

Director, Office for Victims of Crime.

[FR Doc. 88-16069 Filed 7-15-88; 8:45 am]

BILLING CODE 4410-18-M

**DEPARTMENT OF LABOR****Office of the Secretary**

[Case No. 88-INA-54]

**World Bazaar, Employer, on Behalf of Pi-Ling Hsieh Lee, Alien; Notice of Court Order**

The Office of Administrative Law Judges hereby publishes a copy of a court order issued in *In the Matter of World Bazaar, Employer, on behalf of Pi-Ling Hsieh Lee, Alien*, Case No. 88-INA-54. The Board of Alien Labor Certification Appeals requests the parties in Case No. 88-INA-54 and any other interested person to submit briefs on specific issues involved in the case by August 19, 1988.

For further information contact: John M. Vittone at (202) 653-5052.

Signed in Washington, DC, this 12th day of July, 1988.

John M. Vittone,  
Deputy Chief Judge.

Board of Alien Labor Certification Appeals,  
1111 20th Street, N.W.,  
Washington, D.C. 20036.

Date: July 6, 1988  
Case No. 88-INA-54

In the Matter of World Bazaar, Employer,  
on behalf of PI-LING HSIEH LEE, Alien.

**Order**

1. The parties are hereby notified that, on its own motion, this case has been designated for consideration by the Board of Alien Labor Certification Appeals *en banc*.

2. Pursuant to 20 C.F.R. § 656.27(b), the parties are ordered to file briefs with the Board addressing, in the context of this case, the following questions arising under 20 C.F.R. § 656.21(b)(7):

a. Is it lawful for an employer to reject a U.S. worker for a job for which alien labor certification is being sought because that worker is overqualified for the job?

b. Is it lawful for an employer to reject an otherwise qualified U.S. worker for a job for which alien labor certification is being sought because the U.S. worker intends to leave that job as soon as a better job opportunity comes along?

c. In the event the answer to question (b) above is "yes", is it lawful for an employer to assume that an overqualified U.S. worker for a job for which alien labor certification is being sought will leave that job as soon as a better job opportunity comes along?

The parties shall file their respective briefs no later than August 19, 1988.

For the Board.

Jeffrey Tureck,

Administrative Law Judge.

[FR Doc. 88-16101 Filed 7-15-88; 8:45 am]

BILLING CODE 4510-20-M

## Employment and Training Administration

[TA-W-20, 482]

### 3M Co., Rochester, NY; Negative Determination on Reconsideration

On May 27, 1988, the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers at the 3M Company, Rochester, New York. This determination was published in the *Federal Register* on June 10, 1988 (53 FR 21936).

The petitioner claims that workers producing color print paper and microfilm were adversely affected because of imports. Petitioner also claims that imports of x-ray film from Italy displaced workers producing XD and XDL film in 1987 and that Rochester included company import data in its production figures. It is also claimed that infra red (I.R.) film should be considered separately.

The Department's denial was based on the fact that the decreased sales and/or production criterion was not met. Sales and production of x-ray film at the Rochester facility increased both in quantity and value in 1987 compared to 1986.

Investigative findings show that the workers at Rochester are not separately identifiable by type of film. Accordingly,

it would serve no purpose to carve out small appropriate subdivisions by film type. Further, 3M considers infra-red (I.R.) film a type of x-ray film and has included such film production data with Rochester's x-ray production data.

On reconsideration the Department found that the Rochester facility ceased production of color print paper and microfilm prior to the period applicable to the petition. Section 223(b)(1) of the Trade Act does not permit the certification or workers prior to one year of the date of the petition which in this case is February 5, 1988.

Petitioner's March 19th letter did not contain any substantial information. The letter contained information from 1981 through 1985 with import and production forecasting for 1987. The Department has actual company import and production data for 1986 and 1987.

Also, on reconsideration, the Department found that imported film data was included in Rochester's production figures since Rochester slit, cut, and packaged the imported film. However, Rochester still has an increase in production of film in 1987 compared to 1986 after allowing for company imported film. Although production declined in the first two months of 1988, company imports did not reach a significant level to form a basis for certification. Workers should repetition in six months if they feel that imports are the cause of worker separations in 1988.

### Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of the 3M Company, Rochester, New York. Signed at Washington, DC, 6th day of July 1988.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Service, UIS.

[FR Doc. 88-16100 Filed 7-15-88; 8:45 am]

BILLING CODE 4510-30 M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Arts and the Humanities.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATE:** Comments on this information collection must be submitted by August 17, 1988.

**ADDRESSES:** Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington DC 20506; (202 682-5401).

**FOR FURTHER INFORMATION CONTACT:** Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

**SUPPLEMENTARY INFORMATION:** The Endowment requests a review of the revision of a currently approved collection. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3505(h).

**Title:** Theater Application Guidelines for FY 1989-90.

**Frequency of Collection:** One-time.

**Respondents:** Individuals or households; State or local governments; Non-profit institutions.

**Use:** Guideline instructions and applications elicit relevant information from individual artists, non-profit arts organizations, and state or local arts agencies that apply for funding under specific Theater program categories. The information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

**Estimated Number of Respondents:** 824.

**Average Burden Hours per Response:** 20.36.

**Total Estimated Burden:** 16,776.

Vera K. Yancey,

Assistant Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 88-16058 Filed 7-15-88; 8:45 am]

BILLING CODE 7537-01-M

## NATIONAL TRANSPORTATION SAFETY BOARD

### Public Hearing in Carrollton, KY, Highway Accident

In connection with its investigation of the accident involving a pickup truck/church activity bus head-on collision and fire on May 14, 1988, the National Transportation Safety Board will convene a public hearing at 9:00 a.m. (local time), on August 2, 1988, in the Grand Ballroom, Parlors C & D, of the Holiday Inn Hotel, 1325 Hurstbourne Lane, Louisville, Kentucky. For more information contact Alan Pollock, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, DC 20594, telephone (202) 382-6606.

Bea Hardesty,  
Federal Register Liaison Officer.  
July 12, 1988.

[FR Doc. 88-16052 Filed 7-15-88; 8:45 am]  
BILLING CODE 7533-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-368]

### Arkansas Power and Light Co., Arkansas Nuclear One, Unit 2; Environmental Assessment and Findings of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-6 issued to Arkansas Power and Light Company, (the licensee), for operation of the Arkansas Nuclear One, Unit 2 (ANO-2) located at Russellville, Arkansas.

#### Environmental Assessment

##### Identification of Proposed Action

By letter dated October 28, 1987 (2CAN108706), the licensee requested a change in the plant Technical Specifications (TSs) to decrease the required differential pressure produced by the high pressure safety injection pumps during surveillance testing, from 1402.5 psid to 1360.4 psid.

##### The Need for Proposed Action

The proposed TS change is needed because the current specification provides little margin for variation in pump performance. The proposed revision establishes a more realistic differential pressure requirement for the high pressure safety injection (HPSI) pumps which will increase operational

flexibility. Recent analyses have shown that a lower differential pressure requirement will not adversely impact the original analysis results, and will result in only a very small reduction of the injection leg flow rates.

##### Environmental Impact of the Proposed Action

The proposed reduction in the required differential pressure for the HPSI pumps was considered with respect to all the accident analyses in Chapter 15 of the Final Safety Analysis Report (FSAR), and also with respect to the loss of coolant accident (LOCA) analysis in Chapter 6 of the FSAR. The proposed reduction does not increase the probability or consequences of a previously evaluated accident. Therefore the proposed changes will not increase to greater than previously determined, the probability of accident and post-accident radiological releases, nor otherwise affect radiological plant effluents. The Commission concludes that there are no significant radiological environmental impacts associated with the proposed TS changes.

With regard to potential non-radiological impacts, the proposed TS change involves features located entirely within the restricted area as defined in 10 CFR Part 20. This would not affect non-radiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

The Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing regarding the proposed changes to the TS, was published in the Federal Register on December 28, 1987 (52 FR 48887). No request for hearing or petition for leave to intervene was filed following this notice.

##### Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result for the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

##### Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

#### Agencies and Persons Consulted

The Commission's staff reviewed the licensee's safety analysis and change to the TS that support the proposed amendment. The staff did not consult other agencies or persons.

#### Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

For further details with respect to this action, see the applications for license amendment dated October 28, 1987. Copies are 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 located at the Tomlinson Library, Arkansas Technical University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland, this 9th day of June.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-16078 Filed 7-15-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-313]

### Arkansas Power and Light Co., Arkansas Nuclear One, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of Appendix R to 10 CFR Part 50 to the Arkansas Power and Light Company, (the licensee), for Arkansas Nuclear One, Unit 1 (ANO-1) located in Pope County, Arkansas.

#### Environmental Assessment

##### Identification of Proposed Action

The proposed action would grant exemptions from certain requirements of Sections III.G, III.J and III.O of Appendix R to 10 CFR Part 50, which relate to fire protection features for ensuring that systems and associated circuits used to achieve and maintain safe shutdown are free of fire damage, to the provision of emergency lighting, and to the provision for the oil collection system for reactor

coolant pumps (RCPs). The exemptions are technical since the licensee must demonstrate that fire protection, emergency lighting, and RCP oil collection configurations meet the specific requirements of Section III.G, III.J, and III.O, or that alternate configurations can be justified by an acceptable analysis.

#### *The Need for Proposed Action*

The proposed exemptions are needed because the features described in the licensee's exemption request regarding the existing and proposed fire protection at the plant would result in a net benefit to the public health and safety.

#### *Environmental Impact of the Proposed Action*

The proposed exemptions will provide a degree of fire protection such that there is no increase in the risk of fires at ANO-1. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor do the proposed exemptions otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemptions.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20, with the minor exception of the redundant seismic condensate storage tank level transmitters. These exemptions would not affect non-radiological plant effluents and have no other environmental impact. Therefore we, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemptions.

The Commission has determined not to prepare an environmental impact statement of the proposed exemptions.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's letters dated August 15, 1984 and August 30, 1985 which contained the exemption requests, and letters dated October 20, 1986, April 22 and June 24, 1987, and April 25, 1988 which provided supplemental information. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Tomlinson Library, Arkansas

Technical University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland, this 9th day of June.

For the Nuclear Regulatory Commission,  
Jose A. Calvo,  
Director, Project Directorate—IV, Division of  
Reactor Projects—III, IV, V and Special  
Projects, Office of Nuclear Reactor  
Regulation.  
[FR Doc. 88-16079 Filed 7-15-88; 8:45 am]  
BILLING CODE 7590-01-M

#### [Docket No. 50-289]

#### **GPU Nuclear Corp.; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment of Facility Operating License No. DPR-50, issued to GPU Nuclear Corporation (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 1, located in Dauphin County, Pennsylvania.

#### **Environmental Assessment**

##### *Identification of Proposed Action*

The proposed amendment would revise the Technical Specification (TS) to support core reload for Cycle 7 of operation. The proposed action is in accordance with the licensee's application for amendment dated April 5, 1988.

##### *The Need for Proposed Action*

The proposed change to the TS is required in order to provide the new safety limits and instrument setpoints associated with the core configuration for the next operating cycle. These changes result in part from the use of more highly enriched fuel and to accommodate changes in power peaking and control rod worths.

##### *Environmental Impact of the Proposed Action*

The Commission has completed its evaluation of the proposed revision to Technical Specifications. As a result of these changes, the plant will be able to operate for about 17 months before the next refueling outage instead of the current 14 months. Operation with the core configuration will result in fewer fuel shipments and will remain within the operating parameters approved by the Commission prior to issuance of a full power license and within the analysis of environmental impacts in the Final Environmental Statement (FES) for operation. The proposed changes do not increase the probability or

consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment of Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 25, 1988 (53 FR 13456). No request for hearing or petition for leave to intervene was filed following this notice.

##### *Alternative to the Proposed Action*

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in not allowing operation of the plant.

##### *Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the final Environmental Statement for the Three Mile Island Nuclear Station, Unit 1, dated December 1972.

##### *Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

##### **Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated April 5, 1988, which is available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC and at the Local Public Document Room, Government Publication Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 11th day of July, 1988.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-16080 Filed 7-15-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-289]

### **Metropolitan Edison Co. et al.; Environmental Assessment and Finding of No Significant Impact**

In the Matter of Metropolitan Edison Co., Jersey Central Power & Light Co., Pennsylvania Electric Co., and GPU Nuclear Corp.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-50 issued to GPU Nuclear Corporation (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 1 (TMI-1), located in Dauphin County, Pennsylvania.

#### **Environmental Assessment**

##### *Identification of Proposed Action*

This Environmental Assessment is written in connection with the proposed core uprate for TMI-1 in response to the licensee's application for a license amendment dated April 18, 1988. The proposed action would upgrade the rated core power level for TMI-1 from the current level of 2535 megawatts-thermal (MWt) to 2568 MWt. This uprate would represent an increase of approximately 1.3 percent over the current rated core power and Nuclear Steam Supply System (NSSS) thermal power.

##### *The Need for the Proposed Action*

The proposed action would increase the TMI-1 electrical output by approximately 10 megawatts-electrical (MWe) and thus provide additional electric power to the electrical power grid which serves industrial, commercial and residential customers in the Commonwealth of Pennsylvania.

##### *Environmental Impacts of the Proposed Action*

In December 1972, the U.S. Atomic Energy Commission issued the "Final Environmental Statement Related to Operation of Three Mile Island Nuclear Station, Units 1 and 2" (NUREG-0552). This document evaluates the environmental impact associated with the operation of Three Mile Island Units 1 and 2. The Final Environmental Statement (FES) assumed a 30-year operating lifetime for each unit and was based upon a design thermal rating of 2535 MWt for Unit 1 and 2772 MWt for Unit 2. The staff has reviewed the FES to determine if any significant environmental impacts, other than those previously considered, would result from raising the licensed thermal power level for TMI-1 from 2535 MWt to 2568 MWt.

##### *Radiological Impacts*

The FES discussed population growth or decline by municipality between 1960 and 1970 but did not project population growth for the operating lifetime of TMI-1. However, the FES implied an overall population growth in the area primarily related to growth of Harrisburg International Airport. The trend of population in this area has generally increased very little between 1970 and 1980. In fact, the population of Harrisburg (nine miles northwest of TMI-1) has declined from 68,061 in 1970 to about 53,000 in 1980. The population within a 20 mile radius of TMI-1 was 621,000 in 1970. In 1980, the population within a 30 kilometer radius (18.9 miles) had increased to about 643,000. Using the methodology of NUREG-0017, "Calculations of Releases of Radioactive Materials in Gaseous and Liquid Effluents from PWRs," raising the authorized core thermal power level for TMI-1 as requested could result in a maximum increase of 1.3% in total core fission product inventory. Therefore, off-site dose rates from plant radiological effluents (i.e., indirect exposure) would be expected to increase no more than 1.3%. When converted to actual off-site dose commitments, this incremental potential increase in off-site releases is insignificant and is more than offset by the conservations in the FES. The "1987 Radiological Environmental Monitoring Report for the Three Mile Island Nuclear Station," submitted to the staff on April 29, 1988, indicates that radiation doses to the public from TMI-1 operation continue to be well below all regulatory limits and well within the assumptions used in the staff's FES. For example, the FES calculated the maximum exposure to an individual due to liquid and

airborne effluents would be 0.72 mrem per year. The 1987 environmental monitoring report estimated this maximum dose to be 0.16 mrem for the year 1987, or less than 25% of the FES assumption. By comparison, a typical individual living in the Harrisburg area in 1987 would be expected to receive an annual dose of approximately 288 mrem from natural causes, including radon. The lower observed levels in radioactive effluents from the plant results in a substantially lower radiological impact than assumed in the FES. Therefore, the staff concludes a 1.3% increase in these effluents, and therefore a 1.3% increase in the off-site radiological impact due to liquid and airborne effluents is insignificant and is bounded by the FES. A similar comparison can be shown for direct radiation exposure (i.e., irradiation directly from the reactor itself rather than from effluents released from the reactor systems) to members of the public at the site boundary and for potential exposure due to postulated reactor plant accidents. These exposures were conservatively calculated in the FES and were shown to be low. Therefore an increase of 1.3% is insignificant.

The staff considered the incremental increase in occupational (on-site) exposure as part of its assessment of the proposed 1.3% power increase. The 1972 FES did not address occupational exposure for TMI-1. A supplement to the FES for Three Mile Island Unit 2 (TMI-2) only, issued in December 1976 as NUREG-0112, noted that the licensee committed to assure that individual radiation doses and plant population doses would be maintained as low as reasonably achievable (ALARA). Based on experience by the nuclear industry at that time, an estimate of 500 man-rems per year per reactor unit was made for expected occupational exposure at TMI-2. Actual personnel exposures since restart of TMI-1 in late 1985 indicates that exposures are well below the estimates for TMI-2 and declining each year. Total exposure at TMI-1 for 1986 was 246 person-rems and for 1987 was 174 person-rems, as documented in the licensee's annual reports to the NRC. This compares favorably to the current five-year average of 569 person-rems per unit per year for operating pressurized water reactors (PWRs) in the United States. Since most of this exposure is received during maintenance and refueling periods, and not while the reactor is operating, an increase in operating power level of 1.3% would be expected to have an insignificant effect on occupational exposures at TMI-1.

particularly with the licensee's commitment to an ALARA program.

The staff reviewed the environmental impacts attributable to the transportation of fuel and waste to and from the TMI-1 site. With respect to the normal conditions of transport and possible accidents in transport, the staff concludes that the environmental impacts are bounded by those identified in Table S-4, "Environmental Impact of Transportation of Fuel and Waste To and From One Light Water-Cooled Nuclear Power Reactor" of 10 CFR 51.52. The bases for this conclusion are that: (1) Table S-4 is based on an annual refueling and an assumption of 60 spent-fuel shipments per reactor year.

Presently, TMI-1 is on an 18-month refueling cycle which would, by itself, require fewer spent fuel shipments per reactor year. Reducing the number of fuel shipments would reduce the overall impacts related to population exposure and accidents discussed in Table S-4. However, GPU Nuclear has not shipped any TMI-1 irradiated fuel off-site to date and has no plans to do so in the near future. (2) Table S-4 represents the contribution of such transportation to annual radiation dose per reactor year to exposed transportation workers and to the general public. Presently, TMI-1 is authorized to slightly exceed the fuel enrichment and average fuel irradiation levels that are specified in 10 CFR 51.52(a)(2) and (3) as the bases for Table S-4. The radiation levels of the transport fuel casks are limited by the Department of Transportation and are not dependent on fuel enrichment and/or irradiation levels. Therefore, the estimated doses to exposed individuals per reactor year will not increase over that specified in Table S-4. In terms of transportation of solid radioactive waste (other than fuel) from TMI-1, the number of shipments has been well within the assumptions of the FES. The FES stated that from 50 to 200 truckloads of solid radioactive waste would be shipped per year from the TMI site. In 1987, TMI-1 shipped only 36 truckload of solid radioactive waste.

#### Non-Radiological Impacts

Reexamination of the staff's FES of December 1972 reveals that the assessments of non-radiological impacts were based on several considerations depending on the type of impact being addressed. For some types of impact, the assessments were based on a design power level; for other types, the assessments were based on plant design features, on relative loss of renewable resources, or on relative loss or degradation of available habitat. The staff considered those types of impacts

that may be influenced by plant power level and also considered the fact that the FES assumed both Units 1 and 2 to be operating. TMI-2 has not operated since the March 1979 accident and it is very unlikely to resume operation in the future. Future operation would require a new environmental impact statement. The following topics were considered for a 1.3% increase in power level at TMI-1:

**Consumptive Water Use**—Water usage would be expected to increase between 1.5% and 1.7% at the higher power level of 3568 MWt. For the worst case atmospheric conditions, the increase would be about 180 gallons per minute (gpm).

**Cooling Tower Effects/Salt Drift**—Cooling tower evaporation rates would be equal to the consumptive water use rates, or a maximum of 180 gpm. This incremental increase would not be expected to significantly increase fogging effects as related to operations at Harrisburg International Airport. Studies conducted in 1977, 1978 and 1980 indicated that no cooling tower drift-related impact to the surrounding biota had occurred. Therefore, this incremental power level increase would not be expected to have any impact.

**Meteorology**—Plume dispersion from the cooling towers will not change because of this incremental power increase since this increase is so small and other factors are more controlling. Increased buoyancy of gaseous releases from increased stack temperatures will not occur because the stack temperature increase will be insignificant.

**Impingement/Entrainment of Fish**—Impingement and entrainment of adult, juvenile and larval fish were studied from 1974 through 1982. These studies concluded that no significant impact resulted from operation of the TMI units. The proposed power increase is not expected to significantly increase the impingement and entrainment of fish.

**Chemical Impact from Liquid Discharge**—The additional use of river water at TMI-1, due to the power increase, will not result in the discharge of concentrations of chemicals in excess of that evaluated in the FES because the additional water is lost to evaporation. Therefore, the proposed power increase will not have any significant adverse effects on the aquatic environment or impact the water quality of the Susquehanna River.

**Thermal Impact from Liquid Discharges**—Computer modeling predicts an increase in temperature of 0.4°F in the liquid effluent as a result of the proposed power increase. This increase will not violate the limits of the

National Pollutant Discharge Elimination System (NPDES) issued by the Commonwealth of Pennsylvania. Slight variations in the temperature of effluents released to the environment may affect the composition of macroinvertebrate populations in the vicinity of the discharge. However, such population shifts, if any, are very localized and do not affect the overall quality of the aquatic environment.

The staff therefore concludes that the proposed power level increase will have negligible non-radiological impacts.

#### Alternatives to the Proposed Action

The principal alternative to the proposed action would be to deny the licensee's request to raise licensed power level for TMI-1 to 2568 MWt. In this case, TMI-1 would continue to operate with a maximum power level of 2535 MWt. In Chapter XI of the FES, the staff presented a cost-benefit analysis of the environmental impacts of operation of TMI-1 compared to alternate methods of generating electricity (e.g., burning of coal or oil). In the FES, the staff concluded that the environmental benefit of generating electricity by nuclear fission (as compared to coal or oil) greatly outweighs the environmental cost. Even considering significant changes in the economics of the alternatives since 1972, operation of TMI-1 at 2568 MWt would require only incremental additional yearly costs. These costs would be substantially less than the purchase of replacement power or the installation of new electrical generating capacity. Therefore, the staff concludes at this time that generation of an additional 10 MWe of electricity at TMI-1 is more cost beneficial from an environmental standpoint than generating 10 MWe by other means.

#### Alternative Use of Resources

This action does not involve the use of resources not previously considered and evaluated in the TMI FES.

#### Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

#### Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment. Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for amendment

dated April 18, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 11th day of July, 1988.

For the Nuclear Regulatory Commission,  
John F. Stolz,  
Director, Project Directorate I-4, Division of  
Reactor Projects I/II Office of Nuclear  
Reactor Regulation.

[FR Doc. 88-16081 Filed 7-15-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

**Toledo Edison Co.; The Cleveland  
Electric Illuminating Co.;  
Environmental Assessment and  
Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 located in Ottawa County, Ohio.

**Environmental Assessment**

**Identification of Proposed Action**

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TS's) relating to the Reactor Coolant System (RCS) pressure-temperature operating limits and the Reactor Vessel Material Surveillance Program in accordance with Toledo Edison Company's application dated March 30, 1988.

