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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 632]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 632 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 255,300 cartons during the period September 25 through October 1, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 632 (§ 910.932) is effective for the period September 25 through October 1, 1988.

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

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

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

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

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

This regulation is consistent with the marketing policy for 1988–89. The committee met publicly on September 20, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by an 8 to 5 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the demand for lemons is weakening.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. Section 910.932 is added to read as follows:

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

§ 910.932 Lemon Regulation 632.

The quantity of lemons grown in California and Arizona which may be handled during the period September 25, 1988, through October 1, 1988, is established at 255,300 cartons.

Dated: September 21, 1988.

Robert C. Keeney,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 88–21937 Filed 9–23–88; 8:45 am]
BILLING CODE 3410–02–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Rel. No. 34–26096; File No. S7–47–85]

Lost and Stolen Securities Program

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of Amendments.

SUMMARY: The Securities and Exchange Commission is adopting amendments to Rule 17f–1 under the Securities Exchange Act of 1934 which governs the Lost and Stolen Securities Program ("Program"). The amendments: (1) Amend the definition of the term "reporting institution" to include government securities brokers and dealers; (2) grant an exemption from Program registration to any reporting institution that limits its securities activities exclusively to uncertificated securities, global certificate securities issues or securities for which neither record nor beneficial owners can obtain negotiable securities certificates, and add reporting and inquiry exemptions for those securities; (3) define the terms "uncertificated security" and "global

certificate securities issue"; (4) grant an exemption from Program registration to any reporting institution whose business activities do not involve the handling of securities certificates; (5) amending the exemption from Program registration to any reporting institution who is a member of a national securities exchange, effects securities transactions through the trading facilities of the exchange and who does not receive or hold customer securities; (6) eliminate the current reporting and inquiry exemptions for registered-form government and agency securities; (7) define the terms "customer" and "securities-related transaction" for purposes of the customer inquiry exemption; (8) clarify when the inquiry exemption applies to transfer agents; (9) clarify that only the reporting institution that originally made a loss report must report the recovery of the certificates; (10) require participants to make reports to the Federal Bureau of Investigation in all cases where potential criminal activity may be indicated; and (11) codify prior Commission interpretations that transfer agents must report lost, stolen or counterfeit securities only if they receive notification from non-reporting institutions or if the securities were in the transfer agent's possession at the time of the loss.

EFFECTIVE DATE: These amendments will become effective December 27, 1988.

FOR FURTHER INFORMATION CONTACT: Ester Saverson, Jr., at 202/272–2775, Mail Stop 5–1, Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On November 29, 1985, the Commission proposed for comment amendments to Rule 17f–1 under the Securities Exchange Act of 1934 ("Act") [1] that sought to clarify common questions about the Lost and Stolen Securities Program ("Program"), codify certain longstanding interpretations of Rule 17f–1, focus the Rule on negotiable certificated securities and effectuate certain recommendations made by the General Accounting Office ("GAO") in its May 1984 Report on the Program.[2] In response to the Proposal Release, the Commission received 24 comment letters.[3] Commentators generally supported the amendments, but suggested certain modifications. As discussed below, the Commission agrees with many of the commentators' suggestions and is adopting amendments that are modified in response to certain of their suggestions.[4]

I. Background

The Program was established in 1977 to assist institutions and the public in tracking and deterring trafficking in lost, stolen, missing and counterfeit securities.[5] The Commission established the Program to provide a central facilities manager to whom Program participants report and inquire about missing, lost, counterfeit and stolen securities certificates. The data base currently is operated by the Securities Information Center ("SIC") in Wellesley Hills, Massachusetts,[6] which was designated by the Commission to receive and process reports and inquiries of missing securities.[7] When a securities certificate comes into the possession of a Program participant, the Program participant must make an inquiry to SIC to determine whether the securities certificate previously was reported lost, missing, counterfeit or stolen. When an inquiry into the system matches a missing, lost, counterfeit or stolen security report, commonly referred to as a "hit," SIC provides the inquiring financial institution with the name, address and telephone number of the institution that reported the loss. The institution that reported the loss also is notified, as is the Federal Bureau of Investigation ("FBI") if there are any indications that potential criminal activity may be involved.

When program participants do not comply with Rule 17f–1, they not only undermine the effectiveness of the Program, but also incur risk of financial losses they otherwise might avoid. Inquiry assures participants that securities in their possession have not been reported as missing, lost, counterfeit or stolen. Without inquiry, the program participant or its customers could give value for securities that were missing, lost, counterfeit and stolen securities.

Rule 17f–1 was last amended in 1979. Since that time, the Commission and the financial institutions that use the Program have gained important experience with the Program. The Commission believes that it is now appropriate to reassess the scope, costs and benefits of the Program and the requirements of Rule 17f–1. A discussion of the proposed amendments, commentators' suggestions and the adopted amendments follows.

II. The Amendments

A. Reporting Institutions

The Commission is adopting an amendment to the definition of the term "reporting institution" to clarify that government securities brokers and dealers are required to register with SIC and must comply with the reporting and inquiry provisions of the Rule. The Commission believes that this amendment to the definition of reporting institution should eliminate any confusion about the application of Rule 17f–1's requirements to government securities brokers and dealers.[8]

The Commission also believes it is appropriate at this time, in light of the recent increase in regulation of the government securities markets and the internationalization of the securities markets, to remind the industry of the

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[1] Securities Exchange Act Release No. 22671 (November 29, 1985), 50 FR 50624 ("Proposal Release").

[2] GAO, *SEC's Efforts to Find Lost and Stolen Securities* (May 1984) ("GAO Report").

[3] The Commission received comments from the U.S. Department of the Treasury, Bureau of the Public Debt; Securities Transfer Association ("STA"); Southeastern Securities Transfer Association, Inc. ("SESTA"); American Transtech; Securities Industry Association ("SIA"); Internal Security Association, Financial Firms ("ISA"); J.C. Bradford & Co. ("Bradford"); Boettcher & Co. ("Boettcher"); Drexel, Burnham Lambert, Inc. ("Drexel"); Goldman Sachs & Co. ("Goldman Sachs"); Merrill Lynch Pierce Fenner & Smith Incorporated ("Merrill Lynch"); Dean Witter Reynolds, Inc. ("Dean Witter"); AutEx, Inc.; American Bankers Association; California Bankers Association ("CBA"); Bank of America; Citibank; Continental Bank; The Morgan Bank; Sovran Bank; Union Bank; Hospital Trust; Chicago Clearing House Association ("CCHA"); and the American Bar Association ("ABA"). A summary of the comments received has been placed in the public file for this proceeding. *See* File No. S7–47–85.

[4] In accordance with section 17A(d)(3)(A)(i) of the Act, the Commission consulted with, and requested the views of, the federal bank regulatory agencies at least 15 days prior to this announcement.

[5] In 1975, section 17(f)(1) was adopted as part of the Securities Acts Amendments of 1975. *See* Pub. L. No. 94–29 (June 5, 1975). That Section granted the Commission broad rulemaking authority to establish procedures for reporting and inquiring about missing, lost, stolen and counterfeit securities. Pursuant to this authority the Commission adopted Rule 17f–1 in 1976. See Securities Exchange Act Release Nos. 13053 (December 10, 1976), 41 FR 54923 and 15867 (May 23, 1979), 44 FR 31501.

[6] SIC is operated by Autex Systems, a subsidiary of the International Thomson Organization, Inc.

[7] As of December 31, 1986, this data base contained information on securities certificates with a market value of approximately $12 billion. The approximately 20,000 Program participants include, among others, brokers; dealers; members of the Federal Reserve System; banks whose deposits are insured by the Federal Deposit Insurance Corporation; registered transfer agents; members of national securities exchanges; registered clearing agencies; and participants of registered clearing agencies.

[8] Section 17(f)(1) of the Act and Rule 17f–1 thereunder always have mandated Program registration for all brokers and dealers, including government securities brokers and dealers as well as municipal brokers and dealers, regardless of whether they are registered with the Commission as broker-dealers. Moreover, section 102 of the Government Securities Act specifically requires that government securities brokers and dealers participate in the Program. *See* Government Securities Act of 1986, Pub. L. No. 99–571.

scope of the definition of "reporting institution." For example, foreign branch offices of a registered broker-dealer are reporting institutions.[9] In addition, all participants in registered clearing agencies are "reporting institutions" under the Rule.[10] Thus, mortgage bankers that may become members of the recently registered MBS Clearing Corporation are reporting institutions and, unless an exemption is available, will be required to register with SIC. Similarly, non-U.S. entities that are participants of registered clearing agencies will be required to register with SIC and make appropriate inquiries and reports.[11]

B. Exemptions from Program Registration

The Commission proposed several amendments to the Rule 17f–1 registration exemptions.[12] Specifically, the Commission proposed to replace the exemption for broker-dealers that engage solely in the sale of variable contracts or limited partnership interests and that do not take or hold securities subject to the reporting and inquiry provisions of the Rule with a more functional exemption that takes into account the increasing immobilization of securities. The Commission is adopting the proposed amendments, which exempt any reporting institution whose securities activities involve exclusively uncertificated securities issues, global securities issues or securities issues for which neither record nor beneficial owners can obtain negotiable securities certificates ("functionally uncertificated issues"). The Commission believes that it is appropriate to exempt these entities from participation in the Program for the reasons discussed in the Proposal Release. Expressed simply, the basis for these amendments is that uncertificated securities cannot be lost or stolen in a manner that can be detected through the Program. The Commission also is adopting the proposed definitions of the terms "uncertificated security" and "global certificate securities issues." No commentators objected to these amendments; six supported them.[13]

This exemption is expected to apply infrequently because few institutions deal exclusively in uncertificated issues. Moreover, under this definition, if an exempt institution accepts a single securities certificate for any reason, it loses its exemption and must register with SIC.[14] The Commission expects that an institution that loses its exemption under these circumstances would remain registered for at least six months.

Although this exemption currently has limited applicability, it may become increasingly important as uncertificated securities become more widely accepted.[15] The Commission believes that an increasing number of securities issues will be available in book-entry-only form in the future as the increased cost savings and processing efficiencies resulting from immobilization are recognized. Additionally, the Commission believes that investors will become receptive to securities issues that do not provide negotiable certificates as evidence of ownership. At that time, the Commission expects that a larger number of reporting institutions will be able to take advantage of this exemption from registration.

The Commission also is adopting an amendment to exempt any reporting institution whose business activities never include the handling of securities certificates, including, among other things, safekeeping, pledge, purchase, transfer, redemption or sale. The Commission believes this amendment properly exempts certain securities firms, that, because of the nature of their business, never have occasion to inquire of, or report to, SIC. For example, the Commission understands that there are some broker-dealers, self-styled "mergers and acquisition specialists," whose business is strictly limited to bringing together potential buyers and sellers of businesses. In the past, these institutions have been required to register as reporting institutions. The Commission believes, however, that because these firms do not have occasion to handle securities certificates, they should not be subject to the Rule's reporting and inquiry provisions; nor should they be required to register with SIC and pay the attendant fees. A securities firm that claims an exemption from registration under this provision must realize, however, that if it accepts even one securities certificate for processing, however, even on an accommodation basis, it will be required to register with SIC and otherwise to participate in the program for at least six months.

The Commission also is amending the exemption from registration for members of national securities exchanges who effect securities transactions exclusively on the floor of the exchange solely for other members and who do not receive or hold customer securities. The amendment deletes the phrase "solely for other members" from the Rule to codify Commission interpretations that floor brokers, floor traders and specialists are exempt from registration.[16] The Commission received no comments opposing this amendment and received five comments favoring it.[17]

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[9] Foreign affiliates of registered broker-dealers are not reporting institutions merely by virtue of their affiliation.

[10] Section 3(a)(24) of the Act defines a clearing agency participant to be "any person who uses a clearing agency to clear or settle securities transactions or to transfer, pledge, lend, or hypothecate securities. Such term does not include a person whose only use of a clearing agency is (A) through another person who is a participant or (B) as a pledgee of securities." This definition encompasses certain entities, particularly savings and loan institutions, that, except for their membership in a registered clearing agency, would not be deemed reporting institutions under the Rule. The Commission also believes it is foreseeable that other institutions that are not otherwise "reporting institutions" (for example, insurance companies and pension funds) some day may become direct participants in one or more registered depositories, making them reporting institutions for purposes of the Program.

[11] Rule 17f–1(d)(1)(ii) provides an exemption from inquiry for securities received directly from another reporting institution. Thus, non-U.S. entities that are subject to Rule 17f–1 because they are clearing participants could avail themselves of that inquiry exemption for securities they receive from registered U.S. clearing agencies or other "reporting institutions" such as U.S. broker-dealers. No exemption generally would be available, however, for securities that U.S. broker-dealers or clearing agencies receive from non-U.S. entities that are not "reporting institutions" and they thus would be required to inquire on those certificates.

[12] *See* Rule 17f–1(b).

[13] *See* comments of ABA, Autex, Continental Bank, ISA, SIA and Sovran Bank.

[14] For example, the Commission understands that, if an issuer of a global security issue were to default, physical certificates would be issued to all registered owners. In that event, any reporting institution handling that issue that previously claimed an exemption from registration because its business was limited to functionally uncertificated issues would lose its exemption and would be required to register with SIC.

[15] Examples of instutions that currently may be able to claim the exemption are broker-dealers that handle only limited partnership interests, mutual funds that do not permit investors to obtain negotiable certificates and the Options Clearing Corporation, which deals exclusively with uncertificated options.

[16] Although the amendment may exempt these entities from registration, they would continue to be "reporting institutions" under the Rule. Thus, other reporting institutions will not be burdened with determining whether these exempt entities are reporting institutions for purposes of the inquiry exemption in Rule 17f–1(d)(1)(ii). It also is significant that these entities, as "reporting institutions," are required by Rule 17f–1 to report to SIC any securities which are lost, stolen or discovered to be missing or counterfeit while in their possession. Practically speaking, of course, these broker-dealers rarely will need to make reports, because they almost never hold securities certificates. Should the need to make a report arise, however, the Commission's designee has established procedures for what it calls "permissive reports" that floor traders, floor brokers and specialists should use.

[17] *See* comments of American Bankers Association, ABA, Continental Bank, SIA and Sovran Bank.

The amendment also substitutes the phrase "through the trading facilities of the exchange" for the phrase "on the floor of the exchange" to clarify that members that use the Intermarket Trading System and other inter-market linkages will not lose the protection of the exemption.

C. Reporting Requirements

1. Reports to the Commission or SIC

When making reports to the Commission or SIC under Rule 17f–1(c), reporting institutions must file Form X–17F–1A. The Commission is concerned that many Program participants are not using the appropriate check-off box on Form X–17F–1A to indicate, when appropriate, that certificates were lost in the U.S. mails. It is essential that participants indicate on their reports to SIC when a mail loss has occurred. That indication enables prompt notification to the Postal Service of losses that are under its investigative jurisdiction. Because Rule 17f–1(c)(5) has not previously been conformed to clarify that participants must indicate on Form X–17F–1A that a mail loss occurred, if appropriate, the Commission has adopted a technical conforming amendment to make clear Program participants' responsibility to use the mail-loss check-off box.[18]

2. Reports to Appropriate Law Enforcement Agencies

Prior to these amendments, Rule 17f–1(c) required all reporting institutions, in cases where potential criminal activity was indicated, to notify not only SIC, but also the "appropriate law enforcement agency," within specified time frames. The Commission proposed to amend the Rule's reporting requirements by adding a definition of the phrase "appropriate law enforcement agency" to codify prior Commission policy.

The Commission has decided not to adopt the definition as proposed.[19] Although several commentators agreed that clarification of Program participants' reporting responsibilities was needed, only one commentator, the Internal Security Association/Financial Firms, specifically agreed with the proposed definition. Many of the commentators argued that requiring up to three duplicate reports to various law enforcement agencies, as the proposed amendment would have done in some cases, would be overly burdensome on reporting institutions. Moreover, these commentators believed that the proposed definition was too complex and would have led to more, rather than less, confusion about participants' reporting responsibilities.[20]

The Commission agrees that the proposed definition could have imposed duplicative administrative and financial burdens on Program participants. The Commission instead has decided to amend Rule 17f–1 to require reporting institutions to report only to SIC and the FBI the theft, counterfeiting or loss of securities where there is a substantial basis for believing criminal activity may be involved. After review, the Commission has concluded that mandating reports solely to SIC and the FBI can reasonably be expected to lead to notification of all interested law enforcement agencies through referral through the FBI's National Crime Information Center ("NCIC") and through other FBI referrals.[21] Thus, all law enforcement agencies should receive prompt notification of criminal activity within their jurisdiction and reporting institutions will be spared the burdens of determining whom to notify and of making multiple notifications.

Program participants should realize that the Commission's decision to require that reports be made solely to SIC and the FBI does not in any way affect Program participants' independent notification obligations under other statutes, rules or regulations. Further, the Commission believes that, as a matter of good business practice, participants should continue routinely to report to the police and all federal law enforcement agencies with jurisdiction all losses where potential criminal activity may be indicated.[22]

As an alternative to its proposed definition, the Commission requested comment on the advisability of centralizing in SIC the responsibility for reporting losses and thefts to appropriate law enforcement agencies. Four commentators, Autex, Bank of America, SIA and Sovran Bank, responded favorably, stating that centralizing reporting in SIC would ease the burden on Program participants and most likely would ensure that all interested law enforcement agencies would receive prompt notification of losses and thefts within their jurisdiction. The Commission has determined, however, that, because there is no centralized reporting mechanism to which SIC could make reports, it might be overly burdensome and costly for SIC to assume Program participants' reporting responsibilities. Moreover, because this reporting obligation is limited to cases of potential criminal activity, the Commission believes it is sensible that the reporting institution involved have a direct obligation to notify a law enforcement agency. Therefore, the Commission has decided not to centralize law enforcement agency reporting in SIC at this time.[23]

Several commentators, including the SIA, urged the Commission to adopt a definition of the phrase "appropriate law enforcement agency" that would permit participants to notify any appropriate law enforcement agency. These commentators also focused on the burden compliance with the proposed definition would place on participants and advocated that the Commission define "appropriate law enforcement agency" consistent with its past

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[18] In a similar vein, the Commission reminds participants that they should include on Form X–17F–1A as accurate as possible a dollar value for the securities they are reporting.

[19] The Commission proposed to define the phrase "appropriate law enforcement agency" to mean one or more of the following: (1) The local police, sheriff or similar authority in all cases involving counterfeiting, loss or theft, where there is substantial basis for believing criminal activity was involved; (2) the Federal Bureau of Investigation ("FBI") in all cases involving counterfeiting, loss or theft, where there is substantial basis for believing criminal activity was involved: (a) of any security in excess of $5,000 or (b) regardless of market value, of any security from a federally insured bank or of any security which is a direct obligation of, or guarantee as to principal and interest by, the United States, or any security issued or guaranteed by a corporation in which the United States has a direct or indirect interest; and (3) the United States Secret Service in all cases involving the theft, loss or counterfeiting of any security which is a direct obligation of, or guaranteed by, a corporation in which the United States has a direct or indirect interest.

[20] *See* generally comments of ABA, American Transtech, Bank of America, CBA, Continental Bank, Hospital Trust, Morgan Bank, SIA, STA and Union Bank.

[21] Furthermore, certain law enforcement agencies have access to SIC's database through computer terminals linked to SIC's computers (*see infra* note *22*).

[22] The Commission believes the proposed definition, though not adopted, serves as a useful guide for reporting institutions. *See supra* note *18*.

[23] Although SIC has provided several regional offices of the FBI, Secret Service, and U.S. Postal Service with computer terminals that they use to inquire of SIC, SIC and these law enforcement agencies have not established a mechanism through which SIC could provide them with reports SIC receives of lost, stolen or missing certificates. SIC currently notifies the FBI and Secret Service on a voluntary basis of all hits (hits occur when an inquiry matches a report of a lost, missing or stolen certificate) within their respective jurisdictions, rather than notifying these agencies when the loss is originally discovered and a report is sent to SIC. Thus, because it is critical that the appropriate law enforcement agencies begin an investigation, if one is warranted, immediately, the Commission stresses that SIC's information-sharing arrangement with these law enforcement agencies does not relieve Program participants of their notification responsibilities.

interpretation.[24] The Commission believes, however, that its prior interpretation caused confusion within the industry and did not ensure that law enforcement officials were receiving prompt notification of losses and thefts. Therefore, the Commission has rejected this recommendation in favor of mandating reports solely to the FBI.[25]

3. Transfer Agent Reporting Requirements to Commission, SIC and Appropriate Law Enforcement Agencies

The Commission has determined to adopt an amendment to Rule 17f–1 to codify a longstanding Commission interpretation that transfer agents must notify SIC of lost, stolen or counterfeit securities certificates only if they receive notification from a non-reporting institution or if the securities certificates were in their possession or control at the time of the loss.[26] The Commission believes that requiring transfer agents to make reports to SIC in all instances in which they are informed of the theft or counterfeiting of securities would be unduly burdensome for them. Often, registered transfer agents are informed of losses, theft or counterfeiting by other reporting institutions, who already have a duty under the Rule to report to SIC. Requiring a duplicate report only would serve to add both to the transfer agent's and SIC's administrative burden. Accordingly, the Rule as amended is designed to ensure that, should an individual shareholder report the loss directly to a transfer agent or should the loss occur at the transfer agent, the transfer agent would be required to notify SIC.

Morgan Bank and the STA recommended that the Commission exempt registered transfer agents from the appropriate law enforcement agency reporting requirement. These commentators argued that it is the securityholder's responsibility to report losses or thefts of securities. They believe that transfer agents only should be required to advise securityholders of their obligation to notify the appropriate officials. The Commission has decided not to adopt such an exemption for transfer agents. Although the Commission agrees that the individual securityholder is primarily responsible for notifying the appropriate authorities in the case of a theft, the Commission also believes that individual investors may not always have the sophistication to determine that they should notify the FBI or Secret Service and, instead, may notify only local authorities. It is more likely in such instances that other interested authorities might receive notification too late, if at all, to promptly initiate their investigations.

The Commission believes, therefore, that ensuring timely notification of the proper federal authorities of securities thefts, losses and counterfeiting outweights the burdens imposed on transfer agents by this requirement, particularly where, as here, the reporting obligation is triggered by the possibility of criminal activity. Accordingly, the Commission is amending Rule 17f–1 to require a transfer agent to report to the Commisson, SIC and the FBI only if it receives notification of the loss, theft or counterfeiting from a non-reporting institution (*e.g.*, an individual securityholder) or if the security was in its possession at the time of the loss.

4. Recovery Reports

The Commission has decided to adopt the proposed amendments that clarify which Program participants have the responsibility under Rule 17f–1(c)(4) to report to SIC (and the registered transfer agent for the issue) recoveries of securities previously reported missing, lost or stolen. The Commission received eight comments favoring this amendment and no comments opposing it.[27]

The obligation to report recoveries is limited to the institution that originally reported the security as missing, lost or stolen. Some reporting institutions in the past, however, have interpreted the Rule to mean that all reporting institutions that learn of a recovery of a security previously reported as lost, missing or stolen must report this recovery to SIC and the registered transfer agent for the security involved. Thus, the Commission has decided to amend the Rule to clarify that only the reporting institution that originally reported a security as lost, missing or stolen must report the recovery of that security to SIC, a registered transfer agent for the issue, and the FBI.[28]

Two commentators urged the Commission also to permit (or require) the registered transfer agent for the issue, even if it was not the original reporting institution, to make recovery reports.[29] These commentators suggested that because transfer agents often are notified of a recovery when the original reporting institution is not, it would be efficient to permit them to make recovery reports. The Commission has decided, however, not to permit recovery reports from a transfer agent who is not the original reporting institution. The Commission understands that SIC routinely informs the recovering institution of the original reporting institution's identity and the name and phone number of a contact person at that institution. Thus, the original reporting institution can report the recovery.

By permitting deletions from the data base only on instructions from the original reporting institution and, thus, only when the recovery report data elements match exactly those of the earlier reports, the integrity of the data base is protected. Permitting participants other than the original reporting institution to report recoveries might permit the holder of stolen securities to remove the report of loss on

[24] In 1977, the Commission issued a release outlining general guidelines for reporting institutions to determine which agency was the "appropriate law enforcement agency." In that release the Commission stated that a "[g]ood faith determination and notification to [local law enforcement agencies, the FBI or the U.S. Secret Service] shall be deemed in compliance with paragraph (b)(1) of § 240.17f–1." Securities Exchange Act Release No. 13832 (August 5, 1977) 42 FR 41022, 41023 n. 10.

[25] Continental Bank and CCHA noted in their comments that the federal bank regulators impose on regulated banks a requirement that they report losses, thefts or counterfeiting of securities to the FBI, the U.S. Attorney and the appropriate federal bank regulatory agency within seven days. The Commission recognizes that requiring these banks to comply fully with the Commission's rules in addition to their appropriate regulatory agencies' requirements is duplicative. Thus, to relieve somewhat the burden on these institutions, the Commission has adopted an amendment which would permit these banks to file with the FBI the Criminal Referral Form required by the bank regulators, instead of Form X–17F–1A. The Criminal Referral Form must be filed within the time frames specified in Rule 17f–1, however. Moreover, these financial institutions will continue to be required to file Form S–17F–1A with SIC and the transfer agent for the issue. The Commission considered permitting banks to file the Criminal Referral Form with SIC as well; however, the Criminal Referral Form does not request all the information required by Rule 17f–1(c)(5). Thus, the Commission believes it is necessary that banks continue to file Form X–17F–1A with SIC.

[26] *See* Securities Exchange Act Release No. 13832 (August 5, 1977), 42 FR 42851. Specifically, the Rule as amended provides that a transfer agent is not required to notify SIC if it receives notification on a Form *Y*–17F–1A.

[27] *See* comments of American Bankers Association, ABA, Continental Bank, ISA, Morgan Bank, SIA, STA, and Sovran Bank.

[28] One commentator requested that the Commission restate the Rule's record retention requirements for original reporting institutions. *See* Drexel comment. The commentator requested that participants be reminded of the importance of maintaining accurate records of reports to SIC, including records of why the report originally was made. Rule 17f–1(g) provides that records must be kept for three years. The Commission stresses that this is a minimum requirement and encourages participants to retain these records as long as is feasible.

[29] *See* comments of American Transtech and SESTA.

file with SIC and thereby facilitate negotiation of those valueless securities. While recognizing that reports of lost, missing or stolen securities certificates could remain in the data base even though another reporting institution had recovered the certificates, the Commission believes that it is far better to maintain a slightly over-inclusive data base than one that is under-inclusive.

Furthermore, SIC's system at this time cannot accept recovery reports from participants other than the original reporting institution. The Commission is working with SIC, however, to enable the transfer agent for the issue involved to make a recovery report. Once SIC completes the necessary system enhancements, the Commission will reconsider this requirement.

D. Inquiry Requirements

Rule 17f–1(d)(1) of the Rule requires reporting institutions (other than transfer agents) to inquire about every securities certificate that comes into their possession, unless an exemption exists. The Commission proposed three amendments to the exemptions in subparagraph (d) to: (1) Reduce the $10,000 *de minimis* transaction exemption to $5,000; (2) restrict the scope of the customer exemption; and (3) clarify that transfer agents are exempt from the inquiry provisions of the Rule only when they are acting in their capacity as transfer agent. The Commission received substantial comment on these proposals.

1. The De Minimis Transaction Exemption

Rule 17f–1(d)(1)(iv) currently provides that no inquiry is required if a reporting institution receives certificates as part of a transaction valued at $10,000 or less.[30] This exemption is called the *de minimis* transaction exemption.

In its May 1984 Report concerning the Program, GAO recommended, among other things, that the Commission either eliminate or reduce the $10,000 *de minimis* transaction exemption. GAO stated that a reduction of the *de minimis* exemption would result in an increase in the number of securities certificates recovered. Accordingly, in the Proposal Release, the Commission requested comment on lowering the existing *de minimis* transaction exemption to $5,000 and also on raising the exemption ceiling or eliminating it entirely.

The Commission received numerous comments on this proposal, overwhelmingly against lowering the *de minimis* ceiling.[31] Most commentators indicated that industry perceptions of an appropriate ceiling have not changed since the $10,000 level was established. The $10,000 ceiling was set in 1979 after extensive industry comment. Comments submitted in 1979 indicated that a ceiling below $10,000 would increase user expenses dramatically, without corresponding returns in the form of recovered certificates. Consistent with these earlier findings, the vast majority of commentators strongly disagreed with lowering the *de minimis* transaction exemption. The comments also indicated that reducing the threshold reporting level to $5,000 would result in a significant increase in the number of inquiries reporting institutions would be required to make.[32] All the commentators noted that inquiring of SIC's data base is an extremely laborious process. Thus, these commentators believe, their costs of compliance also would increase significantly. Additionally, many commentators believe that the savings to reporting institutions from increased "hits" would not increase in proportion to the increased inquiry costs.[33]

Relying on commentator experience and cost estimates, the Commission has determined that the potential benefits of lowering the exemption do not outweigh the potential increased compliance costs and, thus, has concluded that lowering the *de minimis* transaction exemption is not warranted. As noted above, Program participants' costs could increase substantially, as could the cost of administering the Program. Moreover, it is not clear that lowering the exemption would increase substantially the number of "hits" to participants. As noted by the American Bankers Association in its comments, SIC's statistics show that currently 20% of all inquiries involve transactions with securities valued under $10,000. Similarly, SIA noted that GAO's own findings showed that approximately 30% of the securities found through the program in 1980 involved transactions of less that $10,000. SIA believes this evidence shows that, where circumstances warrant, participants already voluntarily inquire of SIC about securities even if their value is less than $10,000. Thus, lowering the ceiling would not significantly increase the number of hits. The Commission agrees that the best interpretation of this evidence is that Program participants are exercising good business judgment in determining when to inquire and are permissively inquiring on securities they believe may pose undue risk.[34]

It bears repeating that Program participants must use their judgment in deciding whether to inquire voluntarily on securities certificates even though they are permitted to claim an inquiry exemption with respect to those certificates. The Commission believes that strong incentives to inquire voluntarily continues to exist in many instances. For example, any time a customer asks a reporting institution to guarantee his or her signature, the reporting institution may wish to make a inquiry.

The Commission believes it is appropriate to retain the current *de minimis* transaction exemption and to continue to leave to Program participants the business decision of when to inquire permissively on lower-valued transactions. Although the Commission specifically requested comment on whether the *de minimis* transaction exemption ceiling should be raised, few commentators addressed that question. While four commentators suggested generally that some increase might be appropriate,[35] some rejected the notion of raising the ceiling.[36] Industry perception seems to be that the $10,000 threshold strikes an appropriate balance between the need to detect lost, stolen and counterfeit securities and the need to establish some minimum below which the incremental costs of inquiry are outweighed by the likely returns.

2. The Customer Exemption

The Commission proposed to limit and clarify the exemption from the inquiry requirement of certain securities certificates that are received from a Program participant's customers.[37] The

[30] The phrase "as part of a transaction" means the entire package of securities offered by a customer for a transaction. Reporting institutions should not evaluate each type of security separately to see whether each meets the *de minimis* threshold, but rather participants should look at all the securities involved in the transaction to determine whether the exemption applies.

[31] *See* comments of American Bankers Association, ABA, Boettcher, Bradford, Continental Bank, Dean Witter, Hospital Trust, Merrill Lynch, SIA, SESTA and Sovran Bank.

[32] In its comments the SIA stated that some of its members estimated that the number of mandated inquiries would increase by as much as 60%.

[33] Some commentators stated that items with a value less than $15,000–$25,000 are not frequently subject to criminal activity. (Further, the American Bar Association stated that it believes that lowering the threshold for inquiries only could result in diminishing returns when compared with the increased costs to be borne by reporting entities.)

[34] Rule 17f–1(e) provides that reporting institutions may report to or inquire of SIC voluntarily on any security not otherwise required by the Rule.

[35] *See* comments of ABA, Hospital Trust, Merrill Lynch and SIA.

[36] *See* Comments of Drexel and Goldman Sachs.

[37] Rule 17f–1(d)(1)(iii).

Commission has decided not to adopt the proposed amendments and instead is amending the customer exemption by defining the term "customer" to mean any person with whom the reporting institution has entered into at least one prior securities-related transaction. The Commission also amended the Rule to include a definition of the phrase "securities-related transaction." That term is defined as "a purchase, sale or pledge of investment securities, or custodial arrangement for investment securities."

As noted in the Proposal Release, the Division of Market Regulation in the past has interpreted the customer exemption to apply only when a Program participant received securities certificates registered in the delivering customer's name and (1) the program participant, on at least one occasion, inquired of SIC with respect to securities certificates previously received from this customer; or (2) the security was previously sold to the customer by that reporting institution. The Commission's proposed modification only would have exempted participants from inquiring on certificates registered in the customer's name if the participant sold the securities to the customer originally, as verified through the participant's internal records.

Twelve commentators strongly disagreed with this proposed change.[38] The commentators believe that requiring participants to verify through their internal records that they sold the securities to the customer effectively would eliminate the exemption. They believe it would be more cost-effective to inquire of SIC on every customer transaction than to check manually their records to determine whether they sold the securities to the customer. They also stressed, however, that inquiries to SIC are labor-intensive and costly. Many stated that the proposed amendment would increase significantly the number of inquiries to SIC on a daily basis, potentially overburdening both Program participants and SIC.

The Commission agrees with these commentators that the proposed amendment effectively would have mandated inquiry on every customer transaction. Moreover, the Commission believes the amendment is not necessary in light of the Senate hearings on Organized Crime held in the early 1970s, current industry perceptions about which types of securities are more likely to be subject to criminal activity, and the likely burden the proposed amendment would place on participants.[39]

Several commentators indicated that the securities industry continues to believe that bearer-form and street-name securities are the types of securities which pose the greatest risk to Program participants. As the SIA noted in its comments, Program participants already are subject to various self-regulatory organization rules requiring participants to "know their customer."[40] Moreover, most Program participants require the presenter of registered securities certificates to present proof of identity before they will accept securities. The Commission has decided, for these reasons, not to amend the rule to require verification that the firm previously sold the securities to the customer.

The Commission has decided, however, to adopt a definition of the term "customer" to clarify for Program participants when the inquiry exemption is available to them. The amendment provides that a "customer" is any person with whom the participant has entered into a sale, purchase or pledge of investment securities, or a custodial arrangement for investment securities. Requiring some prior securities-related transaction should ensure that the Program participant previously investigated the customer's identity and, thus, should inhibit forgeries of securities certificates.[41] Moreover, the Commission believes that this is an objective standard that Program participants should be able to apply easily in determining whether they may claim the exemption and should be readily enforceable by participants' appropriate regulatory agencies. Thus, the amended exemption would apply when a reporting institution receives a securities certificate registered in the name of one of its customers, as that term now is defined in the rule, or if the securities previously were sold to that customer and the sale is verified through the reporting institution's internal records. As we noted earlier, however, the Commission strongly encourages reporting institutions to inquire voluntarily when circumstances suggest that inquiry would be advisable.

3. The Transfer Agent Exemption

The Commission is adopting an amendment to Rule 17f–1(d)(1) clarifying that the inquiry exemption for transfer agents is available only to reporting institutions that receive securities certificates in their capacity as transfer agents, paying agents, exchange agents, tender agents or registrars.[42] The Commission's proposed amendment clarified that the exemption applied to reporting institutions acting in the capacity of transfer agent for the issue. Several commentators requested, however, that the Commission apply the exemption to these institutions when acting in their capacity as paying agents, exchange agents, tender agents or bond registrars.[43] In particular, Citibank noted that often agents are appointed to process corporate reorganizations such as mergers, tender offers and exchange offers. In performining these functions, these agents have the same securityholder records, particularly stop files, that transfer agents possess.[44] Because the transfer agent inquiry exemption is based on the fact that transfer agents possess an accurate record of lost, stolen, missing and counterfeit securities certificates, the Commission believes it appropriate to

[38] *See* comments of American Bankers Association, ABA, Boettcher, Bradford, CCHA, Continental Bank, Dean Witter, Drexel, Hospital Trust, Merrill Lynch, SIA and Sovran Bank.

[39] *See Hearings before the Permanent Subcommittee on Investigations, Organized Crime—Stolen Securities*, Senate Committee on Government Operations, 92nd Cong., 1st Sess. (1971); 93rd Cong., 1st Sess. (1973); 93 Cong., 2nd Sess. (1974) ("1973 Hearings"). Testimony at the hearings indicated that bearer securities and securities registered in street name were most likely to be subject to criminal activity. By contrast, it was pointed out that securities certificates registered in owners' names constitute a small portion of the stolen securities traffic. The individuals testifying believed that inquiry on these types of securities would not result in a significant number of hits. *See, e.g., id.*, 1973 Hearings at 643, 647–648 (Testimony of William Fitzpatrick and Roger Birk). The Commission was well aware of the relatively low probability of successful negotiation of registered customer securities when it crafted the customer exemption. The exemptions to the Rule's inquiry requirements thus were structured to make inquiry unnecessary in the majority of instances and to require inquiry only in those circumstances most likely to involve missing, lost, counterfeit or stolen certificates. *See* H. Rep. No. 229, 94th Cong., 103–104 (1975). Letter from Marc L. Weinberg, Attorney, Division of Market Regulation, to James M. Leeper, Trust Department, The Bank of New Orleans and Trust Company (November 27, 1978); Letter from Gregory C. Yadley, Attorney, Division of Market Regulation, to the Honorable Dick Clark, United States Senate (September 25, 1978).

[40] *See, e.g.*, NYSE Rule 405; NASD Manual section 21(b).

[41] Program participants should be aware, however, that the Commission will construe this exemption strictly. For example, if a customer presents securities registered in his or her name, as well as someone else's (*e.g.*, a spouse's), the exemption is available *only* if both owners are "customers" under the definition.

[42] The Commission received comments from seven entities that favored the clarification of the exemption. *See* comments of American Bankers Association, Bank of America, Continental Bank, ISA, Morgan Bank, STA and Sovran Bank.

[43] *See* comments of American Bankers Association, Bank of America and Citibank.

[44] A "stop file" is a transfer agent's record of all securities certificates that securityholders have reported to the transfer agent as missing, stolen or otherwise not suitable for transfer.

extend the exemption to all agents who, in their capacity as paying agents, exchange agents, tender agents or bond registrars, are in possession of these securityholder records. To claim this inquiry exemption, however, these agents must have possession of both the issuer's securityholder list and the current stop file.[45] The Rule is being amended to require both types of information. The same reasoning applies when transfer agents are acting in the capacity of registrar for bond or other debt issues.

E. Securities Subject to Inquiry and Reporting Requirements

1. U.S. Government and Agency Securities

The Commission has decided to adopt the proposed amendment eliminating the reporting and inquiry exemption for registered U.S. Government and U.S. Government agency securities ("government securities"). The Commission received seven comments on its proposed elimination of this exemption. Six commentators supported this amendment [46] and one opposed it.[47]

Bearer-form government securities have been subject to the inquiry and reporting requirements of the Rule since 1979. Inquiries and reports on those securities originally were processed by the Federal Reserve Banks. In 1979, however, the Board of Governors of the Federal Reserve System advised the Commission that the Federal Reserve Banks no longer wished to process inquiries concerning lost or stolen bearer securities and that reports and inquiries about those securities should be directed elsewhere. Following notice and comment, the Commission revised the Program to require that reports and inquiries about lost and stolen government bearer certificates be made to SIC.[48] At that time, the Federal Reserve Banks continued to provide services similar to those provided through the Program for registered-form government securities issues. The Federal Reserve Banks, however, no longer provide those services for registered-form government securities.[49] Therefore, the Commission believes it is critical that SIC take over this responsibility.[50]

The majority of all new government securities issues are issued in book-entry-only form through the Federal Reserve's book-entry system and thus would be excluded from the Program under these amendments. The Commission believes, however, that certificated government securities should be covered by the Program.[51] Moreover, the Government Securities Act of 1986, enacted on October 9, 1986,[52] amended, among other things, section 17(f) of the Act to require reporting institutions, including government securities brokers and dealers, to report and inquire about government securities. The legislation also amended section 17(f) to require the Commission and the Secretary of the Treasury to enter into an agreement to share on a regular basis information about lost, missing, stolen and counterfeit government securities.

2. Securities Not Assigned CUSIP Numbers

The Commission has decided not to adopt the proposed amendment eliminating the exemption for securities not assigned CUSIP numbers ("non-CUSIP securities").[53] Commentators' response to this proposal was mixed. Several commentators responded that they favored inclusion of non-CUSIP securities in the Program.[54] GAO, in its May, 1984 report on the Program, also called for inclusion of non-CUSIP securities because their inclusion would make the Program's data base more comprehensive.[55] Several commentators, however, raised the concern that no alternative uniform descriptive system other than CUSIP has been adequately developed.[56] Because of the difficulty of accurately describing non-CUSIP securities, these commentators believe the additional costs of including them in the Program surpass the usefulness of their inclusion at this time.

The Program currently is CUSIP-driven; in other words, the CUSIP number is vital to identifying accurately a particular security. Most securities processing systems similarly are built around CUSIP numbers. A security receives a CUSIP number if it is traded on a national securities exchange, is listed in the National Quotation Bureau's "pink sheets," is traded on a national basis, or is of significant investor interest. Typically, short-term or very thinly traded securities are not assigned CUSIP numbers. The Commission has limited the reporting and inquiry requirements of Rule 17f-1 to securities assigned CUSIP numbers because it believes that these non-CUSIP securities are neither widely held by public investors, nor readily negotiable or often subject to loss, theft, or counterfeiting. The Commission thus agrees with these commentators that, at least until an adequate descriptive system is designed, it is neither cost-effective nor feasible for non-CUSIP securities to be included in the Program on a mandatory basis.

Currently SIC is accepting reports and inquiries on non-CUSIP securities on a voluntary basis, assigning "pseudo" CUSIP numbers to non-CUSIP securities. Until an industry-wide description system is developed, the Commission believes that voluntary reporting of non-CUSIP securities in the system is the best way to maintain maximum Program efficiency and accuracy. The Commission wishes to stress to Program participants, however, the importance of providing as complete a description of non-CUSIP securities as possible when

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[45] We understand that it is standard industry practice that these agents secure the most recent securityholder and stop list from the record agent immediately before these agents perform their functions. We believe this is not only sound business practice, but also necessary for the exemption from inquiry to apply.

[46] *See* comments of American Bankers Association, Autex, Drexel, Goldman Sachs, ISA and Sovran Bank.

[47] *See* comments of Hospital Trust.

[48] *See* Securities Exchange Act Release No. 15867 (May 23, 1979), 44 FR 31500.

[49] The U.S. Department of the Treasury ("Treasury") will continue, of course, to handle claims for securityholders of lost or stolen government securities. The Commission wishes to stress that its amendment to the Program in no way is meant to affect Treasury's regulations. *See* Bureau of the Public Debt comment.

[50] In its report on the Program, GAO also strongly recommended that these securities be brought within the scope of the Program. *See* GAO Report, *supra* note 2, at 14–18.

[51] The Department of the Treasury, Bureau of Public Debt ("Bureau") was concerned that eliminating the government security exemption would bring U.S. savings notes and bonds within the scope of the Program. As the Bureau noted, however, these securities are not negotiable and cannot be assigned. Thus, Program participants never would have occasion to inquire about these types of securities and their inclusion in the Program, the Bureau believes, is not warranted.

The Commission agrees with the Bureau that inclusion of U.S. saving bonds and notes in the Program is not necessary. The Commission is amending Rule 17f–1(f), which lists the types of securities that are exempt from the reporting and inquiry requirements of the Program. Among others, securities for which neither record nor beneficial owners can obtain a negotiable securities certificate are exempt from the Program. Thus, the Commission believes that, because U.S. savings bonds and notes are not negotiable, they will be exempt from inquiry and reporting under the Rule.

[52] *See* Pub. L. No. 99–57 (October 28, 1986).

[53] CUSIP is the Committee on Uniform Securities Identification Procedures that created the CUSIP numbering system. The CUSIP numbering system provides the entire financial industry with a common and uniform language to identify securities for use in processing and recording securities transactions.

[54] *See* comments of ABA, Autex, Drexel, Goldman Sachs and ISA.

[55] *See* GAO Report, *supra* note 2, at 14–18.

[56] *See* comments of American Bankers Association, CBA, CCHA, Continental Bank, Hospital Trust and Sovran Bank.

making voluntary inquiries and reports.[57]

3. Bond Coupons

In the Proposal Release, the Commission requested comment on whether it should eliminate the reporting and inquiry exemption for bond coupons. The issue was raised in response to GAO's recommendation that the Commission broaden the scope of the Rule's reporting and inquiry requirements to include bond coupons.

The Commission has decided not to adopt the proposed amendment that would eliminate this exemption. The Commission received numerous comments indicating that reports and inquiries on bond coupons would be enormously costly for reporting institutions without corresponding benefits in the form or recovery of lost and stolen coupons.[58] In fact, requiring inquiries on bond coupons might expose reporting institutions to greater risk by requiring more handling of the coupons than is now necessary. Additionally, several collecting agent banks noted in their comments that they routinely do not pay a coupon presenter until they receive verification from the issue that the coupons are accepted.

4. Exemptions for Transactions That Do Not Involve Certificates

The Commission is adopting the proposed amendment to Rule 17f–1(f) to exempt from the reporting and inquiry requirements uncertificated securities for which neither record nor beneficial owners can obtain negotiable securities certificates. No commentators disagreed with this proposal, and several supported it.[59] As discussed in the Proposal Release, the Program in its current form has no applicability to these functionally uncertificated issues. The Commission believes, therefore, that these types of securities should be exempt from the reporting and inquiry provisions of the Program. The Commission also adopted definitions of the terms "uncertificated security"[60] and "global certificate securities issues."[61]

III. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("Analysis") in accordance with 5 U.S.C. 604, as amended by the Regulatory Flexibility Act (the "RFA"), on the amendments to Rule 17f–1. No comments were received specifically concerning the Initial Regulatory Flexibility Analysis prepared at the time of the Proposed Release. The Analysis notes that the amendments to this Rule are part of the Commission's review of the Lost and Stolen Securities Program ("Program"). The Analysis also notes that the amendments concern: 1) Program registration; 2) reporting of lost, stolen, missing and counterfeit securities certificates to SIC and law enforcement agencies; and 3) inquiry of SIC about securities certificates that come into their possession. Specifically, the Analysis discusses that certain exemptions from the Rule's registration, reporting and inquiry requirements have been expanded and clarified and that these changes should reduce the burden on all affected entities, including small transfer agents.

The Commission recognizes its obligation to formulate compliance and reporting requirements that take into account the economic impact of small transfer agents. The RFA directs the Commission to consider significant alternatives to the amendments that would accomplish the stated objectives of applicable statutes and minimize any significant economic impact on small transfer agents. As discussed in the Analysis, the Commission considered the alternatives set forth in the RFA in developing the amendments. The amendments to Rule 17f–1 do not impose additional reporting or recordkeeping requirements, and establish minimum performance standards, rather than particular design standards. Accordingly, the Commission believes that any costs incurred by small transfer agents because of the amendments are far outweighted by the benefits that will accrue to the securities industry from the more efficient and effective operation of the Program.

A copy of the Analysis may be obtained by contacting Joseph B. McDonald, Jr., Division of Market Regulation, U.S Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, or at (202) 272–2411.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

IV. Statutory Basis and Text of Amendments

The Commission amends Chapter II of Title 17 of the Code of Federal Regulations as follows:

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

1. The authority citation for Part 240 is amended by adding the following citation:

Authority: Sec. 23, 48 Stat. 901, as amended, (5 U.S.C. 78w) * * * § 240.17f–1 is also authorized under sections 2, 17 and 17A, 48 Stat. 891, 89 Stat. 137, 141 (15 U.S.C. 78b, 78q, 78q–1) * * *

2. By revising § 240.17f–1 to read as follows:

§ 240.17f–1 Requirements for reporting and inquiry with respect to missing, lost, counterfeit of stolen securities.

(a) *Definitions.* For purposes of this section:

(1) The term "reporting institution" shall include every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System and bank whose deposits are insured by the Federal Deposit Insurance Corporation;

(2) The term "uncertificated security" shall mean a security not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;

(3) The term "global certificate securities issue" shall mean a securities issue for which a single master certificate representing the entire issue

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[57] The Commission also stresses the importance of providing CUSIP numbers to SIC whenever the security has been assigned a CUSIP number. SIC has informed the Commission that Program participants frequently have inquired of or reported to SIC on certificates and claimed the security had no CUSIP number when, in fact, the security was assigned a CUSIP number. Reports and inquiries entered into SIC's data base without the appropriate CUSIP number make SIC's data base inaccurate.

SIC also has informed the Commission that many reporting institutions are not including applicable certificate number prefixes and suffixes when they are reporting and inquiring. The provision of prefixes and suffixes has been mandatory, however, since 1979. *See* Rule 17f–1(c)(5)(vii) and Securities Exchange Act Release No. 15867 (July 1, 1979), 44 FR 31500. Identification of prefixes and suffixes is critical to ensure that the data base contains accurate and specific information.

[58] *See* comments of American Bankers Association, American Transtech, CCHA, Continental Bank, Merrill Lynch, SESTA and Union Bank.

[59] *See* comments of American Bankers Association, ABA, Continental Bank, Morgan Bank, STA and Sovran Bank.

[60] The definition of the term "uncertificated security" is the same as the definition of that term in section 8–102(b) of the official 1977 version of the Uniform Commercial Code ("UCC").

[61] A global certificate securities issue is one for which a single master certificate representing the entire issue is registered in the nominee name of a registered clearing agency and for which beneficial owners cannot receive negotiable securities certificates.

is registered in the nominee name of a registered clearing agency and for which beneficial owners cannot receive negotiable securities certificates;

(4) The term "customer" shall mean any person with whom the reporting institution has entered into at least one prior securities-related transaction; and

(5) The term "securities-related transaction" shall mean a purpose, sale or pledge of investment securities, or a custodial arrangement for investment securities.

(b) Every reporting institution shall register with the Commission or its designee in accordance with instructions issued by the Commission except:

(1) A member of a national securities exchange who effects securities transactions through the trading facilities of the exchange and has not received or held customer securities within the last six months;

(2) A reporting institution that, within the last six months, limited its securities activities exclusively to uncertificated securities, global securities issues or any securities issue for which neither record nor beneficial owners can obtain a negotiable securities certificate; or

(3) A reporting institution whose business activities, within the last six months, did not involve the handling of securities certificates.

(c) *Reporting requirements*—(1) *Stolen securities.*

(i) Every reporting institution shall report to the Commission or its designee, and to a registered transfer agent for the issue, the discovery of the theft or loss of any securities certificates where there is substantial basis for believing that criminal activity was involved. Such report shall be made within one business day of the discovery and, if the certificate numbers of the securities cannot be ascertained at that time, they shall be reported as soon thereafter as possible.

(ii) Every reporting institution shall promptly report to the Federal Bureau of Investigation upon the discovery of the theft or loss of any securities certificate where there is substantial basis for believing that criminal activity was involved.

(2) *Missing or lost securities.* Every reporting institution shall report to the Commission or its designee, and to a registered transfer agent for the issue, the discovery of the loss of any securities certificate where criminal actions are not suspected when the securities certificate has been missing or lost for a period of two business days. Such report shall be made within one business day of the end of such period except that:

(i) Securities certificates lost in transit to customers, transfer agents, banks, brokers or dealers shall be reported by the delivering institution by the later of two business days after notice of non-receipt or as soon after such notice as the certificate numbers of the securities can be ascertained.

(ii) Securities certificates considered lost or missing as a result of securities counts or verifications required by rule, regulation or otherwise (*e.g.*, dividend record date verification made as a result of firm policy or internal audit function report) shall be reported by the later of ten business days after completion of such securities count or verification or as soon after such count or verification as the certificate numbers of the securities can be ascertained.

(iii) Securities certificates not received during the completion of delivery, deposit or withdrawal shall be reported in the following manner:

(A) Where delivery of the securities certificates is through a clearing agency, the delivering institution shall supply to the receiving institution the certificate number of the security within two business days from the date of request from the receiving institution. The receiving institution shall report within one business day of notification of the certificate number;

(B) Where the delivery of securities certificates is in person and where the delivering institution has a receipt, the delivering institution shall supply the receiving institution the certificate numbers of the securities within two business days from the date of request from the receiving institution. The receiving institution shall report within one business day of notification of the certificate number;

(C) Where the delivery of securities certificates is in person and where the delivering institution has no receipt, the delivering institution shall report within two business days of notification of non-receipt by the receiving institution; or

(D) Where delivery of securities certificates is made by mail or via draft, if payment is not received within ten business days, the delivering institution shall confirm with the receiving institution the failure to receive such delivery; if confirmation shows non-receipt, the delivering institution shall report within two business days of such confirmation.

(3) *Counterfeit securities.* Every reporting institution shall report the discovery of any counterfeit securities certificate to the Commission or its designee, to a registered transfer agent for the issue, and to the Federal Bureau of Investigation within one business day of such discovery.

(4) *Transfer agent reporting obligations.* Every transfer agent shall make the reports required above only if it receives notification of the loss, theft or counterfeiting from a non-reporting institution or if it receives notification other than on a Form X–17F–1A or if the certificate was in its possession at the time of the loss.

(5) *Recovery.* Every reporting institution that originally reported a lost, missing or stolen securities certificate pursuant to this Section shall report recovery of that securities certificate to the Commission or its designee and to a registered transfer agent for the issue within one business day of such recovery or finding. Every reporting institution that originally made a report in which criminality was indicated also shall notify the Federal Bureau of Investigation that the securities certificate has been recovered.

(6) *Information to be reported.* All reports made pursuant to this Section shall include, if applicable or available, the following information with respect to each securities certificate:

(i) Issuer;

(ii) Type of security and series;

(iii) Date of issue;

(iv) Maturity date;

(v) Denomination;

(vi) Interest rate;

(vii) Certificate number, including alphabetical prefix or suffix;

(viii) Name in which registered;

(ix) Distingushing characteristics, if counterfeit;

(x) Date of discovery of loss or recovery;

(xi) CUSIP number;

(xii) Financial Industry Numbering System ("FINS") Number; and

(xiii) Type of loss.

(7) *Forms.* Reporting institutions shall make all reports to the Commission or its designee and to a registered transfer agent for the issue pursuant to this section on Form X–17F–1A. Reporting institutions shall make reports to the Federal Bureau of Investigation pursuant to this Section on Form X–17F–1A, unless the reporting institution is a member of the Federal Reserve System or a bank whose deposits are insured by the Federal Deposit Insurance Corporation, in which case reports may be made on the form required by the institution's appropriate regulatory agency for reports to the Federal Bureau of Investigation.

(d) *Required inquiries.* (1) Every reporting institution (except a reporting institution that, acting in its capacity as transfer agent, paying agent, exchange agent or tender agent for an equity issue, or registrar for a bond or other debt

issue, compares all transactions against a shareholder or bondholder list and a current list of stop transfers) shall inquire of the Commission or its designee with respect to every securities certificate which comes into its possession or keeping, whether by pledge, transfer or otherwise, to ascertain whether such securities certificate has been reported as missing, lost, counterfeit or stolen, unless:

(i) The securities certificate is received directly from the issuer or issuing agent at issuance;

(ii) The securities certificate is received from another reporting institution or from a Federal Reserve Bank or Branch;

(iii) The securities certificate is received from a customer of the reporting institution; and

(A) is registered in the name of such customer or its nominee; or

(B) was perviously sold to such customer, as verified by the internal records of the reporting institution;

(iv) The securities certificate is received as part of a transaction which has an aggregate face value of $10,000 or less in the case of bonds, or market value of $10,000 or less in the case of stocks; or

(v) The securities certificate is received directly from a drop which is affiliated with a reporting institution for the purposes of receiving or delivering certificates on behalf of the reporting institution.

(2) *Form of inquiry.* Inquiries shall be made in such manner as prescribed by the Commission or its designee.

(e) *Permissive reports and inquiries.* Every reporting insitution may report to or inquire of the Commission or its designee with respect to any securities certificate not otherwise required by this section to be the subject of a report or inquiry. The Commission on written request or upon its own motion may permit reports to and inquiries of the system by any other person or entity upon such terms and conditions as it deems appropriate and necessary in the public interest and for the protection of investors.

(f) *Exemptions.* The following types of securities are not subject to paragraphs (c) and (d) of this section:

(1) Security issues not assigned CUSIP numbers;

(2) Bond coupons;

(3) Uncertificated securities;

(4) Global securities issues; and

(5) Any securities issue for which neither record nor beneficial owners can obtain a negotiable securities certificates.

By the Commission.

Dated: September 20, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-21919 Filed 9-23-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM87-16-000]

Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated, or Modified Contracts; Correction

Issued: September 14, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction notice.

SUMMARY: On February 5, 1988, the Commission issued a final rule regarding abandonment of sales and purchases of natural gas under expired, terminated, or modified contracts (53 FR 4121 (Feb. 12, 1988)), and on July 22, 1988, issued an order denying rehearing and clarifying the final rule (53 FR 29002 (Aug. 2, 1988)). This notice makes technical corrections to § 157.30 to accurately cross reference paragraphs (c) and (d).

EFFECTIVE DATE: September 14, 1988.

FOR FURTHER INFORMATION CONTACT: Jacob Silverman, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8315.

SUPPLEMENTARY INFORMATION:

List of Subjects in 18 CFR Part 157

Natural gas.

PART 157—[AMENDED]

1. The authority citation for Part 157 continues to read as follows:

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

§ 157.30 [Amended]

2. In § 157.30, paragraph (a) after "paragraph (c)" add "or (d)".

3. In § 157.30, paragraph (e) after "paragraph (c)" remove "or (d)".

Lois D. Cashell,

Secretary.

[FR Doc. 88-21543 Filed 9-23-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 450

[Docket No. 88N-0232]

Antibiotic Drugs; Doxorubicin Hydrochloride Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new dosage form of doxorubicin hydrochloride, doxorubicin hydrochloride injection. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective October 26, 1988; comments, notice of participation, and request for hearing by October 26, 1988; data, information, and analyses to justify a hearing by November 25, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new dosage form of doxorubicin hydrochloride, doxorubicin hydrochloride injection. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the antibiotic drug regulations should be amended in 21 CFR 450.24, and in 21 CFR 450.224 by redesignating it as 21 CFR 450.224a, and by adding new 21 CFR 450.224 and 450.224b to provide for the inclusion of accepted standards for the product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) 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.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, becomes effective October 26, 1988. However, interested persons may, on or before October 26, 1988, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before October 26, 1988, a written notice of participation and request for hearing, and (2) on or before November 25, 1988, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300. All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 450

Antibiotics, antitumor.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 450 is amended as follows:

PART 450—ANTITUMOR ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR Part 450 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

2. Section 450.24 is amended by redesignating paragraphs (a)(1)(iii), (a)(1)(iv), (a)(1)(v), and (a)(1)(vi) as paragraphs (a)(1)(iv), (a)(1)(v), (a)(1)(vi), and (a)(1)(vii), respectively, by adding new paragraph (a)(1)(iii), by revising paragraph (a)(3)(i), by redesignating paragraphs (b)(3), (b)(4), (b)(5), and (b)(6) as paragraphs (b)(4), (b)(5), (b)(6), and (b)(7), respectively, and by adding new paragraph (b)(3) to read as follows:

§ 450.24 Doxorubicin hydrochloride.

(a) * * *

(1) * * *

(iii) It contains no depressor substances.

* * * * *

(3) * * *

(i) Results of tests and assays on the batch for doxorubicin hydrochloride content, microbiological activity, depressor substances, moisture, pH, crystallinity, and identity.

* * * * *

(b) * * *

(3) *Depressor substances.* Proceed as directed in § 436.35 of this chapter.

* * * * *

§ 450.224a [Redesignated from § 450.224]

3. Section 450.224 is redesignated as § 450.224a and new §§ 450.224 and 450.224b are added to Subpart C to read as follows:

§ 450.224 Doxorubicin hydrochloride injectable dosage forms.

§ 450.224b Doxorubicin hydrochloride injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Doxorubicin hydrochloride injection is an aqueous solution of doxorubicin hydrochloride in an isoosmotic diluent. Each milliliter contains doxorubicin hydrochloride equivalent to 2 milligrams of doxorubicin hydrochloride. Its doxorubicin hydrochloride potency is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of doxorubicin hydrochloride that it is represented to contain. It is sterile. It is nonpyrogenic. Its pH is not less than 2.5 and not more than 3.5. It passes the identity test. The doxorubicin hydrochloride used conforms to the standards prescribed by § 450.24(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The doxorubicin hydrochloride used in making the batch for doxorubicin hydrochloride content, depressor substances, microbiological activity, moisture, pH, crystallinity, and identity.

(B) The batch for doxorubicin hydrochloride content, sterility, pyrogens, pH, and identity.

(ii) Samples required:

(A) The doxorubicin hydrochloride used in making the batch: 14 packages, each containing approximately 40 milligrams.

(B) The batch:

(*1*) For all tests except sterility: A minimum of 34 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay.* Doxorubicin hydrochloride is toxic. It must be handled with care in the laboratory. Solutions should not be pipetted by mouth. Transfer all dry powders in a suitable hood while wearing rubber gloves. If the substance contacts the skin, wash with soap and water. Dispose of all waste material by dilution with larger volumes of synthetic detergent solution.

(1) *Doxorubicin hydrochloride potency.* Proceed as directed in § 450.224a, except calculating the doxorubicin hydrochloride potency as follows:

(2) *Calculation.* Calculate the milligrams of doxorubicin hydrochloride per milliliter of sample as follows:

$$\text{Milligrams of doxorubicin hydrochloride per milliliter} = \frac{R_u \times P_s \times d}{R_s \times 1{,}000}$$

where:

R_u = Area of the doxorubicin hydrochloride sample peak/area of the internal standard peak;

R_s = Area of the doxorubicin hydrochloride standard peak/area of the internal standard peak;

P_s = Doxorubicin hydrochloride activity in the doxorubicin hydrochloride working standard solution in micrograms per milliliter; and

d = Dilution factor of the sample.

(3) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(4) *Pyrogens.* Proceed as directed in § 436.32(a) of this chapter, using a solution containing 2.25 milligrams of doxorubicin hydrochloride per milliliter.

(5) *pH.* Proceed as directed in § 436.202 of this chapter, using the undiluted solution.

(6) *Identity.* The high-pressure liquid chromatogram of the sample determined as directed in paragraph (b)(1) of this section, compares qualitatively to that of the doxorubicin hydrochloride working standard.

Dated: September 16, 1988.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88-21934 Filed 9-23-88; 8:45 am]

BILLING CODE 4160-01-M

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Part 602

Predisclosure Notification Procedures for Confidential Commercial Information; Freedom of Information Act

AGENCY: Arms Control and Disarmament Agency.

ACTION: Final rule.

SUMMARY: On April 14, 1988, at 53 FR 12430, the Arms Control and Disarmament Agency published a proposed rule to amend its Freedom of Information Act regulations, 22 CFR Part 602, to implement the requirements of Executive Order 12600 of June 23, 1987, that notification be given to parties that have submitted arguably confidential commercial information to an agency whenever a FOIA request for such information is received by the agency. The procedure is intended to give the submitter an opportunity to object to disclosure of the information and reasonable notice of intent by the agency to disclose the information.

EFFECTIVE DATE: September 26, 1988.

FOR FURTHER INFORMATION CONTACT: Frederick Smith, Jr., Information/Privacy Officer, (202) 647-3442.

SUPPLEMENTARY INFORMATION: Comment was received from one organization suggesting certain clarification of the proposed regulations as they relate to time limits provided in the FOIA. After consideration of the suggestion, it was decided not to change the proposed regulations and they are being adopted in the form originally proposed. The Agency has determined that this rule will not have a significant economic impact on a substantial number of small entities because only a very small percentage of that group will likely be affected by this regulation, i.e., those entities that choose to submit requests for records under the Freedom of Information Act or whose information is requested. As a result, neither an initial nor final Regulatory Flexibility Analysis has been or will be prepared.

This rule is not a major rule for the purpose of Executive Order 12291. This rule does not contain information collection requirements as defined by the Paperwork Reduction Act.

List of Subjects in 22 CFR Part 602

Freedom of Information Policy and Procedures.

For the reasons set forth in the preamble, Title 22, Chapter VI, Part 602 is amended to read as follows:

PART 602—[AMENDED]

1. The authority citation for 22 CFR Part 602 continues to read as follows:

Authority: Sec. 1, 81 Stat. 54, as amended by sec. 1, 88 Stat. 1561 (5 U.S.C. 552) sec. 41, 75 Stat. 635 (22 U.S.C. 2581); and sec. 501, 65 Stat. 290 (31 U.S.C. 9701).

2. Section 602.19 is added to Subpart B to read as follows:

§ 602.19 Predisclosure notification for confidential commercial information.

(a) *When notification is required.* If a request under the Freedom of Information Act (FOIA), 5 U.S.C. 552, seeks a record that contains information submitted by a person or entity outside the Federal government that arguably is exempt from disclosure under exemption 4 of the Act because disclosure could reasonably be expected to cause substantial competitive harm, the Agency shall notify the submitter that such a request has been made whenever:

(1) The submitter has made a good faith designation of information, less than ten years old, as confidential commercial or financial information, or

(2) The Agency has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(b) *Notification to submitter.* The notice to the submitter shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the information. The notice shall afford the submitter a reasonable period of time, based on the amount and/or complexity of the information, within which to object to disclosure.

(c) *Objection by submitter.* Any objection by a submitter to disclosure must be made in writing and sent to: Freedom of Information Officer, U.S. Arms Control and Disarmament Agency, Department of State Building, Washington, DC 20451. It should identify the portion(s) of the information to which disclosure is objected, and should include a detailed statement of all claimed grounds for withholding any of the information under the FOIA and, in the case of exemption 4, an explanation of why the information constitutes a trade secret or commercial or financial information that is privileged and confidential, including a specification of any claim of competitive or other business harm that would result from disclosure.

(d) *Notification to requester.* The Agency shall notify the requester in writing when any notification to a submitter is made pursuant to paragraph (a) of this section.