Specifically, the proposed amendment would:

- (1) Reflect the changes in the RCS pressure-temperature operating limits during heatup, cooldown and inservice leak and hydrostatic tests to accommodate operation to 10 Effective Full Power Years (EFPY).
- (2) Reflect changes to the Low Temperature Overpressurization (LTOP) mitigation measures to ensure continued protection against LTOP events to 10 EFPY, and
- (3) Delete specific details regarding surveillance requirements and surveillance capsule withdrawal schedule of the Reactor Vessel Material Surveillance Program in favor of referencing a previously NRC-approved

document (BAW-1543A) for these program details.

**The Need for the Proposed Action**

The proposed changes are needed to support station operation beyond 5 EFPY by imposing new RCS pressure-temperature limitations and LTOP mitigation measures.

**Environmental Impacts of the Proposed Action**

The Davis-Besse reactor coolant system consists of mechanical piping and motive force to circulate reactor coolant between the reactor, where energy is added to the coolant, and the steam generators, where energy is removed from the coolant. The reactor vessel is an integral part of the RCS, and in order for the coolant to reach the core, the integrity of the reactor vessel must be maintained. The proposed changes will revise the pressure-temperature limits to reflect actual changes in the reactor vessel material due to neutron irradiation and will assure that the reactor is operated conservatively. The changes to the Reactor Vessel Material Surveillance Program are consistent with previous staff determination and ensure reactor vessel properties are periodically monitored to ascertain potential embrittlement effects.

The Commission has evaluated the environmental impact of the proposed amendment and has determined that post-accident radiological releases would not be greater than previously determined. Neither does the proposed amendment otherwise affect radiological plant effluents during normal operation. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed amendment.

With regard to potential nonradiological impacts, the proposed amendment involves changes in the operating procedures for station heatup, cooldown and inservice leak and hydrostatic tests, and in the evaluation of the reactor vessel material properties. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* on May 4, 1988 (53 FR 15932). No request for hearing or petition

for leave to intervene was filed following this notice.

**Alternatives to the Proposed Action**

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts attributable to this facility and would result in operation being terminated at the end of 5 EFPY.

**Alternative Use of Resources**

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Davis-Besse facility.

**Agencies and Persons Consulted**

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated March 30, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington DC., and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 7th day of July, 1988.

For the Nuclear Regulatory Commission,  
Kenneth E. Perkins,  
Director, Project Directorate III-3, Division of  
Reactor Projects—III, IV, V and Special  
Projects.

[FR Doc. 88-16082 Filed 7-15-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-458]

**Gulf States Utilities; Partial Withdrawal  
of Application for Amendment to  
Facility Operating License**

The U.S. Nuclear Regulatory Commission (the Commission) has granted the May 13, 1988 request of Gulf States Utilities (the licensee) to withdraw portions of Attachment 3 of its

June 5, 1987 application for amendment to Facility Operating License No. NPF-47, which authorizes operation of the River Bend Station, Unit 1 located in West Feliciana Parish, Louisiana.

The portions of the amendment application that are withdrawn proposed raising the isolation actuation instrumentation setpoints for the south main steam tunnel temperature and differential temperature monitors (Technical Specification Table 3.3.2-2, items 2.h.1 and 2.h.2). The Commission issued Notice Consideration of Issuance of Amendment in the Federal Register on July 29, 1987 (52 FR 28378). The Commission has considered the May 13, 1988 letter and has determined that permission to withdraw the portions of the June 5, 1987 application for amendment should be granted.

For further details with respect to this action, see: (1) The application for amendment dated June 5, 1987; and (2) the Gulf States Utilities letter dated May 13, 1988 withdrawing portions of the June 5, 1987 application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC 20555 and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 23rd day of May, 1988.

For the Nuclear Regulatory Commission,  
**Walter A. Paulson,**

*Project Manager, Project Directorate—IV,  
Division of Reactor Projects—III, IV, V and  
Special Projects.*

[FR Doc. 88-16077 Filed 7-15-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-072 and 50-407, License Nos. R-25 and R-126, EA 88-64]

#### University of Utah; Order Modifying Licenses

##### I

The University of Utah (the Licensee), located in Salt Lake City, Utah, is the holder of Licenses R-25 and R-126 issued by the Nuclear Regulatory Commission (NRC/Commission). License No. R-25 authorizes the Licensee to operate an AGN-201 research reactor (5 watt thermal power maximum) on its campus for the conduct of educational activities in accordance with the conditions specified therein. Amendment No. 10 (renewal of license) to the license was issued May 2, 1979. The license expires on September 12, 1997. License R-126 authorizes the Licensee to operate a TRIGA research

reactor (100 kilowatt thermal power) on its campus for the conduct of educational activities in accordance with the conditions specified therein. Amendment No. 5 (renewal of license) was issued April 17, 1985. The license expires April 17, 2005.

##### II

The University of Utah reactors are located on campus in the Merrill Engineering Building, Nuclear Engineering Laboratory (NEL) and are utilized to conduct irradiations in support of academic studies. The NEL staff is comprised of a Reactor Administrator (tenured professor), reactor supervisor (tenured professor) and two graduate students who are licensed senior reactor operators. The Reactor Administrator only presides over the Reactor Safety Committee and is not experienced in research reactor operations, while the Reactor Supervisor spends approximately 20 percent of his time involved in reactor activities.

The two graduate students are pursuing advanced degrees and are considered part time employees.

##### III

A special team inspection was conducted during February 16-19, 1988, to assess the licensee's conduct of operations. The inspection was prompted by observations from NRC inspectors and consultants that modifications to the facility and reactors had been made without NRC approval. During this inspection, seven violations, a deviation, and several programmatic concerns (open items) involving reactor operations, radiation protection, and physical security were identified. NRC Inspection Report 50-072 and 50-407/88-01 discusses these inspection findings. Although no unauthorized modifications to either reactor were found to have been made, a lack of management support for the reactor programs, a lack of full time technical support of day-to-day reactor activities, and failure to thoroughly review and apply adequate corrective action to audit findings in a timely manner were determined to be the root causes of the licensee's problems.

As the result of a previous inspection in 1986 (50-407/86-01; 50-072/86-01), the Licensee was issued a Civil Penalty (\$3,500) due to radiation protection program breakdowns. Corrective actions taken in response to those radiation protection problems somewhat improved the licensee's audit program and did correct specific violations and concerns. However, those corrective actions apparently did not bring about broad enough changes to prevent

occurrence of problems in other areas as evidenced by the findings of the most recent NRC inspection.

On March 28, 1988, an enforcement conference was held with the Licensee in which each item of concern, identified in the February 1988 inspection, was reviewed. Because the Licensee failed to demonstrate that positive corrective actions had been taken to improve technical support for the NEL and provide the reactor supervisor relief from some of his other duties and academic responsibilities, a Confirmatory Action Letter (CAL 88-06) was issued on March 30, 1988, confirming that the NEL reactors would remain shutdown until the Region IV office had reviewed the Licensee's response to the violations discussed at the enforcement conference and has authorized the Licensee, in writing, to operate the reactors. As of the date of this Order NRC Region IV has not authorized the Licensee to restart either reactor.

Based on the enforcement conference discussions and further review the licensee decided that increasing the staffing level at the NEL was necessary. In a letter dated June 14, 1988 the licensee committed to retaining a qualified individual to serve as reactor supervisor and whose job description requires the individual spend three quarters of his time carrying out the duties and responsibilities of that position. I have determined that, given the significance of the licensee's commitments in assuring the safe operation of the reactors, the commitments should be incorporated as conditions to the facility's licenses.

##### IV

In view of the foregoing and pursuant to Sections 104, 161b, 161i, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered that licenses No. R-25 and R-126 are modified as follows:

A. The Licensee shall retain a full time professor who has at least one year of research reactor experience to act as the reactor supervisor.

B. The professor retained as reactor supervisor shall devote at least 75 percent of his employed time to carrying out the duties and responsibilities of the reactor supervisor as defined in facility procedures and technical specifications.

The Regional Administrator, Region IV may relax or terminate any of the above conditions for good cause shown.

## V

The Licensee or any other person adversely affected by this Order may, within 30 days of the date of this Order, request a hearing. A request for a hearing should be clearly marked as a "Request for Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. A copy of the hearing request shall also be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Regional Administrator, Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. Upon failure of the licensee and any other person adversely affected by this Order to answer or request a hearing within the specified time, this Order shall be final without further proceedings.

Dated at Rockville, Maryland, this 8th day of July 1988.

For the Nuclear Regulatory Commission,  
James M. Taylor,  
Deputy Executive Director for Regional Operations.

[FR Doc. 88-16083 Filed 7-15-88; 8:45 am]

BILLING CODE 7590-01-M

## SELECTIVE SERVICE SYSTEM

### Privacy Act of 1974; Matching Program to Identify Registration Violators

**AGENCY:** Selective Service System.

**ACTION:** Notice.

**SUMMARY:** Pursuant to OMB Memorandum dated May 11, 1982, "Revised Supplemental Guidance for Conducting Matching Program", the Selective Service System publishes the following information concerning the Selective Service System Registration Compliance Program for computerized matching of individual records maintained by the Selective Service System against records of other federal and non-federal sources.

The notice published in the *Federal Register*, February 19, 1987 (52 FR 5231) is amended by adding to the list of record systems that are matched against the SSS-8 the following system of records:

#### United States Postal Service

USPS 050.020, Finance Records, published in 53 FR 25026 (July 1, 1988) and;

USPS 120.120, Personnel Records, published in 53 FR 25028 (July 1, 1988).

The matching will begin August 15, 1988.

#### Congressional Notice

Copies of this report are sent concurrently with publication to the Congress, addressed to the President of the Senate and the Speaker of the House of Representatives.

Dated: July 12, 1988.

Samuel K. Lessey, Jr.,

Director of Selective Service.

[FR Doc. 88-16104 Filed 7-15-88; 8:45 am]

BILLING CODE 9015-01-M

## DEPARTMENT OF STATE

[Public Notice 1069]

### Statutory Debarment Under the ITAR

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of which persons have been debarred pursuant to section 127.6(c) of the International Traffic in Arms Regulations (22 CFR Parts 120-130).

**EFFECTIVE DATE:** July 8, 1988.

**FOR FURTHER INFORMATION CONTACT:** Clyde Bryant, Chief, Compliance Analysis Division, Office of Munitions Control, Department of State (202-875-6650).

#### SUPPLEMENTARY INFORMATION:

Section 1255 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Dec. 22, 1987, Pub. L. 100-204, 101 Stat. 1331, 1429) amended section 38 of the Arms Export Control Act (22 U.S.C. 2778) (the AECA), which governs the export of defense articles and services. The amendment provides additional authority for the Department to implement the AECA. The amendment is designed primarily to ensure that persons convicted of certain offenses or debarred by U.S. Government agencies for certain actions are denied export privileges. The term "person" means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization, or group, including governmental entities.

New section 38(g)(4) of the AECA prohibits the issuance of export licenses to a person if that person, or any party to the export, has been convicted of violating certain U.S. criminal statutes, including the AECA, or is ineligible to receive an export license or approval from any agency of the U.S.

Government. The term "party to the export" means the president, the chief executive officer, and other senior officers of the license applicant; the freight forwarders or designated exporting agent of the license applicant; and any consignee or end user of any item to be exported. The statute permits certain limited exceptions to this prohibition to be made on a case-by-case basis.

On April 4, 1988, the Department revised the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130) to clarify the debarment process provided by Part 127. Section 127.6 authorizes the Assistant Secretary of State for Politico-Military Affairs to prohibit certain persons from participating directly or indirectly in the export of defense articles or in the furnishing of defense services. Such a prohibition is referred to as a debarment, which, depending upon the circumstances, may be imposed on the basis of judicial proceedings that resulted in a conviction for violating or conspiring to violate the AECA (statutory debarment), or on the basis of an administrative proceeding described in Part 128 (administrative debarment). See 22 CFR 127.6(b). Statutory debarment is based solely upon the outcome of a criminal proceeding, conducted by a court of the United States, that established guilt beyond a reasonable doubt in accordance with due process. Thus, those procedures of Part 128 of the ITAR that apply to administrative debarment are not applicable in such cases.

It is the policy of the Department not to consider applications for licenses or requests for approvals that involve any person who has been convicted of violating the AECA, or of conspiracy to violate the AECA for a period of three years following the conviction. The ITAR provides the Assistant Secretary for Politico-Military Affairs with the discretion to determine an alternative period of time for debarment. Persons who have been statutorily debarred may appeal to the Under Secretary of State for Security Assistance, Science and Technology for reconsideration of the ineligibility determination.

Pursuant to amended section 38 of the AECA and § 127.6 of the ITAR, the Assistant Secretary for Politico-Military

Affairs has debarred twenty-six persons who have been convicted of violating the AECA, or of conspiracy to violate the AECA. These persons have been debarred for a three year period following their conviction, and have been so notified by a letter from the Office of Munitions Control. Pursuant to § 127.6(c), the names of these persons (and their offense, date of conviction(s), and court of conviction(s)) are being published in the **Federal Register**. Anyone who requires additional information to determine whether a person has been debarred should contact the Office of Munitions Control.

This notice involves a foreign affairs function of the United States and is thus excluded from the procedures of 5 U.S.C. 553 and 554 and Executive Order 12291 (46 FR 13193).

It implements statutory and regulatory requirements that entered into force on December 22, 1987 and April 4, 1988, respectively.

In accordance with these authorities, the following persons are debarred for a period of three years following their conviction for violating, or conspiring to violate, the AECA (name/offense/date/court):

1. European Defense Associates  
18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778)  
January 21, 1986  
Middle District of Florida
2. John J. McTavish  
18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778) and 22 U.S.C. 2778  
February 20, 1986  
Northern District of Georgia
3. Antonio Achurra  
22 U.S.C. 2778  
February 24, 1986  
Central District of California
4. Arif Durrani  
22 U.S.C. 2778  
May 13, 1987  
District of Connecticut
5. Francesco Bilotta  
22 U.S.C. 2778  
May 29, 1987  
Eastern District of New York
6. Joseph P. Murray, Jr.  
22 U.S.C. 2778  
June 30, 1987  
District of Massachusetts
7. Robert Anderson  
22 U.S.C. 2778  
June 30, 1987  
District of Massachusetts
8. Patrick Nee  
22 U.S.C. 2778  
June 30, 1987  
District of Massachusetts
9. Johannes Nootenboom  
22 U.S.C. 2778  
July 17, 1987

- Western District of Washington
10. Edward James Bush  
22 U.S.C. 2778  
August 3, 1987  
Central District of California
11. Anthony George Cenci  
22 U.S.C. 2778  
August 10, 1987  
Central District of California
12. Richard Nortman  
22 U.S.C. 2778  
August 10, 1987  
Central District of California
13. Richard Herman Schroeder  
22 U.S.C. 2778  
August 10, 1987  
Central District of California
14. George MacArthur Posey  
18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778) and 22 U.S.C. 2778  
September 21, 1987  
Central District of California
15. Hassan Kangaroo  
18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778) and 22 U.S.C. 2778  
October 6, 1986  
Central District of California
16. Cesario Estanislao Benitez  
22 U.S.C. 2778  
October 26, 1987  
Northern District of California
17. Arie Aviv  
22 U.S.C. 2778  
October 30, 1987  
Southern District of New York
18. Isidro Manabat Roman  
22 U.S.C. 2778  
November 13, 1987  
Northern District of California
19. George Wenzl  
22 U.S.C. 2778  
November 19, 1987  
District of Colorado
20. Clifford Kapel  
22 U.S.C. 2778  
November 20, 1987  
Southern District of Florida
21. Technical Service International  
22 U.S.C. 2778  
November 20, 1987  
Southern District of Florida
22. Ronald Howard Semler  
18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778) and 22 U.S.C. 2778  
February 10, 1988  
Central District of California
23. Monte Barry Semler  
18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778) and 22 U.S.C. 2778  
February 10, 1988  
Central District of California
24. Hercaire International  
18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778)  
January 15, 1988  
Southern District of Florida
25. Norman Thomas Steckler  
18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778)

January 15, 1988

Southern District of Florida

26. Robert Eugene Helmuth

18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778)

January 15, 1988

Southern District of Florida.

Date: July 8, 1988.

William B. Robinson,

Director, Office of Munitions Control, Bureau of Politico-Military, Department of State.

[FR Doc. 88-16068 Filed 7-15-88; 8:45 am]

BILLING CODE 4710-25-M

## DEPARTMENT OF TRANSPORTATION

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 8, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45686

Date Filed: July 7, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 4, 1988.

Description: Application of Tropical Airways, Inc. pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations applies for certificate of public convenience and necessity authorizing it to engage in scheduled interstate and overseas air transportation.

Docket No. 45687

Date Filed: July 7, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: August 4, 1988.

Description: Application of Tropical Airways, Inc. pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing it to engage in foreign scheduled air transportation.

**Docket No. 45694**

*Date Filed:* July 8, 1988.

*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* August 5, 1988.

*Description:* Application of Virgin Atlantic Airways Limited, pursuant to section 402 of the Act and subpart Q of the Regulations requests amendment of its foreign air carrier permit to engage in foreign charter air transportation of passenger and cargo between any point or points in the United States, either directly or via intermediate or beyond points in other countries, with or without stopovers.

**Docket No. 42012**

*Date Filed:* July 8, 1988.

*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* August 5, 1988.

*Description:* Amendment No. 1 of the Application of Servicios Aereos, S.A. d/b/a Aero California, pursuant to section 402 of the Act and subpart Q of the Regulations, requests that it be granted permit authority to engage in scheduled foreign air transportation of persons, property and mail between between (1) La Paz and San Jose del Cabo, Mexico on the one hand, and Los Angeles, California on the other hand, and (2) La Paz, Guaymas and San Jose del Cabo on

the one hand, and Tucson and Phoenix, Arizona on the other hand.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR. Doc. 88-16067 Filed 7-15-88; 8:45 am]

BILLING CODE 4910-62-M

**Federal Aviation Administration**

[Summary Notice No. PE-88-27]

**Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued**

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

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's

regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before: August 8, 1988.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. —, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 12, 1988.

Denise D. Hall,

Manager, Program Management Staff.

**PETITIONS FOR EXEMPTION**

| Docket No. | Petitioner                     | Regulations affected    | Description of relief sought  |
|------------|--------------------------------|-------------------------|---|
| 25565      | Horizon Air.....               | 14 CFR SFAR 38-2.....   | To allow the application of § 121.9 in the conduct of operations with 49-passenger SA227 aircraft.  |
| 25602      | Trans World Airlines, Inc..... | 14 CFR 121.360.....     | To allow petitioner to operate six Lockheed L-1011-385-1-15 airplanes for an indefinite period of time with a ground proximity warning system that utilizes the Civil Aviation Authority certification requirements instead of complying with the requirements of Technical Standard Order C92. |
| 25616      | America West Airlines.....     | 14 CFR 108.5(a)(1)..... | To allow petitioner to utilize Boeing 737 aircraft without a security program that meets the requirements of § 108.7.   |

[FR Doc. 88-16029 Filed 7-15-88; 8:45 am]

BILLING CODE 4910-13-M

**Air Traffic Control Tower Commissioned; Nashua, NJ**

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

**ACTION:** Notice of commissioning Air Traffic Control Tower.

**SUMMARY:** Notice is hereby given that on August 3, 1988, the Airport Traffic Control Tower at Boire Field, Nashua, New Hampshire, will be commissioned. Tower hours of operation will be established in advance by Notice to Airmen, and thereafter published in the Airman's Information Manual. The

designated facility identification for the airport control tower will be: Nashua Tower.

**FOR FURTHER INFORMATION CONTACT:** Communications to the tower should be directed to: Mr. Royce N. Rankin, Jr., Airport Traffic Control Tower, 79 Perimeter Road, Nashua, New Hampshire 03063.

[49 USC 1348 and 1354(a); 49 USC 106(g) (Revised Pub. L. 97-499 (January 12, 1983))]

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

James I. Lucas,

Manager, Air Traffic Division, New England Region.

[FR Doc. 88-16028 Filed 7-15-88; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF THE TREASURY****Public Information Collection Requirements Submitted to OMB for Review**

Date: July 12, 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: 1545-0984

Form Number: 8586

Type or Review: Revision

Title: Low-Income Housing Credit

Description: The Tax Reform Act of 1986

(Code sec. 42) permits owners of residential rental projects providing low-income housing to claim a credit against income tax for part of the cost of constructing or rehabilitating such low-income housing. Form 8586 is used by taxpayers to compute the credit and by IRS to verify that the correct credit has been claimed.

Estimated Number of Respondents:

50,000

Estimated Burden Hours Per Response:

18 minutes

Frequency of Response: Annually

Estimated Average Reporting Burden:

15107 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 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 88-16040 Filed 7-15-88; 8:45 am]

BILLING CODE 4810-25-M

## Bureau of Alcohol, Tobacco and Firearms

[Notice No. 664; Ref: ATF 0 1100.91C]

### Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 20, Distribution and Use of Denatured Alcohol and Rum

#### Delegation Order

1. *Purpose.* This order delegates certain authorities of the Director to the Associate Director (Compliance Operations) and permits redelegation to other Compliance Operations personnel.

2. *Cancellation.* ATF 0 1100.91B, Delegation Order—Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 20, Distribution and Use of Denatured Alcohol and Rum, dated August 27, 1986, is cancelled.

3. *Background.* Under current regulations, the Director has the authority to take final action on matters

relating to the distribution and use of denatured alcohol and rum. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order 120-01 (formerly Order No. 221), dated June 6, 1972, and 26 CFR 301.7701-9, authority to take final action on the following matters is delegated to the Associate Director (Compliance Operations):

a. To approve containers, other than those specified in regulations, for the conveyance of large quantities of denatured spirits or articles, under 27 CFR 20.11.

b. To prescribe all forms required by regulations under 27 CFR 20.21.

c. To approve, pursuant to written applications, alternate methods or procedures (including alternate construction or equipment, but excluding action on general-use formulas), in lieu of methods or procedures specifically prescribed in regulations, under 27 CFR 20.22(a).

d. To withdraw approval of any alternate method or procedure whenever the revenue is jeopardized or the effective administration of the regulations is hindered, under 27 CFR 20.22(c).

e. To issue permits, pursuant to 27 CFR 20.242, to cover the use of specially denatured spirits by the United States or a governmental agency, under 27 CFR 20.25.

f. To approve or disapprove adoption by a successor of a predecessor's formulas and statements of process, under 27 CFR 20.63.

g. To approve other suitable materials for packages containing more than 5 gallons of completely denatured alcohol, under 27 CFR 20.144.

h. To approve the printing of extraneous matter on labels which are to be used on containers of completely denatured alcohol of 5 gallons or less, under 27 CFR 20.147.

i. To authorize other marks to be placed on the Government head or side of a package, under 27 CFR 20.178.

j. To approve applications and grant permits on ATF Form 5150.33, Spirits for Use of the United States, for the procurement and withdrawal of specially denatured spirits for use by the United States or any governmental agency, and to receive evidence of authority to sign for the head of an agency or subagency, under 27 CFR 20.241 and 27 CFR 20.242.

k. To cancel issued permits under 27 CFR 20.245.

l. To authorize the disposition of excess specially denatured spirits in the possession of a governmental agency, under 27 CFR 20.246.

5. *Coordination With Other Offices.* The authority delegated under paragraphs 4a and 4f through 4h of this order shall be carried out in coordination with the Office of the Comptroller, Director of Laboratory Services, Chief, Alcohol and Tobacco Laboratory.