(e) *When notification is not required.* Notification to a submitter is not required if:

(1) The Agency determines that the information requested should not be disclosed;

(2) Disclosure is required by statute (other than the FOIA) or by regulation;

(3) The information has previously been lawfully published or officially made available to the public.

(f) *Notice of intent to disclose.* If the Agency determines that despite the objection of the submitter the requested information should be disclosed, in whole or in part, it shall notify both the requester and the submitter of the decision and shall provide to the submitter in writing:

(1) A brief explanation of why the submitter's objections were not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date that provides a reasonable period of time between receipt of the notice and the disclosure date.

(g) *Notice of lawsuit.* (1) Whenever a requester brings legal action to compel

disclosure of information covered by paragraph (a) of this section the Agency shall promptly notify the submitter in writing.

(2) Whenever a submitter brings legal action to prevent disclosure of information covered by paragraph (a) of this section, the Agency shall promptly notify the requester in writing.

William J. Montgomery,

Administrative Director.

[FR Doc. 88-20774 Filed 9-23-88; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8223]

Income Taxes; Branch Tax; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Corrections to temporary regulations.

SUMMARY: This document contains corrections to Treasury Decision 8223, which was published in the **Federal Register** for Friday, September 2, 1988 (53 FR 34045). The regulations provide guidance to taxpayers concerning the imposition of tax on profits of a U.S. branch of a foreign corporation that are removed from the branch and on interest that is paid, or deemed paid, by the branch.

FOR FURTHER INFORMATION CONTACT: Elizabeth Karzon of the Office of Associate Chief Counsel (International), within the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attn: CC:LR:T) Telephone 202-566-3160 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these corrections provide guidance to taxpayers in the application of section 884 of the Internal Revenue Code of 1986. This section was added to the Code by section 1241 of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085, 2576).

Need for Correction

As published, T.D. 8223 contains typographical errors and omissions that, if not corrected, might cause confusion to taxpayer and practitioners.

Correction of Publication

Accordingly, the publication of temporary regulations (T.D. 8223), which was the subject of FR Doc. 88-19832, is corrected as follows:

§ 1.884-4T [Corrected]

Par. 1. In § 1.884-4T(b)(5)(i)(B), page 34066 third column, seventh line, the reference to "paragraph (b)(i)(iv)" is corrected to read as "paragraph (b)(1)(iv)".

Par. 2. In § 1.884-4T(b)(8)(v), Example (2), page 34069, second column, first line, the language "A, a foreign corporation and" is corrected to read "A, a foreign corporation, and".

§ 1.844-5T [Corrected]

Par. 3. In § 1.844-5T(b)(2)(i)(B), page 34070, third column, line six through line fifteen is correctly added to read: "(*1*) the partner's percentage distributive share of the partnership's dividend income from the stock, (*2*) the partner's percentage distributive share of gain from disposition of the stock by the partnership, or (*3*) the partner's percentage share of the stock (or proceeds from the disposition of the stock) upon liquidation of the partnership.

Par. 4. In § 1.844-5T(b)(2)(i)(D), page 34070, third column, corrections appear in three locations. In the fifth line, the designation "(1)" is corrected to read "(*1*)". In the ninth line, the designation "(2)" is corrected to read "(*2*)". In the thirteeth line, the designation "(3)" is corrected to read "(*3*)".

Par. 5. In § 1.884-5T(d)(6), page 34075, first column, fifteenth line, the language "district director" is corrected to read "District Director".

PART 602—[AMENDED]

§ 602.101 [Corrected]

Par. 6. In § 602.101, Par. 4, page 34076, first column, the language "§ 1.884-3T. . . . 1545-1070" is added immediately following the language "§ 1.884-2T. . . . 1545-1070".

Dale D. Goode,

Chief, Technical Section, Legislation and Regulations Division.

[FR Doc. 88-21831 Filed 9-23-88; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 146

[FRL-3453-3]

Underground Injection Control Program: Oxygen Activation Method Mechanical Integrity Test for Injection Well Classes I-V: Interim Approval

AGENCY: Environmental Protection Agency.

ACTION: Notice of alternative method; interim approval with request for comments.

SUMMARY: The Director of the Office of Drinking Water of the U.S. Environmental Protection Agency (EPA) intends to grant interim approval ending two years from October 26, 1988 for use of the Oxygen Activation (OA) tool to test fluid migration adjacent to the injection well bore as an alternative to the tests specified in the Code of Federal Regulations, 40 CFR 146.8(c). The Agency intends this approval to apply to all injection wells. This test is referred to as the Oxygen Activation Method.

To define better the use of this alternative test, EPA requests comments and further data on the viability of this alternative. During the two-year interim approval, the Agency intends to study the test to verify that it provides comparable results to the tests currently specified in 40 CFR 146.8(c) and to refine criteria for its use. Based on this analysis, the Agency will then issue a final determination on its use as an alternative to existing tests for demonstrating the absence of fluid movement behind the casing [see 40 CFR 146.8(a)(2)].

DATES: The interim approval period for this alternative mechanical integrity test becomes effective October 26, 1988. Written comments and referenced data may be submitted, and will be considered by EPA in making its decision on whether to grant final approval. EPA requests that such written comments and any referenced data be submitted by April 26, 1990.

ADDRESSES: Comments should be addressed to Bruce J. Kobelski, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency (U.S. EPA), 401 M Street, SW., Washington, DC 20460. A copy of the comments and technical data relevant to this test will be available for review during normal business hours at the U.S. PA, Room 1013 East Tower, 401 M Street, SW., Washington, DC; U.S. EPA Region V, 111 West Jackson Boulevard, Trans Union Building, 9th Floor, Chicago, Illinois; U.S. EPA Region VI, 1445 Ross Avenue, Dallas, Texas; and U.S. EPA, Robert S. Kerr Research Lab, Ada, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Bruce J. Kobelski, Office of Drinking Water (WH-550), U.S. EPA, Washington, DC 20460, at: (202) 382-7275; J. Daniel Arthur, Safe Drinking Water Branch, Underground Injection Control Section, U.S. EPA Region V, 230 South Dearborn Street, Chicago, Illinois 60604 at: (312) 886-4280, or Jerry

Thornhill, Robert S. Kerr Research Lab, U.S. EPA, P.O. Box 1198, Ada, Oklahoma 74820, at: (405) 332–8800.

SUPPLEMENTARY INFORMATION:

I. Background

The Safe Drinking Water Act (SDWA) (42 U.S.C. 300h, *et seq.*) is intended to protect underground sources of drinking water (USDWs) from contamination by underground injection. One of the cornerstones of the Underground Injection Control (UIC) program is the mechanical integrity of wells. Mechanical integrity (MI) is defined as the absence of significant leaks in the casing, tubing or packer, and the absence of significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore. This movement can occur from either the injection zone or from other zones or aquifers. Acceptable methods of evaluating mechanical integrity are specified in 40 CFR 146.8 for State programs administered by EPA (direct implementation), and in the program applications of the States with primary enforcement responsibility (Primacy) for injection wells. Section 146.8(d) states that the Director may allow alternative mechanical integrity tests if the Administrator approves the alternative.

The EPA intends to grant interim approval for a period of two years from October 26, 1988 for the use of an alternative mechanical integrity test known as the Oxygen Activation Method. Several injection well operators in various states requested that EPA approve this test as an alternative mechanical integrity test. This test may be applied to all classes of injection wells. The information gathered during the two-year interim period will be used to verify the effectiveness of the alternative. Any necessary changes in the test procedures will be identified during the interim approval period.

II. Description of the Testing Method

Presently, there are four (4) national testing methods approved for demonstrating the mechanical integrity of an injection well pursuant to 40 CFR 146.8(a)(2); the Temperature Log, the Noise Log, the Radioactive Tracer Survey when the injection zone is separated from the lowermost USDW by a single confining layer, and cementing records for Class II and some Class III wells. The temperature log can be used to detect flow channels by identifying differences in temperature which are not consistent with the local geothermal gradient. The noise log detects noise generated by liquid or gas flows behind casing, and the radioactive tracer survey (when the injection zone is adjacent to a single confining layer which separates the lowermost USDW from the injection zone) detects fluids tagged with radioactive tracers behind casing.

The EPA believes that for injection wells, the Oxygen Activation Method affords a more direct means of confirming the absence of, or detecting the presence of significant fluid movement through vertical channels adjacent to the well bore. It is especially valuable for detecting interformational flow.

The Oxygen Activation Method artificially induces a radioactive tracer with a very short half-life (7.13 seconds). The tool is lowered into the well, where it bombards the oxygen molecules in the fluid behind the casing with energetic neutrons from a stationary neutron source in the tool. Computerized statistical analysis of gamma rays released by the "excited" molecules, and detected by the tool's dual receivers enables the calculation of flow velocities. Analysis of the velocity allows the logger to determine whether and where flow is occurring.

The Agency has determined that in order for the test to be accurate, pertinent geologic and well construction data must be known. Information needed prior to testing may vary depending on how the well is constructed. At a minimum, specific lithologic data from the top of the injection zone to the surface is required. This data must be obtained by running an initial (base) Gamma Ray Log prior to taking stationary readings with the Oxygen Activation tool. This is essential due to the different natural radiation which is emitted from various geologic formations or zones, and because the natural radiation may change slightly over time. Also, prior to taking stationary readings, the Oxygen Activation tool must be properly calibrated in a predetermined "no flow" condition.

III. Basis for Determination

All technical documentation supporting the OA Method will be available for public review at EPA offices mentioned in the Summary of this notice. EPA developed the requirements and limitations of the testing method, for demonstrating mechanical integrity pursuant to 40 CFR 146.8(a)(2), after considering testing results on a test well at the EPA's Robert S. Kerr Research Lab in Ada, Oklahoma, and on wells used for both the production of hydrocarbons and the injection of water for the purpose of enhanced oil recovery. Further consideration was given to the following technical documents:

(1) "PDK–100: A New Generation Pulsed Neutron Logging System", R.R. Randall, D.W. Oliver and E.C. Hopkinson, *Proceedings of the Tenth European Formation Symposium*, Aberdeen, April 22–25, 1986.

(2) "The PDK–100 Enhances Interpretation Capabilities or Pulsed Neutron Capture Logs", R.R. Randall, D.W. Oliver and W.H. Fertl, *Transactions of the SPWLA Twenty-Seventh Annual Logging Symposium*, Houston, Texas, June 9–13, 1986.

(3) "Measuring Behind Casing Water Flow", T.M. Williams, Underground Injection Practices Council International Symposium on Subsurface Injection of Oilfield Brines, New Orleans, LA, May 5–7, 1987.

(4) "Quantitative Monitoring of Water Flow Behind and In Wellbore Casing", D.M. Arnold and H.J. Paap, *Journal of Petroleum Technology*, January 1979, pp 121–130.

In addition the following information was considered:

(1) In many cases, presently approved testing methods may not always conclusively demonstrate zone isolation or communication behind casing.

(2) The Oxygen Activation Method can be used in well Classes I–V and can confirm zone isolation or communication without removal of the injection well's tubing and packer, in most cases. In addition, the method can be used in small diameter wells without tubing and packer.

(3) Unlike other approved methods for demonstrating mechanical integrity, pursuant to 40 CFR 146.8(a)(2), the Oxygen Activation Method yields a more direct method of confirming zone isolation or communication without need for intensive interpretation. Although the tool has additional capabilities, EPA is approving only the fluid movement applicability of the test in this notice.

IV. Special Conditions

A. Limitations for Conducting the Oxygen Activation Method Mechanical Integrity Test

The following are limitations for conducting the Oxygen Activation Method mechanical integrity test:

(1) The Oxygen Activation Method has only been perfected by a limited number of logging companies. Logging tools capable of detecting flow velocities of at least three (3) feet per minute shall be used for demonstrating mechanical integrity pursuant to 40 CFR 146.8(a)(2).

(2) Three (3) readings lasting 3–5 minutes shall be taken at each stationary position. This allows enough information to be gathered so that more precise results will be obtained. In some cases where results are inconclusive, additional readings over longer time periods may be required by the Director.

(3) Stationary readings, as previously described, shall be taken at the base of each USDW, and adjacent to the confining layer which isolates injection fluids to the injection zone.

(4) If any significant flow indication is observed, the well shall fail the test, i.e. it does not establish mechanical integrity pursuant to 40 CFR 146.8(a)(2).

(5) The Oxygen Activation Method shall not be used in wells with pipe diameters less than $1^{1}\frac{1}{16}$ inches (inside diameter).

(6) At this time, the Oxygen Activation Method shall be used only for pipe diameters up to 13⅜ inches. However, during the interim approval period, the Agency solicits data on the application of this testing method for large diameter wells.

B. Informational Requirements of the Test

During the interim approval period, EPA is requesting affected State UIC Directors to make certain determinations and supply necessary information for effective evaluation of this test, as follows:

(1) The results of the testing must include the following descriptive information: test date, well operator's name, well name and number, county, and state. In addition, the information must indicate the calibration of the logging instrument, background determination, the number, location, and duration of stationary readings, and an interpretation of the data collected.

(2) If the Director chooses to require or allow the use of the OA tool, he shall submit a recommendation to the Office of Drinking Water, or the Region, based on the results obtained during the interim period for the Oxygen Activation Method. The recommendation shall outline any limitations, procedures, and criteria necessary to assure effective testing.

C. Determination

The Oxygen Activation Method, subject to the conditions and procedures discussed in this notice, provides the necessary information to demonstrate reliably whether a well has significant fluid movement through vertical channels adjacent to the well bore.

EPA is approving this test for well Classes I through V in all States. After the two-year interim approval period, EPA will make a final determination on whether this test is an effective alternative mechanical integrity test for well Classes I through V in all States.

Date: September 20, 1988.

Michael B. Cook,

Director, Office of Drinking Water.

[FR Doc. 88–21774 Filed 9–23–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 146

[FRL–3453–2]

Underground Injection Control Program; Extension of Water-in-Annulus Mechanical Integrity Test Interim Approval

AGENCY: Environmental Protection Agency.

ACTION: Notice of alternative method; extension of interim approval.

SUMMARY: Notice is given today that the Director of the Office of Drinking Water, Environmental Protection Agency (EPA), has granted an additional extension of six (6) months from September 26, 1988 for the use of an alternative to the tests specified in § 146.8(b) to test the mechanical integrity of an injection well's tubular goods. This mechanical integrity test (MIT), known as the water-in-annulus test, has been approved only for existing Class II enhanced recovery wells in specific counties in the States of New York and Pennsylvania. This extension of the interim approval is necessary for further evaluation on the test's sensitivity, reliability, and effectiveness.

EFFECTIVE DATE: This approval extends for a period of six months from September 26, 1988.

ADDRESSES: Any comments concerning the extension of interim approval should be addressed to Bruce J. Kobelski, EPA, Office of Drinking Water (WH–550), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Bruce J. Kobelski, EPA, Office of Drinking Water, Washington, DC 20460, (202) 382–7275; or S. Stephen Platt, U.S. EPA, Region III, Drinking Water/Ground Water Protection Branch, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215) 597–2537.

SUPPLEMENTARY INFORMATION: On July 14, 1987, the EPA published in the **Federal Register** (52 FR 26342) a one year extension of interim approval for the water-in-annulus mechanical integrity test. This test has been approved for existing Class II enhanced recovery wells (existing wells are those wells which were in operation prior to June 25, 1984) located in Allegheny, Cattaraugus, and Steuben Counties in New York, and Elk, Forest, McKean, Potter, Venango, Warren, and Washington Counties in Pennsylvania (49 FR 29375).

The July 14, 1987 **Federal Register** notice (52 FR 26342) included the description of the test, procedures for conducting the test, and the interpretation of test results.

At this time, the Agency has determined that additional data concerning the test's sensitivity and reliability is needed in order to confirm its effectiveness for assessing mechanical integrity. Therefore, EPA is extending its interim approval of this test for six months until March 27, 1989.

During this extension of interim approval, additional testing comparing the water-in-annulus test with existing approved MITs will be conducted. When the information collected has been evaluated, the Agency will make a final determination concerning this test.

Dated: September 18, 1988.

Michael B. Cook,

Director, Office of Drinking Water.

[FR Doc. 88–21775 Filed 9–23–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Mangement

43 CFR Part 3450

[AA–660–08–4121–02; Circular No. 2611]

Management of Existing Leases; Continuation of Leases—Readjustment of Terms

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking revises the existing regulations at 43 CFR Subpart 3451 by: 1) Eliminating the practice of allowing coal leases to file objections to readjusted lease terms and conditions; 2) requiring that, as of the effective date of the lease readjustment, the lessee must make rental and royalty payments at the readjusted rates; and 3) clarifying that the notification to the Governor of the affected State is by copy of the readjusted terms and conditions. Readjusted rentals and royalties will no longer be allowed to accrue during the pendency of an appeal to the Office of Hearing and Appeals, Department of the Interior. This Final rulemaking will ensure that the lease terms and conditions conform to the requirements of the Federal Coal

Leasing Amendments Act of 1976, as amended.

EFFECTIVE DATE: September 26, 1988.

ADDRESS: Inquiries or suggestions should be sent to: Director (660), Bureau of Land Management, Room 3411, Main Interior Building, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Paul W. Politzer, (202) 343–7722 or Pamela J. Lewis, (202) 343–7722.

SUPPLEMENTARY INFORMATION: A proposed rulemaking containing revisions to 3 paragraphs of 43 CFR 3451.2 was published in the Federal Register on December 8, 1987 (52 FR 46499), with a 60-day comment period. During that comment period, comments were received from 10 sources, with 3 coming from business, 4 coming from associations, 1 from an attorney, 1 from a Federal agency, and 1 from a State agency. All of the comments were given careful consideration during the preparation of this final rulemaking. The **SUPPLEMENTARY INFORMATION** preamble to that proposed rulemaking is incorporated herein in its entirety, to the extent not modified by this **SUPPLEMENTARY INFORMATION.**

This final rulemaking eliminates the notice of readjusted terms and conditions and replaces this notice with a decision transmitting the readjusted terms and conditions. The decision will be sent to the Federal coal lessee prior to the anniversary of the date on which the Federal coal lease is subject to readjustment.

In general, the comments received were unfavorable to the changes made in the proposed rulemaking and evidenced confusion on the part of the writers as to the intent of the Department of the Interior with respect to eliminating the filing of objections to readjusted lease terms and conditions. The elimination of the filing of *objections* with the Bureau of Land Management State Offices regarding the notice of readjusted lease terms and conditions in no way diminishes the rights of a Federal coal lessee to *appeal* the Bureau of Land Management's final lease readjustment action to the Interior Board of Land Appeals (IBLA). Any action taken by the Bureau of Land Management that a Federal coal lessee believes to be adverse to him is appealable to IBLA. However, the Bureau of Land Management will no longer entertain objections protesting the readjustment of a coal lease. This will ensure that the lease terms and conditions conform to the requirements of the Federal Coal Leasing Amendments Act of 1976, as amended (FCLAA) (90 Stat. 1083–1092) on the annivesary date.

Two comments requested that the final rulemaking state that it will have "no effect on leases no longer before the Department of the Interior on administrative appeal and that agreements to post bonds to protect the interest of the Federal Government while an appeal remains pending before the courts continue in full force and effect." The Bureau of Land Management rejected these requests for the following reasons.

At this time there are approximately 57 Federal coal leases with readjustment appeals pending before IBLA and another 39 Federal coal leases with readjustment appeals that have been elevated to either the District or Circuit Court level. Of these Federal coal leases, less than 5 percent are paying the higher readjusted rental and royalty rates while in the appeal process. In addition, on January 28, 1987, IBLA issued an order (*Ark Land Co.*, IBLA 86–1449) that specifically states that, under the current regulations, until IBLA fully adjudicates the merits of a readjustment appeal before it, the Bureau of Land Management may not increase the lease bond to cover the accrual of the higher readjusted rental and royalty amounts. See *Ark Land Co.*, 97 IBLA 241, 248 (1987), referring to and explaining the January 28, 1987, order.

One of the purposes of this rulemaking is to eliminate the accrual of these moneys during the appeal process. The IBLA order has effectively stopped the Bureau of Land Management from protecting the interests of the Federal Government through the use of adequate bonding. Therefore, this rulemaking applies to all Federal coal leases regardless of where they are in the appeal process.

This final rulemaking removes the provision in the existing regulations that allows the accrual of rentals and royalties during the pendency of an appeal of a Federal coal lease readjustment for the reasons cited above.

Section 6 of FCLAA amended section 7 of the Mineral Leasing Act (MLA) (30 U.S.C. 207) to require that Federal coal leases be readjusted to a production royalty rate of not less than 12½ percent of the gross value of all coal mined. However, the Secretary of the Interior was given the discretion to set a lesser royalty rate than 12½ percent for coal recovered by using underground methods. A production royalty of at least 8 percent, but not less than 5 percent if conditions warrant, of the gross value of coal mined using underground methods is currently provided for at 43 CFR Subparts 3451 and 3473.

The Office of the Solicitor has interpreted section 6 of FCLAA as requiring that the readjusted terms and conditions of all Federal coal leases issued prior to August 4, 1976, and subject to readjustment of their terms and conditions after that date, are required to comply with the requirements of FCLAA (Solicitor's Opinion M–36939, 88 I.D. 1003 (1981)).

This final rulemaking eliminates the process under which a Federal coal lessee files objections with the Bureau of Land Management State Offices regarding readjusted terms and conditions. Readjusted terms and conditions become applicable to pre-FCLAA Federal coal leases upon their first adjustment under FCLAA. Standard lease terms and conditions are not subject to objection by the Federal coal lessee because they have already been the subject of public review and comment under the Administrative Procedures Act (40 U.S.C. 760, *et seq.*) (see the Final Federal Coal Lease Form, Part I, Sections 1 and 2, and Part II, Sections 1 through 14; see also the Coal Management; Federally Owned Coal; Amendments to Coal Management Program Regulations (47 FR 33114, July 30, 1982) and Coal Exploration and Mining Operations (47 FR 33154, July 30, 1982)). The basis for all special stipulations added to a Federal coal lease upon readjustment is also required by law and regulation (e.g., protection of the environment in wilderness study areas.)

The removal of the provisions allowing an objection to be filed with the Bureau of Land Management State Offices regarding lease terms and conditions for readjusted Federal coal leases will result in administrative cost savings by the Bureau of Land Management of approximately $80,000 each fiscal year.

The U.S. Court of Appeals for the Tenth Circuit held that the mandatory terms and conditions established by section 6 of FCLAA are required to be included in a Federal coal lease at the time of readjustment (*FMC Wyoming Corp. v. Hodel*, 816 F.2d 496 (10th Cir. 1987); *Coastal States Energy Co. v. Hodel*, 816 F.2d 502 (10th Cir. 1987)). In both *FMC* and *Coastal*, the Tenth Circuit affirmed the Bureau of Land Management's policy and procedures regarding readjustment of Federal coal leases issued prior to the enactment of FCLAA. The Tenth Circuit held that notice sent to a Federal coal lessee prior to the anniversary date for readjustment of the Federal coal lease, which stated

the Bureau's intent to readjust the Federal coal lease, constitutes a timely exercise of the Bureau of Land Management's right to readjust, even if the readjustment terms are not finalized until after the anniversary date. "Anniversary date" in this preamble and in these final regulations refers to the date on which the coal lease is readjusted. Prior to enactment of FCLAA, this occurred every 20 years; since enactment of FCLAA, the readjustments occur at the end of the first 20 years following lease issuance and every 10 years thereafter. The Tenth Circuit also held that when the Bureau of Land Management readjusts a pre-FCLAA Federal coal lease after 1976, the Bureau is required to impose the statutory terms enacted in FCLAA, including a royalty rate not less than 12½ percent of the value of coal produced by surface methods. In *Coastal*, the 10th Circuit applied the *FMC* holdings and also ruled that the Secretary of the Interior has "broad authority" to readjust other terms of Federal coal leases. The Tenth Circuit specifically upheld as reasonable and within the discretionary authority of Secretary of the Interior 3 readjustment terms not required by FCLAA—an increased bonding requirement, a change from "monthly to quarterly rental" [sic] payments, and the removal of the right to credit rental against royalty payments.

On October 6, 1987, FMC petitioned the U.S. Supreme Court to review the decision of the Tenth Circuit. The U.S. Supreme Court denied certiorari on January 25, 1988 (108 S.Ct. 772 (1988)). Therefore, the holdings in *FMC* and *Coastal* are dispositive on the readjustment of Federal coal leases, despite the fact that several Federal coal lessees have filed suit in the U.S. District Court for the District of Columbia in an attempt to obtain judgments conflicting with the Tenth Circuit's decisions in *FMC* and *Coastal*.

Several comments stated that during the pendency of an appeal of readjusted terms and conditions, the lessee would be denied the time value of its money. One comment stated further that "the preference of [IBLA] is to not make orders regarding payments final until an appeal has been heard * * * [and that] during the pendency of that appeal, the rentals and royalties that are not 'required by statute or regulation' should be accrued and should not become immediately payable." The lessee is not denied any time value of its money. The Tenth Circuit's *FMC* and *Coastal* decisions ratified the Department of the Interior's interpretation that the increased royalty and rental rates imposed by FCLAA are to be applied to pre-FCLAA Federal coal leases on this first post-FCLAA anniversary date. The effect of these decisions is that on the anniversary date, the increased amount of money owed to the United States because of the new rental and royalty rates is due and payable to the Federal Government at that time. The IBLA decisions relied upon in the comments (*Marathon Oil Co.*, 94 IBLA 78, September 30, 1986, and *Marathon Oil Co.*, 90 IBLA 236, January 30, 1986), interpreted the regulations of the Minerals Management Service on royalty payment during an appeal from a decision establishing the amount of royalty due. Such appeals generally involve case-specific issues. Here, the regulation rate sets out the royalty rate to include in readjusted leases, a rate which the courts have ratified. As explained elsewhere in this preamble, the public interest demands that payment at the readjusted royalty rate commence with the effective date of the readjustment:

Paragraph 3451.2(e) (1985) allowed the accrual of rentals and royalties during the pendency of an appeal to IBLA only, not after an IBLA decision had been rendered upholding the new rates. Paragraph 3452.1(e) stated, in relevant part: "However, during the pendency of the appeal, royalties and rentals shall accrue under the readjustment lease terms and shall be payable if the decision is upheld on appeal, * * *" The "appeal" referred to is limited to the administrative appeal within the Department of the Interior, not to judicial appeals of final Department of the Interior decisions (*Ark Land Co.*, 97 IBLA 241, 248–249 (1987)). That provision has been amended in this final rulemaking to state that as of the effective date of the readjustment, rentals and royalties will no longer be allowed to accrue during the pendency of any administrative review. As stated previously, as of the effective date of the readjustment, the moneys belong to the Federal Government and are due and payable at that time. See *FMC Wyoming Corp. v. Hodel*, 816 F.2d 496 (10th Cir. 1987), *cert. denied* (108 S. Ct. 772 (1988)) and *Coastal States Energy Co. v. Hodel*, 816 F.2d 502 (10th Cir. 1987). These comments were rejected.

One comment stated that the "proposed change is particularly unfair to * * * electric utilities * * * and their customers, because they will now have to pay *immediately*, through their electric bills, royalty rates which may ultimately be disapproved, or changed, either through the appeal process, regulatory changes, or by legislation." (Emphasis in original.) This is incorrect. Regardless what the applicable rental and royalty payment obligations are, they are always payable immediately, based on sales of coal that has been mined. The statutory minimum royalty rate of 12½ percent for surface-mined coal has been in the law since August 4, 1976, and the regulatory minimum royalty rate of 8 percent (but not less than 5 percent if conditions warrant) for underground-mined coal has been in the Federal coal lease forms since 1976 and in the regulations since 1979. Under the *FMC* and *Coastal* decisions, the imposition of the FCLAA rates on pre-FCLAA Federal coal leases on their first post-FCLAA anniversary date has been judicially approved. If these rates are changed in the future because of court precedent or amendments to FCLAA, the Department of the Interior will address those changes at that time. If the underground royalty rate is changed through regulations, the Department of the Interior will, at that time, address the effect of the royalty rate change on already readjusted leases with underground coal reserves.

One comment stated, "Because it is possible that the Bureau would not deliver the new terms and conditions to the lessee until nearly two years after the anniversary date (when the lessee would be required to commence payment of a readjusted rate), the lessee's account would be in arrears regarding the adjusted rental or royalty *without his knowledge.*" (Emphasis added.) Since late 1984, the Bureau of Land Management has, by internal procedure, been providing the initial notice of intent to readjust to the lessees 2 years prior to the anniversary date and the notice of readjusted terms and conditions 6 months prior to the anniversary date. Those procedures remain unchanged by this final regulation, except that the notice of readjusted terms and conditions is replaced by a decision transmitting the readjusted terms. Moreover, the initial notice of intent to readjust, which is delivered to the Federal coal lessee 2 years prior to the anniversary date, incorporates the regulations regarding the FCLAA royalty and rental rates. Accordingly, Federal coal lessees have been afforded substantial advance notice of the new royalty rates, before the anniversary date. This allows the opportunity to forecast future impacts of the readjusted royalty rate required by FCLAA and to plan accordingly. For these reasons, these two comments were rejected.

Several comments addressed the potential bifurcation in the appeal process that was contained in the proposed rulemaking. One comment stated, "Clearly, BLM's refusal to accommodate a lessee's individual situation upon readjustment deserves administrative review." The intended meaning of the proposed rulemaking was that the readjustment decision constituted the final action by the Bureau of Land Management. The provision for filing objections with the Bureau regarding special stipulations has been removed as addressed above. Therefore, no bifurcation remains in this final rulemaking. The lessee retains both the opportunity for administrative review through appeal to IBLA and judicial review to the courts having jurisdiction over the leases.

Several comments stated a desire that "agreements to post bonds to protect the interests of the government while an appeal remains pending before the courts continue in full force and effect." This final rulemaking no way amends the regulations for payment of rentals and royalties to the Minerals Management Service. However, those readjusted rentals and royalties will now be due and payable as of the effective date of the readjustment, regardless of appeal of IBLA or the filing of a civil suit. It is the Minerals Management Service's decision whether to require payment or allow lessees to post bonds to cover the accruing royalties and rentals during administrative appeal, if any. If the decision is made to allow the payment obligation to be covered by a Federal coal lease bond, then the Bureau of Land Management will then adjust the affected bond in accordance with established procedures.

One comment stated, "Bond amounts require the exercise of judgment in both methodology and actual calculation. The amount, factors considered, and how these factors are supplied should be subject to administrative review upon readjustment." The existing regulations related to bonding remain unchanged by this final rulemaking. Those regulations, and the Bureau of Land Management's right to adjust or increase the bonding requirement at the time of readjustment, were addressed by the Tenth Circuit Court of Appeals. The Tenth Circuit specifically upheld as reasonable and as within the discretionary authority of the Secretary of the Interior three readjustment terms not specifically required by FCLAA; one of those terms was an increased bonding requirement. Procedures for determining the appropriate amount of a Federal coal lease bond to be adjusted periodically to reflect the type and phase of ongoing operations, if any, are not regulatory in nature. Therefore, they are not set forth in any regulation, nor will they be in the future. However, formerly informal procedures were made standard procedures for the bonding of all Federal coal leases and have been utilized by all Bureau of Land Management State Offices since December 13, 1985. Therefore, this comment was rejected.

One comment stated that the "Tenth Circuit language in *Coastal States Energy* merely applies to that lease." This is clearly not the case. While specifically applying only to the Federal coal leases at issue in these cases, the Tenth Circuit's decisions in both *FMC* and *Coastal* are dispositive of the same legal issues for all Federal coal lease readjustments within the jurisdiction of the Tenth Circuit. This, of course, includes increased rental and royalty rates, timeliness of readjustment decisions, increased bonding requirements, the deletion of the procedure allowing rentals to be credited against royalties, and the change from quarterly to monthly royalty payments. This appears to be the reason that several lessees have filed their judicial challenges in the U.S. District Court for the District of Columbia—an attempt to obtain conflicting decisions. The Bureau of Land Management believes that the Tenth Circuit's decisions are dispositive of all of the more than 150 administrative and judicial challenges that have been taken for Federal coal lease readjustments since 1981 and those decisions will continue to be applied to all Federal coal lease readjustments.

One comment stated that "the proposed elimination of review of the imposition of all standard lease terms and conditions is inconsistent with 43 CFR 3475.1. This rule allows for modification of standard terms or conditions not required by statute or regulation." The provisions of the Final Coal Lease Form, that have been in use by all Bureau of Land Management State Offices since March 30, 1984 (see 49 FR 12753), are all required by statute or regulation. See the earlier discussion on the Final Federal Coal Lease Form. Therefore, § 3475.1 is not inconsistent with this final rulemaking. This comment was rejected.