#### 6. Redelegation.

a. The authorities in paragraphs 4a, 4b, 4d and 4g may be redelegated to personnel in Bureau Headquarters not lower than the position of branch chief.

b. The authorities in paragraphs 4c, 4e, 4f and 4h through 4l may be redelegated to personnel in Bureau Headquarters not lower than the position of ATF specialist.

c. The authority in paragraph 4c above may be redelegated to regional directors (compliance) to approve, without submission to Bureau Headquarters, subsequent applications for alternate methods or procedures and processes which are identical to those previously approved by Bureau Headquarters. Regional director (compliance) may redelegate this authority to personnel not lower than the position of technical section supervisor.

d. The authority in paragraph 4l may be redelegated to regional directors (compliance), who may redelegate this authority to personnel not lower than the position of technical section supervisor or area supervisor.

e. The authority in paragraph 4d above may be redelegated to regional directors (compliance) to withdraw approval alternate methods or procedures which were approved at the regional level. Regional directors (compliance) may redelegate this authority to personnel not lower than the position of chief, technical services.

f. The authority in paragraphs 4f and 4i may be redelegated to regional directors (compliance), who may redelegate this authority to personnel not lower than the position of technical section supervisor.

7. *For Information Contact.* Colleen M. Then, Distilled Spirits and Tobacco Branch, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202) 566-7531.

8. *Effective Date.* This delegation order becomes effective on (Date of Publication in the Federal Register).

Approved: June 20, 1988.

W.T. Drake,

Acting Director.

[FR Doc. 88-16085 Filed 7-15-88; 8:45 am]

BILLING CODE 4810-13-M

[Notice No. 663; Ref: ATF O 1100.67D]

**Delegation to the Comptroller of  
Authorities of the Director in 27 CFR  
Part 20, Distribution and Use of  
Denatured Alcohol and Rum**

**Delegation Order**

1. *Purpose.* This order delegates certain authorities of the Director to the Comptroller and permits redelegation to other Office of the Comptroller personnel.

2. *Cancellation.* AFT O 1100.67C, Delegation Order—Authorities of the Director in 27 CFR Part 211, Distribution and Use of Denatured Alcohol and Rum Regulations, dated June 30, 1982 is canceled.

3. *Background.* The Director has authority, under current regulations, to take final action on matters relating to denatured distilled spirits and the procurement, use, disposition, and recovery of denatured alcohol, specially denatured rum, and articles containing denatured spirits. It has been administratively determined that certain authorities now vested in the Director by regulations in 27 CFR Part 20, Distribution and Use of Denatured Alcohol and Rum Regulations, belong at a lower organizational level and should be delegated.

4. *Delegation.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order 120-01 (formerly Order No. 221), dated June 6, 1972, and 26 CFR 301.7701-9, authority to take final action on the following matters is delegated to the Comptroller:

a. To approve all formulas for articles and statement of processes relating to recovery operations or other activities required to be submitted on AFT F 5150.19, under 27 CFR 20.23.

b. To cancel any approved formulas or statements of process, under 27 CFR 20.91(c).

c. To request for submission of samples of (1) any ingredient used in the manufacture of an article or (2) any finished article under 27 CFR 20.92.

d. To restrict on ATF F 5150.19 covering the size of containers in which an article may be sold, the maximum quantity which may be sold to any person at one time, the class of vendee to which an article may be sold, and the specific use for which an article may be sold, under 27 CFR 20.100.

5. *Redelegation.* The authorities delegated herein may be redelegated in Bureau Headquarters but not below the level of Physical Science Technician.

6. *For Information Contact.* Colleen M. Then, Distilled Spirits and Tobacco Branch, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202) 566-7531.

7. *Effective Date.* This delegation order becomes effective on July 18, 1988.

Approved: June 20, 1988.

W.T. Drake,

Acting Director.

[FR Doc. 88-16086 Filed 7-15-88; 8:45 am]

BILLING CODE 4810-31-M

**VETERANS ADMINISTRATION**

**Agency Form Under OMB Review**

**AGENCY:** Veterans Administration.

**ACTION:** Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

**ADDRESSES:** Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before August 17, 1988.

Dated: July 8, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

**Extension**

1. Department of Veterans Benefits.

2. Notice of Change in Student Status.

3. VA Forms 22-1999b and 22-1999b-1.

4. This form is issued by school certifying officials to report changes in the enrollment status of a student who is in receipt of VA benefits. The information is used by the VA as a basis for adjusting the students' benefits.

5. On occasion.

6. State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations.

7. 8,559 responses.

8. 82,023 hours.

9. Not applicable.

[FR Doc. 88-16018 Filed 7-15-88; 8:45 am]

BILLING CODE 8320-01-M

**Advisory Committee on Readjustment  
Problems of Vietnam Veterans;  
Meeting**

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Advisory Committee on Readjustment Problems of Vietnam Veterans will be held August 2, and 3, 1988. This is a regularly scheduled meeting for the purpose of reviewing Agency and other relevant services to Vietnam veterans and to formulate Committee recommendations and objectives. The meeting will be held in the Omar Bradley Conference Room at VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The meeting August 2, will begin at 8:30 a.m. and conclude at 4 p.m. The day's agenda will consist of an update and review of the National Vietnam Veterans Readjustment Study, the utilization of Resource Allocation Methodology (RAM) and Diagnostic Related Groups (DRG) in VA health care facilities, VA Social Work Service and mental health, and the Department of Veterans Benefits management of post-traumatic stress disorder (PTSD) claims. The meeting on August 3 will begin at 8:30 a.m. and conclude at 4 p.m. The second day's agenda will consist of a review of the influence of RAM and DRG on mental health services, VA mental health and quality assurance, VA domiciliary care and PTSD treatment, and a status update on the activities of the Chief Medical Director's Special Committee on PTSD. Both day's meetings will be open to the public to the seating capacity of the room.

Due to limited seating capacity of the room, those who plan to attend or who have questions concerning the meeting should contact Arthur S. Blank, Jr., M.D., Director, Readjustment Counseling

Service, Veterans Administration  
Central Office (phone number 202 233-  
3317/3303).

Dated: July 11, 1988.

By direction of the Administrator.

**Dennis R. Boxx,**

*Deputy Associate Deputy Administrator for  
Public Affairs.*

[FR Doc. 88-16055 Filed 7-15-88; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register

Vol. 53, No. 137

Monday, July 18, 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).

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 26367, Tuesday, July 12, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time) Tuesday, July 19, 1988.

### CHANGE IN THE MEETINGS:

#### Open Session

The items listed below have been added to the agenda:

- Proposed Policy Statement on Application of Section 4(f)(2) of the ADEA of 1967, as amended, 29 U.S.C. § 623(f)(2), to the Treatment of Welfare Benefits Under Pension Plans
- Policy Statement on Equal Pay Act Cases Involving Sports Coaches

#### CONTACT PERSON FOR MORE

INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat, (202) 634-6748.

Date: July 14, 1988.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 88-16134 Filed 7-11-88 11:48 am]

BILLING CODE 6750-06-M

## FARM CREDIT ADMINISTRATION

### Correction of Sunshine Act Meeting

**SUMMARY:** Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on July 11, 1988 (53 FR 26128) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for July 12, 1988. This notice is to revise the agenda for that meeting to add an item to the closed session.

#### FOR FURTHER INFORMATION CONTACT:

David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22101-5090.

**ADDRESS:** Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22101-5090.

**SUPPLEMENTARY INFORMATION:** Parts of the meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The agenda for Tuesday, July 12, is revised as follows:

#### Open Session

- Final Regulations Governing Civil Money Penalties, 12 CFR Parts 622 and 623.
- Final Regulations Governing FCA's Examination Process, 12 CFR Parts 611 and 617.
- Reaffirmation of Final Rule Relating to Book-Entry Procedure Applicable to the Farm Credit System Financial Assistance Corporation, 12 CFR 615, new Subpart R.

#### \*Closed Session

- Examination and Enforcement Matters.
- Update regarding Federal Land Bank of Jackson, in receivership, and Federal Land Bank Association of Jackson, in receivership.

Dated: July 13, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-16116 Filed 7-13-88; 4:38 pm]

BILLING CODE 6705-01-M

## FEDERAL COMMUNICATIONS COMMISSION

July 13, 1988.

### FCC To Hold a Closed Commission Meeting Wednesday, July 20, 1988

The Federal Communications Commission will hold a Closed Meeting on the subjects listed below on Wednesday, July 20, 1988, following the Open Meeting, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, NW., Washington, DC.

#### Agenda, Item No., and Subject

Hearing—1.—Petition for Approval of Settlement Agreement and related matters in the Los Angeles, California television comparative renewal proceeding (Docket Nos. 18679-80).

Hearing—2.—Petition for Approval of Settlement Agreement and related matters in the Memphis, Tennessee radio comparative renewal proceeding (MM Docket Nos. 84-1051, 84-1053).

These items are closed to the public because they concern Adjudicatory Matters. (See 47 CFR 0.603 (j)).

The following persons are expected to attend:

Commissioners and their Assistants  
Managing Director and members of his staff

General Counsel and members of her staff

Chief, Office of Public Affairs and members of his staff

Action by the Commission July 13, 1988.

\*Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (b), (8) and (9).

Commissioners Patrick, Chairman; Quello, and Dennis voting to hold a closed meeting.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632-5050.

Issued: July 13, 1988.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-16151 Filed 7-11-88; 11:40 am]

BILLING CODE 6712-01-M

## FEDERAL COMMUNICATIONS COMMISSION

July 13, 1988.

### FCC To Hold Open Commission Meeting, Wednesday, July 20, 1988

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, July 20, 1988, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

#### Agenda, Item No., and Subject

General—1.—Title: Applications for authority to construct and operate an Automated Maritime Telecommunications System using the Group C channels (216.512 to 216.9875 MHz) along the Lower Mississippi River and Gulf Intracoastal Waterway filed by Riverphone, Inc. t/a Maritel. Summary: The FCC will consider the applications and waiver request submitted by Maritel for an Automated Maritime Telecommunications System and the petitions filed opposing them.

General—2.—Title: Amendment of Parts 2 and 80 of the Commission's Rules applicable to Automated Maritime Telecommunications Systems (AMTS). Summary: The Commission will consider a petition for rule making asking that AMTS service be expanded nationwide and that operation on Group C and D channels be permitted subject to the same restrictions concerning interference to television reception applicable to Group A and B channels.

General—3.—Title: Development and Implementation of a Public Safety National Plan and Amendment of Part 90 to Establish Service Rules and Technical Standards for use of the 821-824/866-869 MHz Bands by the Public Safety Services. Summary: The Commission will address four petitions for Reconsideration filed in

regard to the Report and Order in this proceeding.

**Private Radio—1—Title:** In the Matter of Amendment of Part 90 of the Commission's Rules to Permit Business Radio Use of Certain Channels in the 150 MHz Band. **Summary:** The Commission will consider a Notice of Proposed Rule Making regarding Business and Taxicab Radio use of certain channels in the 150 MHz band.

**Common Carrier—1—Title:** In the Matter of Telephone Company Cable Television Cross-Ownership Rules, Sections 63.54-63.58, CC Docket No. 87-266. **Summary:** The Commission will consider further action in this proceeding.

**Mass Media—1—Title:** Section 403 inquiry into alleged abuses of the Commission's processes by applicants for broadcast facilities. **Summary:** The Commission will consider whether to initiate an inquiry into abuses of its processes in the filing of applications by various applicants.

**Mass Media—2—Title:** Amendment of Part 73 of the Rules to provide for an additional FM station class (Class C3) and to increase the maximum transmitting power for Class A FM stations. **Summary:** The Commission will consider whether to propose to establish an additional intermediate classification (Class C3) for Zone II FM broadcast stations and allotments, as requested by Petaz Communications, Inc. (RM-6236). Also, the Commission will consider whether to propose to increase the maximum effective radiated power limit for Class A FM broadcast stations from 3000 to 6000 watts, as requested by the New Jersey Class A FM Broadcasters Association (RM-6237).

**Mass Media—3—Title:** Amendment of Part 73 of the Commission's Rules to adopt a new emission limitation and to eliminate restrictions on interference to the protected daytime contours of AM stations. **Summary:** The Commission will consider adoption of a Notice of Proposed Rule Making in the above-entitled matters.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632-5050.

Issued: July 13, 1988.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-16152 Filed 7-11-88; 11:40 am]

BILLING CODE 6712-01-M

#### FEDERAL DEPOSIT INSURANCE CORPORATION

##### Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:29 a.m. on Tuesday, July 12, 1988, the Board of Directors of the Federal

Deposit Insurance Corporation met in closed session to consider: (1) Matters relating to the possible closing of certain insured banks; (2) a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act; and (3) matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: July 13, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-16128 Filed 7-14-88; 11:48 am]

BILLING CODE 6714-01-M

#### TENNESSEE VALLEY AUTHORITY

##### [Meeting No. 1405]

**TIME AND DATE:** 10 a.m. (e.s.t.), Wednesday, July 20, 1988.

**PLACE:** TVA Chattanooga Office Complex (Auditorium), 1101 Market Street, Chattanooga, Tennessee.

**STATUS:** Open.

##### Agenda

Approval of minutes of meeting held on June 29, 1988.

##### Discussion Item

1. Preliminary Rate Review.

##### Action Items

##### Old Business

1. Contract No. TV-74666A Among State of Alabama Community College in Gadsden, The University of Alabama, the City of Gadsden, and TVA under which the Parties will Cooperate to Continue a Project to Establish a Joint Research and Training Center.

#### New Business

##### A—Budget and Financing

\*A1. Modification of the Capital Budget Financed from Power Proceeds and Borrowings for Fiscal Year 1988—Performance of a Safety System Quality Evaluation on the Containment Spray System for Unit 1 at Sequoyah Nuclear Plant.

##### C—Power Items

\*C1. Proposed Interruptible Wheeling Agreement with Mississippi Power & Light Company.

C2. Supplement to the Statement to Distributors Regarding Administration of Wholesale Power Contract Resale Provisions.

C3. Revision of TVA's Current Arrangements with General Power Customers Relating to Contract Demand Reduction.

C4. Proposal to Inform Distributors that Mercury-vapor Fixtures may be Offered for New Service to Individual Outdoor Lighting Customers Under the Outdoor Lighting Rate Schedule.

C5. Revision to the Economy Surplus Power Program.

C6. Proposed Form Agreement Covering Distributor Cooperation in a Residential Electrical Development Program.

##### D—Personnel Items

D1. Supplement to Consulting Contract TV-44938A with John M. Kellberg, Knoxville, Tennessee, for Consultation on Major Hydro Projects and Engineering Problems Associated with Thermal Power Plants. Requested by the Power Group.

D2. Supplement to Consulting Contract TV-55304A with Robert B. Jansen, Spokane, Washington, for Consultation on Major Hydro Projects and Engineering Problems Associated with Thermal Power Plants. Requested by the Power Group.

D3. Supplement to Consulting Contract TV-69836A with Thomas M. Leps, Incorporated, Menlo Park, California, for Consultation on Major Hydro Projects and Engineering Problems Associated with Thermal Power Plants. Requested by the Power Group.

\*D4. Supplement to Consulting Contract TV-72363A with Southerland, Asbill & Brennan to Provide Advice and Consultation with Respect to Legal Matters.

##### E—Real Property Transactions

E1. Modification of Deed Affecting Approximately 0.08 Acre of Chickamauga Reservoir Land Located in Meigs County, Tennessee, to Resolve an Existing Violation of the Deed Covenants.

##### F—Unclassified

\*F1. Drawdown of Norris Reservoir in an Effort to Maintain Essential Raw Cooling Water Temperature Limit at Sequoyah Nuclear Plant.

F2. Supplement to Memorandum of Agreement No. TV-23928A Between TVA and U.S. Department of the Army, Corps of Engineers, Covering Arrangements for Improvements to Navigation Facilities on the Tennessee River.

F3. Supplement to Agreement No. TV-69546A Between TVA and the U.S. Forest Service, Department of Agriculture, Covering

Arrangements for TVA Assistance in Support of Forest Service Land Management and Natural Resources Programs.

F4. Supplement to Contract No. TV-72489A Between TVA and the U.S. Forest Service, Department of Agriculture, Covering Arrangements for a Study Relating to Hardwood in the Tennessee Valley Region.

F5. Supplement to Agreement No. TV-73630A with U.S. Army Corps of Engineers, Lower Mississippi Valley Division, Vicksburg, Mississippi, Covering Arrangements for a Fishery Survey on the Lower Mississippi River.

F6. Agreement Between TVA and U.S. Geological Survey, U.S. Department of the Interior, Covering Arrangements for a Phosphate Beneficiation Prefeasibility Study.

F7. Interagency Agreement with the U.S. Army Project Manager for Binary Munitions Covering Arrangements for Loan of TVA Employees in Connection with Pilot-Scale Verification of the Process for Methylphosphonic Dichloride Production.

F8. Interagency Agreement with the U.S. Army Resource Management Division, Rocky Mountain Arsenal, Covering Arrangements for Loan of TVA Employees in Connection with a Chemical Agent Safety Program.

F9. Fertilizer Distribution Agreement with Nitron Chemical Corporation.\*

\*Items approved by individual Board members. This would give formal ratification to the Board's action.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Alan Carmichael, Director of Information, or a member of this staff can respond to requests for information about his meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: July 13, 1988.

W.F. Willis,

*Executive Vice President and Chief Operating Officer.*

[FR Doc. 88-16162 Filed 7-14-88; 3:43 pm]

BILLING CODE 8120-01-M

# Corrections

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.

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3410-4]

### Municipal Settlement Discussion Group

#### Correction

In notice document 88-15229 appearing on page 25537 in the issue of Thursday, July 7, 1988, make the following correction:

In the third column, under **FOR FURTHER INFORMATION CONTACT**, the telephone number should read 202/ 475-8367.

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 85-AAL-4]

#### Alteration of Colored Federal Airway R-39; AK

##### Correction

In rule document 88-14939 beginning on page 25141 in the issue of Tuesday, July 5, 1988, make the following correction:

On page 25142, in the second column, "**§ 71.017—[Amended]**" should read "**§ 71.107—[Corrected]**".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 75

[Airspace Docket No. 88-AGL-2]

#### Alteration of Jet Route; Ohio

##### Correction

In rule document 88-14938 beginning on page 25143 in the issue of Tuesday, July 5, 1988, make the following corrections:

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1. On page 25143, in the third column, in the second line from the bottom, "0910 u.t.c." should read "0901 u.t.c.".

2. On page 25144, in the first column, under "**FOR FURTHER INFORMATION CONTACT**", in the second line, "2400," should read "240)".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. 85-08; Notice 2]

#### Federal Motor Vehicle Safety Standards; Occupant Crash Protection

##### Correction

In rule document 88-15121 beginning on page 25337 in the issue of Wednesday, July 6, 1988, make the following correction:

**§ 571.208 [Corrected]**

On page 25344, in the third column, in **§ 571.208**, in section 4.4.2.2., in the ninth line, "of" should read "to".

BILLING CODE 1505-01-D

# Register

Monday  
July 18, 1988

## Part II

## Department of Education

34 CFR Part 700  
Educational Research Grant Program;  
Final Regulations

## DEPARTMENT OF EDUCATION

## 34 CFR Part 700

## Educational Research Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

**SUMMARY:** The Secretary amends the regulations governing the Educational Research Grant Program. These amendments are needed to implement certain provisions of the General Education Provisions Act (GEPA), as amended by Title XIV of the Higher Education Amendments of 1986, and to improve the operation of the program.

**EFFECTIVE DATE:** These regulations take effect either 45 days after publication in the *Federal Register* or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Dr. Lawrence Bussey, Jr., Office of Research, Office of Educational Research and Improvement, 555 New Jersey Avenue NW., Suite 610, Washington, DC 20208-1633. Telephone number: (202) 357-6249.

**SUPPLEMENTARY INFORMATION:** The Educational Research Grant Program (ERGP) provides assistance to institutions of higher education, public and private organizations, institutions and agencies and individuals for educational research and related activities designed to advance educational theory and practice.

On March 18, 1988, the Secretary published in the *Federal Register* (53 FR 9088) a notice of proposed rulemaking (NPRM) for the Educational Research Grant Program.

## Public Comment

In the NPRM, the Secretary invited comments on the proposed regulations. The Secretary received comments from one organization that fully supported the proposed rules. There are no differences between the NPRM and these final regulations.

## Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

## Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would

require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

## List of Subjects in 34 CFR Part 700

Education, Education research, Grant programs—education.

(Catalog of Federal Domestic Assistance Number 84.117: Educational Research and Development)

Dated: June 23, 1988.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising Part 700 to read as follows:

## PART 700—EDUCATIONAL RESEARCH GRANT PROGRAM

## Subpart A—General

Sec.

700.1 What is the Educational Research Grant Program?

700.2 Who is eligible for an award?

700.3 What types of activities may the secretary fund?

700.4 What priorities may the secretary establish?

700.5 What regulations apply?

700.6 What definitions apply?

## Subpart B—How Does One Apply For An Award?

700.10 What types of applications may one submit?

700.11 When may one submit an unsolicited application?

## Subpart C—How Does The Secretary Make An Award?

700.20 How does the secretary evaluate an application?

700.21 What special procedures does the secretary use to evaluate an unsolicited application?

700.22 What selection criteria does the secretary use?

700.23 What additional procedures may the secretary use to determine which applications will be selected for funding?

700.24 What additional factors may the secretary consider in making awards for invitational applications and field-initiated applications?

## Subpart D—What Conditions Must Be Met After An Award?

700.30 What restrictions apply to the use of funds awarded under this program?

Authority: 20 U.S.C. 1221e, unless otherwise noted.

## Subpart A—General

## § 700.1 What is the Educational Research Grant Program?

The Educational Research Grant Program supports scientific inquiry designed to advance educational theory and practice.

(Authority: 20 U.S.C. 1221e)

## § 700.2 Who is eligible for an award?

The following are eligible for awards under the Educational Research Grant Programs:

- (a) Institutions of higher education.
- (b) Public and private organizations, institutions, and agencies.
- (c) Individuals.

(Authority: 20 U.S.C. 1221e)

## § 700.3 What types of activities may the Secretary fund?

(a) The Secretary may fund applications that include, but are not limited to, those designed to carry out one or more of the following activities:

- (1) Educational research.
- (2) Dissemination of educational research.

(3) Training of individuals in educational research.

(b) For each competition, the Secretary may restrict applications to one or more of the activities in paragraph (a) of this section.

(c) For each competition for invitational applications announced in the *Federal Register*, the Secretary may restrict educational research projects to one or more of the following activities:

- (1) Basic research.
- (2) Applied research.
- (3) Development.
- (4) Planning.
- (5) Surveys.
- (6) Assessments.
- (7) Evaluations.
- (8) Investigations.
- (9) Experiments.
- (10) Demonstrations in education and fields related to education.

(Authority: 20 U.S.C. 1221e)

## § 700.4 What priorities may the Secretary establish?

(a) For each competition for invitational applications, the Secretary may select funding priorities from a list of biennial research priorities published in the *Federal Register* for public comment pursuant to section 405(b)(4) of the Act. These biennial research priorities may include one or more priorities from paragraph (b) of this section.