One comment stated that "BLM has not articulated any reason that the existing provision has caused any hardship on the agency. For instance, have substantial amounts of accrued royalties become uncollectible after appeals are decided?" As of June 30, 1988, outstanding accrued rentals and royalties from all readjusted Federal coal leases totaled approximately $134,615,000, an increase of $11,000,000 in the previous 3 months, with an approximate outstanding interest balance of more than $20,000,000. Of the $134,615,000, at least one half is to be returned to the affected States as payments in lieu of taxes. It is estimated that at least one Federal coal lessee may have to declare bankruptcy when all of its appeals have been exhausted, a situation that could have been avoided had the rentals and royalties been paid in a timely manner instead of having been allowed to accrue since the effective date of the readjustments. However, the actual factor that may result in a declaration of bankruptcy is not the owed rentals and royalties; it is the interest that has accrued during the administrative and judicial challenges. Some of this interest due has been accumulating since 1981. As a result, in one State as much as $50,000,000 in owed Federal rentals and royalties may not be fully realized.The potential default of such accruing royalties, rentals, and interest is the reason for this final rulemaking. For this reason, this comment was rejected.

One comment stated that "if BLM will retain the interest regardless of whether the protest succeeds, then BLM will have an incentive to delay its processes since it will have the interest value regardless of the ultimate outcome and that interest will increase over time." First, the Bureau of Land Management does not retain any interest; it is payable to the Treasury of the United States. The Bureau of Land Management has absolutely no incentive to seek a delay in the payment of readjusted rentals and royalties owed the Federal Government. Second, as addressed previously, especially in the response to the comment immediately preceding this one, it is the Federal coal lessees that have sought the delay in the effective date of the readjustments through administrative and judicial challenges that continue to be taken, some of which have been pending for more than 7 years.

The same comment further stated that the "problem of accrued interest may be especially acute * * * in requests for relief under Section 14 of FCLAA, 30 U.S.C. 209, which might not be processed before the royalty increase becomes effective." Requests for a royalty rate reduction pursuant to 30 U.S.C. 209 are totally separate and distinct from readjustments of Federal coal leases pursuant to 30 U.S.C. 207(a).

Such royalty rate reductions are sought for the purpose of relief from the readjusted royalty rate and cannot be made part of the readjustment document. The royalty rate in the readjusted lease terms and conditions is either the statutory *minimum* of 12½ percent or the regulatory *minimum* of 8 percent (but not less than 5 percent if conditions warrant). Royalty rate reductions are granted, when warranted under the conditions set out in 30 U.S.C. 209, to provide relief from these statutory and regulatory minimums. This comment was rejected.

This final rulemaking also makes it clear that the notification to the Governor of the affected State is by copy of the readjusted terms and conditions. Existing § 3451.1(c)(2) has also been amended editorially to reflect changes made in this final rulemaking.

The principal authors of this final rulemaking are Pamela J. Lewis and Allen B. Agnew, Division of Solid Mineral Operations, assisted by other field and Washington Office staff, staff of the Division of Legislation and Regulatory Management, all of the Bureau of Land Management, and staff of the Office of the Solicitor, Department of the Interior.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

The economic impacts of this final rulemaking will not exceed the economic threshold of Executive Order 12291 and the rulemaking will impact all Federal coal lessees equally, regardless of their size.

This final rulemaking contains no information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 3450

Coal, Government contracts, Intergovernmental relations, Mines, Public Lands—mineral resources, Reporting and recordkeeping requirements.

Under the authority of the Mineral Leasing Act (30 U.S.C. 181, *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act (30 U.S.C. 521–531), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201, *et seq.*), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, *et seq.*), Part 3450, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

J. Steven Griles,

Assistant Secretary of the Interior.

August 25, 1988.

PART 3450—[AMENDED]

1. The authority citation for Part 3450 continues to read:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351–359; 30 U.S.C. 521–531; 30 U.S.C. 1201 *et seq.*; and 43 U.S.C. 1701 *et seq.*

2. Section 3451.1 is amended by revising paragraphs (c)(2) and (e) to read as follows:

§ 3451.1 Readjustment of lease terms.

* * * * *

(c) * * *

(2) In any notification that a lease will be readjusted under this subsection, the authorized officer will prescribe when the decision transmitting the readjusted lease terms will be sent to the lessee. The time for transmitting the information will be as soon as possible after the notice that the lease shall be readjusted, but will not be longer than 2 years after such notice. Failure to send the decision transmitting the readjusted lease terms in the specified period shall constitute a waiver of the right to readjust, unless the delay is caused by events beyond the control of the Department.

* * * * *

(e) The Governor of the affected State will be sent a copy of the readjusted lease terms.

3. Section 3451.2(a), (b), (c), and (e) are revised to read:

§ 3451.2 Notification of readjusted lease terms.

(a) If the notification that the lease will be readjusted did not contain the readjusted lease terms, the authorized officer will, within the time specified in the notice that the lease shall be readjusted, notify the lessee by decision of the readjusted lease terms.

(b) The decision transmitting the readjusted lease terms and conditions to the lessee(s) of record shall constitute the final action of the Bureau of Land Management on all the provisions contained in a readjusted lease and will be provided to the lessee(s) of record prior to the anniversary date. The effective date of the readjusted lease shall not be affected by the filing of any appeal of, or a civil suit regarding, any of the readjusted terms and conditions.

(c) The readjusted lease terms and conditions shall become effective on the anniversary date;

(e) Regardless of whether an appeal is filed by the lessee(s), all of the readjusted lease terms and conditions, including, but not limited to, the reporting and payment of rental and royalty, shall be effective on the anniversary date.

[FR Doc. 88–21883 Filed 9–23–88; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6809]

Suspension of Community Eligibility; Flood Insurance; Illinois, et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

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

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance

coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 *et seq.*). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

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

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

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

§64.6 List of Eligible Communities.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date [1]
Region V—Minimal Conversions					
Illinois	Monmouth, city of, Warren County.	170676	Apr. 11, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Michigan	Bruce, township of, Chippewa County.	260375	Nov. 25, 1986, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Centerville, village of, St. Joseph County.	260509	Apr. 5, 1979, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Clark, township of, Mackinac County.	260759	Apr. 25, 1986, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Croton, township of, Newaygo County.	260468	Nov. 26, 1986, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Elk Rapids, village of, Antrim County.	260699	Nov. 3, 1976, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Evart, township of, Osceola County.	260810	Dec. 10, 1987, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Fabius, township of, Fabius County.	260781	Nov. 13, 1986, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Greenbush, township of, Alcona County.	260001	Aug. 26, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Hendricks, township of, Mackinac County.	260806	June 5, 1987, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Houghton, township of, Keweenaw County.	260799	Apr. 18, 1987, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Hudson, township of, Mackinac County.	260807	Aug. 6, 1987, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Long Lake, township of, Grand Traverse County.	260782	Nov. 25, 1986, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Marquette, city of, Marquette County.	260716	Apr. 13, 1987, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Nahma, township of, Delta County.	260688	Apr. 16, 1987, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date [1]
Do	Norvell, township of, Jackson County.	260424	July 28, 1982, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Osceola, township of, Osceola County.	260797	Apr. 4, 1987, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Otsego, township of, Allegan County.	260740	Sept. 30, 1983, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Raber, township of, Chippewa County.	260786	Dec. 16, 1986, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Reynolds, township of, Montcalm County.	260743	May 29, 1984, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Rubicon, township of, Huron County.	260789	Dec. 22, 1986, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Selma, township of, Wexford County.	260757	Apr. 7, 1986, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Stronach, township of, Manistee County.	260801	Apr. 13, 1987, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Turner, village of, Arenac County.	260550	Oct. 22, 1987, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Union, township of, Grand Traverse County.	260805	Apr. 23, 1987, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Minnesota	Browerville, city of, Todd County.	270475	Apr. 16, 1974, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Ohio	Bettsville, village of, Seneca County.	390500	Dec. 21, 1978, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Greenwich, village of, Huron County.	390282	June 23, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Russia, village of, Shelby County.	390880	June 3, 1981, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Wisconsin	Birchwood, village of, Washburn County.	550574	Feb. 26, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Couderay, village of, Sayer County.	550408	July 24, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Edgar, village of, Marathon County.	550248	July 10, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Maiden Rock, village of, Pierce County.	550327	July 25, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Oakfield, village of, Fond Du Lac County.	550139	May 14, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Plain, village of, Sauk County	550440	Dec. 23, 1974, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Reedsville, village of, Manitowoc County.	550242	June 23, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Wild Rose, village of, Waushara County.	550507	Jan. 22, 1982, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Wonewoc, village of, Juneau County.	550208	July 18, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Region X					
Washington	Lind, town of, Adams County	530003	Mar. 21, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Washtucna, town of, Adams County.	530006	Dec. 26, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Region I—Regular Conversions					
Maine	Damariscotta, town of, Lincoln County.	230216	Feb. 4, 1976, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Region II					
New York	Seneca Nation of Indians, Cattaraugus County.	361591	Feb. 24, 1977, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Region III					
Pennsylvania	Albany, township of, Berks County.	421046	Nov. 19, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Damascus, township of, Wayne County.	422163	June 9, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Lincoln, township of, Bedford County.	421344	Aug. 21, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Manchester, township of, Wayne County.	422168	Dec. 8, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Pleasantville, borough of, Bedford County.	421327	Mar. 8, 1977, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Maryland	Baltimore, city of, Independence County.	240087	Dec. 3, 1971, Emerg. Mar. 15, 1978, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Pennsylvania	Neville, township of, Allegheny County.	425385	Mar. 19, 1971, Emerg. July 7, 1972, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Virginia	Big Stone Gap, town of, Wise County.	515521	June 19, 1970, Emerg. Dec. 11, 1970, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Pennsylvania	Liberty, township of, Bedford County.	421343	May 28, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Washington, township of, Northampton County.	421156	Apr. 15, 1974, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date [1]
Region IV					
Alabama	Choctaw County, unincorporated areas.	010310	Sept. 25, 1974, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Georgia	Brantley County, unincorporated areas.	130012	Aug. 13, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Wayne County, unincorporated areas.	130417	Dec. 31, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Kentucky	Berea, city of, Madison County	210156	Apr. 22, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
North Carolina	Stokes County, unincorporated areas.	370362	Dec. 11, 1979, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Greensboro, city of, Guilford County.	375351	Apr. 3, 1970, Emerg. July 3, 1978, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
South Carolina	Eastover, town of, Richland County.	450173	June 26, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Myrtle Beach, city of, Horry County.	450109	Oct. 15, 1971, Emerg. July 5, 1977, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Region V					
Illinois	Iroquois County, unincorporated areas.	170731	Dec. 17, 1973, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Morrison, city of, Whiteside County.	170691	Morrison, city of, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Woodland, village of, Iroquois County.	170819	June 25, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Ohio	Middlefield, village of, Geauga County.	390192	Mar. 10, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Paulding, village of, Paulding County.	390438	May 6, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Illinois	Watseka, city of, Iroquois County.	170297	Dec. 10, 1974, Emerg. June 15, 1979, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Region VI					
Arkansas	Horseshoe Bend, city of, Izard County.	050256	July 2, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Louisiana	Livingston Parish, unincorporated areas.	220113	May 20, 1977, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
New Mexico	Moriarty, city of, Torrance County.	350083	Mar. 31, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Dayton, city of, Liberty County	480440	Mar. 19, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Texas	Roscoe, city of, Nolan County	481558	Aug. 13, 1979, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Oklahoma	Miami, city of, Ottawa County	400157	Nov. 29, 1974, Emerg. Dec. 16, 1980, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Region VIII					
Colorado	Teller County, unincorporated areas.	080173	Sept. 24, 1976, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Woodland Park, town of, Teller County.	080175	Apr. 23, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Westminster, city of, Adams and Jefferson Counties.	080008	July 13, 1973, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
South Dakota	Aberdeen, city of, Brown County.	460007	Apr. 9, 1973, Emerg. June 1, 1978, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Region IX					
California	Desert Hot Springs, city of	060251	June 30, 1975, Emerg. Apr. 2, 1979, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Region X					
Idaho	Mountain Home, city of, Elmore County.	160058	May 27, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Soda Springs, city of, Caribou County.	160193	July 9, 1976, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Oregon	Troutdale, city of, Multnomah County.	410184	June 13, 1974, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Washington	Almira, town of, Lincoln County	530107	July 8, 1977, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Davenport, city of, Lincoln County.	530109	June 19, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Ephrata, city of, Grant County	530051	July 18, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Lincoln County, unincorporated areas.	530106	Apr. 2, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Odessa, town of, Lincoln County.	530111	May 16, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Sprague, city of, Lincoln County.	530113	Mar. 27, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp.	Sept. 30, 1988	Sept. 30, 1988.
Do	Wilbur, town of, Lincoln County	530114	May 14, 1975, Emerg. Sept. 30, 1988, Reg. Sept. 30, 1988, Susp	Sept. 30, 1988	Sept. 30, 1988.

[1] Date certain Federal Assistance no longer Available in Special Flood Hazard Areas.
Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Harold T. Duryee,
Administrator, Federal Insurance Administration.
Issued: September 21, 1988.
[FR Doc. 88-21895 Filed 9-23-88; 8:45 am]
BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6810]

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

AGENCY: Federal Emergency Management Agency.
ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

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

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

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

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

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

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

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Oklahoma: Delaware County, unincorporated areas	400502	Aug. 2, 1988, Emerg.	Mar. 3, 1981.
Iowa: Irwin, city of, Shelby County	190249	May 1, 1975, Emerg.; July 16, 1981, Reg.; June 3, 1988, Susp.; Aug. 1, 1988, Rein.	July 16, 1981.
New York:			
Albion, village of, Orleans County	360641	May 11, 1976, Emerg.; Nov. 30, 1979, Reg.; May 17, 1988, Susp.; Aug. 2, 1988, Rein.	Nov. 30, 1979.
Richford, town of, Tioga County	361216	Aug. 10, 1976, Emerg.; May 15, 1985, Reg.; June 15, 1988, Susp.; Aug. 2, 1988, Rein.	May 15, 1985.
Iowa: Wall Lake, city of, Sac County	190504	Aug. 7, 1975, Emerg.; Sept. 1, 1986, Reg.; June 3, 1988, Susp.; Aug. 2, 1988, Rein.	Sept. 1, 1986.
Louisiana: Abita Springs, town of, St. Tammany Parish	220199	July 16, 1975, Emerg.; May 17, 1988, Reg.; May 17, 1988, Susp.; Aug. 2, 1988, Rein.	May 17, 1988.
West Virginia:			
Marion County, unincorporated areas	540097	Aug. 21, 1977, Emerg.; July 4, 1988, Reg.; July 4, 1988, Susp.; Aug. 1, 1988, Rein.	July 4, 1988.
Pax, town of, Fayette County	540032	July 8, 1975, Emerg.; Mar. 16, 1988, Reg.; Mar. 16, 1988, Susp.; Aug. 3, 1988, Rein.	Mar. 16, 1988.
Pennsylvania: Shohola, township of, Pike County	421969	Aug. 7, 1975, Emerg.; July 15, 1988, Reg.; July 15, 1988, Susp.; Aug. 3, 1988, Rein.	July 15, 1988.
Florida: Hardee County, unincorporated areas	120103	Apr. 1, 1976, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.; June 24, 1988, Rein.	May 4, 1988.
Arkansas: Benton County, unincorporated areas	050419	Apr. 29, 1988, Emerg.	Oct. 18, 1977.
Georgia: Barrow County, unincorporated areas	130497	Aug. 9, 1988, Emerg.	
North Carolina: Granite Falls, town of, Caldwell County	370414	do.	
Pennsylvania: Forksville, borough of, Sullivan County	420811	Apr. 21, 1975, Emerg.; Mar. 1, 1987, Reg.; Mar. 1, 1987, Susp.; Aug. 11, 1988, Rein.	Mar. 1, 1987.
North Carolina: Halifax County, unincorporated areas	370327	Nov. 22, 1976, Emerg.; May 5, 1981, Reg.; July 4, 1988, Susp.; Aug. 12, 1988, Rein.	May 5, 1981.
Virginia: Windsor, town of, Isle of Wight County	510295	Aug. 11, 1988, Emerg.	Apr. 15, 1977.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
New York:			
Scriba, town of, Oswego County	360663	Sept. 15, 1975, Emerg.; Sept. 16, 1982, Reg.; June 15, 1988, Susp.; Aug. 12, 1988, Rein.	Sept. 16, 1982.
Addison, village of, Stueben County	360762	Jan. 9, 1974, Emerg.; June 15, 1981, Reg.; May 17, 1988, Susp.; Aug. 12, 1988, Rein.	June 15, 1981.
North Carolina: Stantonburg, town of, Wilson County	370371	Aug. 19, 1988, Emerg.	Oct. 19, 1975.
Tennessee: Dover, town or, Stewart County	470237	do	Dec. 9, 1977.
Wisconsin: Brokaw, village of, Marathon County	550247	Jan. 16, 1975, Emerg.; June 1, 1988, Reg.; June 1, 1988, Susp.; Aug. 19, 1988, Rein.	June 1, 1988.
North Carolina: Enfield, town of, Halifax County	370115	Aug. 7, 1975, Emerg.; June 25, 1976, Reg.; July 4, 1988, Susp.; Aug. 22, 1988, Rein.	June 25, 1988.
Pennsylvania:			
East Franklin, township of, Armstrong County	421305	Apr. 22, 1975, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.; Aug. 24, 1988, Rein.	Apr. 5, 1988.
Londonderry, township of, Chester County	421484	Dec. 12, 1974, Emerg.; Apr. 5, 1988, Reg.; Apr. 5, 1988, Susp.; Aug. 24, 1988, Rein.	Apr. 5, 1988.
Maryland: Berlin, town of, Worcester County	240141	Mar. 21, 1978, Emerg.; Sept. 18, 1986, Reg.; Sept. 18, 1986, Susp.; Aug. 29, 1988, Rein.	Sept. 18, 1986.
New York: Brockport, village of, Monroe County	360411	Aug. 4, 1975, Emerg.; Apr. 23, 1982, Reg.; May 17, 1988, Susp.; Aug. 29, 1988, Rein.	Apr. 23, 1982.
Iowa: East Peru, city of, Madison County	190450	Apr. 25, 1977, Emerg.; Feb. 1, 1987, Reg.; June 3, 1988, Susp.; Aug. 28, 1988, Rein.	Feb. 1, 1987.
Oklahoma:			
Allen, town of, Pontotac County	400174	Sept. 26, 1975, Emerg.; Nov. 30, 1982, Reg.; Aug. 4, 1988, Susp.; Aug. 22, 1988, Rein.	Nov. 30, 1982.
Bennington, town of, Bryon County	400260	Oct. 23, 1980, Emerg.; Aug. 19, 1985, Reg.; Aug. 4, 1988, Susp.; Aug. 22, 1988, Rein.	Aug. 19, 1985.
Billings, town of, Noble County	400347	Sept. 8, 1983, Emerg.; June 19, 1985, Reg.; Aug. 4, 1988, Susp.; Aug. 22, 1988, Rein.	June 19, 1985.
Texas: Lumberton, city of, Hardin County	481111	May 8, 1979, Emerg.; May 8, 1979, Reg.; May 4, 1988, Susp.; Aug. 22, 1988, Rein.	Dec. 15, 1977.
Oklahoma: Covington, town of, Garfield County	400362	June 30, 1975, Emerg.; May 1, 1985, Reg.; Aug. 4, 1988, Susp.; Aug. 24, 1988, Rein.	May 1, 1988.
North Carolina: Elon College, town of, Alamance County	370411	Mar. 10, 1988, Emerg.	
Arizona: Litchfield Park, city of, Maricopa County	040128	Aug. 19, 1988, Emerg.; Aug. 19, 1988, Reg.	Apr. 15, 1988.
Region I Minimal Conversion			
New Hampshire: Middleton, town of, Stafford County	330022	Aug. 1, 1988, suspension withdrawn.	Aug. 1, 1988.
Region VI			
Texas: San Augustine County, unincorporated areas	481183	Aug. 1, 1988, suspension withdrawn.	Aug. 1, 1988.
Region I Regular Conversions			
Maine: Madison, town of, Somerset County	230126	Aug. 1, 1988, suspension withdrawn.	Aug. 4, 1988.
Region III			
Pennsylvania:			
Glasgow, borough of, Beaver County	420112	Aug. 1, 1988, suspension withdrawn.	Aug. 4, 1988.
Southampton, township of, Cumberland County	421587	do	Do.
South Newton, township of, Cumberland County	421586	do	Do.
Tulpehocken, township of, Berks County	421115	Aug. 4, 1988, suspension withdrawn.	Do.
West Carroll, township of, Cambria County	421449	do	Do.
West Virginia: Berkeley County, unincorporated areas	540282	do	Do.
Region IV			
Florida: Union County, unincorporated areas	120422	Aug. 4, 1988, suspension withdrawn.	Aug. 4, 1988.
Georgia: Fayetteville, city of, Fayette County	130431	do	Do.
Mississippi:			
Copiah County, unincorporated areas	280221	do	Do.
Georgetown, town of, Copiah County	280045	do	Do.
Region V			
Illinois: Lemont, village of, Cook County	170117	Aug. 4, 1988, suspension withdrawn.	Aug. 4, 1988.
Minnesota: Wright County, unincorporated areas	270534	do	Do.
Wisconsin: Cassville, village of, Grant County	555548	do	Do.
Region VIII			
Colorado: Boulder, city of, Boulder County	080024	Aug. 4, 1988, suspension withdrawn.	Aug. 4, 1988.
Region IX			
California:			
Kings County, unincorporated areas	060086	Aug. 4, 1988, suspension withdrawn.	Aug. 4, 1988.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
National City, city of, San Diego County	060293	do	Do.
Region X			
Oregon: Pilot Rock, city of, Umatilla County	410212	Aug. 4, 1988, suspension withdrawn	Aug. 4, 1988.
Washington: Ritzville, city of, Adams County	530005	do	Do.
Region I			
Connecticut:			
Cornwall, town of, Litchfield County	090045	Aug. 16, 1988, suspension withdrawn	Aug. 16, 1988.
Sharon, town of, Litchfield County	090053	do	Do.
Region II			
New York:			
Camden, village of, Oneida County	360993	Aug. 16, 1988, suspension withdrawn	Aug. 16, 1988.
Spring Valley, village of, Rockland County	365344	do	Do.
Region III			
Pennsylvania: Clay, township of, Huntingdon County	421687	Aug. 16, 1988, suspension withdrawn	Aug. 16, 1988.
Region IV			
North Carolina:			
Ashe County, unincorporated areas	370007	Aug. 16, 1988, suspension withdrawn	Aug. 16, 1988.
Lenoir, city of, Caldwell County	370040	do	Do.
West Jefferson, town of, Ashe County	370009	do	Do.
Region V			
Minnesota: Austin, city of, Mower County	275228	Aug. 16, 1988, suspension withdrawn	Aug. 16, 1988.
Ohio: Darbyville, village of, Pickaway County	390712	do	Do.
Wisconsin:			
Colfax, village of, Dunn County	550120	do	Do.
Oxford, village of, Marquette County	550268	do	Do.
Region VII			
Kansas:			
Atwood, city of, Rawlins County	200280	Aug. 16, 1988, suspension withdrawn	Aug. 16, 1988.
Barton County, unincorporated areas	200016	do	Do.
Nebraska: Randolph, city of, Cedar County	310397	do	Do.
Region VIII			
Colorado: Broomfield, city of, Boulder County	085073	Aug. 16, 1988, suspension withdrawn	Aug. 16, 1988.
Montana:			
Missoula County, unincorporated areas	300048	do	Do.
Missoula, city of, Missoula County	300049	do	Do.
Region IX			
California: Trinity County, unincorporated areas	060401	Aug. 16, 1988, suspension withdrawn	Aug. 16, 1988.
Region X			
Oregon:			
Columbia County, unincorporated areas	410034	Aug. 16, 1988, suspension withdrawn	Aug. 16, 1988.
Deschutes County	410055	do	Do.
Scappoose, city of, Columbia County	410039	do	Do.
Vernonia, city of, Columbia County	410041	do	Do.
Region V Minimal Conversions			
Michigan: Berrien, town of, Berrien County	260733	Aug. 16, 1988, suspension withdrawn	Aug. 16, 1988.
Region X			
Oregon: Spray, city of, Wheeler County	410248	Aug. 16, 1988, suspension withdrawn	Aug. 16, 1988.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

Issued: September 21, 1988.

Harold T. Duryee,

Federal Insurance Administration.

[FR Doc. 88-21896 Filed 9-23-88; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 80

[PR Docket No. 86-424; FCC 88-285; RM-5166]

Maritime Services; Amendment of the Maritime Services Rules To Allow Ships To Use 406.025 MHz Emergency Position Radiobeacons for Distress Alerting and Search and Rescue Functions

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This rule allows the voluntary use of 406.025 MHz emergency radiobeacons by ships for distress situations. This action was initiated by a petition for rulemaking filed by the National Oceanic and Atmospheric Administration. The effect of this rule is to permit ships to voluntarily carry emergency position indicating radiobeacons which are monitored by satellites participating in the COSPAS/SARSAT system.

EFFECTIVE DATE: October 24, 1988. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 24, 1988.

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

FOR FURTHER INFORMATION CONTACT: William P. Berges or Robert H. McNamara, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, adopted August 24, 1988, and released September 9, 1988. The full text of this Commission decision including the adopted rule is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The full text of this decision including the proposed rule change may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. On November 12, 1986, the Commission released a *Notice of Proposed Rule Making*, PR Docket No. 86-424, FCC 86-479, 51 FR 43749, which proposed to amend the rules in the maritime services to allow ships to use emergency radiobeacons operating on 406.025 MHz on a voluntary basis. The Commission took this action in response to a petition for rulemaking (RM-5166) filed by the National Oceanic and Atmospheric Administration of the United States Department of Commerce (NOAA). Authorization to use the frequency 406.025 MHz will give ships access to the COSPAS/SARSAT satellite system which monitors wide areas on a global basis for distress signals and alerts search and rescue units to provide assistance. The *Report and Order* discusses the comments filed to these proposals and amends the Rules to allow ships to use 406.025 MHz emergency position indicating radiobeacons for distress alerting and search and rescue functions.

Paperwork Reduction

2. The rule changes adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Regulatory Flexibility Statement

3. We certify that section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) does not apply to this rulemaking proceeding because it will not have a significant economic impact on a substantial number of small entities. The rule changes adopted herein will have a minor beneficial effect on the maritime community by permitting the use of 406.025 MHz radiobeacons by ships to enhance the detection of emergency signals by satellites. These changes are voluntary and will not cause significant economic impact on any entity.

Authority Citation

4. This *Report and Order* is issued under the authority of 47 U.S.C. 154(i) and 303 (g) and (r).

Ordering Clauses

5. It is ordered, that Part 80 of the Commission's Rules is amended as shown below.

6. It is further ordered, that these rule amendments shall become effective as indicated in the **"EFFECTIVE DATE"** paragraph of this document.

7. It is further ordered, that this proceeding is terminated.

8. A copy of the *Report and Order* will be served on the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 2

Frequency allocations, Treaties.

47 CFR Part 80

Marine safety, Ship stations, Incorporation by reference.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

Amended Rules

Parts 2 and 80 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

Authority: Sec. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. In § 2.106 footnote "649" is revised to read as follows:

§ 2.106 Table of Frequency allocations.

* * * * *

International Footnotes

* * * * *

649 The use of the band 406-406.1 MHz by the mobile-satellite service is limited to low-power satellite emergency position-indicating radiobeacons (see also Article 38).

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. In § 80.15 a new paragraph (e)(3) is added to read as follows:

§ 80.15 Eligibility for station license.

* * * * *

(e) *EPIRB stations.*

* * * * *

(3) A 406.025 MHz EPIRBs may be used by any ship required by U.S. Coast Guard regulations to carry an EPIRB or by any ship that is equipped with a VHF ship radio station.

3. In § 80.203 paragraphs (f), (g), (h), and (i) are changed to (g), (h), (i), and (j) respectively and a new paragraph (f) is added to read as follows:

§ 80.203 Authorization of transmitters for licensing.

* * * * *

(f) In addition to the type acceptance requirements contained in Part 2 of this chapter applicants for type acceptance of 406.025 MHz radiobeacons must also comply with the type acceptance procedures contained in § 80.1061 of this part.

* * * * *

4. In § 80.205, paragraph (a) footnote 12 is revised to read as follows:

§ 80.205 Bandwidth.

(a) * * *

12 Applicable to radiolocation and associated telecommand ship stations operating on 154.585 MHz, 159.480 MHz, 160.725 MHz, 160.785 MHz, 454.000 MHz, and 459.000 MHz, and to emergency position indicating radiobeacons operating in the 406.000–406.1000 MHz frequency band.

5. In § 80.207 paragraph (d) is amended by adding after 243.000 MHz under "Distress, Urgency and Safety" and frequency 406.025 MHz as follows:

§ 80.207 Classes of emission.

* * * * *

(d) * * *

Types of stations	Classes of emission
* * * * *	
Distress, Urgency and Safety: [8] [9]	
* * * * *	
406.025 MHz	G1D
* * * * *	

[8] For direction finding requirements see § 80.375.
[9] Includes distress emissions used by ship, coast, EPIRB's and survival craft stations.

6. In § 80.209 subparagraph (a)(7) is revised to read as follows:

§ 80.209 Transmitter frequency tolerances.

(a) * * *

Frequency bands and categories of stations	Tolerances applicable until Jan. 1, 1990, for transmitters installed before Jan. 2, 1987	Tolerances applicable [1] to new transmitters installed after Jan. 1, 1987, and to all transmitters after Jan. 1, 1990
* * * * *		
(7) *Band 400–466 MHz:*		
(i) EPIRBs operating on 406.025 MHz.	5	5
(ii) On-board stations.	5	5
* * * * *		

[1] Transmitters authorized prior to January 2, 1990, with frequency tolerances equal to or better than those required after this date will continue to be authorized in the maritime services provided they retain type acceptance and comply with the applicable standards in this part.

7. In § 80.223 paragraph (d) is revised to read as follows:

§ 80.223 Special requirements for survival craft stations.

* * * * *

(d) When an EPIRB is part of a survival craft station the EPIRB portion must be capable of transmitting on the frequencies and emissions contained in Subpart V of this chapter.

8. Section 80.1051 is revised to read as follows:

§ 80.1051 Scope.

This subpart describes the technical and performance requirements for Classes A, B, C, and S, and Categories 1, 2, and 3 EPIRB stations.

9. A new § 80.1061 is added to read as follows:

§ 80.1061 Special requirements for 406.025 MHz EPIRBs.

(a) Notwithstanding the provisions in paragraph (b) of this section, 406.025 MHz EPIRBs must meet all the technical and performance standards contained in the Radio Technical Commission for Maritime Services document titled "RTCM Recommended Standards for 406 MHz Satellite Emergency Position-Indicating Radiobeacons (EPIRBs)" dated July 31, 1987, with editorial updates of December 31, 1987 (RTCM Recommended Standards). This RTCM document is incorporated by reference in accordance with 5 U.S.C. 552(a). The document is available for inspection at Commission headquarters in Washington, DC or may be obtained from the Radio Technical Commission for Maritime Services, Post Office Box 19087, Washington, DC 20036.

(b) The 406.025 MHz EPIRB must contain as an integral part a "homing" beacon operating only on 121.500 MHz that meets all the requirements described in the RTCM Recommended Standards document described in paragraph (a) of this section. The 121.500 MHz "homing" beacon must have a continuous duty cycle that may be interrupted during the transmission of the 406.025 MHz signal only.

(c) Prior to submitting a type acceptance application for a 406 MHz radiobeacon, the radiobeacon must be certified by a test facility recognized by one of the COSPAS/SARSAT Partners that the equipment satisfies the design characteristics associated with the measurement methods described in Appendix B of the RTCM Recommended Standards.

Additionally, the radiobeacon must be certified by a test facility recognized by the U.S. Coast Guard to certify that the equipment complies with the U.S. Coast Guard environmental and operational requirements associated with the test procedures described in Appendix A of the RTCM Recommended Standards. Information regarding the recognized test facilities may be obtained from Commandant (G–MVI), U.S. Coast Guard, 2100 2nd Street SW., Washington, DC 20593–0001

(1) After a 406.025 MHz EPIRB has been certified by the recognized test facilities the following information must be submitted in duplicate to the Commandant (G–MVI), U.S. Coast Guard, 2100 2nd Street SW., Washington, DC 20593–0001:

(i) The name of the manufacturer or grantee and model number of the EPIRB;

(ii) Copies of the certificate and test data obtained from the test facility recognized by a COSPAS/SARSAT Partner showing that the radiobeacon complies with the COSPAS/SARSAT design characteristics associated with the measurement methods described in Appendix B of the RTCM Recommended Standards;

(iii) Copies of the test report and test data obtained from the test facility recognized by the U.S. Coast Guard showing that the radiobeacon complies with the U.S. Coast Guard environmental and operational characteristics associated with the measurement methods described in Appendix A of the RTCM Recommended Standards; and

(iv) Instruction manuals associated with the radiobeacon, description of the test characteristics of the radiobeacon including assembly drawings, electrical

schematics, description of parts list, specifications of materials and the manufacturer's quality assurance program.

(2) After reviewing the information described in paragraph (1) above the U.S. Coast Guard will issue a letter stating whether the radiobeacon satisfies all RTCM Recommended Standards.

(d) A type acceptance application for a 406.025 MHz EPIRB submitted to the Commission must also contain a copy of the U.S. Coast Guard letter that states the radiobeacon satisfies all RTCM Recommended Standards, a copy of the technical test data, and the instruction manual(s).

(e) An identification code, issued by the National Oceanic and Atmospheric Administration (NOAA), the United States Program Manager for the 406.025 MHz COSPAS/SARSAT satellite system, must be programmed in each EPIRB unit to establish a unique identification for each EPIRB station. With each marketable EPIRB unit the manufacturer or grantee must include postage pre-paid registration card addressed to: NOAA, NESDIS, USMCC Data Base Manager, Federal Building 4, Washington, DC 20233. The registration card must include the EPIRB identification code and must request the owner's name, address, telephone number and type of ship.

(f) To enhance protection of life and property it is imperative that each 406.025 MHz EPIRB be registered with NOAA. Therefore, in addition to the identification plate or label requirements contained in §§ 2.925, 2.926, and 2.1003 of the Commission's Rules, each 406.025 MHz EPIRB must be provided on the outside with a clearly discernible permanent plate or label containing the following statement: "It is extremely important that the owner of this 406.025 MHz EPIRB registers the NOAA identification code contained on this label with the National Oceanic and Atmospheric Administration (NOAA) whose address is: NOAA, NESDIS, USMCC Data Base Manager, Federal Building 4, Washington, DC 20233."

(g) For 406.025 MHz EPIRBs whose identification code can be changed after manufacture, the identification code shown on the plate or label must be easily replaceable using commonly available tools.

[FR Doc. 88-21488 Filed 9-23-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-375; RM-5827; RM-6153; RM-6222]

Radio Broadcasting Services; Geneva, AL, Freeport and Southport, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Shelley Broadcasting Co., Inc., substitutes Channel 229C2 for Channel 228A at Geneva, Alabama, and modifies its license for Station WRJM-FM to specify the higher powered channel. Channel 229C2 can be allotted to Geneva in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.1 kilometers (12.5 miles) south to avoid a short-spacing to unused Channel 226A at Fort Rucker, Alabama, and to Station WBBK-FM, Channel 228A, Blakely, Georgia. The coordinates for this allotment are North Latitude 30-52-05 and West Longitude 85-48-03. The conflicting proposals of Gary Randall Billingsley and Paul H. Reynolds for the allotment of Channel 229A to Freeport, Florida, and Southport Broadcasting Company for the allotment of Channel 229A to Southport, Florida, have been dismissed. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 31, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-375, adopted August 23, 1988, and released September 15, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Alabama is amended by revising the entry for Geneva by deleting Channel 228A and adding Channel 229C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-21877 Filed 9-23-88; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-383; RM-5933]

Radio Broadcasting Services; Crockett, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 228C2 for Channel 228A at Crockett, Texas, and modifies the license of Station KBHT(FM) to specify operation on the higher class co-channel, at the request of B.S.T. Broadcasting, Inc., as that community's first wide coverage area FM service. Station KBHT(FM)'s current transmitter site can be used for the upgrade at coordinates 31-17-33 and 95-28-20. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 3, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-383, adopted August 30, 1988, and released September 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subject in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by

deleting Channel 228A and adding Channel 228C2 at Crockett.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-21872 Filed 9-23-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-325; RM-5822]

Radio Broadcasting Services; Wenatchee, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 285C2 for Channel 285A at Wenatchee, Washington, and modifies the license of Station KYJR(FM) to specify operation on the higher class co-channel, as requested by Wenatchee Wireless Works, as that community's second wide coverage area FM service. Although a site restriction of 6.3 kilometers (3.9 miles) southeast of Wenatchee at coordinates 47-23-46 and 120-14-27 is required, the channel can be utilized at the station's current transmitter site at coordinates 47-28-44 and 120-12-49 as a special negotiated short-spaced allotment. Concurrence has been obtained from the Canadian government. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 31, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-325, adopted August 24, 1988, and released September 15, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended for Lihue, Hawaii by adding Channel 228C1 and removing Channel 228A.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-21875 Filed 9-23-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-27; RM-6041]

Radio Broadcasting Services; Howland, ME

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 280A to Howland, Maine, as that community's first FM broadcast service, in response to a petition filed by Robert J. Cole. Petitioner filed supporting comments. Concurrence of the Canadian government has been obtained for the allotment of Channel 280A at Howland. The coordinates for Channel 280A are 45-14-18 and 68-39-42. With this action, this proceeding is terminated.

EFFECTIVE DATES: October 31, 1988; the window period for filing applications will open on November 1, 1988, and close on December 1, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-27, adopted August 23, 1988, and released September 15, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Maine is amended by adding Howland, Channel 280A.

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47 CFR Part 73

[MM Docket No. 87-487; RM-5965]

Radio Broadcasting Services; Lihue, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 228C1 for Channel 228A at Lihue, Hawaii, and modifies the Class A license for Station KQNG-FM to specify Channel 228C1, at the request of the licensee, John Hutton Corporation. The coordinates for Channel 228C1 at Lihue are 21-59-33 and 159-24-24. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 31, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-487, adopted August 24, 1988, and released September 15, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Washington, by deleting Channel 285A and adding Channel 285C2 at Wenatchee.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-21874 Filed 9-23-88; 8:45 am]

BILLING CODE 6712-01-M

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-21876 Filed 9-23-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-592; RM-6022]

Radio Broadcasting Services; Iron River and Kingsford, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 256C2 for Channel 257A at Iron River, Michigan, in response to a petition filed by Northland Advertising, Inc. We shall also modify the license of Station WIKB-FM to specify operation on Channel 256C2 in lieu of Channel 257A in accordance with § 1.420(g) of the Commission's Rules. The coordinates for Channel 256C2 are 46-06-03 and 88-32-23. To accommodate the substitution of channels at Iron River, it is necessary to substitute Channel 251A for Channel 255A at Kingsford. Channel 255A was allotted to Kingsford in MM Docket 84-231 and made available for application in Window Number 11. Edward and Alice Slater hold the construction permit for Channel 255A at Kingsford (BPH 860507PN). The substitution at Kingsford can be made in compliance with the Commission's spacing requirements at the authorized site for Channel 255A. The coordinates for Channel 251A at Kingsford are 45-49-57 and 88-04-51. Northland Advertising, Inc. has indicated a willingness to reimburse the permittees for Channel 255A for all reasonable costs incurred in changing frequencies. Since the communities of Iron River and Kingsford are both within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 3, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-592, adopted August 29, 1988, and released September 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete test of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Michigan is amended by removing Channel 257A and adding Channel 256C2 at Iron River and by removing Channel 255A and adding Channel 251A at Kingsford.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-21878 Filed 9-23-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-607; RM-6040]

Radio Broadcasting Services; Jesup and Swainsboro, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Bohanan Associated Broadcasters, Inc., substitutes Channel 252C1 for Channel 252A at Jesup, Georgia, and modifies its license for Station WZKS(FM) to specify the higher powered channel. In addition, the Commission modifies the license of Station WJAT-FM, Swainsboro, Georgia, to specify operation on Channel 251A in lieu of its present Channel 252A. Channel 252C1 can be allotted to Jesup in compliance with the Commission's minimum distance separation requirements with a site restriction of 42 kilometers east to accommodate petitioner's desired transmitter site. The coordinates for this allotment are North Latitude 31-37-46 and West Longitude 81-26-19. Channel 251A can be allotted to Swainsboro in compliance with the Commission's minimum distance separation requirements and can be used at Station WJAT-FM's present transmitter site. The coordinates for this allotment are North Latitude 32-35-08 and West Longitude 82-21-42. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 3, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-607, adopted August 23, 1988, and released September 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the FM Table of Allotments for Georgia is amended by removing Channel 252A and adding Channel 252C1 for Jesup and removing Channel 252A and adding Channel 251A for Swainsboro.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-21879 Filed 9-23-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 236

[FRA Docket No. SI-5, Notice No. 2]

RIN 2130-AA54

Automatic Train Control; Departure Testing

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: In response to section 9 of the Rail Safety Improvement Act of 1988, FRA is amending its railroad signal regulations (49 CFR Part 236) to require that whoever performs any test required by FRA rules of an automatic train stop,

train control, or cab signal apparatus prior to entering territory where such apparatus will be used shall certify in writing that such test was properly performed. The certification will be kept and maintained in the same manner and place as the daily inspection report for that locomotive.

EFFECTIVE DATE: December 21, 1988.

FOR FURTHER INFORMATION CONTACT: S.H. Stotts, Jr., Chief, Standards Division, Office of Safety, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone 202–366–0495), or Mark Tessler, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone 202–366–0628).

SUPPLEMENTARY INFORMATION: On June 22, 1988, the President signed into law the Rail Safety Improvement Act of 1988 (RSIA) (Pub. L. 100–342).

Section 9 of the RSIA amends section 202 of the Federal Railroad Safety Act of 1970 by adding new subsections (j), (k), and (l) dealing with automatic train control and related systems.

New subsection 202(j) provides for the issuance of rules as may be necessary to require that "(1) whoever performs any test required by the Secretary of an automatic train stop, train control, or cab signal apparatus prior to entering territory where such apparatus will be used, shall certify in writing that such test was properly performed; and (2) that such certification shall be kept and maintained in the same manner and place as the daily inspection report for that locomotive."

On August 26, 1988, FRA issued proposed rules (53 FR 33789) implementing the statutory mandate. A public hearing was held in Washington, DC, on September 9, 1988, at which four organizations were represented.

FRA proposed to amend 49 CFR 236.587 by revising subsection (d) to require that everyone, including engineers, performing the test certify in writing that the test was properly performed. The certification and the results of the test will be posted in the cab of the locomotive in the same manner as is presently done for daily locomotive inspections under 49 CFR Part 229.

Under current practice, the departure test results are retained if the test is performed by someone other than the engineer. The individual performing the test would normally carry a copy of the test results off the locomotive for filing with his or her supervisory official. The proposed rule change was meant to ensure the consistency of this procedure, whether the test is performed by an engineer or some other individual, by requiring that the certification and test results be left at the test location for filing with the appropriate supervisory official. In the situation in which the ATC or a related safety system is cut out between the initial terminal and the equipped territory, and in the situation where a locomotive's initial terminal does not have a railroad office, the proposed rules would have permitted the engineer to transmit the test information to the dispatcher, who would keep a written record of the test results and the name of the employee performing the test. Thus, in all situations, a copy of the test results and certification would be in both the locomotive cab and a railroad office, thereby ensuring the integrity of the records.

FRA also proposed a technical change to § 236.110. This section governs the manner in which railroad signal test results are recorded and filed by the railroad. FRA proposed to require that § 236.110 apply to tests made in compliance with § 236.587.

Four organizations presented testimony at the public hearing and one organization submitted a written statement regarding the proposed rule: Consolidated Rail Corporation (Conrail), National Railroad Passenger Corporation (Amtrak), Long Island Railroad (LIRR), Brotherhood of Locomotive Engineers (BLE), and the Railway Labor Executives Association (RLEA).

Conrail objected to the requirement that train and engine crews leave a copy of the certification and test results at the test location. The railroad recommended that the engineer retain an extra copy of the documentation and forward it to proper supervisors upon arrival at the final terminal. However, Conrail's proposal would not achieve the result FRA's proposal was meant to accomplish—always having a copy of the test documentation *outside* the locomotive cab to ensure that the data could be retrieved even in the event that an accident destroyed the interior of the locomotive cab.

Section 236.587(d)(2) was meant to address Conrail's problem while still retaining documentation outside the locomotive cab. When locomotives are tested at outlying areas where it is difficult or impossible to leave a copy of the test documentation at the test location, the railroad has the option to transmit the test results by radio to someone who then can record the results and the name of the person conducting the test. The proposed rule designated the dispatcher as the person to whom such test results should be transmitted. However, in response to comments made by the LIRR and Conrail, we are providing a railroad greater flexibility in determining who should receive and record the information. The final rule requires the information to be transmitted to the dispatcher or to *one* other designated official at each test location. We are limiting the number of alternative contact persons to one in order to ensure that there is no confusion at any location as whom to contact. A railroad is free to order its employees to always contact the dispatcher pursuant to § 236.587(d)(2). It would also be permissible for a railroad to designate a specific official at location "x" as the official to be contacted. If that offical is unavailable, however, the engineer *must* then either contact the dispatcher or comply with paragraph 587(d)(1) by leaving a copy of the test documentation at the test location. Unavailability of the individual designated under paragraph 587(d)(2) does not relieve the engineer of the obligation to comply with the provisions of this section 587(d) by contacting the dispatcher or leaving a copy of the test documentation at the test location.

The LIRR also commented on the increase in forms that will be generated by this rule. It should be noted that only when a test result is left at the test location is it necessary to file that documentation under § 236.110. The written record made by the dispatcher or other designated person is sufficient record under § 236.587(d)(2).

Another item commented on was the record retention period imposed on the railroads. The proposed rule included departure test results among other signal system test results that are governed by § 236.110. Among other requirements, that section requires that all test results be retained until the next test result is filed, but in no case less than one year. Both Conrail and Amtrak representatives felt that a 92-day retention period is adequate. We agree. The final rule has been revised to reflect the shorter retention period.

Both the BLE and RLEA recommended that the departure testing rules not apply to their members until federal training standards on proper testing are imposed on the railroads and the employees trained in proper testing procedures. We emphasize that this rule change does not in any way change the manner in which required safety tests are performed, nor does it in any way change who shall perform the tests. The only change is in the certification and administrative handling of the results of those tests. We are not aware of any widespread problem in the quality of the training of employees in the proper testing of safety

devices, nor in the performance of the tests themselves. As a consequence, we will not impose any additional burdens on the railroads in this regard.

Regulatory Impact

This rule has been evaluated in accordance with existing policies and procedures, and is considered to be non-major under Executive Order 12291 but significant under DOT policies and procedures (44 FR 11034, February 26, 1979). This rule's economic impact is so minimal that preparation of a full regulatory evaluation is not warranted. It is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

FRA has further concluded that the rule will have no significant impact on the environment.

The rule has information collection requirements. FRA is submitting these information collection requirements to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980. The record keeping requirements contained in this rule are not required until such approval has been obtained.

This rule will not have substantial effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 236

Railroad safety, Signal systems.

The Final Rule

Therefore, in consideration of the foregoing, FRA amends 49 CFR Part 236 as follows:

PART 236—[AMENDED]

1. The authority citation for Part 236 continues to read as follows:

Authority: 49 App. U.S.C. 26, as amended; 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49 (f), (g), and (m).

2. By revising § 236.110 to read as follows:

§ 236.110 Results of tests.

Results of tests made in compliance with §§ 236.109 to 236.102, inclusive; 236.376 to 236.387, inclusive; 236.576; 236.577; and 236.586 to 236.589, inclusive, shall be recorded on preprinted or computerized forms provided by the railroad. Such forms shall show the name of the railroad, place and date, equipment tested, results of tests, repairs, replacements, adjustments made, and condition in which the apparatus was left. Each record shall be signed by the employee making the test and shall be filed in the office of a supervisory official having jurisdiction. Results of tests made in compliance with § 236.587 shall be retained for 92 days. Results of all other tests listed in this section shall be retained until the next record is filed but in no case less than one year.

3. By revising § 236.587(d) to read as follows:

§ 236.587 Departure test.

* * * * *

(d)(1) Whoever performs the test shall certify in writing that such test was properly performed. The certification and the test results shall be posted in the cab of the locomotive and a copy of the certification and test results left at the test location for filing in the office of the supervisory official having jurisdiction.

(2) If it is impractical to leave a copy of the certification and test results at the location of the test, the test results shall be transmitted to either (i) the dispatcher or (ii) one other designated individual at each location, who shall keep a written record of the test results and the name of the person performing the test. These records shall be retained for at least 92 days.

Issued in Washington, DC, on September 20, 1988.

John H. Riley,

Administrator.

[FR Doc. 88–21897 Filed 9–23–88; 8:45 am]

BILLING CODE 4910–06–M

Federal Highway Administration

49 CFR Parts 383 and 391

[FHWA Docket No. MC–88–8]

RIN 2125–AB68

Commercial Driver's License Program; Waivers; Final Disposition

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of final disposition.

SUMMARY: A variety of parties requested exemptions from the commercial driver testing and licensing standards (49 CFR 383), and other provisions of the Commercial Motor Vehicle Safety Act of 1986 (Title XII of Pub. L. 99–570, 100 Stat. 3207–170). The specific waiver requests considered were for drivers of six different groups:

(1) Farm vehicles;

(2) Firefighting equipment;

(3) Military vehicles;

(4) Transit buses;

(5) Certain vehicles used by railway companies; and

(6) Public utility vehicles.

The FHWA has decided that it is not contrary to the public interest to grant waivers to firefighters and certain farmers from the Federal commercial driver's license regulations (49 CFR Part 383). The effect of this action is to allow States the option to exclude these groups in State implementation of the Federal regulations.

The FHWA also finds that it not contrary to the public interest to waive non-civilian operators of military equipment owned or operated by the Department of Defense (DoD), including the National Guard, from the requirements of 49 CFR Part 383. For the other groups (transit buses, certain railway vehicles and public utility vehicles) the FHWA has determined that waviers from the requirements will not be granted, at this time, so as to lessen the possibility of diminishing commercial vehicle safety and assuring that the public interest continues to be served.

EFFECTIVE DATE: September 26, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Jill L. Hochman, Office of Motor Carrier Standards, (202) 366–4001; or Mr. Paul L. Brennan, Office of the Chief Counsel, HCC–20, (202) 366–1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Commercial Driver's License (CDL) program was established by the Commercial Motor Vehicle Safety Act of 1986 (Act). The Act requires that the driver of a commercial motor vehicle (1) have a single driver's license, (2) be tested for the knowledge and skills needed to drive a commercial motor vehicle, and (3) be disqualified from driving a commercial vehicle if the driver commits certain criminal or traffic violations.

The provisions of the Act apply both to interstate and intrastate drivers involved in trade, traffic, and transportation. The Act includes many persons and vehicles, particularly those in intrastate commerce, not previously covered by Federal Motor Carrier Safety Regulations (FMCSRs).

Waiver Procedures

Section 12013 of the Act provides the Secretary with the authority to waive any class of drivers or vehicles from any or all of the provisions of the Act or the implementing regulations, if the Secretary determines that the waiver is not contrary to the public interest and does not diminish the safe operation of commercial vehicles. Under Federal regulations (49 CFR 383.7), a person may petition the Federal Highway Administrator for a waiver. The Administrator may deny the petition if it is determined to be without merit. If the Administrator determines that the petition may have merit, the FHWA will publish a notice in the **Federal Register** to provide opportunity for comment. After analyzing the comments, the Administrator may grant or deny the waiver. The FHWA will then publish a notice of its decisions on the petition in the **Federal Register.**

Response to Notice

In response to the notice published in the **Federal Register** on April 14, 1988 (53 FR 12504), the FHWA received over 1,700 comments regarding commercial driver's license waivers. The majority were from individual farmers or firefighters supporting the waiver. Over 140 letters from members of the Congress also expressed support for waivers for these two groups. Most of the information presented referred to the issue of whether or not public interest would be served by allowing waivers.

Farmers

The FHWA has determined that it is not contrary to the public interest to allow States, at their discretion, to waive certain farmers from the requirements of the CDL program. Absent a waiver, all farmer operators of commercial vehicles of over 26,000 pounds and of vehicles carrying hazardous material in amounts sufficient to be placarded would be subject to the CDL program. Based on the farm vehicle operations safety data available to FHWA at this time, comments to the docket, and the potential burdens imposed on the farmers, FHWA believes that a waiver for farmers involved in small scale farm to market transportation movements is appropriate. The FHWA believes that it is contrary to public interest to waive long haul farm vehicle movements, as well as persons that provide for-hire trucking services to the farm community.

To ensure that any waiver is focused on legitimate farm to market operations by farmers, the group of farm vehicle operators the State may waive is limited to those operators of a farm vehicle which is:

—Controlled and operated by a farmer;
—Used to transport either agricultural products, farm machinery, farm supplies or both to or from a farm;
—Not used in the operations of a common or contract motor carrier; and
—Used within 150 miles of the person's farm.

This limited exemption will provide States with the flexibility to address the concern of farmers, yet retain the safety enhancements included in the Act and implementing regulations for commercial motor vehicle drivers.

In response to the petitions and the subsequent notice, over 700 comments were submitted from either individual farmers or groups, such as the American Farm Bureau, which represent farmers. Of these, the vast majority were in favor of waiving farmers from the CDL requirements and believe that the farm operations are generally different from typical "over the road" business. They note that farm vehicles are used for shorter, more localized trips and farm vehicles are used seasonally. Also, farm vehicles are usually driven by family members or seasonal employees who drive only incidentally, i.e., to pick-up and deliver supplies, or during the harvest season, to farming. The FHWA traditionally has recognized these differences in farm operations and has included exceptions in the Federal Motor Carrier Safety Regulations for certain farm operations.

In response to the petitions requesting waivers for farmers, the FHWA, in cooperation with the Department of Agriculture (DOA), requested the University of Michigan Transportation Research Institute (UMTRI) to examine the data relating to farm truck safety. The UMTRI study developed farm and non-farm safety estimates for vehicles in weight classes of 10,000 pounds Gross Vehicle Weight Ratings (GVWR) and higher. These estimates were developed using the information in the Census Bureau's Transportation Inventory and Use Survey (TIUS) along with samples of the original TIUS vehicle registration data from R.L. Polk Company, information developed by UMTRI through their own surveys and data in the Trucks Involved in Fatal Accidents File (TIFA), and recent UMTRI nationwide studies of truck operations.

The UMTRI estimates show that farmers constitute a very small proportion of fatal truck accidents and are significantly under-involved in such accidents for the vehicle weight classes for which data is readily available, i.e., classes of 10,000 pounds GVWR and higher. For example, in 1982 (the most recent year the TIUS is available), fatal farm accident involvement for various vehicle weight classes compared to fatal non-farm accident involvement as follows:

INVOLVEMENTS IN FATAL ACCIDENTS

[Fatalities per hundred million miles traveled—1982]

	Farm vehicles	Nonfarm vehicles
Vehicles above 10,000 pounds GVWR	2.95	6.64
Vehicles above 26,000 pounds GVWR	2.81	7.25

Thus, the accident rate for farm vehicles in 1982 was less than one half of the rate for non-farm vehicles. The FHWA has no information which would indicate a change in these accident rates for more recent years. (The FHWA will continue to monitor and re-evaluate data and information related to farm vehicle safety to determine whether the waiver for such operation continues to be justified on a safety basis.)

Data available from the Research and Special Programs Administration's Hazardous Materials Information System indicates that there have been no fatalities reported by farmers related to light or heavy vehicles, which carry hazardous materials. Also, the 1982 farm vehicle fatal accident involvement rate is about the same as that for passenger vehicles. Thus, the FHWA believes that farm vehicle operations, both for small and heavy vehicles, have a better safety record than average non-farm commercial motor vehicle operations. The FHWA concludes that a waiver of this group would not result in a reduction in the safe operation of a commercial motor vehicle. The FHWA will continue to monitor the data to ensure that the waiver continues to be warranted from a safety standpoint. More specifically, the FHWA will re-evaluate farm vehicle accident rates when the 1987 TIUS data becomes available. That data collection is now underway, and processing should be completed by early 1990.

Several commenters suggested that inclusion of farmers in the CDL system may impede the overall effectiveness of the CDL program or overburden many States' administrative processes. The National Transportation Safety Board (NTSB) also recognized the potential problem of adding farmers to the CDL program in its comments to the docket. The NTSB stated:

If the presence of a large number of farmers in the commercial drivers's license system (CDL) causes the testing and licensing standards to be less stringent, then the overall safety impact could be reduced.

The FHWA estimates that there may be 1.1 million farm vehicles included in the definition of a commercial motor vehicle. Of these, only 178,000 vehicles are believed to be heavy vehicles above 26,000 pounds GVWR. The majority of the farm vehicles included in the definition are pick-up trucks or other light weight trucks (under 26,001 pounds GVWR) which are used to transport pesticides, fertilizers, or other products integral to farming; but which are defined as hazardous materials. Based on this number of vehicles, the FHWA estimates that there may be as many as 1.8 to 3.0 million drivers that may from time to time operate a vehicle meeting the definition of a commercial motor vehicle.

The FHWA believes that the imposition of the CDL program on the entire farm community, even spread over the next four years, could be contrary to the public interest. As indicated at the time of the request for comments on the CDL waivers, the Department indicated that it wanted to take a reasonable common-sense approach in implementing the CDL legislation. Thus, the FHWA endorses an exemption that would be allowed for short haul farm to market movements. The waiver would not be available to operators of farm vehicles who operate over long distances, operate to further a commercial enterprise, or operate under contract or for-hire for farm cooperatives or other farm groups. Such operators drive for a living and do not drive only incidentally to farming.

Firefighters and Operators of Emergency Equipment

Over 900 comments were from groups of individuals who addressed waivers for firefighters. Of these, most supported a waiver and stated that firefighters, especially volunteers, would find the financial burden imposed by the commercial driver license requirements onerous. Most firefighting organizations have extensive initial training as well as retraining requirements for their equipment operators.

Therefore, the FHWA believes it not contrary to the public interest to waive operators of firefighting and other emergency equipment from the requirements of the Act. Drivers who operate emergency or fire equipment which is necessary to the preservation of life or property or the execution of emergency governmental functions perform under emergency conditions and are not subject to normal traffic regulation. These vehicles are equipped with audible and visual signals and are operated by a person in the employ of a volunteer or paid fire organization. Emergency equipment such as a fire truck, hook and ladder truck, foam or water transporter or other vehicles used only in response to emergencies are included.

Military Personnel

FHWA has determined that military vehicles when operated by military personnel in pursuit of military purposes are beyond the intended coverage of the Act. Virtually all States currently make no effort to regulate operators of military vehicles, and FHWA finds no public interest or safety benefit to be gained by requiring such State regulations at present. The DoD administers the Defense Traffic Safety Program which assures adequate training and supervision of military drivers.

Although the FHWA does not collect data for civilian versus non-civilian accidents, the DoD provided some information in its docket submission. These data show that during 1987 approximately 10,500 DoD vehicles of commercial design (i.e., vehicles which would meet the definition of a commercial motor vehicle) traveled 52 million miles on and off military installations. These vehicles were involved in 3 fatal accidents.

The FHWA believes that commercial vehicle safety will not be diminished if all non-civilian operators of equipment owned or operated by the Department of Defense are waived from the Act's requirements. This waiver applies to any active duty military personnel, and members of the reserves and national guard on active duty including personnel on full-time national guard duty, personnel on part-time training and national guard military technicians (civilians who are required to wear military uniforms and are subject to the code of military justice).

Transit Operatore, Railroad Employees, Public Utility Employees and Other Groups

The information available to the FHWA at this time indicates that these commercial motor vehicle operations are conducted by a wide variety of business entities, which are subject to varying degrees of regulation by Federal, State, and local authorities. These groups do not specifically deal with the protection of life and property. Moreover, these groups operate a large number of vehicles nationwide under all types of conditions (i.e., in urban, suburban, and rural areas; on highways and other roads; with varying speeds and traffic congestion; and in all weather conditions and at all times of day). For example, transit buses carry millions of passengers each day with the ever present threat of an accident involving a high loss of life. Public utility and railroad employees both operate large or hazardous material laden vehicles both day and night throughout the year, sometimes under the most adverse weather conditions. Finally, these vehicles are operated by drivers who tend to be highly trained to provide other services and who may receive extensive job safety training, but who oftentimes have limited opportunities to acquire knowledge of, and develop skills for, the safe operation of commercial motor vehicles. Accordingly, the FHWA is unable to conclude that granting waivers to these groups at this time will not be contrary to the public interest or will not diminish the safe operations of commercial motor vehicles.

Further, many of the commenters requested waivers because of misunderstandings about the requirements of the CDL program. Some of the major areas of confusion that were reflected in the comments to the docket relate to the price of the CDL, age requirements to obtain a CDL and the inter-relationship(s) between the new CDL requirements and the more traditional Federal requirements found in Parts 390–399. With respect to the price for a CDL, many commenters believe the CDL will cost $450.00. Under Part 383, each State will establish its own fee structure. One State, which currently has a classified licensing and testing system in place that is very similar to the types of licensing and testing required under the CDL program, charges between $38.00 and $42.00 for a license which is good for four years. The FHWA does not expect that a $450.00 fee or an almost 10-fold increase in the price of a similar license is likely. With respect to the minimum age to obtain a CDL, many commenters believe all CDL holders need to be 21 years of age under Part 383. However, drivers who do not operate in interstate commerce and even certain interstate farm vehicle drivers do not have to be 21 years old unless that is the minimum age their State requires. Finally, many commenters seem to believe that CDL holders need to keep log books or that vehicles operated by a CDL holder automatically become subject to the Federal vehicle inspection requirements. Under the CDL program, this is not the case unless the driver or the vehicle is already subject to such requirements. Thus, the FHWA

believes that when such groups gain a complete understanding of the requirements as included in the Final Rule issued on July 21, 1988, many of their concerns may be resolved.

When the promulgation of all requirements of the Act is completed, FHWA intends to amend the regulation to reflect these waivers.

Authority: Title XII of Pub. L. 99-570, 100 Stat. 3207; 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48.

Issued on: September 19, 1988.

Robert E. Farris,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 88-21891 Filed 9-23-88; 8:45 am]

BILLING CODE 4910-22-M

Proposed Rules

Federal Register
Vol. 53, No. 186
Monday, September 26, 1988

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1941

Proposed Revisions to Provisions of the Supplemental Appropriations Act

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its authority that became effective on March 16, 1988, for making annual production loans to delinquent borrowers. This action is taken as a means of affording the public an opportunity to consider three changes concerning the making of annual operating (OL) loans to delinquent borrowers for production purposes, or the granting of subordinations, to delinquent borrowers to enable them to obtain annual operating credit from another lending source. The first change would revise the standards for eligibility for these loans. The second change would ease the requirements for obtaining non-disturbance agreements. The third change would prohibit such loans to borrowers who have been considered for loan restructuring (writedown of FmHA debt) under the provisions of new subpart 1951–S of the agency's regulations.

DATE: Written comments must be submitted on or before October 26, 1988.

ADDRESS: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250. The Regulatory Impact Analysis Statement (RIA) and all written comments made pursuant to this notice, will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mark Falcone, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250, telephone (202) 475–4019.

SUPPLEMENTARY INFORMATION:

Classification

This action was reviewed under USDA procedures established in Department Regulation 1512–1, which implements Executive Order 12291, and was determined to be major because it will result in an annual effect on the economy of $100 million or more.

Summary of RIA

The USDA developed a Regulatory Impact Analysis (RIA), which was summarized in the final rule, and was published in the **Federal Register** (53 FR 8738–8740) dated March 16, 1988. Any changes that may be made as a result of this proposed rule could have an impact on the RIA. If so, the RIA will be revised when the final rule is published.

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Farm Operating Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Programs Affected

These changes effect the FmHA operating loan program, as listed in the Catalog of Federal Assistance:

10.406—Farm Operating Loans.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Discussion of Proposed Rule

The regulations authorizing the making of annual operating loans or granting subordinations to delinquent borrowers were published to comply with a provision in Chapter X of Title I of the Supplemental Appropriations Act for 1957 (Pub. L. 100–71), dated July 11, 1987. Three changes are being considered. The first would change the existing "conditions" for eligibility to examples. The second would make less restructive the need to obtain non-disturbance agreements. These proposed changes are based on public expresisons that the existing regulation is more restrictive than the policy in effect under FmHA Administrative Notice (AN) No. 1113 (1960, dated November 30, 1984, to which the law required FmHA must adhere. The third proposed change would amend the regulations by restricting eligibility of these loans to only those borrowers whose accounts have not had the benefit of being fully considered for restructuring, pursuant to Subpart S of Part 1951. That regulation, which itself was published as a proposed rule on May 23, 1988, provides major debt restructuring alternatives for delinquent FmHA farm loan borrowers, including a debt write-down program, which provides a long-term solution rather than a short-term solution for delinquent borrowers.

On July 11, 1987, the President signed Pub. L. 100–71. One of the provisions of the Act, (in Chapter X of Title I, 101 Stat. 429) states, in its entirety, as follows:

> Hereafter, funds appropriated or available to the Farmers Home Administration under this or any other Act to make or to service farm loans shall be available for continuing assistance to delinquent borrowers on the basis of the policies contained in Farmers Home Administration Announcement Number 1113–1960, dated November 30, 1984.

The Administrative Notice to which this legislation refers is AN No. 1113 (1960), which reestablished, for the 1985 crop year, a policy then known as the "Continuation Policy." Since 1982, FmHA had policies to make loans to delinquent borrowers, if certain conditions could be met. These policies permitted making new production loans (or subordinating FmHA's liens so that others could make such loans) to borrowers whose delinquent accounts

could not be resolved through the use of FmHA's servicing programs. In November 1985, the Continuation Policy was discontinued.