(b) The Secretary may also select one or more funding priorities from the

following list of priorities or combinations of these priorities:

- (1) Learning.
- (2) Teaching.
- (3) Technology in education.
- (4) Instructional processes and materials, including textbooks and computer software for instruction.
- (5) Education and staff development for teachers, administrators, and other education staff.
- (6) Organization and management of schools, including effective education leadership.
- (7) Evaluation and indicators, including testing, measurement, and standards of performance.
- (8) Governance of education, including school board policies and practices.
- (9) Educational finance and productivity.
- (10) Education and the law.
- (11) Dissemination and knowledge utilization in education.
- (12) Improvement in education, including State and local reform initiatives.
- (13) Student achievement, including students' motivation to learn, their failure to learn, and their failure to attend school and graduate.
- (14) Home, family, cultural, and community influences on education, including parental choice and involvement in schooling.
- (15) Education, work, and careers.
- (16) Equity and excellence, including the effects of ability grouping.
- (17) Guidance and counseling.
- (18) International education.
- (19) English literacy, including reading, writing, and language skills.
- (20) Mathematics.
- (21) Science.
- (22) Foreign languages.
- (23) Early childhood education.
- (24) History and social sciences including economics, geography, political science, sociology, anthropology, and psychology.
- (25) Physical and health education.
- (26) Humanities, including music, art, literature, and dance.
- (27) Citizenship and character education.
- (28) Elementary education.
- (29) Secondary education.
- (30) Early adolescent education.
- (31) Adolescent education.
- (32) Postsecondary education.
- (33) Adult and continuing education.
- (34) Teachers.
- (35) School professionals and personnel.
- (36) Public and private institutions.
- (37) School discipline and crime in schools.
- (38) Education of special populations, including the educationally

disadvantaged or students at-risk, those with limited English proficiency, the handicapped, immigrants, and the academically gifted and talented.

(Authority: 20 U.S.C. 1221e)

#### § 700.5 What regulations apply?

The following regulations apply to grants under the Educational Research Grant Program:

- (a) The Education Department General Administrative Regulations (EDGAR) 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board) and Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government).
- (b) The regulations in this Part 700.

(Authority: 20 U.S.C. 1221e)

#### § 700.6 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

|             |            |
|-------------|------------|
| Applicant   | Facilities |
| Application | Grant      |
| Award       | Grantee    |
| Budget      | Nonprofit  |
| Contract    | Private    |
| Department  | Project    |
| EDGAR       | Public     |
| Equipment   | Secretary  |

(b) *Other definitions.* The following definitions also apply to this part:

"Act" means the General Education Provisions Act, as amended.

"Educational research" means basic and applied research, development, planning, surveys, assessments, evaluations, investigations, experiments, and demonstrations in the field of education and related fields.

"Field-initiated applications" means applications to conduct educational research on a topic or topics chosen by the applicant.

"Institution of higher education" means an institution of higher education as defined in section 1201(a) of the Higher Education Act of 1965, as amended.

(Authority: 20 U.S.C. 1141(a))

"Invitational applications" means applications meeting one or more priorities established by the Secretary in accordance with § 700.4 and 34 CFR 75.105.

"Unsolicited application" means an application not specifically invited by the Secretary, to carry out one or more of the activities listed in § 700.3(a).

(Authority: 20 U.S.C. 1221e)

### Subpart B—How Does One Apply For An Award?

#### § 700.10 What types of applications may one submit?

An eligible party listed in § 700.2 may submit one or more of the following types of applications for awards under this program:

(a) An invitational application in response to an application notice that establishes one or more priorities in accordance with § 700.4 and 34 CFR 75.105.

(b) A field-initiated application in response to an application notice in accordance with 34 CFR 75.100.

(c) An unsolicited application as described in § 700.11.

(Authority: 20 U.S.C. 1221e)

#### § 700.11 When may one submit an unsolicited application?

An applicant may submit an unsolicited application at any time during a fiscal year.

(Authority: 20 U.S.C. 1221e)

### Subpart C—How Does the Secretary Make an Award?

#### § 700.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates separately invitational applications, field-initiated applications, and unsolicited applications.

(b) (1) The Secretary evaluates applications on the basis of the selection criteria in § 700.22.

(2) The Secretary awards up to 100 points, including a reserved 25 points to be distributed in accordance with paragraph (b)(4) of this section, based on the selection criteria in § 700.22.

(3) Subject to paragraph (b)(4) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading of the criterion.

(4) For each competition announced in the Federal Register for awards for invitational applications and field-initiated applications, the Secretary distributes the reserved 25 points among the criteria in § 700.22, as announced in a notice published in the Federal Register, and for unsolicited applications, the Secretary distributes the reserved 25 points in accordance with § 700.21(d).

(Authority: 20 U.S.C. 1221e)

#### § 700.21 What special procedures does the Secretary use to evaluate an unsolicited application?

(a) At any time during a fiscal year, the Secretary may accept and consider

for funding unsolicited applications, for projects that do not meet a priority established in accordance with § 700.4 (a) and (b), and that have not been submitted under a competition for field-initiated applications for that fiscal year.

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the *Federal Register*.

(c) The Secretary selects an unsolicited application for funding in accordance with the procedures in § 700.20.

(d) The Secretary assigns 15 of the reserved 25 points under § 700.20(b)(2) to the selection criteria in § 700.22(f) (Significance) so that the maximum number of possible points for this criterion is 30 and 10 of the reserved points to the selection criterion in § 700.22(g) (Technical soundness) so that the maximum number of possible points for this criterion is 25.

(Authority: 20 U.S.C. 1221e)

**§ 700.22 What selection criteria does the Secretary use?**

(a) *Plan of operation* (10 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(2) The quality of the applicant's plans to use its resources and personnel to achieve each objective of the project; and

(3) The extent to which the applicant will equitably address the educational needs of students and educators in both public and private educational institutions.

(b) *Quality of key personnel* (20 points).

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the principal investigator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (b)(1) (i)

and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(c) *Budget and cost-effectiveness* (5 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, design, and potential significance of the project.

(d) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and  
(2) To the extent possible, are objective and produce data that are quantifiable.

(e) *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.

(f) *Significance* (15 points).

(1) The Secretary reviews each application to determine the significance of the of the proposed project.

(2) The Secretary determines the project's potential to make a significant contribution to American education, as measured by factors such as—

(i) Importance of the proposed project from the standpoint of basic knowledge or of problems in American education;

(ii) The likely magnitude of the addition that will be made to knowledge or educational practices if the project is successful, including the extent to which the proposed outcomes can be broadly applied.

(iii) The extent to which the project involves creative or innovative approaches that complement or are alternatives to existing approaches to the project's problem area; and

(iv) The extent to which the project is designed to yield products and outcomes that can be disseminated and utilized in other settings, such as information, materials, processes, or techniques.

(g) *Technical soundness* (15 points).

(1) The Secretary reviews each application to determine the technical soundness of the proposed activities.

(2) The Secretary determines—  
(i) The adequacy of the project's design, methodology, instrumentation, and data analysis plan, as applicable;

(ii) The extent to which the application exhibits a thorough

knowledge of current research and development concepts, theories, and outcomes and relates these to the proposed activity; and

(iii) The extent to which, where appropriate, the perspectives of a variety of disciplines are used.

(h) *Applicant's commitment and capacity* (0 points). The Secretary may assign points to this criterion pursuant to § 700.20(b)(3). The Secretary determines the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will build upon the project when Federal assistance ends.

(Authority: 20 U.S.C. 1221e)

(Approved by the Office of Management and Budget under control number 1850-0602)

**§ 700.23 What additional procedures may the Secretary use to determine which applications will be selected for funding?**

(a) After review of applications and preparation of a rank order of applications on the basis of the selection criteria in § 700.22 and in accordance with 34 CFR 75.217(b) and (c), the Secretary selects highly rated applications for further consideration on the basis of the factors in 34 CFR 75.217(d).

(b) For field-initiated applications, the Secretary reviews each application chosen for further consideration to determine whether the proposed activities would address educational problems of national importance. The Secretary determines the relative importance of field-initiated applications and selects only those applications that propose activities that are of the greatest national importance.

(c) In determining the order in which applications chosen for further consideration may be selected for funding under 34 CFR 75.217(d), the Secretary may consider the recommendations of experts.

(Authority: 20 U.S.C. 1221e)

**§ 700.24 What additional factors may the Secretary consider in making awards for invitational applications and field initiated applications?**

In addition to the criteria in §§ 700.22 and 700.23(b), the Secretary may consider the following factors in selecting invitational applications and field-initiated applications for funding:

(a) The geographical distribution of projects funded under a particular competition or under this program.

(b) The diversity of activities or projects funded under a particular competition or under this program.

(Authority: 20 U.S.C. 1221e)

**Subpart D—What Conditions Must Be Met After an Award?****§ 700.30 What restrictions apply to the use of funds awarded under this program?**

Of the funds made available through an award under the program, the Secretary may restrict the amount of funds used to purchase equipment.

(Authority: 20 U.S.C. 1221e)

[FR Doc. 88-16013 Filed 7-15-88; 8:45 am]

BILLING CODE 4000-01-M



# Fast Facts

**Monday**  
**July 18, 1988**

## **Part III**

## **Department of Education**

**34 CFR Part 779**

**College Library Technology and  
Cooperative Grants Program; Final  
Regulations**

## DEPARTMENT OF EDUCATION

## 34 CFR Part 779

## College Library Technology and Cooperation Grants Program

AGENCY: Department of Education.

ACTION: Final regulations.

**SUMMARY:** These regulations implement the College Library Technology and Cooperation Grants Program authorized under Title II-D of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986. The program is designed to encourage resource-sharing projects among the libraries of institutions of higher education through the use of technology and networking and to improve library and information services provided to them by public and nonprofit private organizations. Funds may also be granted to conduct research or demonstration projects to meet special needs in using technology to enhance library and information sciences.

**EFFECTIVE DATE:** These regulations take effect either 45 days after publication in the *Federal Register* or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, write or call the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Frank Stevens or Louise Sutherland, U.S. Department of Education, Office of Education Research and Improvement, Library Programs, 555 New Jersey Avenue, NW., Room 402, Washington, DC 20208-1430. Telephone (202) 357-6315.

**SUPPLEMENTARY INFORMATION:** On March 21, 1988, the Secretary published a notice of proposed rulemaking (NPRM) for the College Library Technology and Cooperation Grants Program in the *Federal Register* 53 FR 9246. This is a new program, funded for the first time in FY 1988. The proposed rules were drafted with input from national library and education organizations. Largely due to this involvement and guidance, few major issues have been raised in response to the NPRM. Comments principally addressed areas needing clarification; these required only minor editorial changes. Other changes included the addition of the minimum amount to be awarded, substitution of more accurate names for two of the types of grants, a clearer statement of the fiscal responsibilities of the grantee, and the addition of a dissemination requirement to the Research and Demonstration Grants.

## Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, six parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes are not addressed.

## Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

## Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

## Assessment of Education Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

## List of Subjects in 34 CFR Part 779

Colleges and universities, Education, Grant programs—education, Libraries, Library and information science, Libraries—resource sharing, Network, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.197, College Library Technology and Cooperation Grants)

Dated: June 30, 1988.

William J. Bennett,  
Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 779 to read as follows:

## PART 779—COLLEGE LIBRARY TECHNOLOGY AND COOPERATION GRANTS PROGRAM

## Subpart A—General

## Sec

779.1 What is the College Library Technology and Cooperation Grants Program?

779.2 What Types of grants does the Secretary provide?

779.3 Who is eligible for an award?

779.4 What activities may the Secretary fund?

779.5 What priorities may the Secretary establish?

779.6 What regulations apply?

779.7 What definitions apply?

779.8 What is the time period for expenditure of grant funds?

## Subpart B—How Does One Apply for an Award?

779.10 How does an applicant satisfy the matching requirement?

## Subpart C—How Does the Secretary Make an Award?

779.20 How does the Secretary evaluate an application?

779.21 What selection criteria does the Secretary use?

## Subpart D—What Conditions Must be Met After an Award?

779.30 What agency must be informed of activities funded by this program?

Authority: 20 U.S.C. 1021 and 1047, unless otherwise noted.

## Subpart A—General

## § 779.1 What is the College Library Technology and Cooperation Grants Program?

The College Library Technology and Cooperation Grants Program provides grants of at least \$15,000 for technological equipment and other special purposes designed to encourage the use of technology to enhance library resource sharing.

(Authority: 20 U.S.C. 1047)

## § 779.2 What types of grants does the Secretary provide?

Under the College Library Technology and Cooperation Grants Program, the Secretary shall make competitive awards in each of the following four types of grants:

(a) *Networking Grants.* These grants are designed to plan, develop, acquire, install, maintain, or replace technological equipment and software necessary to participate in networks for sharing of library resources.

(b) *Combination Grants.* These grants are designed to establish and strengthen joint-use library facilities, resources, software, or equipment.

(c) *Services to Institutions Grants.* These grants are designed to establish, develop, or expand programs or projects that improve the grantee's service to institutions of higher education.

(d) *Research and Demonstration Grants.* These grants are designed to conduct research or demonstration projects to meet specialized national or regional needs in utilizing technology to enhance library and information sciences.

(Authority: 20 U.S.C. 1047)

#### § 779.3 Who is eligible for an award?

The following are eligible to receive an award under this program:

(a) For Networking Grants, institutions of higher education.

(b) For Combination Grants, combinations of institutions of higher education.

(c) For Services to Institutions Grants, public or nonprofit private organizations (other than institutions of higher education) that provide library and information services to institutions of higher education on a formal cooperative basis.

(d) For Research and Demonstration Grants, institutions of higher education.

(Authority: 20 U.S.C. 1047)

#### § 779.4 What activities may the Secretary fund?

(a) The Secretary awards grants under this program to enable eligible recipients to develop or implement activities or services that the Secretary determines are likely to carry out a purpose specified in § 779.2.

(b) The types of activities or services referred to in paragraph (a) of this section may include, but are not limited to:

(1) Networking membership fees and expenses;

(2) Acquisition of equipment and supplies, including computer hardware and software;

(3) Telecommunications expenses;

(4) Salaries of project personnel;

(5) Evaluation of the project; and

(6) Dissemination of information about the project.

(Authority: 20 U.S.C. 1047)

Cross Reference: (See 34 CFR Part 74, Appendix D.)

#### § 779.5 What priorities may the Secretary establish?

(a) Each year, the Secretary may give priority to one or more of the four types of grants listed in § 779.2.

(b) The Secretary announces these priorities in a notice published in the *Federal Register*.

(Authority: 20 U.S.C. 1047)

Cross Reference: (See 34 CFR 75.105 Annual priorities.)

#### § 779.6 What regulations apply?

The following regulations apply to the College Library Technology and Cooperation Grants Program:

(a) The Education Department General Administration 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 779.

(Authority: 20 U.S.C. 1021)

#### § 779.7 What definitions apply?

(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR 77.1:

|             |                |
|-------------|----------------|
| Applicant   | Nonprofit      |
| Application | Private        |
| Award       | Project        |
| Contract    | Project period |
| EDGAR       | Public         |
| Grant       | Secretary      |
| Grantee     |                |

(b) *Other definitions.* The following definitions also apply to this part: "Combination of institutions of higher education" means—

(1) Two or more institutions of higher education that have entered into a formal cooperative agreement for the purpose of carrying out a common objective; or

(2) A public or nonprofit private agency, organization, or institution designated or created by a group of institutions of higher education for the purpose of carrying out a common objective on their behalf.

"Institution of higher education" means a public or nonprofit private institution of higher education as defined in 34 CFR 668.3.

"Joint-use" means shared facilities, resources, and services of member institutions of a combination of institutions of higher education.

"Librarianship" means the principles and practices of library and information science, including the acquisition, organization, storage, retrieval, and dissemination of information resources.

"Library organization or agency" means a public or nonprofit private organization or agency that provides library services or programs.

"Network" means a system of sharing library resources that is developed, maintained, or operated by a library organization or agency and that possesses the following characteristics:

(1) The system is primarily or exclusively used by other library organizations or agencies.

(2) The system provides users with cooperative services or activities beyond traditional interlibrary loan services.

(3) The system is not restricted in access or use to units, departments, branches, or components that are part of the library organization or agency sponsoring the system.

(4) The system is constituted under a formal written instrument that describes services, activities, and membership offered by the system.

(Authority: 20 U.S.C. 1021)

#### § 779.8 What is the time period for expenditure of grant funds?

Grant funds for these projects may be expended over a three-year period.

(Authority: 20 U.S.C. 1047)

#### Subpart B—How Does One Apply for an Award?

##### § 779.10 How does an applicant satisfy the matching requirement?

An applicant shall, in its application, give satisfactory assurance that, if it is selected as a grantee, it will—

(a) Expend, for the same purposes as the propose for which the grant is made, an amount not less than one-third of the grant during the three-year period for which the grant is made; and

(b) Make the expenditure from funds other than funds received under Title II of the Higher Education Act of 1965.

(Authority: 20 U.S.C. 1047)

#### Subpart C—How Does the Secretary Make an Award?

##### § 779.20 How does the Secretary evaluate an application?

(a) The Secretary uses the general selection criteria in § 779.21(a) and the special program criteria in § 779.21(b) to evaluate applications for new grants.

(b) The maximum possible score for the general criteria is 60 points.

(c) The maximum possible score for the specific criteria is 40 points.

(Authority: 20 U.S.C. 1047)

**§ 779.21 What selection criteria does the Secretary use?**

(a) *General selection criteria.* An applicant may receive up to 60 points under the general selection criteria in this section, for each type of grant, as follows:

(1) *Project description* (10 points). The Secretary reviews each application to determine the quality of the applicant's project, including—

(i) A concise description of the project;

(ii) A clear statement of the project objectives; and

(iii) Evidence of adequate planning.

(2) *Plan of operation* (15 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The effectiveness of the plan of management to assure proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program; and

(iv) The quality of the applicant's plans to use its resources and personnel to achieve each objective.

(3) *Quality of key personnel* (15 points). The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (a)(3)(i) and (ii) of this section will commit to the project; and

(iv) Key personnel's knowledge of librarianship and library technology.

(4) *Budget and cost-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.

(5) *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.

(6) *Evaluation plan* (5 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) Are objective and produce data that are quantifiable. Cross Reference. (See 34 CFR 75.590 Evaluation by the grantee.)

(b) *Special program criteria.* An applicant may receive up to 40 points under the special program criteria in this section for each type of grant, as follows:

(1) *Networking Grants.* The Secretary reviews each Networking Grant application to determine the extent to which—

(i) The project strengthens the academic programs of the institution;

(ii) There is a need for special assistance as evidenced by the inability of the institution, because of fiscal constraints, institutional size, or any other factors—

(A) To plan, develop, acquire, install, maintain, or replace technological equipment with its existing resources; and

(B) To participate in resource-sharing networks;

(iii) There is evidence of commitment to the project, capability to continue the project, and the likelihood that the applicant will build upon the project when the grant period ends;

(iv) There is evidence of strong and continuing institutional willingness to share library resources and to participate in cooperative arrangements with other libraries;

(v) The project would increase local, regional, or national access to materials; and

(vi) The applicant possesses, or will possess, after an award of a grant under this program, equipment and software compatible with that of other members of the network.

(2) *Combination Grants.* The Secretary reviews each Combination Grant application to determine the extent to which—

(i) There is a need for special assistance as evidenced by the inability of the institution to establish and strengthen joint use of library facilities, resources, or equipment with its existing resources because of fiscal constraints, institutional size, or any other factors;

(ii) There is evidence of commitment to the project, capability to continue the project, and the likelihood that the applicant will build upon the project when the grant period ends;

(iii) There is evidence of willingness to share library resources and to participate in cooperative arrangements with other academic libraries;

(iv) The academic programs of the institutions of higher education described in the application would be strengthened by the project;

(v) Local, regional, or national academic resource sharing would increase;

(vi) Project equipment and software would be compatible with that of other academic networks; and

(vii) Technological expertise would be shared with the academic library community.

(3) *Services to Institutions Grants.* The Secretary reviews each Services to Institutions Grant application to determine the extent to which—

(i) The project would establish, develop, or expand local, regional, or national resource-sharing programs;

(ii) There is a demonstrated level of support from institutions of higher education that the project is needed and desired;

(iii) There is evidence of the applicant's commitment to the project and capability to continue the project, and of the likelihood that the applicant will build upon the project when the grant period ends; and

(iv) There is evidence that formal written cooperative agreements to provide library and information services exist between the applicant and the institutions of higher education identified in the application.

(4) *Research and Demonstration Grants.* The Secretary reviews each Research and Demonstration Grant application to determine the extent to which—

(i) The applicant proposes an innovative approach in utilizing technology for library services;

(ii) There is evidence from library users, library educators, or library administrators that the research or demonstration project is desirable;

(iii) The project meets a special national or regional need in utilizing technology to enhance library or information sciences;

(iv) The project was developed in consultation with leading experts and takes account of current research; and

(v) The applicant provides plans to disseminate the results of the project.

(Authority: 20 U.S.C. 1047)

(Approved by Office of Management and Budget under control number 1850-0622.)

**Subpart D—What Conditions Must Be Met after an Award?**

**§ 779.30 What agency must be informed of activities funded by this program?**

Each applicant that receives a grant under this part shall annually inform the State agency designated under section 1203 of the Higher Education Act, as amended, of its activities under this part.

(Authority: 20 U.S.C. 1022)

#### Appendix—Analysis of Comments and Responses

The following is an analysis of comments and changes in the regulations since publication of the NPRM. Substantive issues are discussed under the headings of the regulations to which they pertain. Technical and other minor changes are not addressed.

#### *The College Library Technology and Cooperation Grants Program*

**Comment:** Two commenters, representing two major national library constituencies, suggested that the minimum grant award amount be included in § 779.1. They noted that this is basic program information and would provide consistency with section 241(b) of the Act.

**Discussion:** The omission of the minimum grant award in the proposed regulations was inadvertent. The Secretary agrees that the law and the regulations should be consistent.

**Change:** Section 779.1 has been changed in accordance with the comments and the law to read "the College Library Technology and Cooperation Grants Program provides grants of at least \$15,000 for technological equipment and other special purposes designed to encourage the use of technology to enhance library resources sharing."

#### *Types of Grants Available*

**Comment:** Three commenters sought clarification of the intent and scope of the four types of grants available. For Networking Equipment Grants, they suggested that the intent should be to target funds on new networking initiatives or major networking improvements rather than on continuing activities. One commenter questioned whether the emphasis in this category is solely on the purchase of equipment rather than participation in, enhancement of, or creation of new networks. For Joint-Use Grants, one commenter sought a definition of the types of allowable activities.

**Discussion:** With regard to Networking Grants, the law does not state that new networking initiatives or major program improvements are the only fundable activities under this category. The law includes maintenance of technological equipment as an eligible activity and, in doing so, provides for special assistance for ongoing activities. The law also recognizes the planning, development, acquisition, installation and replacement of technological equipment, and, therefore, applicants may focus their projects on new

networking initiatives or major program improvements, if they so desire. Similarly, activities other than the acquisition of equipment are allowable.

In § 779.2(b), the name "Joint-Use Grants" requires clarification. The focus of the statute is on four separate types of applicants rather than four separate types of activities. The law states that the second type of grant is for combinations of institutions of higher education to establish and strengthen joint-use library facilities, resources, or equipment. Joint-use means shared facilities, resources, and services of member institutions of a combination of institutions of higher education.