Under the Continuation Policy, FmHA had refrained from foreclosure or other debt collection processes for those borrowers who received new loans, until after those new loans became due and payable. Those borrowers who received loans under that policy, came to be known as Continuation loan policy borrowers; and they had to satisfy certain conditions. Among those conditions were, to quote from the 1984 AN:

"2. The borrower has been unable to pay accounts as scheduled. Examples of this would be:

A. Reduction in essential income from a nonfarm job due to unemployment or underemployment of the borrower-operator or spouse caused by circumstances beyond the borrower's control; or

B. Reduction in income due to illness, injury or death of an individual borrower, or, in the case of an entity borrower, the stockholder, member or partner who operates the farm; or

C. Reduction in income due to a natural disaster(s), an outbreak of uncontrollable disease, and/or uncontrollable insect damage which caused severe loss of agricultural production that reduced the repayment ability of the borrower to the degree that scheduled payments cannot be made."

On November 16, 1987, FmHA published proposed regulations for public comment concerning this section of Pub. L. 100–71 (52 FR 43766–68). In the proposed regulations, FmHA converted the examples illustrating the second criterion in the 1984 AN into outright limitations. The proposed rule stated: "2. The borrower has been unable to pay accounts as scheduled due to :", and then set out the language of the three examples.

FmHA made this change of language in an attempt to use clearer language and better form in its new regulations than it had used in the 1984 AN. This change in wording was not thought to establish a substantive difference from the progrm existing as a result of the 1984 AN, since the 1984 "examples" were intended to be interpreted as conditions. It was thought that using the language in the proposed rule would be more effective than republishing the 1984 AN itself, since the law refers to the "policies" contained in the 1984 AN, as well as to the AN itself.

No comments were received on this point during the 30-day comment period following the publication in the **Federal Register** of the proposed regulation; and the Agency reviewed those comments it did receive and published its final rule on this subject on March 6, 1988.

Shortly before the final rule was published in the **Federal Register**, however, the Administrator received a letter from a member of the public alleging that the replacement of the "examples" with conditions in the proposed rule (which feature was incorporated into the final rule) made the regulations more restrictive than the 1984 AN. Specifically, this letter argued that:

"The AN merely lists three examples of reasons why the borrower has been unable to pay his/her account. In the proposed regulations, those three examples are converted into rules. The proposed regulations narrow the AN by providing that a borrower may be eligible for assistance under this policy only if his/her inability to pay was caused by one of those three reasons. Certainly, it is impermissible for the final regulations to be more restrictive than AN 1113.1960."

The same member of the public made some extensive comments on the proposed FmHA regulations published in the **Federal Register** on May 23, 1988. These regulations were published as a result of the Agricultural Credit Act of 1987. Several of the comments mentioned referred to FmHA Institution 1941–A, § 1941.14, Annual production loans to delinquent borrowers. All of FmHA's Farmers Program regulations were published in the proposed regulations, even though some sections, including the above mentioned section, had no proposed changes.

In addition to the repeated comment requesting FmHA to change condition to "examples", the commenter in another letter, dated June 21, 1988, also requested FmHA to expand the "Continuation Policy" to include the following:

(1) Notify all delinquent borrowers who inquire about or submit applications for operating loans or subordinations, by letter, about the availability of such loan to delinquent borrowers.

(2) Automatically reconsider assistance under this program to all borrowers whose applications for operating loans or subordinations have been denied since July 11, 1987 (the date of enactment of this authority).

(3) Change the present sentence on non-distrubance agreements to the way it was stated in AN No. 1113 (1960).

FmHA does not plan to adopt the first comment as it is not necessary to notify delinquent borrowers about the program. If they apply for assistance and cannot show repayment on all their debts after considering all servicing options, County Supervisors will automatically consider their applications for this program.

FmHA does not plan on adopting the second comment, as the regulations and the 1984 Administrative Notice (AN) do not have retroactive provisions. There is no indication that the law contemplates or requires retroactive consideration.

FmHA does plan to adopt the third comment so as not to place a greater burden on the farmer than the requirements in AN No. 1113 (1960).

Any comments submitted on this proposed rule should provide as much evidence as possible on the impact of the program as it was implemented in 1984 and 1985 in the commenter's State or locality. The statute specifically requires FmHA to adopt the "policies" that were used in 1984–1985 to administer this special loan authority; and the goal is thus to adapt the rules for use in 1988 and beyond as nearly as possible to the practices in effect at that time.

Another purpose of this notice is to propose an amendment to the existing regulations which will limit the availability of "Continuation Loans" to only those farm borrowers whose loans and accounts have not been fully considered for restructuring, in accordance with Subpart S of Part 1951, which regulation contains provisions of section 353 of the Consolidated Farm and Rural Development Act (CONACT). This portion of the CONACT was added as a result of section 615 of the Agricultural Credit Act of 1987, Pub. L. 100–233. As stated in the proposed rule, published in the **Federal Register**, (53 FR 18392–18523) on May 23, 1988, FmHA plans to accelerate the borrower's account once a final decision has been made that the borrower is not eligible for debt write-down. Debt write-down is a provision of Pub. L. 100–233. Present FmHA regulations state that once a borrower's account is accelerated, the borrower will not be considered for a Continuation Loan.

When the Continuation Policy was first established in 1982, it was intended to operate for only one year. However, the policy was extended one year at a time, with some modifications, as a "temporary" solution, for each of the 1983, 1984, and 1985 production years. In all three of those years, it was expected the financial condition of borrowers would improve in the subsequent year, or that a new law(s) would be enacted which would enable resolution of the financial difficulties of these borrowers. For this reason, FmHA did not, in the 1984 AN or its predecessor ANs, come to grips with the problem of how to deal with these delinquent borrowers on a longer-term basis. While the AN made it clear that the Continuation Policy

established each year was to extend through that production year only, it did not establish, in advance, clear rules for dealing with borrowers whose financial situations did not improve, but got progressively worse.

Since a new law has been enacted affording FmHA borrowers substantial debt restructuring options, FmHA proposes to limit the making of Continuation Loans to only those borrowers who have not had the opportunity to be fully considered for these new options. Unlike the situation which existed in 1982–1985, FmHA now has a powerful statutory mechanism which it must use, at a borrower's request, in attempting to resolve the borrower's financial problems on a long term basis. If a borrower has encountered financial difficulties, caused by forces beyond his/her control, the Continuation Loan will be available to enable the borrower, if otherwise eligible, to operate for another year while his or her situation can be further evaluated and fully considered for debt restructuring/writedown. The borrower will also be able to seek administrative review of the restructuring decision from a new, independent, appellate body within the Agency. If the restructuring process results in written-down or defeated debt, the borrower will no longer be "delinquent" once the process has been completed; and the Continuation Loan would not be used, nor would it be necessary, since the borrower should be eligible for operating credit under normal terms.

If the borrower's financial situation is so serious that it cannot be resolved, even through the restructuring process, then under this proposal, FmHA would not extend another Continuation Loan once the restructuring process, including the administrative appeal, was completed. If the borrower did not qualify for restructuring/writedown, FmHA would then proceed to accelerate the borrower's account, including any outstanding Continuation Loan, immediately after the Continuation Loans came due. The FmHA would not consider the borrower for another Continuation Loan, as that would prevent all collection activities for another production year.

The FmHA realizes that the policies resulting from this proposed rule will, in many instances, cause the borrower to discontinue farming. However, FmHA has no reasonable alternative. Under the terms of the Continuation Loan policy presently in effect, a borrower is eligible for consideration of a Continuation Loan only if the FmHA loan(s) is delinquent and cannot be brought current through use of FmHA's various servicing options. These borrowers are specifically made eligible even though they cannot repay the installment(s) or the balance due on any other existing indebtedness, including debts owed to FmHA and to other providers of credit. Also, once a Continuation Loan has been made, FmHA is precluded from proceeding with acceleration and foreclosure until after the Continuation Loan comes due and the progress or further deterioration of the operation is known.

Under a purely mechanical application of the present rule, the borrower could, conceivably, receive a new Continuation Loan year after year even though the borrower had not made any payment on any other debt the preceding production year, including last year's Continuation Loan.

While this result was perhaps acceptable during the 1982–85 period, when the new section 353 loan restructuring authority did not exist, FmHA does not believe the Congress, in enacting the new Continuation Policy, intended to establish a back-door annual grant program, but rather intended the new law to be used to assist troubled borrowers during the period in which Congress could complete its consideration of the then-pending debt restructuring legislation. This consideration ultimately resulted, on January 6, 1988, in the enactment of the new restructuring authorty. During the 1988 calendar year, this new authority will be implemented through regulations and used to resolve the situations of troubled borrowers on a more permanent basis.

As in the case of the element of this Notice dealing with eligibility for Continuation Loans, FmHA is not committed to the terms of this particular proposal. All comments and views on this extremely difficult question will be considered carefully, in an effort to construct a system which will effectuate the underlying Congressional purposes reflected in the Continuation Loan legislation and the Agricultural Credit Act provisions.

List of Subjects in 7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

Therefore, as proposed, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1941—OPERATING LOANS

1. The authority citation for Part 1941 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Operating Loan Policies, Procedures and Authorizations

2. Amend introductory text of § 1941.14(a)(2) to read as follows:

§ 1941.14 Annual production loans to delinquent borrowers.

* * * * *

(a) * * *

(2) The borrower has been unable to pay accounts as scheduled. Examples of this would be:

* * * * *

3. Amend § 1941.14 by revising paragraph (a)(6) and adding new paragraph (a)(7) to read as follows:

§ 1941.14 Annual production Loans to delinquent borrowers.

* * * * *

(a) * * *

(6) Non-disturbance agreements will be obtained from other creditors, as necessary.

(7) FmHA has not completed the process (including any administrative appeal and further review) of considering the borrower for debt restructuring, pursuant to Subpart S of Part 1951 of this chapter.

* * * * *

Date: August 2, 1988.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 88–21900 Filed 9–23–88; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2800, 2810, 2880, 9230, and 9260

[AA–330–08–4211–02–NCPH]

Rights-of-Way, Trespass, and Law Enforcement—Criminal; Amendment To Provide Procedures for Action on Unauthorized Use, Occupancy, or Development, of the Public Lands for Transportation and Other Systems or Facilities Which Could Be Allowed by a Temporary Use Permit, or Right-of-Way

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would provide procedures for addressing unauthorized use, occupancy, or development of the public

lands for uses and facilities that require authorization pursuant to Title V of the Federal Land Policy and Management Act (43 U.S.C. 1761–1771), the Act of August 28, 1937 (43 U.S.C. 1181a and 1181b) or section 28 of the Mineral Leasing Act (30 U.S.C. 185). These procedures will enhance protection for public lands and resources from unauthorized use and assure a proper monetary return for use, occupancy, or development of the public lands and resources as well as provide a penalty for violation.

DATE: Comments should be submitted by November 25, 1988. Comments not received or postmarked by the above date may not be considered in the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

Comments will be available in Room 5555 of the above address for public review during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Oscar Anderson, (202) 343–5441.

SUPPLEMENTARY INFORMATION: The existing regulations in 43 CFR Parts 2800, 2810, and 2880 establish the procedures for obtaining authorization in the form of a right-of-way or temporary use permit to use the public lands for the construction, operation, maintance and termination of transportation and other systems or facilities. The authorizations are issued only for those uses that conform to statute, regulations, Bureau of Land Management plans, policies, objectives, and resource management programs. This proposed rulemaking would not apply where a public highway right-of-way was obtained pursuant to Revised States 2477 or a right-of-way for ditches and canals was obtained pursuant to Revised Statute 2339. Except for those public uses that quality for exception under other statutes (county roads, REA funded projects, etc.) the subject authorizations require the payment of land use fees.

Unauthorized use of the public lands requiring a right-of-way, temporary use permit, or road use fee causes results in significant financial losses to the United States because of nonpayment of rental fees, road use, amortization, and maintenance fees, as well as because of the cost to repair damage to public land resources from misuse, abuse and negligence. Investment and operations of the unauthorized user are also at risk. The Bureau of Land Management has tried to resolve cases involving unauthorized use of the public lands, most of which are unintentional, by working with the individual and negotiating an amicable solution. In most circumstances, the problems are resolved, but there are instances where negotiation does not work, particularly where the unauthorized use has been knowingly and willfully committed. For such instances, a procedure is needed to allow the United States to obtain payment for the use of the land and, where appropriate, to impose civil and/or criminal penalties against those making unauthorized use of the public lands. This proposed rulemaking provides this procedure.

Unauthorized use is a trespass against the United States. Trespass can be either willful or nonwillful. Willful trepass cases are processed under civil and/or criminal authorities while nonwillful cases are processed under civil and/or administrative authorities. For nonwillful cases, the Bureau of Land Management would first attempt to reach an amicable solution before resorting to the civil or criminal procedures provided by this proposed rulemaking. In those instances were unauthorized use, occupancy, or development of the public lands and improvements is verified, the Bureau of Land Management would consider authorizing the use, occupancy, or development provided it conforms to Bureau programs, policies, and objectives and is in compliance with State and local requirements.

In those instances where law enforcement action is required for the prevention or abatement of an unauthorized use or development, such action would be aggressively pursued by the Bureau. When appropriate, the Bureau would seek cooperation of Federal, State, and local law enforcement agencies.

The provisions of this proposed rulemaking are applicable only to activities which are required to be authorized under 43 CFR Parts 2800, 2810, and 2880, and do not apply to other types of unauthorized use, such as grazing trespass, mineral trespass, timber trespass. In addition Part 9239.7–1 is amended to include all public lands as defined in the Federal Land Policy and Management Act (FLPMA).

The principal author of this proposed rulemaking is Oscar Anderson, Division of Rights-of-Way, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rulemaking would provide procedures for use by the Bureau of Land Mangement in carrying out its responsibility to protect the public lands, improvements, and resources from unauthorized use, occupancy, or development. the procedures will be equally applicable to all entities, regardless of size, found to be making an unauthorized use, occupancy, or development of the public lands, improvements, and resources.

This rule does not contain information collection requirements which require appoval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

Under the authority of sections 303, 309, and 501–511 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, 1740, 1761–1771) it is proposed to amend Parts 2800, 2810, 2880, Group 2800, and Parts 9230, and 9260, Group 9200, Subchapter 1, all of Chapter II of Title 43 of the Code of Federal Regulations, as set forth below:

PART 2800—RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

1. The authority citation for Part 2800 is revised to read:

Authority: 43 U.S.C. 1733, 1740, and 1761–1771.

2. Section 2800.0–3 is revised to read:

§ 2800.0–3 Authority.

Sections 303, 309, and 501–511 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733, 1740, 1761–1771) authorize the Secretary of the Interior to issue regulations providing for the use, occupancy, and development of the public lands through permits, easements, and rights-of-way.

3. Section 2800.0–5 is amended by adding the definition of "trespass" as subparagraph (u), "willful trespass" as subparagraph (v), "nonwillful trespass" as subparagraph (w), and "unnecessary or undue degradation" as subparagraph (x).

§ 2800.0-5 Definitions.

* * * * *

(u) "Trespass" means any use, occupancy or development of the public lands that requires a right-of-way, temporary use permit or other authorization pursuant to the regulations of this part and that has not been so authorized, or that is beyond the scope and specific limitations of such authorization or that causes unnecessary or undue degradation.

(v) "Willful trespass" means the voluntary or conscious trespass as defined at § 2801 of this title. The term does not include an act made by mistake or inadvertence. The term includes actions taken with criminal or malicious intent. A consistent pattern of trespass may be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of mistake or inadvertence. Conduct which is otherwise regarded as being knowing or willful does not become innocent through the belief that the conduct is reasonable or legal.

(w) "Nonwillful trespass" means a trespass, as defined at § 2801.3(a) of this title, committed by mistake or inadvertence.

(x) "Unnecessary or undue degradation" means surface disturbance greater than that which would normally result when the same or a similar activity is being accomplished by a prudent person in a usual, customary, and proficient manner that takes into consideration the effects of the activity on other resources and land uses, including those resources and uses outside the area of activity. This disturbance may be either nonwillful or willful as described in § 2800.0-5(v) through (w), depending upon the cirumstances.

4. Section 2801.3 is revised to read:

§ 2801.3 Unauthorized Use, Occupancy, or Development.

(a) Any use, occupancy, or development of the public lands that requires a right-of-way, temporary use permit, or other authorization pursuant to the regulations of this part and that has not been so authorized, or that is beyond the scope and specific limitations of such an authorization, or that causes unnecessary or undue degradation, is prohibited and shall constitute a trespass.

(b) Anyone determined by the authorized officer to be in violation of paragraph (a) of this section shall be notified in writing of such trespass and shall be liable to the United States for:

(1) Reimbursement of all costs incurred by the United States in the investigation and termination of such trespass;

(2) The rental value of the lands, as provided for in § 2803.1-2 of this title, for the current year and past years of trespass, or where applicable, the cumulative value of the current use fee, amortization fee, and maintenance fee as determined by the authorized officer for unauthorized use of any road administered by the BLM; and

(3) Rehabilitating and stabilizing any lands that were harmed by such trespass. If the trespasser does not rehabilitate and stabilize the lands within the time set by the authorized officer in the notice, he/she shall be liable for the costs incurred by the United States in rehabilitating and stabilizing such lands.

(c) In addition to the provisions of paragraph (b) of this section, the following penalties shall be assesed by the authorized officer:

(1) For all nonwillful trespass which is not resolved within 30 days of receipt of a written demand under paragraph (a) of this section—twice the rental value, or twice the charges for road use, amortization and maintenance which have accrued since the inception of the trespass;

(2) For repeated nonwillful or willful trespass—3 times the rental value, or 3 times the charges for road use, amortization and maintenance which have accrued since the inception of the trespass.

(d) In no event shall settlement for trespass computed pursuant to paragraphs (b) and (c) of this section be less than the processing fee for a Category I application as provided for in § 2808.3-1 of this title for nonwillful trespass or less than 3 times this value for repeated nonwillful or knowing and willful trespass. In all cases the trespasser shall pay whichever is the higher of the computed penalty or minimum penalty amount.

(e) Failure to satisfy the requirements of § 2801.3(b) of this title shall result in the denial of any right-of-way, temporary land use, road use application or other lands use request filed but not yet granted until there has been compliance with the provisions of § 9239.7-1 of this title.

(f) Any person adversely affected by a decision of the authorized officer issued under this section may appeal that decision under the provisions of Part 4 of this title.

(g) In addition to the civil penalties provided for in this part, any person who knowingly and willfully violates the provisions of § 2801.3(a) of this title may be tried before a United States magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both, as provided by section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and § 9262.1 of this title.

PART 2810—TRAMROADS AND LOGGING ROADS

1. The authority citation for Part 2810 is revised to read:

Authority: 43 U.S.C. 1181a, 1181b, 1732, 1733, and 1740.

2. Section 2812.0-3 is revised to read:

§ 2812.0-3 Authority.

Sections 303, and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, and 1740), and the Act of August 28, 1937 (43 U.S.C. 1181a and 1181b), provide for the conservation and management of the Oregon and California Railroad lands and the Coos Bay Wagon Road lands and authorize the Secretary of the Interior to issue regulations providing for the use, occupancy, and development of the public lands through permits and rights-of-way.

3. Section 2812.1-3 is revised to read:

§ 2812.1-3 Authorized use, occupancy or development.

Any use, occupancy, or development of the Revested Oregon and California Railroad and Recoveyed Coos Bay Wagon Road Grant Lands (O & C) lands (as is defined in 43 CFR 2812.0-5(e)), for tram roads without an authorization pursuant to this subpart, or which is beyond the scope and specific limitations of such an authorization, or that causes unnecessary or undue degradation, is prohibited and shall constitute a treapas. Anyone determined by the authorized officer to be in violation of this section shall be notified of such treapass in writing and shall be liable to the United States for all costs and payments determined in the same manner as set forth at § 2801.3, Part 2800 of this title.

PART 2880—RIGHTS-OF-WAY UNDER THE MINERALS LEASING ACT

1. The authority citation for Part 2880 is revised as follows:

Authority: 30 U.S.C. 185, Section 28, unless otherwise noted.

2. Section 2881.3 is revised to read:

§ 2881.3 Unauthorized use, occupancy or development.

Any use, occupancy, or development of the public lands that requires a right-of-way, temporary use permit, or other authorization pursuant to the regulations in this part, and that has not been so

authorized, or that is beyond the scope and specific limitations of such authorization, or that causes unnecessary or undue degradation, is prohibited and shall constitute a trespass. Anyone determined by the authorized officer to be in trespass on the public lands shall be notified in writing of such trespass and shall be liable to the United States for all costs and payments determined in the same manner as set forth at § 2801.3, Part 2800 of this title.

PART 9230—TRESPASS

1. The authority citation for Part 9230 is revised to read:

Authority: 43 U.S.C. 1732, 1733, 1740, and 1761–1771.

2. Section 9239.7–1 is revised to read:

§ 9239.7–1 Public lands.

The filing of an application under Part 2800, 2810, or 2880, of this chapter does not authorize the applicant to use or occupy the public lands for right-of-way purposes, except as provided at §§ 2800.0–5(M), 2802.1(d) and 2882.1, until written authorization has been issued by the authorized officer and received by the applicant. Any unauthorized occupancy or use of public lands or improvements for right-of-way purposes constitutes a trespass against the United States for which the trespasser is liable for costs, damages, and penalties as provided in §§ 2801.3, 2812.1–3, and 2881.3, of this title. No new permit, license, authorization or grant of any kind shall be issued to a trespasser until:

(a) The trespass claim is fully satisfied; or

(b) The trespass files a bond conditioned upon payment of the amount of damages determined to be due the United States; or

(c) The authorized officer determines in writing that there is a legitimate dispute as to the fact of the trespasser's liability or as to the extent of his liability and the trespasser files a bond in an amount determined by the authorized officer to be sufficient to cover payment of a future court judgment in favor of the United States.

PART 9260—LAW ENFORCEMENT—CRIMINAL

The authority citation for Part 9260 is revised to read:

Authority: 16 U.S.C. 433; 16 U.S.C. 460*l*–6a; 16 U.S.C. 670j; 16 U.S.C. 1246(i); 16 U.S.C. 1338; 18 U.S.C. 1851–1861; 43 U.S.C. 315(a); 43 U.S.C. 1061, 1063; 43 U.S.C. 1733.

2. Subpart 9262 is revised to read:

§ 9262.0 Authority.

43 U.S.C. 1732, 1733, 1740, 1761–1771.

§ 9262.1 Penalties for unauthorized use, occupancy, or development of public lands.

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) any person who knowingly and willfully violates the provisions of §§ 2801.3(a), 2812.1–3, 2881.3, or 2920.1–2(a) of this title, by using public lands without the requisite authorization, may be tried before a United States magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both.

J. Steven Griles,

Assistant Secretary of the Interior.

August 8, 1988.

[FR Doc. 88–21884 Filed 9–23–88; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–434, RM–6416]

Radio Broadcasting Services; Flora, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by John H. Pembroke, proposing the allotment of FM Channel 248A to Flora, Mississippi, as that community's first FM broadcast service. There is a site restriction 9.4 kilometers (5.8 miles) northwest of the community. The coordinates used for this allotment are 32–36–03 and 90–23–14.

DATES: Comments must be filed on or before November 14, 1988, and reply comments on or before November 29, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John H. Pembroke, P.O. Box 22604, Jackson, Mississippi 39205.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–434, adopted August 18, 1988, and released September 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR § 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–21882 Filed 9–23–88; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–433, RM–5994, RM–6181]

Radio Broadcasting Services; Brookville and Punxsutawney, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; request for supplemental information.

SUMMARY: The Commission requests further comments on the competing expression of interest in use of Channel 288B1 at Brookville, Pennsylvania, filed by Genas Broadcasting. At the request of Strattan Broadcasting, the Commission issued the *Notice of Proposed Rule Making*, 2 FC Rcd 6329 (1987), proposing the substitution of Channel 288B1 for Channel 204A at Brookville, Pennsylvania, and the modification of its license for Station WMKX to specify the higher powered channel and the substitution of Channel 281A for Channel 288A at Punxsutawney, Pennsylvania, and the modification of the license of Renda Radio, Inc. for Station WPXZ–FM to specify Channel 281A. In addition, the Request for Supplemental Information

states policy concerning the acceptability of competing expressions of interest for non-adjacent upgrade proposals, noting that expressions of interest should include both a certificate of service and, in appropriate cases, a statement of intent to reimburse a licensee or permittee for expenses incurred in changing channels in order to accommodate a proposed allotment. No further competing expressions of interest in use of Channel 288B1 at Brookville or counterproposals thereto will be accepted since an opportunity for such filings has already been provided.

DATES: Comments must be filed on or before November 10, 1988, and reply comments on or before December 12, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert L. Olender, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street, NW., Suite 203, Washington, DC 20036 (Counsel to Strattan Broadcasting); Irving Gastfreund, Esq., Kaye, Scholer, Fierman, Hays & Handler, 1575 Eye Street, NW., Washington, DC 20005 (Counsel to Renda Radio); and Mr. Joseph Nascone, Genas Broadcasting, Inc., 817 Elm Spring Road, Pittsburg, Pennsylvania 15243.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Request for Supplemental Information, MM Docket No. 87–433, adopted August 29, 1988, and released September 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–21880 Filed 9–23–88; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–453, RM–6456]

Radio Broadcasting Services; Franklin, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Franklin Community Radio Company, proposing the allotment of Channel 297A to Franklin, Texas, as that community's first local FM service. The allotment can be made in compliance with the Commission's minimum distance separation requirements from the reference coordinates at 31–01–36 and 96–29–00.

DATES: Comments must be filed on or before November 14, 1988, and reply comments on or before November 29, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: L.A. Worden, Franklin Community Radio Co., 11502 Canyon Trail, Houston, Texas 77066. (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–453, adopted August 24, 1988, and released September 19, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Motion of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–21881 Filed 9–23–88; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 53, No. 186
Monday, September 26, 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

Forest Service

Weed Pest Management Program; Idaho Panhandle National Forests

AGENCY: Notice of Intent To Prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts of implementing a week control program on the forest to manage undesirable, including noxious, weeds on the Forest.

The Forest Plan for the Idaho Panhandle National Forests (IPNF) includes a decision that noxious weed control will be based on an integrated pest management (IPM) approach, which includes, but is not limited to, the current practices of inventory, monitoring, some handpulling, and some biological control. Use of herbicides will also be considered in this environmental impact statement. Cooperation with counties, other agencies, and private landowners is a requirement of the Forest Plan and will be included in the EIS.

An environmental analysis has been completed for control of noxious and other undesirable weeds on the forest. Based on public involvement and identified issues it was decided that an environmental impact statement should be completed. The environmental analysis including the public involvement and information will be used to complete the environmental impact statement. A range of alternatives for management of noxious and other undersirable weeds will be considered. One of these will be a no action alternative. Others that will be considered will include cultural treatment techniques such as mechanical and handpulling, biological, chemical (herbicide) and integrated pest management methods. The agency invites written comments and suggestions on the scope of the analysis and opportunities for management of weeds on the Forest. The agency also gives notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected parties are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by November 1, 1988.

ADDRESS: Send written comments to William E. Morden, Forest Supervisor, Idaho Panhandle National Forests, 1201 Ironwood Drive, Coeur d'Alene, Idaho 83814.

FOR FURTHER INFORMATION CONTACT: Ralph W. Wheeler, Interdisciplinary Team Leader, Idaho Panhandle National Forests, 1201 Ironwood Drive, Coeur d'Alene, Idaho 83814.

SUPPLEMENTARY INFORMATION: The size of the IPNF is 2,478,477 net acres. It has been determined through surveys conducted in 1987 that approximately 23,000 acres are infested with noxious weeds. These infestations included leafy spurge, rush skeletonweed, Scotch thistle, Dalmatian toadflax, spotted knapweed, Russian knapweed, diffuse knapweed, tansy ragwort, and Canada thistle.

The Forest Service is considering a 5 year program to treat about 1,600 acres to contain the infestations and to prevent new invaders from becoming established. This program will be accomplished in cooperation with the 5 northern Idaho counties, Benewah, Bonner, Boundary, Kootenai and Shoshone and the State of Idaho. These counties manage about 1,800 acres of Forest Service land within county road rights-of-way. They propose a 5 year program to treat 217 acres to contain infestations.

A scoping process was utilized for an environmental assessment. Initial scoping began November 30, 1987, with letters being sent to interested individuals, organizations and other agencies. Public notice in local papers was made November 30, 1987 and January 12, 1988. Several letters responding to the initial notices and many news articles have appeared in local papers pertaining to management of weeds on the Idaho Panhandle National Forests since publishing the first notice. This information will be used to develop the environmental impact statement. Additional scoping will be accomplished to supplement and update existing information. Federal, State, and local agencies, farmers and other individuals or organizations who have expressed an interest or may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of issues in addition to those identified in accomplishing the environmetnal analysis.
2. Identification of additional issues to be analyzed in depth.
3. Elimination of insiginficant issues or those which have been covered by a previous environmental review.

The analysis is expected to take about 1 month. The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in December, 1988. At that time the EPA will publish a notice of availability of the DEIS in the **Federal Register**. The comment period on the DEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of noxious and other undesirable weeds on the Idaho Panhandle National Forest participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions (*Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (*Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. After the comment period

ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by February, 1989. In the FEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments and responses, environmental consequences discussed in the FEIS, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision.

That decision will be subject to review under applicable Forest Service regulations.

Date: September 19, 1988.

William E. Morden,

Forest Supervisor, Idaho Panhandle National Forests.

[FR Doc. 88-21965 Filed 9-23-88; 8:45 am]

BILLING CODE 3410-11-M

Idaho State Highway Vegetation Management Program; Idaho Panhandle National Forests

ACTION: Notice of Intent To Prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts for a proposal by the Idaho Department of Transportation to manage vegetation, including noxious weeds, on 200 acres of National Forest lands. The State of Idaho Department of Transportation has overall maintenance responsibility for Highways I-90, US-95, SH-3, SH-6, SH-41, and SH-57. Portions of these highways cross National Forest lands managed by the Idaho Panhandle National Forests. Permits for use of the land for some of the highways requires prior approval by the Forest Service to use chemicals (herbicides) for management of vegetation. There are approximately 200 acres of National Forest land adjacent to the 50 miles of State maintained highways across the National Forest of which about 80 acres is proposed for cultural (mowing or cutting) and/or herbicide treatment annually. One alternative is to treat the total 200 acres over a period of about three years. As brush and weeds are controlled, annual treatment acreage would be reduced to a minimum for spot treatment to maintain control of the brush and weeds along the roadways. The vegetation that is planned for treatment includes alder and other native vegetation that is causing management and safety problems as well as noxious weeds that have invaded the road rights-of-way. Noxious weeds include spotted knapweed, diffuse knapweed, rush skeletonweed, Dalmation toadflax, and other undesirable weeds such as common St. John's-wort.

An environmental analysis was started in March 1988. Public meetings were held in Coeur d'Alene, St. Maries and Priest Lake, Idaho. Based on information and recommendations gained from these meetings the decision was made to develop a complete environmental impact statement. A range of alternatives for management of vegetation along the State managed highways, across the Idaho Panhandle National Forests will be considered. One of these will be a no action alternative. Alternatives will include cultural treatment techniques such as mechanical and handpulling, biological, chemical (herbicide), along with combinations of these methods and other methods of control that may be identified during the scoping and analysis process.

The agency invites written comments and suggestions on the scope of the analysis and opportunities for management of weeds on the Forest. The agency also gives notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected parties are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by November 1, 1988.

ADDRESS: Send written comments to William E. Morden, Forest Supervisor, Idaho Panhandle National Forests, 1201 Ironwood Drive, Coeur d'Alene, ID 83814.

FOR FURTHER INFORMATION CONTACT: Ralph A. Wheeler, Interdisciplinary Team Leader, Idaho Panhandle National Forests, 1201 Ironwood Drive, Coeur d'Alene, Idaho 83814.

SUPPLEMENTARY INFORMATION: The size of the IPNF is 2,478,477 net acres. The State of Idaho utilizes about 200 acres of right-of-way, for State highways. This is an average of about 16 feet on each side of the pavement or four acres per mile for 50 miles. They propose to treat less than half of the 200 acres annually to meet their objectives in management of vegetation, including control of noxious weeds. The Forest is also currently preparing a separate Environmental Impact Statement for management of weeds in other areas of the Forest. Cumulative affects will be considered in the evaluation of the State Highway Management Program. Information, letters and other input to the initial scoping process will be used to develop the environmental impact statement. Additional scoping will be accomplished to supplement and update existing information. Federal, State, and local agencies, farmers and other individuals or organizations who have expressed an interest or may be interested in or affected by the decision will be invited to participate in the scoping process.

This process will include:

1. Identification of issues in addition to those identified in accomplishing the environmental analysis.

2. Identification of additional issues to be analyzed in depth.

3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

The analysis is expected to take about 3 months. The Draft Environmental Impact Statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in January 1989. At that time the EPA will publish a notice of availability of the DEIS in the **Federal Register**. The comment period on the DEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of noxious and other undesirable weeds on the Idaho Panhandle National Forest participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions (*Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the Final Environmental Impact Statement (*Wisconsin Heritages, Inc. v., Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing the Final Environmental Impact Statement (FEIS).

The FEIS is scheduled to be completed by March 1989. In the FEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments and responses, environmental consequences discussed in the FEIS, and policies is making a decision regarding this proposal. The responsible official document the decision and reasons for the decision in the Record of Decision.

That decision will be subject to review under applicable Forest Service Regulations.

Date: September 19, 1988.

William E. Morden,

Forest Supervisior, Idaho Panhandle National Forests.

[FR Doc. 88-21966 Filed 9-23-88; 8:45 am]

BILLING CODE 3410-11-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Notice of ATBCB meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB) has scheduled a meeting to be held from 1:00 p.m. to 4:00 p.m., on Wednesday, October 5, 1988, in the Coral Room of the Holiday Inn—Fishermans' Wharf, 1300 Columbus Avenue, San Francisco.

ITEMS ON THE AGENDA: Presentation by the Department of the Interior, "Access to Parks and Recreation: Disabled People Speak." Also on the agenda are the following items: Selection of Executive Director (closed session—Board members only); complaint status report; Air Carrier Access Act; public affairs plan; joint meeting with President's Committee on Employment of Persons with Disabilities, May 1989; priorities for FY 1989 Research and Technical Assistance; ATBCB mission statement; election of an Executive Committee member.

There will be an open comment period following regular Board business. Public participation is invited to discuss issues relevant to the Architectural Barriers Act and the ATBCB.

DATE: Wednesday, October 5, 1988—1:00 p.m. to 4:00 p.m.

ADDRESS: Coral Room of the Holiday Inn—Fishermans' Wharf, 1300 Columbus Avenue, San Francisco.

The Technical Programs and the Planning and Budget Committees of the ATBCB will meet simultaneously on Wednesday morning, October 5, 1988, from 9:00 a.m. to 11:00 a.m. at the Holiday Inn—Fishermans' Wharf, 1300 Columbus Avenue, San Francisco. The Technical Programs Committee will meet in the Coral Room, and the Planning and Budget Committee will meet in the Board Room. The Executive Committee will meet from 11:00 a.m. to 12:00 noon in the Coral Room.

Board members will participate in a site visit of selected areas as arranged by the Department of the Interior on Tuesday, October 4, 1988.

FOR FURTHER INFORMATION CONTACT: Larry Allison, Special Assistant for External Affairs, (202) 653-7848 (voice or TDD) or Barbara A. Gilley, Administrative Officer, (202) 653-7834 (voice or TDD).

Thomas G. Deniston,

Acting Executive Director.

[FR Doc. 88-21920 Filed 9-23-88; 8:45 am]

BILLING CODE 6820-BP-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Export Privileges; Jong Hee Park et al.

In the Matter of Jong Hee Park, a/k/a/ JON PARK, Individually and doing business as United Compudata Corporation, both located at 942 S. Norton Avenue Los Angeles, California 90019, Respondents.

Order

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having determined to initiate and administrative proceeding against Jong Hee Park, a/k/a Jon Park, individually and doing business as United Compudata Corporation, pursuant to section 13(c) of the Export Adminstration Act of 1979, as amended (50 U.S.C. app. 2401-2420 (1982 and Supp. III 1985)) and Part 388 of the Export Administration Regulations (currently codified at 15 CFR Parts 368-399 (1988)) (the Regulations), based on allegations that Park violated §§ 387.4 and 387.6 of the Regulations in that, on or about March 24, 1983, Park exported one U.S.-origin computer system from the United States to the Republic of Korea, knowing that the required export license had not been obtained;

The Department and Park having entered into a Consent Agreement whereby the parties have agreed that this matter will be settled by the Department's denying Park all United States export privileges for a period of four years following the date of entry of this Order, and

The terms of the Consent Agreement having been approved by me;

It is therefore, ordered,

First, Jong Hee Par, a/k/a Jon Park, individually and doing business as United Compudata Corporation (hereinafter, collectively referred to as Park), is denied export privileges as follows:

A. All outstanding individual validated export licenses in which Park appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of respondents' privileges of participating, in any manner or capacity, in any special licensing procedures, including, but not limited to, distribution licenses, are hereby revoked.

B. For a period four years following the date of entry of this Order, Park is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data form the United States or abroad.

C. Without limiting the generality of the foregoing paragraph, participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated export license; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States, and subject to the Regulations, and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

D. Such denial of export privileges shall extend not only to Park, but also to all Park's officers, representatives, agents, employees, successors and assignees. After notice and opportunity for comment, such denial may also be made applicable to any person, firm,

corporation, or business organization with which Park is now or hereafter may be related by affiliation, ownership control, position of responsibility, or other connection in the conduct of trade or related services.

E. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to an specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data which are subject to the denial of export privileges set out herein, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with either respondent or anyone who is now or may be subsequently named as related party, or whereby either respondent or any related party may obtain any benefit therefrom or have an interest in or participation therein, directly or indirectly: (i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for either respondent or any related party denied export privileges; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

Second, that the proposed Charging Letter, the Consent Agreement and this Order shall be made available for public inspection. A copy of this Order shall be served upon Park and published in the **Federal Register.**

This Order is effective immediately.

G. Philip Hughes,

Assistant Secretary for Export Enforcement.

Entered this 30th day of August, 1988.

[FR Doc. 88-21921 Filed 9-23-88; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[C-201-405]

Certain Textile Mill Products From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain textile mill products from Mexico. We preliminarily determine the total bounty or grant to be zero or *de minimis* for 24 firms, 14.10 percent *ad valorem* for Fibras Sinteticas, S.A. de C.V., and 4.39 percent *ad valorem* for all other firms during the period January 1, 1986 through December 31, 1986. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: September 26, 1988.

FOR FURTHER INFORMATION CONTACT: Jean Carroll or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230: telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On November 24, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 45010) the final results of its last administrative review of the countervailing duty order on certain textile mill products from Mexico (50 FR 10824, March 18, 1985). On March 31, 1987, the Government of Mexico requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation of the administrative review on April 22, 1987 (52 FR 13268). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of Mexican textile mill products. For a complete description of these products, see Appendix A of this notice. The review covers the period January 1, 1986 through December 31, 1986 and 18 programs.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX") is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to Mexican exporters and U.S. importers for two purposes: pre-export financing and export financing. We consider both pre-export and export FOMEX loans to confer export bounties or grants since these loans are given at preferential rates only on merchandise destined for export. We treat benefits to U.S. importers as benefits to their corresponding Mexican exporters. We found that the annual interest rates that financial institutions charged borrowers for peso-denominated FOMEX pre-export financing outstanding during the period of review ranged from 39.60 to 70.00 percent. The annual interest rates for dollar-denominated FOMEX financing outstanding during the period of review ranged from 5.40 to 7.40 percent.

We consider the benefit from loans to occur when the interest is paid. Interest on FOMEX pre-export loans is paid at maturity, and those that matured during the period of review were obtained between July 1985 and November 1986. Since interest on FOMEX export loans is pre-paid, we calculated benefits from all FOMEX export loans received during the period of review.

The Banco de Mexico stopped publishing data on nominal and effective commercial lending rates after 1984. Therefore, as the basis for our benchmark, we have relied in part on the rates for the years 1981 through 1984, as published in the Banco de Mexico's *Indicadores Economicos y Moneda* (I.E.). We calculated the average difference between the Costo Porcentual Promedio (CPP) rates, the average cost of short-term funds to banks, and the I.E. effective rates for the period 1981 through 1984. We added this average difference to the 1985 and 1986 CPP rates. In this way, we calculated a benchmark of 86.39 percent for pre-export peso loans obtained in 1985, and 135.27 percent for pre-export peso loans obtained in 1986.

To determine the effective interest rate benchmark for dollar loans, we used the quarterly weighted-average effective interest rates published in the *Federal Reserve Bulletin*, which was 10.47 percent in 1986.

Sixteen of the 41 known exporters of this merchandise used this program during the period of review. Because we found that the exporters were able to tie both types of FOMEX loans to exports to specific countries, we measured the benefit only from FOMEX loans tied to U.S. shipments. We allocated the FOMEX benefits over U.S. shipments, excluding those firms with significantly different (including *de minimis*) aggregate benefits. We preliminarily determine the benefit from FOMEX during the period of review to be 14.10

percent *ad valorem* for Fibras Sinteticas, S.A. de C.V., and 4.36 percent *ad valorem* for all other firms except those with zero or *de minimis* benefits.

In February 1988, the Banco de Mexico changed the interest rates on FOMEX peso loans to 130.00 percent and on FOMEX dollar loans to 7.30 percent. To calculate the FOMEX benefit for cash deposit purposes, we followed the same methodology used in calculating the assessment rates. For peso loans we used as our benchmark the sum of the February 1988 CPP rate and the average 1981–1984 spread between the CPP and the I.E. effective rates. For dollar loans we used as our benchmark the February 1988 weighted-average effective interest rate from the *Federal Reserve Bulletin*. On this basis, we preliminarily find, for purposes of cash deposits of estimated countervailing duties, a FOMEX benefit of 3.27 percent *ad valorem* for all firms except those with significantly different (including zero or *de minimis*) aggregate benefits.

(2) CEPROFI

Certificates of Fiscal Promotion ("CEPROFI") are tax certificates used to promote the goals of the National Development Plan ("NDP"). They are granted in conjunction with investments in designated industrial activities or geographic regions and can be used to pay a variety of federal tax liabilities. Article 26 of the decree revising the authority for issuing CEPROFI certificates, published in the *Diario Oficial* on January 22, 1986, requires each recipient to pay a four-percent supervision fee. The four-percent supervision fee is "paid in order to qualify for, or to receive," the CEPROFI's. Therefore, it is an allowable offset, as defined in section 771(6)(A) of the Tariff Act, from the gross bounty or grant.

Firms in Mexico may receive CEPROFI benefits under three provisions: "Category I," which makes CEPROFI certificates available for the manufacture and processing of raw materials, construction and capital goods; "Category II," which makes CEPROFI certificates available for particular industrial activities; and a third provisions, which makes CEPROFI certificates available for the purchase of Mexican-made equipment.

The Department held in the final affirmative countervailing duty detemination on bricks from Mexico (49 FR 19564, May 8, 1984) that CEPROFI certificates granted for the purchase of Mexican-made equipment are not countervailable because such certificates are available to any company that purchases Mexican-made equipment. We consider the other two types of CEPROFI certificates to be domestic bounties or grants because they are available only to certain industries. For the three companies that received tax certificates from Category II CEPROFI provision, we allocated each firm's benefits, less the four-percent supervision fee, over the value of its sales to all markets during the period of review. We then weight-averaged the resulting benefits by each company's proportion of the total exports to the United States of this merchandise during the review period, excluding those firms with significantly different (including *de minimis*) aggregate benefits. We preliminarily determine the benefit from this program during the review period to be 0.003 percent *ad valorem* for all firms except those with significantly different (including zero or *de minimis*) aggregate benefits.

(3) FONEI

The Fund for Industrial Development ("FONEI"), administered by the Banco de Mexico, is a specialized financial development fund that provides long-term loans at below-market rates. FONEI loans are available under various provisions with different eligibility requirements. The plant expansion provision is designed for the creation, expansion, or modernization of enterprises in order to promote the efficient production of goods capable of competing in the international market or to meet the objectives of the NDP, which include industrial decentralization. We consider this FONEI loan provision to confer a bounty or grant because it restricts loan benefits to those enterprises located outside of Zone IIIA. Three firms made payments on varible-rate peso-denominated FONEI loans for plant expansion or modernization outstanding during the period of review.

We treated these variable-rate loans as a series of short-term loans. To calculate the benefit, we used the same benchmarks as for the FOMEX peso-denominated pre-export loans and compared them to the preferential interest rates in effect for each FONEI loan payment made during the period of review. We allocated the benefits over each company's total sales to all markets. One of these firms had *de minimis* aggregate benefits. For the remaining firms that made interest payments on FONEI loans, we weight-averaged the resulting benefits by each company's proportion of exports to the United States of this merchandise during the period of review, excluding those firms with significantly different (including zero and *de minimis* aggregate benefits. We preliminarily determine the benefit from this program during the review period to be 0.01 percent *ad valorem* for all firms except those with significantly different (including zero or *de minimis*) aggregate benefits.

(4) FOGAIN

The Guarantee and Development Fund for Medium and Small Industries ("FOGAIN") is a program that provides long-term loans to all small and medium-size firms in Mexico. The interest rates available under the program vary depending on whether a small or medium-size business has been granted priority status, and whether a business is located in a zone targeted for industrial growth. Although FOGAIN loans are available to all small and medium-size firms in Mexico, regardless of the type of industry or location, some companies get more beneficial rates than others. Therefore, to the extent that this program provides financing at rates below the least beneficial rate available under FOGAIN, we consider it to be countervailable.

Eight firms had FOGAIN loans on which interest payments were due during the period of review. One firm had long-term fixed-rate FOGAIN loans and the other seven firms had long-term variable-rate FOGAIN loans. For both the variable-rate and fixed rate loans, we used as our benchmarks the least beneficial interest rates in effect for each FOGAIN loan payment made during the period of review. We treated each loan with a variable interest rate as a series of short-term loans. To calculate the benefit from the variable-rate FOGAIN loans, we compared the benchmark rate to the FOGAIN preferential rate for each loan payment made during the review period.

To calculate the benefit from the fixed-rate loans, we compared the annual payments of principal and interest actually made with the payments that would have been made if the loans were obtained at the least preferential FOGAIN interest rate. We then calculated the present value of this stream of benefits back to the year the loan was made, using the least beneficial FOGAIN rate as the discount rate. We allocated the total of the present values over the life of the loan (using a declining balance methodology) to yield the annual subsidy amounts.

We allocated the benefits from each loan over each company's total sales to all markets. Three of the eight firms had *de minimis* aggregate benefits. For the remaining five firms, we weight-averaged the resulting benefits by each

company's proportion of exports of this merchandise to the United States during the period of review, excluding those firms with significantly different (including *de minimis*) aggregate benefits. We preliminarily determine the benefit from this program during the period of review to be 0.02 percent *ad valorem* for all firms except those with significantly different (including zero or *de minimis*) aggregate benefits.

(5) Other Programs

We also examined the following programs and preliminarily determine that exporters of textile mill products did not use them during the review period:

(A) State tax incentives;
(B) National Industrial Development Fund ("FOMIN");
(C) NDP preferential discounts;
(D) Trust Fund for the Study and Development of Industrial Parks ("FIDEIN");
(E) Bancomext loans;
(F) Delay of payments on loans;
(G) Delay of payments to PEMEX of fuel charges;
(H) PROFIDE loans;
(I) Export credit insurance;
(J) Tax Rebate Certificate ("CEDI");
(K) Accelerated depreciation;
(L) Article 15 loans;
(M) Preferential state investment incentives; and
(N) Import duty reductions and exemptions.

Firms Not Receiving Benefits

We preliminary determine that the following 25 firms received zero or *de minimis* benefits during the period of review:

(1) Abetex, S.A. de C.V.;
(2) Acytex, S.R.L. de C.V.;
(3) Celanese Mexicana, S.A.;
(4) Celulosa y Derivados, (Derivados Acrilicos, S.A.);
(5) Corporcion Charles, S.A.;
(6) Extrafil, S.A.;
(7) Fabrica de Hilados y Tejidos SINDEC, S.A.;
(8) Fabrica La Estrella, S.A.;
(9) Fariel, S.A. de C.V.;
(10) Fisher Price de Mexico;
(11) Glassmex, S.A.;
(12) Jeramex, S.A.;
(13) Hilados y Tejidos de Tepeji del Rio, S.A.;
(14) Milyon, S.A. de C.V.;
(15) Noblis Lees, S.A. de C.V.;
(16) Ryltex, S.A.;
(17) Sociedad Cooperativa de Produccion Maquiladora El Progreso, S.C.L;
(18) Stanmex, S.A. de C.V.;
(19) Telas Ajijic, S.A.;
(20) Terpel, S.A. de C.V.;
(21) Textiles Mabratex, S.A.;
(22) Textiles Panzacola S.A.;
(23) Texturizados y Tejidos Windsor, S.A.;
(24) Torenco, S.A. de C.V.; and
(25) Turbofil, S.A.

For purposes of cash deposits of estimated countervailing duties, an additional firm, Crisol Textil, S.A. de C.V., received *de minimis* benefits.

Preliminary Results of Review

As a result of our review, we preliminary determine the total bounty or grant during the period January 1, 1986 through December 31, 1986 to be zero or *de minimis* for 25 firms, 14.10 percent *ad valorem* for Fibras Sinteticas, S.A. de C.V., and 4.39 percent *ad valorem* for all other firms.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the 25 firms listed above and to assess countervailing duties of 14.10 percent of the f.o.b. invoice price on shipments from Fibras Sinteticas, 4.39 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1986 and on or before December 31, 1986.

The Department intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from the 25 firms listed above and, due to the change in the FOMEX interest rates, to waive cash deposits for the following additional firm: Crisol Textil, S.A. de C.V. The Department will also instruct Customs to collect a cash deposit of estimated countervailing duties of 3.30 percent of the f.o.b. invoice price on shipments from all other firms. These deposit requirements and waivers become effective for all merchandise entered, or withdrawn from warehouse, for consumption, on or after date of publication of the final results of this review and shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Jan W. Mares,

Assistant Secretary, Import Administration.

Date: September 2, 1988.

Appendix A—Certain Textile Mill Products From Mexico TSUSA Item Numbers for 1986

YARNS

300.6020
300.6024
300.6028
301.0100 through 301.3900
302.2020 through 302.2920
302.0124 through 302.3924
302.2026 through 302.4926
302.1028 through 302.3928
303.2040
303.2042
307.7000
310.0106
310.0107
310.0108
310.0110
310.0114
310.0130
310.0149
310.0150
310.0206
310.0207
310.0208
310.0249
310.0250
310.0270
310.0510
310.1015
310.1070
310.1205
310.1210
310.1555
310.1570
310.2150
310.4027
310.4047
310.4050
310.5046
310.5047
310.5049
310.6034
310.9000
310.9300
310.9500

CORDAGE

316.5500
316.5800
316.7000
319.0300
319.0700

FABRIC

320.0103 through 320.0903
320.0021 through 320.0921
320.0122 through 320.0922
320.0131 through 320.0931
320.0134 through 320.0934
320.0138 through 320.0938
320.0142 through 320.0942
320.0145 through 320.1945
320.0149 through 320.0949
320.0154 through 320.0954
320.0157 through 320.0957
320.0163 through 320.1963
320.0166 through 320.0966
320.0171 through 320.1971
320.0172 through 320.0972
320.0177 through 320.1977
320.0180 through 320.0980
320.0198 through 320.0998
321.0134 through 321.0934
321.1071 through 321.1971
321.1077 through 321.1977
322.0162 through 322.0962
322.0163 through 322.0963
322.1006 through 322.1906
322.1015 through 322.1915
322.1025 through 322.1925
322.1029 through 322.1929
322.1030 through 322.1930
322.1034 through 322.1934
322.1036 through 322.1936
322.1037 through 322.1937
322.1040 through 322.1940
322.1041 through 322.1941
322.1045 through 322.1945
322.1047 through 322.1947
322.1048 through 322.1948
322.1050 through 322.1950
322.1051 through 322.1951
322.1052 through 322.1952
322.1053 through 322.1953
322.1055 through 322.1955
322.1056 through 322.1956
322.1065 through 322.1965
322.1066 through 322.1966
322.1068 through 322.1968
322.1071 through 322.1971
322.1075 through 322.1975
322.1077 through 322.1977
322.1079 through 322.1979
322.1081 through 322.1981
322.1084 through 322.1984
322.1085 through 322.1985
322.1086 through 322.1986
322.1088 through 322.1988
322.1089 through 322.1989
322.1090 through 322.1990
322.1091 through 322.1991
322.1095 through 322.1995
322.1097 through 322.1997
322.2016 through 322.2916
322.2023 through 322.2923
322.2069 through 322.2969
322.2073 through 322.2973
322.4003 through 322.4903
322.4021 through 322.4921
322.4022 through 322.4922
322.4038 through 322.4938
322.4042 through 322.4942
322.4049 through 322.4949
322.4054 through 322.4954
322.4057 through 322.4957
322.4066 through 322.4966
322.4072 through 322.4972
322.4080 through 322.4980
322.4098 through 322.4998
322.5012 through 322.5912
322.5013 through 322.5913
322.5014 through 322.5914
322.5015 through 322.5915
322.5016 through 322.5916
322.5017 through 322.5917
322.5018 through 322.5918
322.5019 through 322.5919
322.5023 through 322.5923
322.5069 through 322.5969
322.5073 through 322.5973
322.8016 through 322.8916
322.8023 through 322.8923
322.8069 through 322.8969
322.8073 through 322.8973
322.9003 through 322.9903
322.9021 through 322.9921
322.9022 through 322.9922
322.9038 through 322.9938
322.9042 through 322.9942
322.9049 through 322.9949
322.9054 through 322.9954
322.9057 through 322.9957
322.9066 through 322.9966
322.9072 through 322.9972
322.9080 through 322.9980
322.9098 through 322.9998
324.2022 through 324.2922
324.2024 through 324.2924
324.2031 through 324.2931
324.2038 through 324.2938
324.2042 through 324.2942
324.2049 through 324.2949
324.2054 through 324.2954
324.2057 through 324.2957
324.2066 through 324.2966
324.2072 through 324.2972
324.2080 through 324.2980
324.2098 through 324.2998
324.8066 through 324.8966
324.8072 through 324.8972
324.8074 through 324.8974
324.8080 through 324.9080
324.8098 through 324.8998
325.1051 through 325.1951
325.1052 through 325.1952
325.1085 through 325.1985
325.1089 through 325.1989
325.1091 through 325.1991
325.1095 through 325.1995
325.8022 through 325.8922
325.8024 through 325.8924
325.8031 through 325.8931
327.2021 through 327.3921
327.2022 through 327.3922
327.2031 through 327.2931
327.2038 through 327.3938
327.2042 through 327.3942
327.2049 through 327.3949
327.2054 through 327.3954
327.2057 through 327.3957
327.3003 through 327.3903
327.3066 through 327.3966
328.2003 through 328.2903
328.2021 through 328.2921
328.2022 through 328.2922
328.2031 through 328.2931
328.2038 through 328.2938
328.2042 through 328.2942
328.2049 through 328.2949
328.2054 through 328.2954
328.2057 through 328.2957
328.2066 through 328.2966
328.2072 through 328.2972
328.2080 through 328.2980
328.2098 through 328.2998
331.2022 through 331.2922
331.2024 through 331.2924
331.2031 through 331.2931
331.2038 through 331.2938
331.2042 through 331.2942
331.2049 through 331.2949
331.2054 through 331.2954
331.2057 through 331.2957
331.2066 through 331.2966
331.2072 through 331.2972
331.2074 through 331.2974
331.2080 through 331.2980
331.2098 through 331.2998
336.1540
336.6251
336.6252
336.6254
336.6257
338.4004
338.5006
338.5007
338.5009
338.5010
338.5011
338.5013
338.5016
338.5021
338.5023
338.5024
338.5026
338.5027
338.5030
338.5031
338.5036
338.5037
338.5041
338.5043
338.5044
338.5045
338.5046
338.5048
338.5049
338.5051
338.5054
338.5055
338.5059
338.5060
338.5064
338.5065
338.5069
338.5073
338.5075
338.5076

338.5079
338.5080
338.5082
338.5084
338.5085
338.5087
338.5088
338.5092
338.5095
338.5098
339.1000

SPECIAL CONSTRUCTION FABRIC

345.4000
345.5553
345.5555
345.5557
345.5575
345.5585
346.5850
346.6265
346.7000
347.6040
347.6800
348.0065
351.3000
351.5010
351.5060
351.6010
351.7060
351.8060
352.9060
352.2060
352.8010
352.8060
353.1000
353.5012
353.5052
355.1610
355.1620
355.1630
355.2500
355.4530
355.8100
356.2510
357.4500
357.7010
357.8060
358.0290
358.0690
358.1400
358.3500
358.5040
359.1010
359.1030

TEXTILE FURNISHINGS

360.0600
360.1200
360.2500
360.4225
360.4335
360.4825
360.4835
360.7000
360.7800
360.7900
360.8300
360.8400
361.0530
361.0540
361.2410
361.4200
361.4500
361.4600
361.4800
361.5420
361.5426
361.6000
361.7010
363.0510
363.0515
363.1020
363.1040
363.2000
363.2562
363.2564
363.2575
363.2580
363.2590
363.4500
363.6030
363.6540
363.8506
363.8509
363.8515
363.8525
363.8545
363.8550
363.8555
364.0500
364.1300
364.1800
364.2000
364.2300
364.2500
364.3000
365.5060
365.6615
365.6625
365.6665
365.8400
365.8700
365.8910
365.8920
365.8940
365.8970
365.8980
366.1720
366.2460
366.2480
366.4200
366.4600
366.4700
366.5100
366.7700
366.7925
366.7930
366.8400
367.3200
367.3300
367.6325
367.6340
367.6380

[FR Doc. 88-21953 Filed 9-23-88; 8:45 am]
BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: Columbus, Ohio

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3 year period, subject to available funds. The cost of performance for the first (12) months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-federal contributions for the budget period April 1, 1989 thru March 31, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Columbus, Ohio geographic service area. The award number of this MBDC will be 05-10-89001-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority business. To this end, MBDC funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be

considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminatng in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

Closing Date: The closing date for applications is November 4, 1988. Applications must be postmarked on or before November 4, 1988.

Address: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353-0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

David Vega,

Regional Director, Chicago Regional Office.

Date: September 20, 1988.

[FR Doc. 88-21910 Filed 9-23-88; 8:45 am]

BILLING CODE 3510-21-M

National Institute of Standards and Technology

[Docket No. 70866-8134]

Approval of Federal Information Processing Standard 152, Standard Generalized Markup Language (SGML)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce (Secretary) has approved a new standard, which will be published as FIPS Publication 152.

SUMMARY: On October 29, 1987, notice was published in the **Federal Register** (52 FR 41609) that a Federal Information Processing Standard for Standard Generalized Markup Language (SGML) was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NIST. On the basis of this interview, NIST recommended that the Secretary approve the standard as a Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

The approved standard contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard, and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the standard is provided in this notice.

EFFECTIVE DATE: This standard is effective March 31, 1989.

ADDRESS: Interested parties may purchase copies of this standard, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement portion of the standard.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence Welsch, National Computer and Telecommunications Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975-3345.

Date: September 20, 1988.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication 152

(date)

Announcing the Standard for Standard Generalized Markup Language (SGML)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

Name of Standard. Standard Generalized Markup Language (SGML) (FIPS PUB 152).

Category of Standard. Software Standard, Markup Language; Electronic Document Interchange.

Explanation. This publication announces the adoption of the International Standards Organization Standard Generalized Markup Language, (SGML), ISO 8879-1986, as a Federal Information Processing Standard (FIPS). ISO 8879-1986 specifies a language for describing documents to be used in office document processing, interchange between authors and between authors and publishers, and publishing. The language provides a coherent and unambiguous sysntax for describing the elements within a document. The language includes:

a. An abstract syntax for descriptive markup of the elements within a document.

b. A reference concrete syntax which binds the abstract syntax to particular delimite chracters and quantities.

c. Markup declarations that allow the definition of a specific vocabulary of generic identifiers and atributes for different document types.

d. Provision for arbitrary data content. This can include specialized data content notations that require interpretations different from general text, i.e., formulas, images, non-Latin alphabets, previously formatted text or graphic.

e. Entity references for referring to content located outside the mainstream of the document, such as separately written chapters, photographs, etc.

f. Special delimiters for processing instructions to distinguish them from descriptive markup. Processing instructions are systems and applications dependent.

Approving Authority. Secretary of Commerce.

Maintenance Agency. Department of Commerce, National Institute of Standards and Technology (NIST) (National Computer and Telecommunications Laboratory.

Cross Index. International Standards Organization ISO 8879–1986, Information Processing—Text and Office Systems—Standard Generalized Markup Language (SGML).

Related Documents.

a. ISO 9069–1987, Information processing—SGML support facilities—SGML Document Interchange Format (SDIF).

b. ISO 9070–1987, Information processing—SGML support facilities—Registration procedures for public text.

c. Federal Information Processing Standards (FIPS) Publication 29–2, Interpretation Procedures for Federal Information Processing Standards for Software.

Objectives. The primary objectives of this standard are:

To provide a common markup language for a variety of document types and uses;

To allow the portability of unformatted textual data among different installations and processing systems;

To promote interchange of documents between systems of different manufactures.

Applicability. This standard is intended to be used for documents that are processed by any text processing system. It is particularly applicable to: (a) Documents that are intended for electronic printed output; (b) documents that are interchanged among systems with differing text output devices; and (c) documents that are processed in more than one way, even when the procedures use the same text processing language.

Documents that exist solely in formatted form are not within the scope of applicability of this standard.

This standard applies to the development and acquisition of SGML systems. An SGML system includes an SGML parser, which must be able to recognize markup in conforming SGML documents; an entity manager, such as file system or symbol table that can maintain and provide access to multiple entities or units of information; and both or either of:

a. An implementation of one or more SGML applications; and/or

b. Facilities for a user to implement SGML applications, with access to the SGML parser and entity manager.

If the SGML parser is a validating parser, it must find and report a reportable markup errort if one exists, and must recognize and report ambiguous content models.

An implementation of SGML involves consideration of an entire SGML system.

Specifications. The ISO 8879–1986 Standard Generalized Markup Language defines the scope of the specification, the field of application, the syntax and semantics of SGML constructs, and requirements for confoming SGML applications and documents. All of the specifications of ISO 8879–1986, using the core concrete syntax, apply to FIPS SGML with the exception of the following optional features: SHORTREF; CONCUR; DATATAG; RANK; SHORTTAG; SUBDOC; SIMPLE; IMPLICIT; and EXPLICIT. The two optional features that are part of the FIPS SGML are OMITTAG (omitted tag minimization) and FORMAL (formal public identifiers). The core concrete syntax is a variant of the reference concrete syntax that has no short reference delimiters.

Implementation. This standard is compulsory and binding. The implementation of this standard involves two areas of consideration: acquisition of SGML systems and interpretation of the syntax and semantics of SGML constructs.

Acquisition of SGML Systems. This standard is effective March 31, 1989. SGML systems developed or acquired for Federal use after this date should implement this standard. Conformance to this standard should be considered whether SGML systems are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services. If the functionality of one or more of the optional features meets programmatic requirements, then those optional features may be acquired.

A transition period provides time for industry to produce SGML systems conforming to the standard. The transition period begins on the effective date and continues for one year thereafter. The provisions of this publication apply to orders placed after the effective date.

Interpretation of FIPS SGML. Resolution of questions regarding this standard will be provided by NIST. Questions concerning the content and specifications of this FIPS PUB should be addressed to: Director, National Computer and Telecommunications Laboratory, Attn: SGML Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code.

Requests for waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government-wide savings. Agency heads may act only upon written waiver requests containing the information detailed above. Agency heads may approve requests for waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to the: Director, National Computer and Telecommunications Laboratory, ATTN: FIPS Waiver Decisions, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899. In addition notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register.**

When the determination on a waiver request applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver request, any supporting documents, the document approving the waiver request and any supporting and accompanying document(s), with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

SPECIAL INFORMATION. Another approach, to the interchange of documents, currently under development, is the Office Document Architecture and Office Document Interchange Format (ODA/ODIF), draft international standard (DIS 8613). NIST is currently working on the development of this draft standard which, when

completed, will become a Federal Information Processing Standard.

WHERE TO OBTAIN COPIES. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 152 (FIPSPUBS152), and title. Payment may be made by check, money order, or NTIS deposit account.

Copies of other FIPS PUBS are also available from the National Technical Information Service.

Copies of ISO 9069–1987 and ISO 9070–1987 may be obtained from: American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

[FR Doc. 88–21899 Filed 9–23–88; 8:45 am]

BILLING CODE 3510-CN-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Defense Intelligence Agency Scientific Advisory Committee, Closed Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, Defense.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scentific Advisory Committee has been scheduled as follows:

DATE: 20 October 1988, 8:30 a.m. to 3:30 p.m.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340–1328, (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on HUMINT/ Scientific and Technical Intelligence Interface.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 21, 1988.

[FR Doc. 88–21950 Filed 9–23–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Defense Intelligence College; Closed Meeting

AGENCY: Defense Intelligence Agency Defense Intelligence College, Defense.

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of the DIA Defense Intelligence College Board of Visitors has been scheduled as follows:

DATES: Monday, October-Wednesday, 2 November 1988; 9:00 a.m. to 4:00 p.m. on 31 October and 1 November; 9:00 to 11:00 a.m. on 2 November.

ADDRESS: The DIAC, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Robert L. De Gross, Provost, DIA Defense Intelligence College, Washington, DC 20340–5485. (202/373–3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, asd to the successful accomplishment of the mission assigned to the Defense Intelligence College.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 21, 1988.

[FR Doc. 88–21951 Filed 9–23–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Nuclear Agency (DNA)

Membership of the Performance Review Board

AGENCY: Defense Nuclear Agency, DOD.

ACTION: Notice of membership of the Defense Nuclear Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Nuclear Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Board shall provide fair and impartial review of Senior Executive Service performance appraisals and make recommendations regarding performance and performance awards to the Director, Defense Nuclear Agency.

EFFECTIVE DATE: The effective date of service for the appointees of the DNA PRB is on or about October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Allen I. Barke, Chief, Civilian Personnel Management Division (MPCV), Defense Nuclear Agency, Washington, DC 20305–1000, (703) 325–7591/2.