**Change:** In order to clarify the intent and purpose of the statute, the term "equipment" is deleted from the title of the first type of grant to read "Networking Grants." To clarify the second type of grant, the name is changed to "Combination Grants".

The definition of "joint-use" as described above, is added to "What definitions apply?" at § 779.7(b).

#### *Eligibility for an Award*

**Comment:** In § 779.3, two commenters noted that there are no guidelines as to whether an institution of higher education or other entity can be involved in more than one grant at a time. Their opinion is that an institution of higher education or other entity should administer only one grant at a time, with possible exceptions in the Services to Institutions and Research and Demonstration Grants categories. They also questioned whether grantees can have overlapping grants in several fiscal years.

**Discussion:** Institutions of higher education are not precluded from applying for both Networking Grants and Research and Demonstration Grants, nor shall they be precluded if they are also parties to Combination Grants projects. Non-academic entities are only eligible in the Services to Institutions Grants category and, therefore, would not be involved in any other grant type. Applicants are allowed to apply for grants in each fiscal year provided that subsequent grants do not replicate existing efforts.

**Change:** None. Generally, procedures governing the awarding of discretionary grants are found in Part 75 of the Education Department General Administrative Regulations (EDGAR).

#### *Activities the Secretary May Fund*

**Comment:** All of the commenters noted that the term "illustrative" in § 779.4(b) is misleading and confusing. They suggested that the phrase be changed to "examples of eligible

activities." They noted that this would also be more consistent with the law. They questioned whether specific activities, such as support for the salaries of staff members directly involved in the project, are fundable. Two commenters suggested the addition of "campus or multi-campus systems support for interfacing with library networks" as an eligible activity.

**Discussion:** The statute does not specifically limit the types of eligible activities, and a list of examples would be more consistent with the law. Salaries of project personnel are allowable as described in 34 CFR Part 74, Appendix D, Part I. Support for campus or multi-campus systems is not precluded in the regulations or the law and therefore, is an allowable activity.

**Change:** Section 779.4(b) is changed to read, "The types of activities or services referred to in paragraph (a) of this section may include, but are not limited to." In § 779.4(b), "Salaries of project personnel" is added as item number four.

#### *Establishment of Priorities by the Secretary*

**Comment:** Several commenters were in opposition to setting priorities for the program as they believe the content of the projects proposed by the applicants will reflect the needs and priorities of the library community. They noted that setting priorities adds unpredictability to a new program and leaves no room for libraries to plan future projects. They also questioned upon what bases the Secretary will establish annual priorities and suggest that, if priorities must be set, the Secretary should consult with the library profession before doing so.

**Discussion:** There is a great demand for the limited funds available under this program and it is the intent of the Secretary to allocate the available funds in the most productive way possible. The Secretary has the authority under EDGAR, in § 75.105, to set annual priorities, if he so desires. In the course of setting priorities, the Secretary will consider input from the profession, the public and other interested parties.

**Change:** None.

**Comment:** In § 779.5(c), three commenters opposed apportioning funds in each category, as they believe this is a method of setting priorities.

**Discussion:** As discussed above, the Secretary is authorized to set priorities. In accordance with the authority provided in EDGAR, in any year the Secretary decides to set priorities, the apportionment of different levels of funds in each category will be the method by which the selected priorities

will be implemented. However, the EDGAR regulations adequately address the procedures and proposed § 779.5(c) is, therefore, unnecessary.

*Change:* Section 779.5(c) has been deleted.

#### *Assurances Regarding "Maintenance of Effort"*

*Comment:* Two commenters sought clarification of the requirement in § 779.10 regarding what is referred to in the Notice of Proposed Rulemaking as the Maintenance of Effort requirement. They suggested that the term "matching" be included to define the one-third applicant contribution requirement.

*Discussion:* The requirement in the law states that the applicant will expend during the 3-year period for which the grant is sought, from funds other than funds received under this title, for the same purpose as such grant, an amount from such other sources equal to not less than one-third of such grant. This contribution is, in fact, a matching requirement. The Secretary, however, wants to stress that it is a one-third match and not a one for one match as is the case with most matching requirements.

*Change:* To clarify the intent of the statute, § 779.10 has been changed to read "How does an applicant satisfy the matching requirement?" This reflects the nature of the statute and adds to the clarity of the regulations.

#### *Selection Criteria the Secretary Uses*

*Comment:* Two commenters were concerned that certain projects may take more than three years to become effective due to the complex and far reaching nature of technological development. They suggested that these grants should include support for significant steps taken toward a new level of sharing resources, and further suggested the revision of § 779.21(b)(1)(v) to read "the project

would increase local, regional or national access to materials, or would be a critical and identifiable step toward that end."

*Discussion:* Congress specifically made provisions for the complex nature of technological projects by extending the normal grant period from one to three years. Three years is sufficient time to achieve the program purposes and goals under the Networking Grant. This does not preclude start-up activities or planning and development, provided that a program purpose is clearly achieved within the three year timeframe.

*Change:* None.

*Comment:* Two commenters suggested the addition of the term "software" to § 779.21(b)(1)(vi) under Networking Grants and § 779.21(b)(2)(vi) under Combination Grants to read "the applicant possesses or will possess . . . equipment and software compatible with that of other members of the network" and "project equipment and software would be compatible with that of other networks," respectively. They felt this would further clarify the scope of the grants and add consistency to the program.

*Discussion:* The Secretary agrees that not only should the acquired hardware be compatible but also the software.

*Change:* The term "software" has been added to §§ 779.21(b)(1)(vi) and 779.21(b)(2)(vi), and for consistency, software is also added to § 779.2 (a) and (b).

*Comment:* Under subsection 779.21(b)(4), two commenters suggested the addition of an assurance that project results of Research and Demonstration Grants will be widely disseminated. They believe that this will ensure the widest possible benefits from federal support of research and demonstration activities.

*Discussion:* Dissemination is usually an inherent activity in Research and

Demonstration projects, but the Secretary agrees that there should be appropriate and widespread dissemination.

*Change:* The following is added under § 779.21(b)(4): "(v) The applicant provides plans to disseminate the results of the project."

#### *Agencies Which Must Be Informed of Funded Activities*

*Comment:* One commenter suggested that in § 779.30 an additional section be added that would require the applicant to submit a copy of its application to the State Library Administrative Agency for review in order to make comments which the Secretary would then be obliged to take under consideration in making grant awards. The commenter suggested that the grants awarded from this program would have a significant impact on the other state programs.

*Discussion:* The Department recognizes that the State Library Administrative Agencies would like to facilitate coordination of networking activities among the many types of libraries in their states, but the Department has no authority to require such submission of applications. The regulations in § 779.30 require the applicant to inform the state agency designated under section 1203 of the Higher Education Act of its activities under this part. Further, this program is covered under Executive Order 12372 which additionally requires that the applicant notify the State Single Point of Contact of its intent to apply. In those States that require review for this program, applications are to be submitted simultaneously to the State Review Process and the U.S. Department of Education.

*Change:* None.

[FR Doc. 88-16038 Filed 7-15-88; 8:45 am]

BILLING CODE 4000-01-M

# Test Report

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**Monday,  
July 18, 1988**

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## **Part IV**

## **Department of Education**

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**Office of Special Education and  
Rehabilitative Services**

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**Handicapped Special Studies Program;  
Notice of Final Annual Evaluation  
Priorities**

PART IV

Department of  
Education

Office of Special Education and  
Remedial Services

Handicapped Special Studies Program;  
None of First Annual Evaluation  
Priorities

**DEPARTMENT OF EDUCATION****Office of Special Education and Rehabilitative Services****Handicapped Special Studies Program; Notice of Final Annual Evaluation Priorities****AGENCY:** Department of Education.**ACTION:** Notice of final annual evaluation priorities.

**SUMMARY:** The Secretary announces annual evaluation priorities for the Handicapped Special Studies program. These studies have been selected to ensure effective use of program funds and to meet requirements of the Education of the Handicapped Act (EHA).

**EFFECTIVE DATE:** These priorities take effect either 45 days after publication in the *Federal Register* or later if the Congress take certain adjournments. If you want to know the effective date of these priorities call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511-M/S 2313), Washington, DC 20202. Telephone: (202) 732-1099.

**SUPPLEMENTARY INFORMATION:** The Handicapped Special Studies program, authorized by Section 618 of Part B of the Education of the Handicapped Act (EHA), as amended, supports studies to evaluate the impact of the Act, including efforts to provide a free appropriate public education and early intervention services to infants, toddlers, children and youth with handicaps. The results of these studies must be included in the annual report submitted to the Congress by the Department.

On March 7, 1988, the Secretary published a notice of proposed annual evaluation priorities for this program in the *Federal Register* at 53 FR 7294. There is no difference between the proposed priorities and these final priorities.

**Public Comment**

In the March 7 notice, the Secretary invited comments on the proposed annual evaluation priorities. One comment was received which enthusiastically supported Priority 2 "Study of Anticipated Services for Students with Handicaps Exiting from School." Except for minor editorial revisions, the Secretary has made no changes in these final annual evaluation priorities since publication of the proposed priorities.

**Priorities:** The Secretary announces priorities under the Handicapped Special Studies Program, CFDA No. 84.159, for fiscal year 1988 applications. Under priority 1, the Secretary invites applications for cooperative agreements to support certain types of studies. Priority 2 will also be addressed through cooperative agreements.

**Priority 1: State Agency/Federal Evaluation Studies Projects (CFDA No. 84.159A)**

This priority supports evaluation studies by State agencies to assess the impact and effectiveness of activities assisted under the Education of the Handicapped Act. Within this priority, the Secretary particularly invites studies that: (1) Assess the effect of State and local fiscal policies on the delivery of pre-referral services and special education in regular classrooms at either the elementary or secondary school levels; (2) document experiences of special education students after they exit secondary school, and determine the relationship between secondary programming and post-secondary outcomes; (3) evaluate the effect of alternative assessment practices on multilingual and limited English speaking children and youth; and (4) assess program effectiveness and impact through utilization of student outcome indicators. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(1)), applications for studies described in items (1), (2), (3), and (4) will not receive a competitive or absolute preference over other applications that propose evaluation studies to assess the impact and effectiveness of activities assisted under the Education of the Handicapped Act.

**Priority 2: Study of Anticipated Services for Students with Handicaps Exiting From School (CFDA No. 84.159B)**

Section 618(b)(3) of the Education of the Handicapped Act requires the Secretary to report annually on the number of handicapped children and youth exiting the educational system through program completion or otherwise, by disability category and age, and anticipated services for the next year. The anticipated services data are intended to provide national and State-level information for planning the adult services required by these youths after they leave school. Data to respond to this requirement have been collected through reports from each of the States. Most States gather these data from local school districts. However, State educational agencies report that local educational agency staff have difficulty inferring the type or nature of anticipated adult services individual

youths will require. Because of this difficulty, the Secretary believes that more useful information for adult service planning can be obtained from information on the characteristics of exiting students from which adult service needs could be inferred.

Under this priority, the Secretary supports cooperative agreements to identify, define and operationalize student performance indicators and other descriptive indicators (e.g., reading level, mobility) to determine adult service needs. Projects must develop an array of indicators related to the services these youths will require from adult service agencies to live independently and achieve gainful employment. Indicators must be supported by research findings, conceptual rationales, or both. Further, alternative methods of measurement for each indicator must be developed. Indicators must be developed in cooperation with State adult service agencies. Projects should provide evidence that the indicators have significant practical utility in planning adult services for students with handicaps exiting from school. Finally, alternative strategies for collecting data on these indicators on a State by State basis need to be specified. These strategies must address sampling issues, the burden involved in collecting the data, instrument administration, data verification and data aggregation at State and national levels, and issues related to periodic (e.g., annual) collection of data. The Secretary is particularly interested in indicators of in-school as well as out-of-school functioning so that a program of services can be designed to enhance the effectiveness of the individual in educational, home, community, and work environments. Performance indicators on students with a wide range of limitations and disabilities must be addressed.

These projects would cumulatively provide potential designs by which schools, rather than inferring anticipated adult service needs, could provide relevant student performance characteristics to adult service agencies for the purpose of planning.

(20 U.S.C. 1418)

Dated: June 30, 1988.

William J. Bennett,  
Secretary of Education.(Catalog of Federal Domestic Assistance  
Number 84.159; Handicapped Special Studies  
Program)

[FR Doc. 88-16039 Filed 7-15-88; 8:45 am]

BILLING CODE 4000-01-M



# United States Federal Register

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**Monday**  
**July 18, 1988**

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**Part V**

**Office of  
Management and  
Budget**

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**Budget Rescissions and Deferrals; Notice**

**OFFICE OF MANAGEMENT AND  
BUDGET****Cumulative Report on Rescissions and  
Deferrals**

July 1, 1988.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of July 1, 1988, of 22 deferrals contained in the

three special messages of FY 1988. There have been no rescissions proposed. These messages were transmitted to the Congress on October 1 and 29, 1987, and February 19, 1988.

**Rescissions (Table A and Attachment  
A)**

As of July 1, 1988, there were no rescission proposals pending before the Congress.

**Deferrals (Table B and Attachment B)**

As of July 1, 1988, \$5,494.3 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1988.

**Information from Special Messages**

The special messages containing information on the deferrals covered by this cumulative report are printed in the **Federal Registers** listed below:

Vol. 52, FR p. 37739, Thursday, October 8, 1987

Vol. 52, FR p. 42400, Wednesday, November 4, 1987

Vol. 53, FR p. 6734, Wednesday, March 2, 1988

James C. Miller III,  
*Director.*

BILLING CODE 3110-01-M

TABLE A  
STATUS OF 1988 RESCISSIONS

|  | Amount<br>(In millions<br>of dollars) |
|--|---------------------------------------|
| Rescissions proposed by the President..... | 0                                     |
| Accepted by the Congress.....              | 0                                     |
| Rejected by the Congress.....              | 0                                     |
| Pending before the Congress.....           | 0                                     |

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TABLE B  
STATUS OF 1988 DEFERRALS

|  | Amount<br>(In millions<br>of dollars) |
|--|---------------------------------------|
| Deferrals proposed by the President.....   | 9,310.0                               |
| Routine Executive releases through July 1, 1988 ..<br>(OMB/Agency releases of \$3,840 million and<br>cumulative adjustments of \$24.3 million) | -3,815.7                              |
| Overtured by the Congress.....   | 0                                     |
| Currently before the Congress.....   | 5,494.3                               |

Attachments

## Attachment A - Status of Rescissions - Fiscal Year 1988

| As of July 1, 1988<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Rescission<br>Number | Amount<br>Previously<br>Considered<br>by Congress | Amount<br>Currently<br>Before<br>Congress | Date of<br>Message | Amount<br>Rescinded | Amount<br>Made<br>Available | Date<br>Made<br>Available | Congressional<br>Action |
|--|----------------------|---|---|--------------------|---------------------|-----------------------------|---------------------------|-------------------------|
| NONE   |                      |   |   |                    |                     |                             |                           |                         |

## Attachment B - Status of Deferrals - Fiscal Year 1988

| As of July 1, 1988<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Deferral<br>Number | Amount<br>Transmitted<br>Original<br>Request | Amount<br>Transmitted<br>Subsequent<br>Change | Date of<br>Message | Cumulative<br>OMB/Agency<br>Releases | Congress-<br>sionally<br>Required<br>Releases | Congres-<br>sional<br>Action | Cumulative<br>Adjustments | Amount<br>Deferred<br>as of<br>7-1-88 |
|--|--------------------|--|---|--------------------|--------------------------------------|---|------------------------------|---------------------------|---------------------------------------|
| FUNDS APPROPRIATED TO THE PRESIDENT  |                    |  |   |                    |                                      |   |                              |                           |                                       |
| International Security Assistance  | D88-20             | 2,949,000                                    |   | 2-19-88            | 865,000                              |   |                              | 17,500                    | 2,101,500                             |
| Foreign military sales credit.....   | D88-1              | 40,000                                       |   | 10-1-87            |                                      |   |                              |                           |                                       |
| Economic support fund.....   | D88-1A             |  | 1,960,727                                     | 2-19-88            | 988,583                              |   |                              |                           | 1,012,144                             |
| Military assistance.....   | D88-21             | 608,186                                      |   | 2-19-88            | 310,001                              |   |                              |                           | 298,185                               |
| International disaster assistance.....   | D88-22             | 13,479                                       |   | 2-19-88            | 11,650                               |   |                              |                           | 1,829                                 |
| Special Assistance for Central America   |                    |  |   |                    |                                      |   |                              |                           |                                       |
| Promotion of stability and security in   |                    |  |   |                    |                                      |   |                              |                           |                                       |
| Central America.....   | D88-2              | 1,000  |   | 10-1-87            |                                      |   |                              |                           | 1,000                                 |
| DEPARTMENT OF AGRICULTURE  |                    |  |   |                    |                                      |   |                              |                           |                                       |
| Forest Service   |                    |  |   |                    |                                      |   |                              |                           |                                       |
| Expenses, brush disposal.....  | D88-3              | 120,425                                      |   | 10-1-87            |                                      |   |                              |                           | 130,654                               |
| Timber salvage sales.....  | D88-3A             |  | 10,529  | 2-19-88            | 300                                  |   |                              |                           | 24,385                                |
| Cooperative work.....  | D88-4              | 34,841                                       |   | 10-1-87            | 10,456                               |   |                              |                           | 470,941                               |
| Gifts, donations, and bequests for forest                                      | D88-5              | 628,025                                      |   | 10-1-87            | 157,084                              |   |                              |                           |                                       |
| and rangeland research.....  | D88-6              | 104  |   | 10-1-87            | 60                                   |   |                              |                           | 44                                    |
| DEPARTMENT OF DEFENSE - MILITARY   |                    |  |   |                    |                                      |   |                              |                           |                                       |
| Military Construction  |                    |  |   |                    |                                      |   |                              |                           |                                       |
| Military construction, Defense.....  | D88-7              | 900  |   | 10-1-87            |                                      |   |                              |                           | 900                                   |
|  | D88-7A             |  | 1,297,848                                     | 2-19-88            | 1,297,848                            |   |                              |                           |                                       |
| Family Housing   |                    |  |   |                    |                                      |   |                              |                           |                                       |
| Family housing, Defense.....   | D88-8              | 51,015                                       |   | 10-1-87            |                                      |   |                              |                           | 0                                     |
|  | D88-8A             |  | 135,940                                       | 2-19-88            | 186,955                              |   |                              |                           |                                       |
| DEPARTMENT OF DEFENSE - CIVIL  |                    |  |   |                    |                                      |   |                              |                           |                                       |
| Wildlife Conservation, Military Reservations                                   |                    |  |   |                    |                                      |   |                              |                           |                                       |
| Wildlife conservation, Defense.....  | D88-9              | 636  |   | 10-1-87            |                                      |   |                              |                           | 759                                   |
|  | D88-9A             |  | 149   | 2-19-88            | 26                                   |   |                              |                           |                                       |

Attachment B - Status of Deferrals - Fiscal Year 1988

| As of July 1, 1988<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account                                  | Deferral<br>Number | Amount<br>Transmitted<br>Original<br>Request | Amount<br>Subsequent<br>Change | Date of<br>Message | Cumulative<br>OMB/Agency<br>Releases | Congres-<br>sionally<br>Required<br>Releases | Congres-<br>sional<br>Action | Cumulative<br>Adjustments | Amount<br>Deferred<br>as of<br>7-1-88 |
|---|--------------------|--|--------------------------------|--------------------|--------------------------------------|--|------------------------------|---------------------------|---------------------------------------|
| <b>DEPARTMENT OF ENERGY</b>   |                    |  |                                |                    |                                      |  |                              |                           |                                       |
| Power Marketing Administration  |                    |  |                                |                    |                                      |  |                              |                           |                                       |
| Alaska Power Administration, Operation and maintenance.....   | D88-14             | 120  |                                | 10-29-87           |                                      |  |                              |                           | 120                                   |
| Southeastern Power Administration, Operation and maintenance.....   | D88-15             | 2,000  |                                | 10-29-87           | 2,000                                |  |                              |                           | 0                                     |
| Southwestern Power Administration, Operation and maintenance.....   | D88-16             | 6,000  |                                | 10-29-87           |                                      |  |                              |                           | 13,200                                |
|   | D88-16A            |  | 7,200                          | 2-19-88            |                                      |  |                              |                           |                                       |
| Western Area Power Administration, Construction, rehabilitation, operation and maintenance.....                 | D88-17             | 774  |                                | 10-29-87           |                                      |  |                              |                           | 0                                     |
|   | D88-17A            |  | 2,426                          | 2-19-88            | 3,200                                |  |                              |                           |                                       |
| <b>DEPARTMENT OF HEALTH AND HUMAN SERVICES</b>  |                    |  |                                |                    |                                      |  |                              |                           |                                       |
| Office of Assistant Secretary for Health Scientific activities overseas (special foreign currency program)..... | D88-18             | 2,391  |                                | 10-29-87           |                                      |  |                              |                           | 2,960                                 |
|   | D88-18A            |  | 569                            | 2-19-88            |                                      |  |                              |                           |                                       |
| Social Security Administration Limitation on administrative expenses (construction).....                        | D88-10             | 6,171  |                                | 10-1-87            |                                      |  |                              |                           | 6,207                                 |
|   | D88-10A            |  | 36                             | 2-19-88            |                                      |  |                              |                           |                                       |
| <b>DEPARTMENT OF JUSTICE</b>  |                    |  |                                |                    |                                      |  |                              |                           |                                       |
| Office of Justice Programs  |                    |  |                                |                    |                                      |  |                              |                           |                                       |
| Crime victims fund.....   | D88-19             | 85,000                                       |                                | 10-29-87           | 6,800                                |  |                              | 6,800                     | 85,000                                |
| <b>DEPARTMENT OF STATE</b>  |                    |  |                                |                    |                                      |  |                              |                           |                                       |
| Bureau for Refugee Programs   |                    |  |                                |                    |                                      |  |                              |                           |                                       |
| United States emergency refugee and migration assistance fund, executive.....                                   | D88-11             | 11,638                                       |                                | 10-1-87            |                                      |  |                              |                           | 11,638                                |
| <b>DEPARTMENT OF TRANSPORTATION</b>   |                    |  |                                |                    |                                      |  |                              |                           |                                       |
| Federal Aviation Administration Facilities and equipment (Airport and airway trust fund).....                   | D88-12             | 879,049                                      |                                | 10-1-87            |                                      |  |                              |                           | 1,329,907                             |
|   | D88-12A            |  | 450,858                        | 2-19-88            |                                      |  |                              |                           |                                       |
| <b>DEPARTMENT OF THE TREASURY</b>   |                    |  |                                |                    |                                      |  |                              |                           |                                       |
| Office of Revenue Sharing   |                    |  |                                |                    |                                      |  |                              |                           |                                       |
| Local government fiscal assistance trust fund.....  | D88-13             | 2,933  |                                | 10-1-87            |                                      |  |                              |                           | 2,933                                 |
| <b>TOTAL, DEFERRALS.....</b>  |                    | <b>5,443,688</b>                             | <b>3,866,281</b>               |                    | <b>3,839,963</b>                     | <b>0</b>                                     |                              | <b>24,300</b>             | <b>5,494,306</b>                      |

[FR Doc. 88-16070 Filed 7-15-88; 8:45 am]

BILLING CODE 3110-01-C

1. General Information  
 2. Physical Description  
 3. Chemical Analysis  
 4. Biological Data  
 5. Geographical Distribution  
 6. Historical Records  
 7. Remarks

| No. | Date | Locality   | Collector | No. | Date | Locality   | Collector |
|-----|------|------------|-----------|-----|------|------------|-----------|
| 1   | 1911 | California | Smith     | 2   | 1912 | California | Smith     |
| 3   | 1913 | California | Smith     | 4   | 1914 | California | Smith     |
| 5   | 1915 | California | Smith     | 6   | 1916 | California | Smith     |
| 7   | 1917 | California | Smith     | 8   | 1918 | California | Smith     |
| 9   | 1919 | California | Smith     | 10  | 1920 | California | Smith     |
| 11  | 1921 | California | Smith     | 12  | 1922 | California | Smith     |
| 13  | 1923 | California | Smith     | 14  | 1924 | California | Smith     |
| 15  | 1925 | California | Smith     | 16  | 1926 | California | Smith     |
| 17  | 1927 | California | Smith     | 18  | 1928 | California | Smith     |
| 19  | 1929 | California | Smith     | 20  | 1930 | California | Smith     |
| 21  | 1931 | California | Smith     | 22  | 1932 | California | Smith     |
| 23  | 1933 | California | Smith     | 24  | 1934 | California | Smith     |
| 25  | 1935 | California | Smith     | 26  | 1936 | California | Smith     |
| 27  | 1937 | California | Smith     | 28  | 1938 | California | Smith     |
| 29  | 1939 | California | Smith     | 30  | 1940 | California | Smith     |
| 31  | 1941 | California | Smith     | 32  | 1942 | California | Smith     |
| 33  | 1943 | California | Smith     | 34  | 1944 | California | Smith     |
| 35  | 1945 | California | Smith     | 36  | 1946 | California | Smith     |
| 37  | 1947 | California | Smith     | 38  | 1948 | California | Smith     |
| 39  | 1949 | California | Smith     | 40  | 1950 | California | Smith     |
| 41  | 1951 | California | Smith     | 42  | 1952 | California | Smith     |
| 43  | 1953 | California | Smith     | 44  | 1954 | California | Smith     |
| 45  | 1955 | California | Smith     | 46  | 1956 | California | Smith     |
| 47  | 1957 | California | Smith     | 48  | 1958 | California | Smith     |
| 49  | 1959 | California | Smith     | 50  | 1960 | California | Smith     |
| 51  | 1961 | California | Smith     | 52  | 1962 | California | Smith     |
| 53  | 1963 | California | Smith     | 54  | 1964 | California | Smith     |
| 55  | 1965 | California | Smith     | 56  | 1966 | California | Smith     |
| 57  | 1967 | California | Smith     | 58  | 1968 | California | Smith     |
| 59  | 1969 | California | Smith     | 60  | 1970 | California | Smith     |
| 61  | 1971 | California | Smith     | 62  | 1972 | California | Smith     |
| 63  | 1973 | California | Smith     | 64  | 1974 | California | Smith     |
| 65  | 1975 | California | Smith     | 66  | 1976 | California | Smith     |
| 67  | 1977 | California | Smith     | 68  | 1978 | California | Smith     |
| 69  | 1979 | California | Smith     | 70  | 1980 | California | Smith     |
| 71  | 1981 | California | Smith     | 72  | 1982 | California | Smith     |
| 73  | 1983 | California | Smith     | 74  | 1984 | California | Smith     |
| 75  | 1985 | California | Smith     | 76  | 1986 | California | Smith     |
| 77  | 1987 | California | Smith     | 78  | 1988 | California | Smith     |
| 79  | 1989 | California | Smith     | 80  | 1990 | California | Smith     |
| 81  | 1991 | California | Smith     | 82  | 1992 | California | Smith     |
| 83  | 1993 | California | Smith     | 84  | 1994 | California | Smith     |
| 85  | 1995 | California | Smith     | 86  | 1996 | California | Smith     |
| 87  | 1997 | California | Smith     | 88  | 1998 | California | Smith     |
| 89  | 1999 | California | Smith     | 90  | 2000 | California | Smith     |
| 91  | 2001 | California | Smith     | 92  | 2002 | California | Smith     |
| 93  | 2003 | California | Smith     | 94  | 2004 | California | Smith     |
| 95  | 2005 | California | Smith     | 96  | 2006 | California | Smith     |
| 97  | 2007 | California | Smith     | 98  | 2008 | California | Smith     |
| 99  | 2009 | California | Smith     | 100 | 2010 | California | Smith     |
| 101 | 2011 | California | Smith     | 102 | 2012 | California | Smith     |
| 103 | 2013 | California | Smith     | 104 | 2014 | California | Smith     |
| 105 | 2015 | California | Smith     | 106 | 2016 | California | Smith     |
| 107 | 2017 | California | Smith     | 108 | 2018 | California | Smith     |
| 109 | 2019 | California | Smith     | 110 | 2020 | California | Smith     |
| 111 | 2021 | California | Smith     | 112 | 2022 | California | Smith     |
| 113 | 2023 | California | Smith     | 114 | 2024 | California | Smith     |
| 115 | 2025 | California | Smith     | 116 | 2026 | California | Smith     |
| 117 | 2027 | California | Smith     | 118 | 2028 | California | Smith     |
| 119 | 2029 | California | Smith     | 120 | 2030 | California | Smith     |

# **Federal Register**

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**Monday**  
**July 18, 1988**

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## **Part VI**

### **Department of the Interior**

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#### **Fish and Wildlife Service**

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##### **50 CFR Part 17**

**Endangered and Threatened Wildlife and  
Plants; Shortnose and Lost River  
Suckers, Houghton's Goldenrod and  
Pitcher's Thistle; Final Rules**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Shortnose Sucker and Lost River Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

**SUMMARY:** The Service determines endangered status for the shortnose sucker (*Chasmistes brevirostris*) and Lost River sucker (*Deltistes luxatus*), fishes restricted to the Klamath Basin of south-central Oregon and north-central California. Dams, draining of marshes, diversion of rivers and dredging of lakes have reduced the range and numbers of both species by more than 95 percent. Remaining populations are composed of older individuals with little or no successful recruitment for many years. Both species are jeopardized by continued loss of habitat, hybridization with more common closely related species, competition and predation by exotic species, and insularization of remaining habitats. This rule implements the protection provided by the Endangered Species Act of 1973, as amended, for the shortnose sucker and Lost River sucker.

**EFFECTIVE DATE:** August 17, 1988.

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

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

**SUPPLEMENTARY INFORMATION:****Background**

Cope (1879) originally described the shortnose sucker (*Chasmistes brevirostris*) and Lost River sucker (*Deltistes luxatus*) from Upper Klamath Lake, Oregon. Later, Gilbert (1898) and Evermann and Meek (1898) described two other species of *Chasmistes* from the same lake. A careful review of all available specimens, however, documented that *brevirostris* is the only valid species of *Chasmistes* from Upper Klamath Lake and that the other two "species" were merely sex or condition

variants of *brevirostris* (Miller and Smith 1981).

The Lost River sucker was originally placed in the genus *Chasmistes* by Cope (1879). *Deltistes*, a monotypic genus, was erected for the Lost River sucker in 1896 based on the delta-shaped gill rakers (Seale 1896). In addition to the deltoid, short gill rakers, the Lost River sucker is characterized by subterminal mouth, small hump on the snout (at least in preserved specimens), and large size of adults (ca. 10 lbs.). The primary morphological characters that distinguish the shortnose sucker from other species of *Chasmistes* include the presence of a terminal, oblique mouth with weak or no papillae on the lips. Scales are small, with 65 to 79 in the lateral line and 21 to 25 around the caudal peduncle (Miller and Smith 1981).

Upper Klamath Lake and its tributaries are now the primary refuge for both the Lost River and shortnose suckers. A substantial population of shortnose suckers occurs in Copco Reservoir on the Klamath River, but the Lost River sucker population has practically been eliminated there (Beak Consultants 1987). Remnant or highly hybridized populations of these two species occur in the Lost River system and other nearby areas.

In addition to Upper Klamath Lake, Copco Reservoir, and their tributary streams, shortnose suckers and Lost River suckers have been collected from Iron Gate Reservoir, California (California Dept. of Fish and Game 1980), J.C. Boyle Reservoir, Oregon (Jeff S. Ziller, pers. comm.) and Clear Lake Reservoir, California (Coots 1965, Loch et al. 1975). Additionally, shortnose suckers have been collected from Lake of the Woods, Oregon (Andreasen 1975a). The Lost River sucker also was known from Sheepy Lake, Lower Klamath Lake and Tule Lake in California (Coots 1965).

The populations of shortnose and Lost River suckers in Copco and Iron Gate Reservoirs may have resulted from drift of individuals downstream in the Klamath River from Upper Klamath Lake. Specimens of shortnose suckers collected from Copco Reservoir in 1962, 1978 and 1979 were introgressed with the Klamath smallscale sucker (*Catostomus rimitulus*) (Miller and Smith 1981). Nonetheless, Miller and Smith (1981) regarded the Copco Reservoir population as consisting of a "relatively intact gene pool of *Chasmistes brevirostris*." A few shortnose suckers have recently been collected from J.C. Boyle Reservoir, located along the Klamath River between Upper Klamath Lake and Copco Reservoir. The status of this

population, which appears quite small, is uncertain. Other reaches of the Klamath River between Copco Reservoir and Upper Klamath Lake also may harbor small remnant populations of both species. The remaining populations of shortnose suckers have not fared as well. The Lake of the Woods population was lost in 1952 during a fish eradication program aimed at removing carp and perch from the lake (Andreasen 1975a). The Clear Lake Reservoir population of shortnose suckers shows evidence of extensive hybridization with the Klamath largescale sucker (*Catostomus snyderi*) (Williams et al. 1985), but further work is needed to precisely determine the genetic constitution of suckers in this system.

A few Lost River suckers have been collected from J.C. Boyle Reservoir in the Klamath River between Upper Klamath Lake and Copco Reservoir (Jeff S. Ziller, pers. comm.). Only one Lost River sucker was collected from Copco Reservoir in 1987 despite intensive collection efforts (Beak Consultants 1987). Populations of Lost River suckers in Sheepy Lake, Lower Klamath Lake and Tule Lake were lost after 1924, when the lakes were drained for farming (Moyle 1976). Prior to 1924, large numbers of Lost River suckers were taken from Sheepy Creek, the spawning stream tributary to Sheepy Lake, for human consumption and livestock feed (Coots 1965). The Clear Lake Reservoir population of Lost River suckers is the last known remnant of the species in the Lost River system. The population in Clear Lake Reservoir is small and suffers from large numbers of exotic species and lack of sufficient spawning area (Koch et al. 1975).

The primary factors in the widespread decline of the shortnose sucker and Lost River sucker have included damming of rivers, instream flow diversion, draining of marshes, dredging of Upper Klamath Lake and other forms of water manipulation. Dams have been particularly destructive in that they have blocked spawning runs of the fish and facilitated hybridization with other types of suckers in the dam's tailwaters. Although the construction of large reservoirs may provide suitable feeding and resting habitat for these lacustrine species, the reservoirs often lack long stretches of large inflowing rivers that are necessary for successful spawning. Such is the case in Clear Lake Reservoir, where small intermittent creeks are the only habitat that remains for spawning attempts.

Survey work performed in 1984-1986 by the Oregon Department of Fish and

Wildlife, The Klamath Tribe, and the Service have shown drastic declines in the largest remaining populations of both species in Upper Klamath Lake (Bienz and Ziller, ms.). During the 1984 survey, the population of shortnose suckers moving out of Upper Klamath Lake in the spawning run was estimated at 2,650 individuals. The 1985 and 1986 surveys found too few shortnose suckers to accurately estimate the population size. The catch per unit effort of shortnose suckers declined 34 percent between the 1984 and 1985 spawning runs. In 1986, catch per effort statistics yielded 74 percent decrease in the spawning run when compared to 1985. Although the population levels of the Lost River sucker have remained substantially above those critically low levels observed for the shortnose, the overall decline has been equally precipitous. In 1984, a population of 23,123 Lost River suckers was estimated in the Upper Klamath Lake spawning run. By the 1985 spawning run, the population had declined to 11,861 (Bienz and Ziller, ms.). Although the shortnose sucker and Lost River sucker are long-lived (up to at least 43 years in the latter species), the drastic decline can be explained by lack of successful spawning. No significant recruitment of young into the populations has occurred for approximately 18 years (Scoppettone 1986).

The Service included both the Lost River and shortnose suckers in category 2 of its December 30, 1982, comprehensive notice of review (47 FR 58954) of vertebrate species under consideration for listing as endangered or threatened. Category 2 includes those species for which information indicates that proposing to list as endangered or threatened is possibly appropriate but for which additional data are needed. These two suckers were maintained in the September 18, 1985, update (50 FR 37958) of the 1982 notice. Surveys conducted since 1984 provided the additional information on which to base a proposed rule. The shortnose sucker and Lost River sucker were proposed as endangered species on August 26, 1987 (52 FR 32145-32149) in accordance with section 4(b) of the Endangered Species Act of 1973, as amended.

#### Summary of Comments and Recommendations

In the August 26, 1987, proposed rule (52 FR 32145-32149) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, city governments, Federal agencies,

scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comments were published in the *Ashland Tidings* (September 22, 1987), *Medford Mail Tribune* (September 22, 1987), *Redding Record-Searchlight* (September 22, 1987), *Klamath Falls Herald & News* (September 20, 1987), *The Oregonian* (September 20, 1987), and *Siskiyou News* (September 20, 1987).

A total of 13 written comments were received during the 60-day comment period following publication of the proposed rule. Comments were submitted by two Federal agencies, two State agencies, one Indian tribe, one City government, five conservation organizations, and two private parties. Twelve responses supported listing and one response expressed no opinion regarding the listing. No comments in opposition to the listing were received. The City of Klamath Falls took no position regarding the listing, but offered results of studies on the potential impact of the proposed Salt Caves Hydroelectric Project on both species. It is the opinion of the City that the project would not impact either species, however, data to support this position are lacking. Government agencies writing to express their support for the listing included the U.S. Forest Service, Bureau of Land Management, California Department of Fish and Game, and Oregon Department of Fish and Wildlife.

In addition to voicing support for the listing, The Klamath Tribe, Desert Fishes Council, Rogue Chapter of the Sierra Club, and Save our Klamath River also stated their belief that critical habitat should be officially designated for both species. The critical habitat designation is discussed below.

Additional data on the decline of the shortnose sucker and Lost River sucker were provided by The Klamath Tribe, California Department of Fish and Game, Oregon Department of Fish and Wildlife, and an independent biologist familiar with the species. As appropriate, this additional information was incorporated into this final rule.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the shortnose sucker and Lost River sucker should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A

species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the shortnose sucker (*Chasmistes brevirostris*) and Lost River sucker (*Deltistes luxatus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Initial biological surveys of the Klamath Basin indicated the presence of large populations of fishes, and suckers in particular (Cope 1879, Gilbert 1898). Spawning runs of suckers from Upper Klamath Lake were large enough to provide a major food source for Indians and local settlers. The shortnose sucker and Lost River sucker were staples in the diet of the Klamath Indians for thousands of years (Charles E. Kimbol, pers. comm.). In the late 1890's, a cannery was operated for commercial harvest of the Lost River sucker on the Lost River near Olene, Oregon (Howe 1984). Even through the 1960's and 1970's, runs of suckers moving from Upper Klamath Lake up into the Williamson and Sprague Rivers were great enough to provide a major sport fishery that annually attracted many people from throughout the West (Bienz and Ziller, ms.; John Fortune, pers. comm.). The primary species was the larger Lost River sucker, locally known as mullet, but significant numbers of shortnose suckers also occurred in the runs. During the past years, however, The Klamath Tribe and local biologists have been so alarmed by the population decline of both suckers that in 1987, the Oregon Fish and Wildlife Commission closed the fishery for both species and place them on the State's list of protected species.

Causes of the declines are varied and not fully understood. Clearly, there has been a drastic reduction in spawning success. Recent data show that neither species of sucker has successfully spawned in Oregon for approximately 18 years (Bienz and Ziller, ms.; Scoppettone 1986). Similar results have recently been obtained for populations of both species in Copco Reservoir, California (Beak Consultants 1987). Most of the spawning habitat for the shortnose sucker and Lost River sucker in the Upper Klamath Lake drainage has been lost. The primary factor may have been the construction of the Sprague River Dam at Chiloquin, Oregon. The dam is located just upstream of the junction of the Sprague and Williamson Rivers and probably eliminated more than 95 percent of the historical spawning habitat. Neither the shortnose sucker nor Lost River sucker spawn in the

Williamson River upstream of its confluence with the Sprague. Fish ladders have been constructed at various times on the Sprague River Dam but their effectiveness in facilitating movement of suckers around the structure has been minimal to non-existent because, although these suckers are strong-swimmers, their leaping ability is greatly limited. Any successfully-spawned larvae may be diverted into agricultural fields by unscreened irrigation pumps and diversions. Minor secondary spawning occurred in the larger springs that flow from along the shores of Upper Klamath Lake. However, the usefulness of these spawning areas along the east shore of the lake was lost when a railroad was constructed and riprap was used to fill in the springs. Further problems may have been caused by decreases in water quality that result from timber harvest, dredging activities, removal of riparian vegetation and livestock grazing.

**B. Overutilization for commercial, recreational, scientific, or educational purposes.** Prior to 1987, Oregon State law allowed a snag fishery for the Lost River sucker. In 1987, the Oregon Fish and Game Commission removed both species from the list of fishes in the State that may be harvested. The shortnose sucker was incidentally taken each spring during its spawning runs by sport fishermen snagging the larger Lost River sucker. In the 1985 sport fishery, Lost River suckers comprised 92 percent of the catch, whereas shortnose and Klamath largescale accounted for 3 and 6 percent, respectively (Brenz and Ziller, ms.). Prior to recent population declines, some recreational take of the shortnose sucker and Lost River sucker was acceptable. No commercial take is known. It should be noted that nearly all scientific data has been obtained from fish collected in natural die-offs (see Factor E, below), or during sport fishing. High mortality of the shortnose sucker occurred during a recent study at Copco Reservoir (Beak Consultants 1987), indicating that great care should be taken in future studies of these species.

**C. Disease or predation.** Exotic fishes have been stocked into the Klamath Basin and have played some role in the decline of the shortnose sucker and Lost River sucker. In addition to preying on young suckers, such exotic species can serve as sources of parasites and/or diseases.

**D. The inadequacy of existing regulatory mechanisms.** Recent action by the State of Oregon to remove the shortnose sucker and Lost River sucker from the list of fishes that may be harvested, and place both species on the

State's list of protected species has improved the adequacy of regulations to protect these species. California State Law lists the shortnose sucker and Lost River sucker as endangered. Although the California Endangered Species Act has provisions for State agencies to consult with the California Department of Fish and Game on projects affecting State-listed species, neither State law protects habitat of the species from projects that are permitted, funded or carried-out by Federal agencies.

**E. Other natural or manmade factors affecting its continued existence.** Hybridization with the Klamath largescale and Klamath smallscale suckers has been recognized as a problem in maintaining the genetic purity of shortnose sucker populations (Miller and Smith 1981, Williams *et al.* 1985). Similarly, hybridization between the Klamath largescale sucker and Lost River sucker has been reported in Upper Klamath Lake (Andreasen 1975a). Although hybridization occurs naturally between many species of suckers (family Catostomidae), increased incidence of hybridization occurs if one of the parental species experiences a major population decline, as in the case of the shortnose sucker. Further hybridization is facilitated by dams that block spawning runs and force individuals of closely related species to spawn in mass in the dam's tailwaters. Spawning of the shortnose, Lost River and Klamath largescale sucker occurs below the Sprague River Dam at Chiloquin.

An additional source of mortality is late-summer die-offs in Upper Klamath Lake. A major die-off of Lost River and shortnose suckers was observed during 1986 that resulted from blue-green algal blooms (genus *Aphanizomenon*) (Scoppettone 1986). Sucker die-offs do not occur every year, but may occur in dry or particularly hot years. Pollution of the lake and decreased summer inflows, perhaps caused by diversion of water for agricultural purposes, aggravate this phenomenon.

The presence of exotics, such as fathead minnows (*Pimephales promelas*) and yellow perch (*Perca flavescens*), may inhibit recovery. Fathead minnows were first documented in the Klamath River system during 1974 and have now spread into Upper Klamath Lake, where they have become abundant (Andreasen 1975b; Jeff S. Ziller, pers. comm.). The minnows may compete with the native suckers for food. Perhaps in response to the increased number of fathead minnows, the yellow perch population in Upper Klamath Lake has increased

recently (Jeff S. Ziller, pers. comm.). The perch are potential predators on larval suckers and may be a major factor in preventing any young suckers from being recruited into the population. Exotic fishes in the Lost River system include bullheads (*Ictalurus* spp.), largemouth bass (*Micropterus salmoides*), crappie (*Pomoxis* sp.), green sunfish (*Lepomis cyanellus*), and Sacramento perch (*Archoplites interruptus*) (Koch *et al.* 1975; Jack E. Williams, pers. obs.).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list the shortnose and Lost River suckers as endangered. Threatened status would not adequately reflect the sharp decline of either species, lack of recruitment, or the continued threat to remaining habitat fragments. Critical habitat is not being designated for this species at this time for reasons discussed below.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent or determinable for these species at this time. As noted in Factor "A" of the above "Summary of Factors Affecting the species" much of the historic spawning grounds of the Upper Klamath Lake population is no longer accessible because a dam blocks the spawning run near the confluence of the Sprague and Williamson Rivers. Similarly, dams on the Klamath River downstream of Upper Klamath Lake have eliminated or blocked access to spawning habitat. Therefore, determining the boundaries of areas to be included as critical habitat is difficult. Further, agency personnel are well-aware of the distribution of both species through the Klamath Basin Sucker Interagency Working Group. Little additional benefits of notification of the species presence would be achieved through critical habitat designation. Because of these factors, the Service finds that the determination of critical habitat cannot be made at this time.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered

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

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

Federal actions that may affect the shortnose sucker and Lost River sucker are issuances of licenses or permits for dam projects by the Federal Energy Regulatory Commission; grazing or timber harvesting practices on Forest Service land in the Upper Klamath Lake and Clear Lake Reservoir watersheds; and agreements, leases, or other arrangements between the Klamath Tribe and local irrigation interests that would result in the diversion of water from the Williamson or Sprague Rivers; and management of canals and diversion structures by the Bureau of Reclamation. Permitting activities of the Army Corps of Engineers pursuant to section 404 of the Clean Water Act or section 10 of the River and Harbor Act also may be affected.

The Act implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import, ship in interstate commerce in the course of a commercial activity, or

sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

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

#### National Environmental Policy Act

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

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#### Author

The primary author of this final rule is Dr. Jack E. Williams, U.S. Fish and Wildlife Service, Sacramento, California; and Department of Wildlife and Fisheries Biology, University of California, Davis, California 95616 (telephone 916/752-7703).

#### List of Subjects in 50 CFR Part 17

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

#### Regulations Promulgation

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

#### PART 17—[AMENDED]

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

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

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

#### § 17.11 Endangered and threatened wildlife.

\* \* \* \* \*

(h) \* \* \*

| Species                  |                                      | Historic range       | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|--------------------------|--------------------------------------|----------------------|--|--------|-------------|------------------|---------------|
| Common name              | Scientific name                      |                      |  |        |             |                  |               |
| FISHES                   |                                      |                      |  |        |             |                  |               |
| Sucker, Lost River.....  | <i>Deltistes luxatus</i> .....       | U.S.A. (OR, CA)..... | Entire.....  | E      | 313         | NA               | NA            |
| Sucker, Short-nose ..... | <i>Chasmistes brevirostris</i> ..... | U.S.A. (OR, CA)..... | Entire.....  | E      | 313         | NA               | NA            |

Dated: June 27, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-16062 Filed 7-15-88; 8:45 am]

BILLING CODE 4310-55-M

## 50 CFR Part 17

### Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for *Solidago houghtonii* (Houghton's Goldenrod)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service determines threatened status for *Solidago houghtonii* (Houghton's goldenrod), a perennial native to the sand beach flats of the northern shorelines of Lakes Michigan and Huron. This plant is threatened by residential development, hydrologic changes of the Great Lakes, destabilization of the shoreline sand dunes and beach flats, human disturbance, and the use of off-road vehicles. *Solidago houghtonii* is presently known to occur at 39 sites within eight Michigan counties. There are also several populations in Ontario, Canada. This action will implement Federal protection provided by the Endangered Species Act of 1973, as amended, for *Solidago houghtonii*.

**EFFECTIVE DATE:** August 17, 1988.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Regional Office of Endangered Species, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

**FOR FURTHER INFORMATION CONTACT:** James M. Engel, Endangered Species Coordinator, at the above address, (612/725-3276 or FTS 725-3276).

#### SUPPLEMENTARY INFORMATION:

##### Background

*Solidago houghtonii* (Houghton's goldenrod), a plant of the family Asteraceae, was discovered in 1839, by Douglass Houghton, Michigan's first State Geologist, along the north shore of

Lake Michigan in Mackinac County, Michigan, between what are now the communities of Naubinway and Epoufette (Guire and Voss 1963). This large-headed goldenrod, 8-30 inches tall, is characterized by its relatively large heads on slightly hairy stalks in a more or less flat-topped inflorescence. The stem is slender and smooth, with a few tiny hairs on the upper portions. Leaves are glabrous (without hairs), but may be scarbrous (with hairs) on the margins and linear, alternately arranged, and number 7 to 15. The basal and lower leaves are up to 8 inches long and  $\frac{3}{4}$  inches wide, tapering and partially clasping the stem. The upper leaves are similar but reduced upwards. All leaves are weakly triple veined and acute. Inflorescences, which appear from midsummer until fall, consist of a few somewhat flat-topped clusters of 5-30 heads containing relatively large flowers. Voss (University of Michigan, pers. comm. 1987) reports one specimen in Cheboygan County, Michigan, with 125 heads.

*Solidago houghtonii* typically occurs on the sparsely vegetated, moist calcareous sand beach shoreline flats, and the damp hollows or depressions between the foredune ridges of northern Lake Michigan and Lake Huron (Nepstad 1981). Its occurrence behind the lakefront dunes has also been noted (Morton 1979). Two other species proposed for federal listing, *Cirsium pitcheri* (Pitcher's thistle) and *Iris lacustris* (Dwarf lake iris), occur in some of the same areas.

Nepstad (1981) described localities in six Michigan counties (Cheboygan, Chippewa, Crawford, Delta, Emmet, and Mackinac), where *Solidago houghtonii* is found in more or less continuous or semi-continuous populations along the Great Lakes shorelines. He noted that it may be misleading to count each population as an individual occurrence, as these populations are merely separated by local discontinuities in habitat. He considered there to be no more than 18 known populations of *Solidago houghtonii*. However, after later survey work, Crispin (Michigan Department of Natural Resources, pers. comm. December 1985 and February 1986) identified additional populations.

A review of data furnished by the Nature Conservancy indicates that within the general areas of the 18 populations noted by Nepstad (1981), about 39 sites now actually exist. *S. houghtonii* is currently known from about 37 sites in seven Michigan counties (Cheboygan, Chippewa, Delta, Emmet, Mackinac, Presque Isle, and Schoolcraft) along the northern shores of Lake Michigan and Lake Huron, and from 2 sites in inland Crawford county within the confines of the State-owned Camp Grayling military reservation (Nepstad 1981). The plant is also known from several sites in Canada, specifically the Manitoulin district and the Bruce peninsula near Cabot Head, in Ontario (Morton 1979). The taxon is considered rare in the province of Ontario (Semple and Ringius 1983).

An additional population of *S. houghtonii* was once reported to occur in Bergen Swamp, Genesee County, New York (Guire and Voss 1963). That population, however, is not now thought to represent the taxon and is undergoing further study.

*Solidago houghtonii* is threatened by residential development, lakefront dune destabilization because of hydrologic changes, human disturbance, and off-road recreational vehicle traffic (Nepstad 1981).

Federal actions involving this species began with section 12 of the Endangered Species Act of 1973 (Act) which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of this report as a petition within the context of section 4(c)(2), now section 4(b)(3)(A) of the Act, and of its intention to review the status of the plant taxa named within. *Solidago houghtonii* was included in the Service's 1975 notice of review. *Solidago houghtonii* was also included as a category 1 species in an updated notice of review for plants published in the Federal Register of December 15, 1980 (45 FR 82480).

Category 1 comprises taxa for which the Service presently has sufficient biological information to support their being proposed to be listed as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been submitted by that date. Section 4(b)(3) of the Act, as amended, requires that, within 12 months of the receipt of a petition, a finding be made as to whether the requested action is warranted, not warranted, or warranted but precluded by other listing activity. On October 13, 1983, October 12, 1984, October 11, 1985, and October 10, 1986, the petition finding was made that listing *Solidago houghtonii* was warranted but precluded. A final finding, to the effect that the petitioned action was warranted, was incorporated in a proposed rule to determine threatened status for *Solidago houghtonii* issued in the Federal Register of August 19, 1987 (52 FR 31045).

#### Summary of Comments and Recommendations

In the August 19, 1987, proposed rule (52 FR 31045) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate state agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the *Sault Ste. Marie News* on August 31, 1987, *The Cheboygan Daily Tribune* on September 2, 1987, *The Crawford Avalanche*, the *Manistique Pioneer-Tribune*, and *The St. Ignace News* on September 3, 1987, and the *Petoskey News Review* on September 8, 1987.

Six comments were received. Support for the proposal was expressed in three comments. A University of Michigan professor provided editorial suggestions, specific species information, and additional reference recommendations. The Michigan chapter of The Nature Conservancy confirmed taxonomic features, threats to the taxon, and that listing the plant is reasonable and necessary. A botanist from the National Museum of Natural Sciences, Canada, provided clarifying information regarding site locations in Canada. Three comments were received which did not take a position on the proposal, but did offer new species information. Two of these, one from the University of New York and the other from the Royal Botanical Gardens, Hamilton, Ontario,

provided thoughts on the taxonomic status of the species. The other response, from the Michigan Department of Military Affairs (National Guard) acknowledged that the presence of *S. houghtonii* within the boundaries of Camp Grayling has not been a problem. However, if the plant expands its range a conflict could arise with military training on adjoining lands. Restrictions associated with the plant's habitat which might affect activities within Camp Grayling are expected to be minimal. All comments are now incorporated into this rule and the Service appreciates the assistance of all parties.

#### Summary of Factors Affecting the Species

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

A. *Present or threatened destruction, modification, or curtailment of its habitat or range.* *Solidago houghtonii* is presently threatened by the potential development of the shoreline along those portions of Lakes Michigan and Huron where the species is found (Nepstad 1981). Private development has already rendered some lakeshore areas unsuitable as long-term habitat for this species. Crispin (pers. comm. 1987) also reported that beachfront development has destroyed part of a *S. houghtonii* population in Cheyboygan County, Michigan. In addition to current and potential shoreline development, *Solidago houghtonii* is threatened by disturbances to the lakefront dune habitat caused by recreational vehicles and by human activities. Nepstad (1981) stated that while the ability of *S. houghtonii* to tolerate changes in the habitat has not yet been determined, the narrow habitat requirements of the plant indicate that destabilization of the foredunes and beach flats could be detrimental to the species. High water levels of the Great Lakes are also a threat to *S. houghtonii*. This natural condition should not be exacerbated by human disturbance. Woiwode (The Nature Conservancy, pers. comm. 1987) reports that continuous high water

levels at some lakeside *S. houghtonii* populations have reduced many of the plants to a vegetative state which does not induce flowering. He questions how long these non-flowering plants can continue to exist. Presently, *Solidago houghtonii* is found at about 37 sites in seven Michigan counties along the shores of Lake Michigan and Lake Huron, two sites inland in Crawford County, and several sites in Ontario. Of the 39 sites in Michigan, 14 are publicly owned; 11 by the State, two by the Federal Government, and one by The Nature Conservancy. The remaining 25 privately owned areas are not protected and are subject to various types of habitat alterations, which could adversely affect *Solidago houghtonii*.

Data does not indicate that this plant was ever more widespread geographically than it now is; however, some formerly known populations within the current range can no longer be relocated (Crispin pers. comm. 1987). Current information indicates that 10 populations (20 percent) may have been extirpated within the last 10 years. Crispin has further noted that several monitoring projects for *Solidago houghtonii* have been initiated by The Nature Conservancy. However, extensive knowledge of the species' ecological requirements are not known.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no known trade in this species, and scientific or horticultural collecting is not known to pose any threat to it. The species is attractive, and publicity concerning its rarity could stimulate greater interest and collecting.

C. *Disease or predation.* This species is not known to be threatened by disease or predation.

D. *The inadequacy of existing regulatory mechanisms.* *S. houghtonii* is officially listed as threatened in Michigan and afforded protection under State law which generally prohibits taking, possession, sale, purchase, and transport of plant species on the Federal and State endangered and threatened lists. Federal listing would reinforce and broaden protection for the species and its habitat.

E. *Other natural and manmade factors affecting its continued use.* Since many populations of this species occur on the lake beachfronts, the plants are subject to hydrologic changes, as well as human and vehicular disturbances. The fact that approximately 20 percent of the earlier known populations have not been found since 1975 (Crispin pers. comm.) points out the need for research

into the population dynamics of the taxon.

In determining to make this final rule, the Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this taxon. Based on this evaluation, the preferred action is to list *Solidago houghtonii* as threatened. Although not thought to be in imminent danger of extinction, this plant is rare, has suffered the loss of many local populations, and faces the prospect of further losses occurring as a result of habitat alteration. For reasons detailed below, critical habitat is not being designated.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). In the present case, the Service believes that designation of critical habitat would not be prudent because no benefit to the taxon can be identified that would outweigh the potential threat of vandalism or collection, which might be exacerbated by the publication of a detailed critical habitat description.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups and individuals. The Endangered Species Act provides for land acquisition and cooperation with the States; it also requires that recovery actions be carried out for all listed species. These actions are initiated by the Service following listing. Management actions that may be of benefit to *S. houghtonii* include monitoring populations, obtaining protective easements at sites of occurrence, providing protection against human disturbance, investigating measures to prevent long-term habitat degradation, and State-Federal cooperation in habitat management and reintroduction projects. The protection required by Federal agencies and applicable prohibitions are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperative provisions of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Two of the sites at which *S. houghtonii* occurs are administered by Federal agencies, but no authorized activities, actually or potentially detrimental to the species, are known in these areas. The U.S. Bureau of Land Management has jurisdiction over a small island in Chippewa County, Michigan, where the plant is found. It is contemplated that ownership of this island will soon be transferred to the State of Michigan. Another small population is located on the Hiawatha National Forest in Mackinac County. Implementation of the management plan for this area, by the U.S. Forest Service, could involve *S. houghtonii* and its habitat.

Section 9 of the Act, and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce, or remove it from land under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued, since this plant is not common in cultivation or in the wild. Requests for copies of the regulations on plants and

inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27239, Central Station, Washington, DC 20038-7329 (703/343-4955).

#### National Environmental Policy Act

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

#### References Cited

- Guire, K.E., and Edward G. Voss. 1963. Distributions of Distinctive Shoreline Plants in the Great Lakes Region: The Michigan Botanist 2:99-114.
- Morton, J.K. 1979. Observations on Houghton's Goldenrod (*Solidago houghtonii*). The Michigan Botanist 18:31-35.
- Nepstad, D.C. 1981. Status report on *Solidago houghtonii* Torrey and Gray. Department of Botany and Plant Pathology, Michigan State University. Unpubl. ms., 29 pp.
- Semple, J.C., and G.S. Ringius. 1983. *Solidago houghtonii* Torrey and Gray. In G.W. Argus and D.J. White, eds., Atlas of the rare vascular plants of Ontario. National Museum of Natural Science, Ottawa.

#### Author

The primary author of this rule is William F. Harrison (see ADDRESSES section) (612/725-3276 or FTS 725-3276).

#### List of Subjects in 50 CFR Part 17

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

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

#### PART 17—[AMENDED]

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

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

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

## § 17.12 Endangered and threatened plants.

.....  
 (h) \* \* \*

| Species                          |                           | Historic range                  | Status | When listed | Critical habitat | Special rules |
|----------------------------------|---------------------------|---------------------------------|--------|-------------|------------------|---------------|
| Scientific name                  | Common name               |                                 |        |             |                  |               |
| Asteraceae:                      |                           |                                 |        |             |                  |               |
| <i>Solidago houghtonii</i> ..... | Houghton's goldenrod..... | U.S.A. (MI), Canada (Ont.)..... | T      | 314         | NA               | NA            |

Dated: June 24, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-16063 Filed 7-15-88; 8:45 am]

BILLING CODE 4310-55-M

## 50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for *Cirsium Pitcheri*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

**SUMMARY:** The Service determines *Cirsium pitcheri* (Pitcher's thistle), to be a threatened species under the authority contained in the Endangered Species Act (Act) of 1973, as amended. The species occurs on the shores of the Great Lakes in Indiana, Michigan, and Wisconsin in the U.S., and Ontario Canada. Development, loss, and disturbance of dunelands by the public are the principal threats to the species. This final rule will implement the protection provided by the Act for *Cirsium pitcheri*.

**EFFECTIVE DATE:** August 17, 1988.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Regional Office of Endangered Species, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

**FOR FURTHER INFORMATION CONTACT:** James M. Engel (see **ADDRESSES** section) at 612/725-3276 or FTS 725-3276.

**SUPPLEMENTARY INFORMATION:**

## Background

*Cirsium pitcheri* (Pitcher's thistle) was first discovered by Z. Pitcher in the 1820's and first described by Eaton as *Cnicus pitcheri* in the 5th edition of his manual (Eaton 1829); the first use of the current binomial was by Torrey and Gray ca. 1843. *Cirsium pitcheri*, a member of the composite or sunflower family, Asteraceae, possesses densely-white-wooly and deeply divided leaves

with long petioles (Smith 1966, Alverson 1981). Other general characteristics include cream-colored or yellowish flowers in heads borne singly or few together on numerous stem branches up to 30 inches (0.76 meters) tall (Alverson 1981). Flowering occurs in June and may continue until mid-August; seed dispersal begins in late July (Keddy and Keddy 1984).

*Cirsium pitcheri* occurs primarily in the dry sand of stabilized, well developed dunes along the shorelines of the Great Lakes. It is also found in dry areas of loose sand ("sand blows" or "blowouts") behind main dunes in open areas of older dunes from higher Pleistocene lake levels (Alverson 1981). Plants are infrequently found on the lower, moist areas of the beach which are more frequently inundated and disturbed by storm wave action (Alverson 1981). Apparently, *Cirsium pitcheri* can tolerate infrequent disturbance to its habitat (i.e., once every 5-10 years) and it has been known to colonize disturbed areas. Periodic disturbance of this species' habitat apparently helps maintain an earlier successional stage of sparsely vegetated, open dunes; colonies of these plants appear to thrive on sites with these ecological conditions. The earlier-to mid-successional stage sites are well drained and support dry sand prairie-like vegetation communities; sites are sunny and open (Nepstad 1981). However, colonies of this plant do not tolerate frequent (i.e., monthly to annual) modification or disturbance to their habitat (see discussion below).

This plant appears to have originated in the Great Plains area and migrated east to its present range through suitable sandy habitats as the last ice age receded approximately 8,000 years ago (Moore and Frankton 1963). *Cirsium pitcheri* is closely related to *Cirsium canescens*, a plant characteristic of the western U.S. sand hills flora (Ownsby and Hsi 1963).

The greatest part of the species' range is in Michigan where it is found at about 100 sites in 25 counties along Lakes Huron, Michigan and Superior (Sue Crispin, Michigan Natural Heritage

Program, pers. comm. 1987). Although the plant is still widespread in Michigan, it depends on dynamic dune processes which have largely disappeared. In Wisconsin the species currently exists at eight sites in three counties on the Lake Superior shoreline (Alverson 1981). No known historic colonies of *Cirsium pitcheri* in Wisconsin have been extirpated but present activities have reduced existing colonies and threats continue (Alverson 1981). In Indiana, *Cirsium pitcheri* is known from seven sites along Lake Michigan (John Bacone, Indiana Division of Nature Preserves, pers. comm. 1987). The species is extirpated in Illinois. It occurs at 12 sites in Ontario, where it is found on the sandy shores of Lakes Huron and Superior (Keddy 1987). This plant occurs on public lands managed by the U.S. National Park Service (NPS) (Indiana Dunes National Lakeshore in Indiana and Sleeping Bear Dunes and Pictured Rocks National Lakeshore in Michigan), the U.S. Forest Service (FS) (Huron-Manistee National Forest), on small (100 yard or 91 meter) stretch of shoreline on Lake Michigan in Wisconsin, that is managed by the U.S. Coast Guard, and on Strawberry Island, which is administered by the Bureau of Land Management (BLM). It also occurs on State owned lands at sites within State parks in Indian, Michigan, and Wisconsin.

*Cirsium pitcheri* reproduces only sexually, and requires 3-10 years between germination and flowering; seeds are dispersed by a pappus which acts like a parachute for wind dispersal (Keddy 1987, Keddy and Keddy 1984). Most seeds are dispersed and settle downwind (inland) from parents, and seedling clusters appear to result from seeds that are dispersed with entire heads rather than separate achenes (Keddy and Keddy 1984). Because of their weight, entire seed heads are also more likely to be buried in the sand than are individual seeds. Keddy and Keddy (1984) suggest that dispersal of entire heads rather than separate achenes may be the mechanism which restricts seedlings establishment to a narrow

band of open beach rather than having all seeds blow inland to shrub and forest habitats. The combination of these reproductive factors, and other life-history requirements, may restrict these plants to clusters in narrowly-defined microhabitats along shorelines of the Great Lakes. These reproductive limitations may also affect the selection of conservation strategies that might be used to protect this species (see discussion in Factor E of the "Summary of Factors Affecting the Species" section).

Federal government actions on this species began on December 15, 1980, when the Service published a revised notice of review for native plants (45 FR 82480). *Cirsium pitcheri* was included in that notice as a category 1 species. Category 1 includes those species for which the Service has sufficient biological data to propose to list them as endangered or threatened species. In subsequent notices published on November 28, 1983 (48 FR 53640), and September 27, 1985 (50 FR 39526), *Cirsium pitcheri* remained in Category 1 where development and publication of proposed rules are anticipated, but because of the large number of taxa, actual publication could take some time. The proposed rule of July 20, 1987 (52 FR 27229), constituted the Service's most recent findings.

#### Summary of Comments and Recommendations

In the July 20, 1987, proposed rule (52 FR 27229) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the *Bay City Times* on August 6, 1987; *Alpena News*, *Cheboygan Daily Tribune*, *Door County Advocate*, *Manistique Pioneer-Tribune*, *Manitowoc Herald-Times-Reporter*, *Petoskey News-Review*, and the *Sault Ste. Marie News* on August 7, 1987; the *Sheboygan Press* on August 8, 1987; the *Gary Post-Tribune*, *Muskegon Chronicle*, *Kalamazoo Gazette*, and the *Traverse City Record-Eagle* on August 10, 1987; the *Munising News* on August 12, 1987; and the *Ludington Daily News* on August 20, 1987. No public hearing was requested or held.

Eleven comments were received. Of these, five respondents expressed support for the proposal and provided new status information, including the Wisconsin Department of Natural

Resources, the National Park Service (NPS), Indiana Department of Natural Resources, a private individual, and a university professor. The Indiana Department of Natural Resources also provided new occurrence and ownership information. The NPS advised that it expects to initiate mapping and monitoring of *C. pitcheri* colonies at Indiana Dunes, Sleeping Bear Dunes, and Pictured Rocks National Lakeshores. Six respondents did not take a position but did provide new information on several populations. The U.S. Forest Service (FS) advised us of an occurrence of *Cirsium pitcheri* within the Huron-Manistee National Forest. Two comments were received from the Michigan Department of Transportation (MDOT). One of these expressed reservations about the increased involvement MDOT will have through the Federal Highway Administration in the section 7 consultation process and indicated it would be difficult for MDOT to meet construction and roadside maintenance schedules because of the added time required for section 7. MDOT is also concerned that listing *C. pitcheri* might affect its ability to maintain new safety standards along coast roads. MDOT also expressed concern about its added responsibilities once *C. pitcheri* is listed, while adjoining landowners are not bound by the Act and sometimes destroy plants. Therefore, MDOT supports added protection for plants on private land and further suggests continued cooperation and early consultation under section 7 with the Federal Highway Administration. Since MDOT is currently complying with the Michigan Department of Natural Resources requirements for endangered and threatened species permits, the Service will endeavor to integrate these State requirements and actions into section 7 activities so as not to cause unnecessary delay or added work for MDOT. MDOT expressed a desire to cooperate with the Service, but admits it has limited control over some uses on the right-of-way. Because of the restrictive nature of seed dispersal for *C. pitcheri*, and the narrow habitat requirements, the number of instances in which *C. pitcheri* may be affected by MDOT actions may not be of the magnitude expected. MDOT also requested representation on the recovery team for *C. pitcheri*. The Service will consider the expertise of MDOT staff when formulating a recovery plan for this species. The other comment from MDOT provided additional status information and recommended the Service focus on

people management and habitat protection in the recovery of *C. pitcheri*.

#### Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their applications to *Cirsium pitcheri* (Eaton) Torrey and Gray are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The development of beaches has and will continue to reduce the range of *Cirsium pitcheri*. In Michigan, approximately 5-10 percent of this species' suitable habitat has been lost due to construction of roads, houses, and other facilities (Sue Crisman, pers. comm. 1987). Although there has been little documented loss of *Cirsium pitcheri* from sites throughout this plant's range, many colonies have been reduced in size (Alverson 1981). The reduction of colony size may severely hamper the ability of the species to recolonize sites that are disturbed naturally (i.e., high water) (see discussion in Factor E of this section).

Historical records indicate that the plant occurred on the shores of Lake Michigan in Illinois (Paulson and Schwegman 1976), but recent surveys have failed to relocate any colonies in the State. There are no data to indicate how these colonies might have been lost.

As indicated in the "Background" section, the species can withstand periodic disturbance to its habitat, and may colonize sites where disturbance creates an earlier successional stage (i.e., open grass dune). However, frequent disturbance and trampling destabilize dunes resulting in reduction or loss of *Cirsium pitcheri* colonies. In addition, road and housing construction result in the permanent loss of dune habitat. In some areas dunes have been bulldozed to reduce topographic relief in order to provide a better view of the lake for cottage residents (Alverson 1981). Some private landowners have attempted to eradicate the species because they believed it was a weed (Alverson 1981). As far as is known, all attempted eradications have been by mechanical means; there are no reports of chemical applications. These types of disturbance and habitat destruction

appear to be critical at several sites in Wisconsin (Ron Nicotera, Wisconsin Department of Natural Resources, personal communications 1987). There are sites within the range of *Cirsium pitcheri* that appear to be suitable habitat, but there are no individual plants or colonies on these sites (Nepstad 1981). Whether this is due to human disturbance, ecological limitations, or environmental factors is unknown.

As previously mentioned, this plant occurs on various public lands, including three National Lakeshores, a small stretch of shoreline managed by the U.S. Coast Guard, a National Forest, a small island administered by the BLM, several State parks, and within State highway rights-of-way. Although the maintenance of quality shoreline habitat is an objective of agencies that manage these lands, hikers, campers, swimmers, and others using beach areas unknowingly disturb or trample *Cirsium pitcheri*. Again, these activities appear to be detrimental only when they occur frequently (i.e., monthly to yearly) over a period of years. It appears that the most serious threat to this plant is the use of off-road vehicles (Edward G. Voss, University of Michigan, pers. comm. 1987). A recent study in Wisconsin reveals that the plant's habitat continues to be lost due to public use of sand dune areas (Nicotera, pers. comm. 1987).

The Indiana Dunes, Sleeping Bear Dunes, and Pictured Rocks National Lakeshores are managed by the NPS, and management plans for these sites contain provisions for protecting colonies of these plants. No other current or planned projects appear to threaten the existence of this plant on these National Lakeshores. The NPS is currently evaluating a request for road access through the Indiana Dunes National Lakeshore to a proposed marina on private land. However, neither the road nor proposed marina site has any known colonies of *Cirsium pitcheri* although some colonies occur in the general area. Prior to the publication of the proposed rule for *Cirsium pitcheri*, (52 FR 27229), the U.S. Department of Army, Corps of Engineers (COE), reviewed a light-draft vessel harbor project on the shoreline of Lake Michigan and concluded that the project would destroy some of the *Cirsium pitcheri* plants at the site. However, the project is not funded. The COE has discussed this with the Service. Once this rule is effective, the COE will initiate consultation with the Service under section 7(a)(2) of the Act, to insure that this activity is not likely to

jeopardize the continued existence of *C. pitcheri*. As mentioned in the "Summary of Comments and Recommendations" section, the Michigan Department of Transportation anticipates that several road maintenance projects may affect this plant, and it will be involved with the Federal Highway Administration consultation process under section 7 of the Act. It has been the experience of the Service that the majority of section 7 consultations are resolved so that the species is protected and the project can continue.

The Coast Guard operates a lighthouse on a 100 yard (91 meter) stretch of shoreline that contains a colony of *Cirsium pitcheri*. That agency neither currently conducts nor plans to conduct any activities that would threaten *Cirsium pitcheri* on this stretch of shoreline. It is anticipated that the BLM administered island will eventually be transferred to the State of Michigan; there are no plans for any type of development on the island.

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

C. *Disease or predation.* White et al. (1983) report that total seed production of *Cirsium pitcheri* in Pukaskwa National Park, Ontario, is reduced by larvae of a plume moth (*Platyptilia carduidactyla*), which feed on immature seeds, and Nepstad (1981) states that juvenile plants are lost due to herbivory by rabbits. It is not known if these forms of predation are a threat to *Cirsium pitcheri*. Loveless (1984) documents predation by several types of moths as well as goldfinches.

D. *The inadequacy of existing regulatory mechanisms.* Over one-half of the known *Cirsium pitcheri* populations occur on private lands and are offered no protection. Over one-fourth of the sites are on Federal lands; the remainder are found on various State lands. *Cirsium pitcheri* is listed as threatened by Indiana, Michigan, and Wisconsin, and rare in Ontario. However, State listing does not protect this plant's habitat, and habitat modification appears to be the principal reason for the plant's decline. Indiana's Nature Preserves Act protects endangered and threatened plants within Nature Preserves; endangered and threatened plants found within Indiana's State parks cannot be removed without a permit. Michigan law prohibits taking, possession, sale, purchase, and transport of plant species on the Federal and State endangered and threatened lists. Wisconsin regulations prohibit any person from removing or transporting any

endangered or threatened wild plant from its native habitat on public property, or from property he or she does not own or control, except in the course of forestry or agricultural practices, or in the construction or maintenance of a utility facility. The prohibitions in the Endangered Species Act will provide additional protection.

E. *Other natural or manmade factors affecting its continued existence.* As previously mentioned, this plant appears to have reproductive characteristics that limit its establishment to clusters within narrow ecological conditions in open dunes along lakeshores. Because of its limited ability to disperse seeds and establish seedlings, this plant may require relatively large colonies to colonize effectively and recolonize naturally and artificially disturbed sites. Reduction of colony size due to frequent, human-induced disturbance may decrease the ability of this plant to recolonize sites that are disturbed by natural phenomena such as high water. For example, 100 acres (42 hectares) of habitat was recently lost in Wisconsin due to high water (June Dobberpuhl, Wisconsin Department of Natural Resources, pers. comm. 1987). The probability of successful recolonization of this site after the water recedes is greater if the colony size is large prior to inundation; however, small colonies are less likely to survive. Large colonies are especially important in areas where the plants are widely dispersed since this plant does not disperse seed over large distances. In addition to a lowered ability to survive catastrophic events, the fitness of smaller colonies is also more likely to be lowered by predators. Therefore, conservation strategies for this plant should include establishment and maintenance of large clusters rather than numerous small colonies spread out over the entire range of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the species in determining to make this final rule. Based upon this evaluation, the preferred action is to list *Cirsium pitcheri* as threatened as opposed to endangered because the species is not in immediate danger of extinction, but does have a restricted range and is confronted by a variety of problems. Critical habitat is not being designated for reasons discussed in the following section.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary

designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Cirsium pitcheri* at this time. Publishing a detailed description and map of this species' habitat might make this species more vulnerable to vandalism (see factor "D" in the "Summary of Factors Affecting the Species"). No benefit would be derived from designating critical habitat and so it would not be prudent or beneficial to determine critical habitat for *Cirsium pitcheri* at this time.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for listed species. Such actions are initiated by the Service following the listing. Some may be undertaken prior to listing, circumstances permitting. Potential habitat management actions that might benefit *Cirsium pitcheri* include: Increasing protection of shorelines within National Lakeshores, educating the public to the harmful affects of offroad vehicles, establishing large colonies of plants in areas with suitable habitat, and reducing frequent disturbance to the plant's habitat throughout its range. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

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

Indiana Dunes, Sleeping Bear Dunes, and Pictured Rocks National Lakeshores, on a 100 yard (91 meter) stretch of Lake Michigan shoreline that is managed by the U.S. Coast Guard, and in the Nordhouse Dunes Area of the Huron-Manistee National Forest. Habitat management strategies currently employed on the National Lakeshores should eventually help improve the conditions of colonies on these sites. No Federal activities or projects are currently proposed on the National Lakeshores that would jeopardize this plant. As mentioned previously in this rule, the NPS is evaluating a request for road access through the Indiana Dunes National Lakeshore to a proposed marina. However, neither the use of the road, nor the construction of the proposed marina is expected to affect existing colonies of *Cirsium pitcheri*. Also, the aforementioned activities of the Michigan Department of Transportation, authorized in part, by the Federal Highway Administration may affect *C. pitcheri*. No current or planned activities of the U.S. Coast Guard, the U.S. Forest Service, or the BLM are expected to jeopardize any colonies of this plant.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Cirsium pitcheri*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export a threatened plant, transport it in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued for *Cirsium pitcheri* since the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management

Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Central Station, Washington, DC 20038-7329 (703/343-4955).

#### National Environmental Policy Act

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

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#### Author

The primary author of this final rule is William F. Harrison (see ADDRESSES section).

#### List of Subjects in 50 CFR Part 17

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

**Regulation Promulgation**

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

**PART 17—[AMENDED]**

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

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

2. Amend § 17.12(h) by adding the following, in alphabetic order under the

family Asteraceae, to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

(h) \* \* \*

| Species                       |                         | Historic range                       | Status | When listed | Critical habitat | Special rules |
|-------------------------------|-------------------------|--------------------------------------|--------|-------------|------------------|---------------|
| Scientific name               | Common name             |                                      |        |             |                  |               |
| Asteraceae—Sunflower family:  |                         |                                      |        |             |                  |               |
| <i>Cirsium pitcheri</i> ..... | Pitcher's thistle ..... | U.S.A. (IL, IN, MI, WI) Canada (ON). | T      | 315         | NA               | NA            |

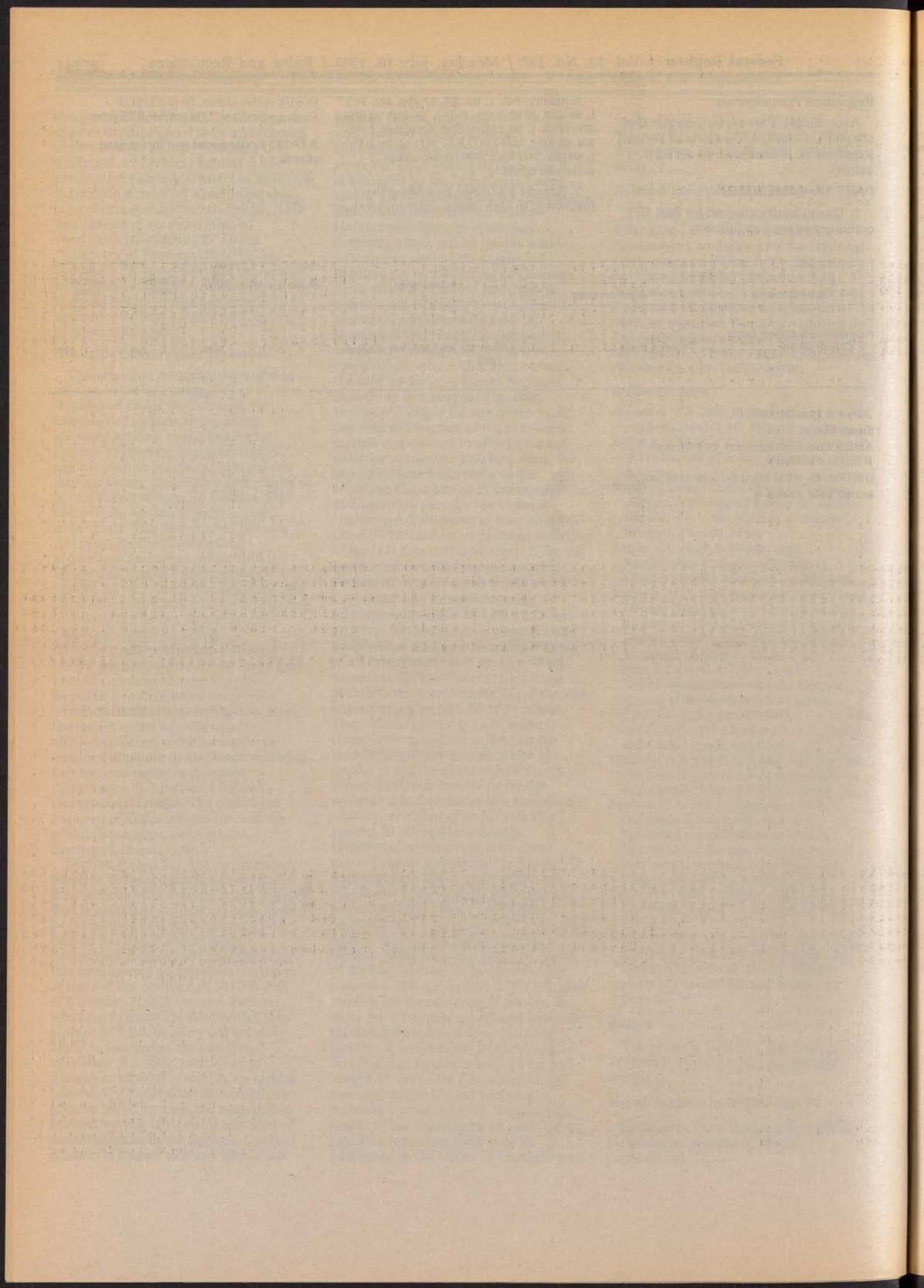
Dated: June 24, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88-16061 Filed 7-15-88; 8:45 am]

BILLING CODE 4310-55-M



# Test Report

Monday  
July 18, 1988

## Part VII

## Department of Labor

### Employment and Training Administration

American Standard, Inc., Union Switch  
and Signal Division, Swissvale, PA;  
Revised Determination on Remand;  
Notice

## DEPARTMENT OF LABOR

Employment and Training  
Administration

(TA-W-17,139)

**American Standard, Inc., Union Switch  
and Signal Division Swissvale, PA;  
Revised Determination on Remand**

Pursuant to a U.S. Court of International Trade order requiring the Department of Labor to withdraw its redetermination and allow petitioners access to confidential information and the opportunity to present evidence and further argument, the Department is issuing a revised determination.

Findings in the record for the initial investigation completed in July, 1986 as well as the subsequent reconsideration found that the increased import criterion of the Group Eligibility Requirements of the Trade Act was not met for rail systems and hardware.

The Department's log of official actions indicates that the factfinding investigation was finished in June 1986 with the completion of the customer survey. Data requested from the company during the original and subsequent investigations did not involve periods of time later than calendar year 1986. However, as a result of the most recent inquiry of company officials stemming from the latest allegations from the petitioners it was determined that the company began importing relay frames in May, 1987.

The restructuring of company production of rail system and components that resulted in the closure of the Swissvale facility was related to the sharp reduction of demand in the export market that was not offset by domestic market demand because of reduced Federal spending on transit systems. Export sales accounted for a substantial proportion of total sales of rail systems and hardware. The decline in sales for exports greatly exceeded declines in sales in the domestic market. A substantial portion of component imports were for finished goods destined for the export market.

Restructuring took the form of relocation of production to other domestic facilities, the elimination of in-house component production and the utilization of domestic and foreign vendors for components previously produced at the Swissvale facility. Although the company explored the feasibility of utilizing foreign vendors for a number of components, only two components were subsequently sourced from foreign suppliers to be utilized in company production. As noted above, importation of one of the items was

initiated for incorporation in production beginning in May, 1987.

On March 10, 1987 the Court remanded the case for further investigation including a public hearing. This time the petitioners focused on component production instead of rail or transit systems. The petitioners presented evidence and allegations of component imports and the company subsequently acknowledged and produced data indicating importation of panels that replaced some production and employment at the Swissvale facility. Other company imports during the period applicable to the petition were related to items being tested for possible incorporation into domestic production or for re-export.

As a result of this investigation on remand the Department found that workers in Departments 110, 222 and 390 were adversely affected because of imports of panels. The certification of panel imports was limited to the three departments because of the positive employment effect of panel imports on other departments. Company imports of panels received at Swissvale were unpacked, reassembled, tested, disassembled and repacked before being reshipped. Consequently, such imports would not have had an adverse impact on these activities.

The company submitted a list of its domestic vendors where outsourcing occurred. The investigative record shows no import replacement of components except for panels. Component imports by Union Switch are unimportant when compared to the company's total sales volume as evidenced by the company's submission under subpoena of all its purchase orders to overseas vendors for the period 1982-1986 (B-334 ff.).

As a result of a further court remand vacating the Department's limited certification, the Department received affidavits from 22 interested persons in Counsel's Memorandum in Support of Petition. Three other affidavits were received in Counsel's Supplemental Memorandum. Counsel also provided further argument in his Second Supplemental Memorandum.

The affiants claimed production and employment declines as a result of rail system components (panels, frames, relays, M-movements, L-shaped relay frames and train stop kits). Counsel noted arithmetic discrepancies and other inconsistencies in the data submitted by the company. Inspection reports on several part numbers from an overseas vendor were also submitted. The Department reviewed the claims and determined that they are unimportant. The arithmetic

discrepancies, even if true, are small compared to total Swissvale production and would not in themselves provide a basis for certification.

Findings in the second remand investigation indicate that the imported parts noted by counsel were for evaluation only and except for relay frames did not replace any of Swissvale's production. Swissvale's production of M-movement machines and relays were transferred to domestic corporate plants in Georgia and South Carolina. Coil production, including wayside coils, was outsourced to independent domestic firms. Production of train stop kits was transferred to the company's Georgia plant in early 1986. A domestic transfer of production would not provide a basis for certification. The findings show no vendors outside the U.S. supplying feeder parts to Union Switch on a regular basis during the period applicable to the petition.

The company began importing relay frames (L-shaped frames) in May 1987 from Korea. Relay frame imports occurred outside the period applicable to the Department's initial investigation and affected only the machining operations at Swissvale. During the period applicable to the petition, the forging of the relay frames was outsourced domestically and returned for machining at Swissvale. Beginning in May 1987 this production was transferred from the domestic vendor to vendors overseas and imported completely machined. The imported relay frames accounted for a negligible share of the company's total purchases of outsourced parts. Imports of relay frames accounted for about one percent of all outsourced parts and less than one-half of one percent of total Union Switch and Signal's sales in 1987.

Counsel in his Second Supplemental Memorandum has understandably tried to emphasize company imports as an important cause of the petitioners unemployment and has taken the Department to task for allegedly relying solely on company statements and data in arriving at its conclusions. The petitioners clearly have little or no confidence in the reliability of the data submitted by the company.

Clearly, the Department did not rely solely on information submitted by company officials. In its investigation the Department utilized U.S. Custom and the Census Bureau sources that provided data on industry imports, as well as specific consignments of imports by specific firm. In addition, the investigation relied on information from customers of the firm.

Also, petitioners were provided the opportunity to express their views and give information at the Public Hearing mandated by the Court. Leads provided by petitioners were followed up by the Department and are included in the record of the investigation.

Further, there is no dispute regarding the company's massive restructuring of production and the company's outsourcing of components formerly produced at the Swissvale facility.

The company did respond to the Department's request by indicating that there were no imports except for panels and L-shaped relay frames. The company has acknowledged that foreign sources for component manufacture were considered and that foreign produced components were evaluated for possible inclusion in the final product assembled domestically. However, much of the information regarding components and parts requested on remand was not necessary since the company indicated there were no imports except for a few sample runs

which did not affect domestic production. The company's purchase orders on foreign parts substantiates this. In only two instances (panels and L-shaped relay frames) did the company actually substitute imported items for items formerly produced at Swissvale and in one such instance, the substitution occurred after much of the production had initially been contracted out to a domestic vendor. Further, imports of this component (L-shaped frames) occurred beginning in May, 1987 which would place it outside the Department's initial investigation. The company compiled extensive lists of domestic vendors utilized in component purchases.

#### Conclusion

After careful review of the additional facts obtained on remand, it is concluded that increased imports of panels like or directly competitive with the panels produced at Swissvale, Pennsylvania contributed importantly to worker separations and to declines in

production and employment in Departments 110, 222 and 390 at Union Switch & Signal Division, Swissvale, Pennsylvania. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of American Standard, Inc., Union Switch and Signal, Swissvale, Pennsylvania in Departments 110, 222 and 390 who were separated from employment on or after January 17, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

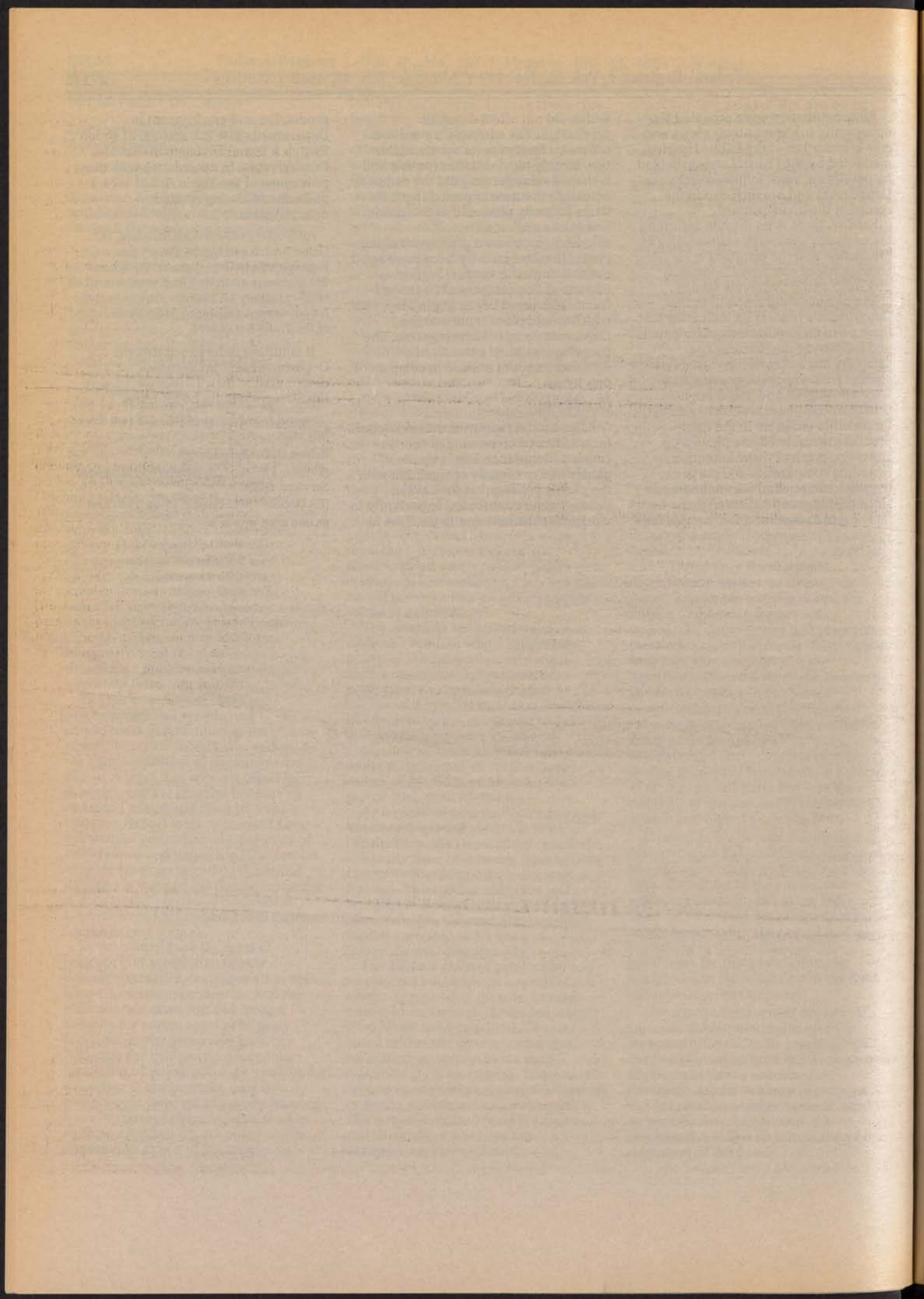
It is further determined that the Department's initial negative determination for all other workers at the Swissvale plant be affirmed.

Signed at Washington, DC, this 14th day of July 1988.

**Robert O. Deslongchamps,**  
*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 88-16252 Filed 7-15-88; 11:31 am]

BILLING CODE 4510-30-M



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