SUPPLEMENTARY INFORMATION: The names and titles of the members of the DNA PRB are set forth below. All are DNA officials unless otherwise identified:

Major General J.C. Scheidt, Director for Operations, USAF
Mr. John M. Bachkosky, Director for Plans, Programs and Requirements
Dr. Don A. Linger, Director for Test
Mr. Curtis L. Dierdorff, Director of Personnel, Defense Mapping Agency
Mr. Mark B. Schneider, Director of Strategic Arms Control Policy, Office of Secretary of Defense

The following DNA officials will serve as alternate members of the DNA PRB, as appropriate.

Mr. Robert L. Brittigan, General Counsel
Dr. Paul H. Carew, Comptroller
Mr. Frederick S. Celec, Deputy Director, Operations Directorate
Mr. Jonathan Z. Farber, Chief, Electromagnetic Applications Division
Mr. David G. Freeman, Director, Acquisition Management Office
Mr. Clifton B. McFarland, Chief, Strategic Structures Division
Mrs. Joan M. Pierre, Director for Radiation Sciences
Dr. George W. Ullrich, Director for Shock Physics
Mr. Robert C. Webb, Chief, Electronic Effects Division
Dr. Leon A. Wittwer, Chief, Atmospheric Effects Division

September 21, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88–21949 Filed 9–23–88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Board of Visitors to the United States Naval Academy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet 28

October 1988, at the U.S. Naval Academy, Annapolis, Maryland. The session, which is open to the public, will commence at 8:30 a.m. and terminate at 3:00 p.m., 28 October 1988, in Room 301, Rickover Hall.

The purpose of the meeting is to make inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic method of the Naval Academy.

For further information concerning this meeting contact: Captain John W. Renard, U.S. Navy, Retired, Secretary to the Board of Visitors, Dean of Admissions, United States Naval Academy, Annapolis, Maryland 21402–5017, (301) 267–4361.

Date: September 20, 1988.

Jane M. Virga,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 88–21902 Filed 9–23–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.116F]

Notice Inviting Applications for New Awards Under the Innovative Projects for Student Community Service Competition Conducted by the Fund for the Improvement of Postsecondary Education

Purpose

Provides grants to institutions of higher education and other public and private, non-profit institutions and agencies to support projects encouraging students to participate in community service activities in exchange for educational services or financial assistance in order to reduce the debt incurred by these students for attendance at institutions of higher education.

Deadline for Transmittal of Applications: December 20, 1988.

Applications Available: October 14, 1988.

Estimated Size of Awards: $10,000 to $70,000 per year.

Estimated Number of Awards: 25.

Project Period: 12 to 24 months.

Available Funds: The President's Budget for Fiscal Year 1989 does not include funds for this program. However, applications are invited to allow for sufficient time to evaluate applications and complete the grant process before the end of the fiscal year, should the Congress appropriate funds for the program. The estimates above are based on the FY 1988 appropriation of $1,454,000.

Applicable Regulations: (a) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 80 with the exceptions noted in 34 CFR 630.4, and (b) the regulations in 34 CFR Part 630.

For applications and information contact: The Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue SW., Room 3100, ROB–3, Washington, DC 20202. Telephone (202) 732–5750 or 732–5766.

Program Authority: 20 U.S.C. 1135e–1.

Dated: August 31, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88–21948 Filed 9–23–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Remedial Order to Tesoro Petroleum Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed remedial order to Tesoro Petroleum Corporation.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Adminstration (ERA) of the United States Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued on March 18, 1988, as amended May 25, 1988, to Tesoro Petroleum Corporation.

This Proposed Remedial Order alleges violations of 10 CFR 211.66 (b) and (h) and 205.202 in the amount of $37,543,138, plus interest, as a result of Tesoro's significant understatement on its entitlements reports of its receipts of controlled tier crude oil at its refinery located in Kenai, Alaska, during the period Janauary 1978 through December 1980. Specifically, ERA has concluded that during the period at issue Tesoro failed properly to report in its Refiners Monthly Reports (ERA–49's) the actual controlled tier certifications associated with substantial volumes of its crude oil receipts at the Kenai, Alaska refinery. Instead, Tesoro reported such volumes as uncontrolled in violation of 10 CFR 211.66(b) and (h). ERA alleges that Tesoro's actions circumvented and contravened or resulted in the circumvention and contravention of the requirements of the Entitlements Program, 10 CFR 211.66, in violation of 10 CFR 205.202.

The effect of the violations is nationwide. As a remedy for these violations, the Proposed Remedial Order directs Tesoro to refund to DOE the amount of $37,543,138, plus interest accrued thereon through the date of payment.

A copy of the amended Proposed Remedial Order may be obtained from: Office of Freedom of Information Reading Room, United States Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC. 20585.

Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, United States Department of Energy, Forrestal Building, Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with 10 CFR 205.193. The Notice shall be filed in duplicate, shall briefly describe how the person be aggrieved by issuance of the Proposed Remedial Order as a final order and shall state the person's intention to file a Statement of Objections. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the Proposed Remedial Order. If a Notice of Objection is not filed in accordance with 10 CFR 205.193, the Proposed Remedial Order may be issued as a final Remedial Order.

Pursuant to 10 CFR 205.193(c), a person who files a Notice of Objection shall on the same day serve a copy of the Notice upon: Ben Lemos, Director of Enforcement Support, Economic Regulatory Administration, U.S. Department of Energy, 1403 Slocum, Dallas, Texas, 75207, and upon: Diana Clark, Director of Administrative Litigation, Economic Regulatory Administration, U.S. Department of Energy, Room 3H–017, RG–32, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, DC, on September 16, 1988.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation Economic Regulatory Administration.

[FR Doc. 88–21962 Filed 9–23–88; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

American Statistical Association Committee on Energy Statistics; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: American Statistical Association's Committee on Energy Statistics, a utilized Federal Advisory Committee.

Date and Time: Thursday, October 27, 1988, 1:30 p.m.–5:00 p.m.; Friday, October 28, 1988, 9:00 a.m.–3:00 p.m.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Contact: Ms. Renee Miller, EIA Committee Liaison, U.S. Department of Energy, Energy Information Administration, EI–72, Washington, DC 20585, Telephone: (202) 586–2088.

Purpose of Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy statistical matters.

Tentative Agenda:

Thursday, October 27, 1988

A. Opening Remarks
B. Major Topics:
1. Factors Affecting the Energy Information Administration's Information Collections Activities
2. Estimating Resources
   a. Coal
   b. Gas
   (Public Comments)

Friday, October 28, 1988

3. Updating the Nonresidential Building Energy Consumption Survey for New Construction
4. Estimating Confidence Intervals for Forecasts
5. Performance Statistics for Petroleum Supply Data
6. Monthly Estimation of Volumes and Prices of Natural Gas Delivered to industrial End Users
   (Public Comments)

C. Topics for Future Meetings

Public Participation: The meeting is open to the public. The chairperson of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Ms. Renee Miller, EIA Committee Liaison, at the address or telephone number listed above or Ms. Carole Patton at 202–586–2222.

Transcripts: Available for public review and copying at the Public Reading Room, (Room 1E–190), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6025, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Issued at Washington, DC on September 20, 1988.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 88–21961 Filed 9–23–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 10442–000]

Azure Mountain Power Co.; Availability of Environmental Assessment

September 21, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for exemption from licensing for the proposed St. Regis Hydroelectric Project and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88–21888 Filed 9–23–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2409–017 California]

Calaveras County Water District, Availability of Environmental Assessment

September 21, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing (OHL) has reviewed the application for an amendment to license for the North Fork Stanislaus River Project. The staff of OHL's Division of Project Compliance and Administration (DPCA) has prepared an environmental assessment (EA) for the proposed amendment action. The EA presents staff's analysis of environmental impacts that would result from the proposed action. In the EA staff concludes that the licensee's proposed modifications would not constitute a major federal action that would significantly affect the quality of the human environment, provided the mitigative measures proposed by the licensee, the resource agencies and the staff are implemented.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices that are located at 825 North Capitol Street, NE., Washington, DC, 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88–21886 Filed 9–23–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 6780–000]

Enviro Hydro, Inc.; Availability of Environmental Assessment

September 21, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Deadwood Creek Hydroelectric Project and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88–21887 Filed 9–23–88 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88-13-000]

Kentucky West Virginia Gas Co.; Proposed Changes In FERC Gas Tariff Pursuant to Order No. 497

Issued September 20, 1988.

Take notice that on September 15, 1988, Kentucky West Virginia Gas Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Second Revised Volume No. 1:

First Revised Sheet No. 1
First Revised Sheet No. 49
First Revised Sheet No. 50
Original Sheet No. 50A
First Revised Sheet No. 51
Original Sheet No. 52A
First Revised Sheet No. 53A
Original Sheet No. 54H
Original Sheet No. 54I
Original Sheet No. 54J
Original Sheet No. 72A
Original Sheet No. 72B
Original Sheet No. 72C
Original Sheet No. 72D
Original Sheet No. 72E
Original Sheet No. 72F
Original Sheet No. 72G
Original Sheet No. 72H
Original Sheet No. 72I
Original Sheet No. 72J
Original Sheet No. 72K
First Revised Sheet No. 72L

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with 18 CFR § 385.214 and 385.211. All such motions or protests should be filed within seven days after publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 88-21889 Filed 9-23-88; 8:45 am]
BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $7,104,217.29 (plus accrued interest) obtained as a result of a consent order which the DOE entered into with Murphy Oil Corporation (Case No. KEF-0095). The fund will be available to customers who purchased refined petroleum products from Murphy during the period March 6, 1973, through January 27, 1981.

DATE AND ADDRESS: Applications for Refund of a portion of the consent order fund must be filed in duplicate and postmarked no later than March 31, 1989. Applications should be addressed to: Murphy Oil Corporation Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. KEF-0095.

FOR FURTHER INFORMATION CONTACT: Jon Leyens, Staff Analyst, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2383.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a consent order entered into by the DOE and Murphy Oil Corporation. The consent order settled possible violations of the Mandatory Petroleum Price and Allocation Regulations with respect to the firm's operations during the period January 1, 1973 through January 27, 1981. On January 26, 1988, the Office of Hearings and Appeals issued a Proposed Decision and Order which tenatively established refund procedures and solicited comments from interested parties concerning the proper disposition of the consent order fund. 53 Fed. Reg. 3440 (February 5, 1988). As the Decision and Order indicates, Applications for Refund from the Murphy consent order fund may now be filed. Applications will be accepted provided they are postmarked no later than March 31, 1989. Applications will be accepted from customers who purchased refined petroleum products from Murphy during the period March 6, 1973 through January 27, 1981. The specific information required in an Application for Refund is set forth in the Decision and Order.

Date: September 19, 1988.

George B. Breznay,
Director, Office of Hearings and Appeals.

DECISION AND ORDER OF THE DEPARTMENT OF ENERGY

Implementation of Special Refund Procedures

September 19, 1988.

Name of Firm: Murphy Oil Corporation.

Date of Filing: June 10, 1987.

Case Number: KEF-0095.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement procedures for the distribution of funds obtained by the DOE as a result of the agency's enforcement of the Mandatory Petroleum Price and Allocation Regulations. *See* 10 CFR Part 205, Subpart V. On June 10, 1987, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order that it entered into with Murphy Oil Corporation (Murphy).

I. Background

Murphy is a major integrated refiner which produced and sold crude oil and full range of refined petroleum products during the period of federal price controls. The firm was therefore subject to the Mandatory Petroleum Price Regulations set forth at 6 CFR Part 150 and 10 CFR Parts 210, 211, and 212. During the period of federal controls, the ERA conducted an extensive audit of Murphy's operations and, as a result of the audit, alleged that Murphy had violated certain applicable DOE price and allocation regulations in its sales of crude oil and refined petroleum products. Settlement discussions were held, and on February 9, 1987, the ERA and Murphy finalized a Consent Order (Consent Order No. RMUH01983Z) that resolved disputes regarding Murphy's refined petroleum product operations during the period January 1, 1973 through January 27, 1981 (consent order period). Pursuant to the terms of the Consent Order, Murphy remitted a total of $7,104,217.29 (the consent order fund) [1] into an interest-bearing escrow

[1] This amount consists of the principal consent order amount of $7,000,000, plus $104,217.29 in interest which accrued prior to Murphy's payment to the DOE. For accounting purposes, the interest remitted by Murphy shall be considered as additional principal.

account, for ultimate distribution by the DOE through Subpart V.

On Janaury 26, 1988, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the Murphy consent order funds. In order to give notice to all potentially affected parties, a copy of the PD&O was published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. 53 FR 3440 (February 5, 1988). Two interested parties, the Petroleum Marketers Association of America (PMAA) and the "Murphy Jobbers Group", jointly submitted comments concerning the proposed procedures for the distribution of the Murphy consent order funds. In this Decision and Order, we will address those comments and adopt final procedures for the distribution of the Murphy funds.

II. Final Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations in which the DOE is unable to identify readily those persons who may have been injured by the alleged regulatory violations or to determine the amount of such injuries. A more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds is set forth in the cases of *Office of Enforcement*, 9 DOE ¶ 82.508 (1981): and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Pursuant to the goals of the Subpart V regulations, we will attempt to provide refunds to claimants who demonstrates that they were injured by Murphy's alleged regulatory violations during the January 1, 1973 through January 27, 1981 consent order period.[2]

Residual funds in the Murphy escrow account will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), Pub. L. No. 99–509, Fed. Energy Guidelines (Petroleum Regulations 1974–1981) ¶ 11,702 *et seq.*

A. Calculation of Refund Amounts

The first step in the refund process is the calculation of an applicant's potential refund. To accomplish this, we will presume that the alleged overcharges were spread evenly over all of Murphy's sales of refined petroleum products during the consent order period. Under this volumetric presumption, a claimant's potential refund generally will be computed by multiplying the number of gallons of covered products that it purchased from Murphy by a volumetric factor of $0.000817 per gallon.[3] We derived this fugure by dividng the $7,104,217.29 received from Murphy by the 8,695,987,648 gallons of refined products subject to price and allocation controls that Murphy sold during the consent order period. In addition, successful claimants will receive proportionate shares of the interest that has accrued on the Murphy escrow account.[4]

Product	Decontrol date
Motor gasoline, propand	Jan. 28, 1981.
Butane and natural gasoline	Jan. 1, 1980
Aviation gas and jet fuel	FEb. 26, 1979
Naptha-based jet fuel	Oct. 1, 1976
Napthas	Sept. 1, 1976.
Diesel fuel, kerosene	July 1, 1976.
No. 1 and No. 2 hearing oil	Do
Residual fuel	June 1, 1976.
Ethane and asphalt	Apr. 1, 1974.

We generally require claimants to submit monthly purchase schedules in order to establish their total purchase volumes from a consent order firm. In their comments, the PMAA and the Murphy Jobbers Group urge that, instead, we allow all refund applicants to submit yearly schedules of their purchase volumes of Murphy covered products. We are not persuaded that this would be appropriate. An annual schedule can mask certain factors, such as seasonal purchase patterns, which help us to ascertain the accuracy of an applicant's submission. Therefore, we will accept annual purchase volume data only if it is accompanied by adequte supporting documentation, such as a computer printout of purchases provided by Murphy.

As in previous cases, only claims for at least $15 in principal will be processed. This minimum has been adopted in refined product refund proceedings because the cost of processing claims for refunds of less than $15 outweighs the beneifts of restitution in those instances. *See, e.g., Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985).

B. Determination of Injury

Once a claimant's potential refund has been calculated, we must determine whether the claimant was injured by its purchases from Murphy, *i.e.*, whether it was forced to absorb the alleged overcharges. Based on our experience in numerous Subpart V proceedings, we will adopt certain presumptions concerning injury in this case. The use of presumptions in refund cases is specifically authorized by DOE procedural regulations. 10 C.F.R. § 205.282(e). An applicant that is not covered by one of these presumptions must demonstrate injury in accordance with the non-presumption procedures outlined in the latter part of this Decision.

1. Presumptions Concerning Injury: The presumptions we will adopt in this case are designed to allow claimants to participate in the refund process without incurring inordinate expense, and to enable OHA to consider the refund applications in the most efficient way possible. We will presume that end-users of Murphy covered products, certain types of regulated firms, and cooperatives were injured by their purchases from Murphy. In addition, we will adopt presumptions regarding small and mid-level claims submitted by refiners, resellers and retailers. Finally, we will presume that refiners, resellers and retailers that made spot purchases of Murphy products, as well as those who sold Murphy products on consignment, were not injured by their purchases. Each of these presumptions is listed below, along with the rationale underlying its use.

a. End-Users: First, in accordance with prior Subpart V proceedings, we will presume that end-users of Murphy products were injured by the firm's

[2] We recognize that we may receive claims based upon Murphy's alleged violation of the DOE allocation regulations. *See* 10 CFR Part 211. We will evaluate such claims by referring to the standards set forth in Decisions such as Office of Special Counsel, 10 DOE ¶ 85,048 at 88,220 (1982) (Amoco), and OKC Corp./Town & Country Markets, Inc., 12 DOE ¶ 85,094 (1984). Under those standards an allocation claimant must: (1) demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm failed to furnish petroleum products that it was obligated to supply to the claimant under 10 CFR Part 211; (2) provide evidence that it had contemporaneously notified the DOE or otherwise sought redress for the alleged allocation violation and (3) establish that it was injured and document the extent of the injury. The remainder of this Decsion concerns only the filing of claims involving Murphy's alleged pricing violations.

[3] Although the Murphy consent order covers the period January 1, 1973 through January 28, 1981, applicants may file claims for volumes purchased only while the particular product was subject to federal price controls. Therefore, claimants may apply for refunds based on purchases made from Murphy between March 6, 1973 and the date of decontrol for each particular product. Below is a list of regulated petroleum products and the dates on which they were decontrolled:

[4] Because we realize that the impact on an individual claimant may have been greater than its potential refund calculated using the volumetric methodology, a claimant may submit evidence detailing the specific alleged overcharge that it sustained in order to be eligible for a larger refund. *See* Standard Oil Co. (Indiana)/Army and Air Force Exchange Service, 12 DOE ¶ 85,015 (1984).

alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. *See Marion Corporation*, 12 DOE ¶ 85,014 (1984) and cases cited therein. Therefore, end-users need only document their purchase volumes of Murphy covered products to demonstrate that they were injured by the alleged overcharges.

b. Regulated Firms and Cooperatives: Second, public utilities, agricultural cooperatives, and other firms whose prices are regulated by government agencies or cooperative agreements do not have to submit detailed proof of injury. Such firms would have routinely passed through price increases, including overcharges, to their customers. Likewise, their customers would share the benefits of cost decreases resulting from refunds. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) *(Tenneco); Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) *(Pennzoil)*. Such firms applying for refunds should certify that they will pass through any refund received to their customers and should explain how they will alert the appropriate regulatory body or membership group to monies received. Purchases that cooperatives subsequently resold to nonmembers will generally not be covered by this presumption.

c. Refiner, Reseller and Retailer Small Claims: Third, we will presume that a firm that resold Murphy products and requests a refund of $5,000 or less, excluding accrued interest, was injured by Murphy's alleged overcharges. A refiner, reseller, or retailer seeking a refund under this small claims presumption will not be required to submit evidence of injury beyond documentation of its purchase volumes of covered products from Murphy during the consent order period. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984). As we have noted in numerous prior proceedings, there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; in some cases, that expense might possibly exceed the expected refund. Consequently, failure to allow simplified application procedures for small claims could deprive injured parties of their opportunity to obtain a refund. Furthermore, use of the small claims presumption is desirable in that it allows the OHA to process efficiently the large number of routine refund claims expected. Refiners, resellers and retailers of Murphy products that are seeking full volumetric refunds in excess of $5,000 must follow the injury demonstration procedures that are outlined below in section 2.[5]

d. Refiner, Reseller and Retailer Mid-Level Claims: Fourth, we will adopt a mid-level presumption of injury under which a refiner, reseller, or retailer who purchased more than 15,298,347 gallons of Murphy covered products may elect to receive 40 percent of its full volumetric share up to $50,000, in lieu of making a detailed showing of injury.[6] The use of this presumption is based on detailed marketing analyses that we conducted in prior special refund proceedings, which indicated that mid-level claimants likely absorbed 40 percent of any overcharges that they allegedly incurred. *See Gulf Oil Corp.*, 16 DOE ¶ 85,381 (1987) *(Gulf II)*.[7] As with the small claims presumption, an applicant that chooses to rely on the mid-level presumption will be required only to document its purchase volumes of Murphy covered products in order to demonstrate that it was injured by Murphy's alleged overcharges.[8]

e. Spot Purchasers: We will also presume that refiners, resellers and retailers that were spot purchasers of a Murphy covered product, *i.e.*, made only sporadic, discretionary purchases, were not injured by their purchases. Consequently, they generally will be ineligible for refunds. The basis for this presumption is that a spot purchaser tended to have considerable discretion as to where and when to make a purchase, and therefore would not have made a purchase unless it was able to recover the full amount of its purchase price, including any alleged overcharges, from its customers. *See Vickers* at 85,396–97. In past proceedings, however, a spot purchaser has been able to rebut this presumption by demonstrating that its base period supply obligation limited its discretion in making the purchases and that it resold the product at a loss that was not subsequently recouped. *See, e.g., Saber Energy, Inc./Mobil Oil Corp.*, 14 DOE ¶ 85,170 (1986).

f. Consignees: Finally, we will presume that consignees of Murphy covered products were not injured by the firm's alleged pricing violations. *See, e.g., Jay Oil Co.*, 16 DOE ¶ 85,147 (1987). A consignee agent generally sold products pursuant to an agreement whereby its supplier established the prices to be charged by the consignee and compensated the consignee with a fixed commission based upon the volume of products that it sold. A consignee may rebut the presumption of non-injury by demonstrating that its sales volumes and corresponding commission revenues declined due to the alleged uncompetitiveness of Murphy's pricing practices. *See Gulf Oil Corp./C.F. Canter Oil Co.*, 13 DOE ¶ 85,388 at 88,962 (1986).

2. Non-Presumption Demonstration of Injury: A refiner, reseller or retailer with a full volumetric refund in excess of $5,000 that does not elect to receive a refund under either the small claims or 40 percent mid-level presumptions will be required to demonstrate its injury. There are two aspects to such a demonstration. First, a firm generally is required to provide a monthly schedule of its banks of unrecouped increased product costs for each covered product that it purchased from Murphy during the consent order period.[9] Cost banks

[5] If an applicant with a claim greater than $5,000 attempts to make a detailed showing of injury in support of a full volumetric refund but, instead, demonstrates that it was injured by less than $5,000, it cannot elect to limit its claim to the $5,000 small claims threshold. *See, e.g.*, Union Texas Petroleum Corp./Arrow Enterprises, Inc., 15 DOE ¶ 85,087 (1986).

[6] A claimant with purchases of 15,298,347 gallons or less that wishes to rely on an injury presumption can receive a larger refund by limiting its claim to the $5,000 small claims threshold than by utilizing the mid-level presumption. If 40 percent of a claimant's volumetric share exceeds $50,000, *i.e.*, if the claimant purchased more than 152,998,776 gallons of Murphy covered products, the claimant may choose to limit its claim to $50,000.

[7] The PMAA and the Murphy Jobbers Group have suggested that we adopt higher presumptive levels of injury for middle distillates and natural gas liquids as we did in Getty Oil Co., 15 DOE ¶ 85,064 (1986) (Getty). The different absorption fractions that we adopted in Getty, however, were based strictly on Getty's pricing data. Getty at 88,117. They are not relevant to the present proceeding. Furthermore, the use of a single average absorption fraction simplifies the refund procedures for the benefit of both the claimants and the DOE. Therefore, we will not adopt the PMAA and Murphy Jobbers Group's suggestion. *See* Gulf II at 88,737.

[8] A mid-level claimant may elect not to receive a refund based upon this presumption and may instead attempt to show that it is eligible for a refund equal to its full volumetric share by making a detailed showing of injury using the criteria set forth later in this Decision. The 40 percent presumption, however, will not be available to claimants who submit a detailed injury showing which leads us to conclude that they are eligible for a refund of less than 40 percent of their volumetric share.

[9] Claimants who have relied upon their banked costs in order to be eligible to receive refunds in other special refund proceedings should subtract those refunds from the cumulative banked costs submitted in this proceeding. *See* Husky Oil Co./Metro Oil Products, Inc., 16 DOE ¶ 85,090 at 88,179 (1987).

for a product should cover the period November 1, 1973 through the product's price decontrol date.[10] If a firm no longer has records of contemporaneously calculated cost banks for a particular product, it may approximate those banks by submitting the following information regarding its purchases of that product from all of its suppliers:

(1) The weighted average gross profit margin that the firm received for the product on May 15, 1973;

(2) A monthly schedule of the weighted average gross profit margins that it received for the product during the period, November 1, 1973 through the product's price decontrol date; and

(3) A monthly schedule of the firm's sales of the product during the period November 1, 1973 through the product's price decontrol date.[11]

The existence of banks of unrecouped increased product costs that exceed an applicant's potential refund is only the first part of an injury demonstration. A firm must also show that market conditions forced it to absorb the alleged overcharges. We will infer this to be true if the prices the applicant paid Murphy were higher than average market prices for the same level of distribution.[12] Accordingly, a claimant attempting to demonstrate injury should submit a monthly schedule of the weighted average prices that it paid Murphy for each covered product that it purchased between March 6, 1973 and the product's price decontrol date.

C. General Refund Application Requirements

Pursuant to 10 CFR 205.283, we will now accept Applications for Refund from individuals and firms that purchased refined petroleum products sold by Murphy between March 6, 1973 and the date of decontrol for the products. There is no specific application form that must be used. However, a suggested format for filing a Murphy Refund Application is set forth in the Appendix to this Decision. All Applications for Refund should include the following information:

(1) A conspicuous reference to Case Number KEF–0095 and the name and address of the applicant during the period for which the claim is filed, as well as the name to whom the refund check should be made out and the address to which the check should be sent;

(2) The name, title, address and telephone number of a person who may be contacted by OHA for additional information concerning the Application;

(3) The manner in which the applicant used the Murphy products, *i.e.*, whether it was a reseller, retailer, consignee, end user, etc.;

(4) For each covered product, a monthly schedule of purchases from Murphy during the period March 6, 1973 through the product's decontrol date. *See supra* note 3. If an applicant received a computer printout of its purchases from Murphy, it may submit that printout in lieu of monthly purchase volume schedules. If the applicant was an indirect purchaser it must also submit the name of its immediate supplier and indicate why it believes the covered product was originally sold by Murphy;

(5) All relevant material necessary to support its claim in accordance with the injury presumptions and requirements outlined above;

(6) If the applicant was or is in any way affiliated with Murphy, an explanation of the nature of the affiliation;

(7) A statement as to whether there has been a change in ownership of the entity that purchased the Murphy refined petroleum products during or since the consent order period. If there was such a change, the applicant must submit a copy of the sales agreement, as well as provide the names and addresses of the previous or subsequent owners;

(8) A statement as to whether the applicant is or has been involved in any DOE enforcement proceedings or private actions filed under Section 210 of the Economic Stabilization Act. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must inform OHA of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d);

(9) A statement as to whether the applicant has received a refund, from any source, for the alleged overcharges identified in the ERA audits underlying this proceeding;

(10) A statement as to whether the applicant or a related firm has filed any other Applications for Refund in this proceeding;

(11) A statement as to whether the claimant or a related firm has authorized any other individual(s) to file an Application for Refund on the claimant's behalf in the Murphy proceeding; and

(12) The following statement signed by the applicant or a responsible official of the business or organization claiming the refund: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c).

Applications for Refund should be sent to: Murphy Refund Proceeding, Case No. KEF–0095, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

All applications must be filed in duplicate and must be postmarked by March 31, 1989. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant that believes that its application contains confidential information must submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why the information is confidential.

It Is Therefore Ordered That:

(1) Applications for refund from the funds remitted to the Department of Energy by Murphy Oil Corporation pursuant to the Consent Order finalized on February 9, 1987 may now be filed.

(2) All applications must be postmarked by March 31, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date: September 19, 1988.

BILLING CODE 6450-01-M

[10] Retailers and resellers of motor gasoline were required to maintain cost bank data only until July 15, 1979 and April 30, 1980, respectively. Therefore, in showing injury with respect to their purchases of motor gasoline, such claimants will not be required to submit cost bank material up to the January 28, 1981 decontrol data of motor gasoline.

[11] For motor gasoline, retailers and resellers have to submit the information detailed in Parts (2) and (3) only through July 15, 1979, and April 30, 1980, respectively. *See supra* note 10.

[12] We generally obtain average market price information from Platt's Oil Price Handbook and Oilmanac (Platt's). If price data for a particular product is not available in Platt's, the burden of supplying alternative information will be on the claimant.

Suggested format for Application for Murphy Refund -- KEF-0095

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DOE use only

Name of Applicant Firm during refund period (3/73-1/81): _____

Address during refund period: _____

_____

_____

2. To whom should refund check be payable? _____

Address to which check should be sent: _____

_____

_____

Contact Person: _____

Telephone No.: ( ) _____

3. Type of Applicant:

Gas Station____ Consumer____ Consignee Agent____ Petroleum Jobber____ Public Utility____

Cooperative____ Other_____
(please specify)

4. (a) Total gallonage for which refund is requested: _____
(Enter total gallons here)

(b) Product(s) (e.g., gasoline, propane): _____

(c) Source of your gallonage information: _____
(If estimates, explain method on separate sheet.)

5. If you are a petroleum marketer (refiner, reseller, or retailer) and you purchased more than 6,119,951 gallons of Murphy products, do you elect to rely on the relevant petroleum marketer injury presumption (See Question & Answer 4)?

Yes ☐ No ☐ Not Applicable ☐

If you do not elect the relevant petroleum marketer injury presumption, or if you are requesting a refund greater than $50,000, attach the required "injury" showing. (See the Decision & Order for details on the injury showing required.)

(Check One)

6. Was the product you bought Murphy-branded? Yes ☐ No ☐

7. Were you supplied by Murphy directly? Yes ☐ No ☐

If yes, please provide Murphy customer number here_____. If no, (i) attach an explanation of why you believe the product was sold by Murphy and (ii) include the name and address of the person or firm from which you purchased the product.

8. Is (was) your business owned all or in part by Murphy? If yes, please explain Yes ☐ No ☐

9. Have you been a party or are you currently a party in a DOE enforcement action or private Section 210 action? (See Q & A No. 7) If yes, please attach an explanation. Yes ☐ No ☐

10. Have you or a related firm filed any other application for refund involving any Murphy product in this proceeding? If yes, attach an explanation. Yes ☐ No ☐

11. Have you or a related firm authorized any individual(s) other than those identified on this form to file an application on your behalf in this Murphy refund proceeding? If yes, attach an explanation. Yes ☐ No ☐

12. Were you a Murphy consignee agent? (See Q & A No. 8) Yes ☐ No ☐
If yes, attach information sufficient to rebut the presumption of non-injury for consignees (See Decision for details.)

13. Did ownership of your firm change during or since the refund period? Yes ☐ No ☐
If you answered yes, please provide an explanation that includes the names and addresses of any previous or subsequent owners and submit a copy of the purchase and sales agreement.

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a jail sentence, a fine, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

_____
Date

_____
Signature of Applicant

_____
Title

SCHEDULE OF PURCHASES

NOTE: YOU DO NOT NEED TO COMPLETE THIS PAGE IF YOU ATTACH THE PURCHASE VOLUME SCHEDULE PROVIDED BY MURPHY.

Name of Applicant: _____

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MONTHLY PURCHASE VOLUMES OF _____
(PRODUCT)

	1973	1974	1975	1976	1977	1978	1979	1980	1981
January	*******	_____	_____	_____	_____	_____	_____	_____	_____
February	*******	_____	_____	_____	_____	_____	_____	_____	*******
March	_____	_____	_____	_____	_____	_____	_____	_____	*******
April	_____	_____	_____	_____	_____	_____	_____	_____	*******
May	_____	_____	_____	_____	_____	_____	_____	_____	*******
June	_____	_____	_____	_____	_____	_____	_____	_____	*******
July	_____	_____	_____	_____	_____	_____	_____	_____	*******
August	_____	_____	_____	_____	_____	_____	_____	_____	*******
September	_____	_____	_____	_____	_____	_____	_____	_____	*******
October	_____	_____	_____	_____	_____	_____	_____	_____	*******
November	_____	_____	_____	_____	_____	_____	_____	_____	*******
December	_____	_____	_____	_____	_____	_____	_____	_____	*******
Yearly Total	_____	_____	_____	_____	_____	_____	_____	_____	_____

TOTAL FOR THIS PRODUCT: _____ GALLONS

Claims for less than $15.00 will not be processed (17,748 gallons total purchases).

✔ **Do not include any purchases of product on or after that product's date of decontrol. (See below for decontrol dates)**

Product	Date Decontrolled	Product	Date Decontrolled
Motor Gasoline, Propane	January 28, 1981	Diesel Fuel, Kerosene	July 1, 1976
Butane and Natural Gasoline	January 1, 1980	No. 1 and No. 2 Heating Oil	July 1, 1976
Aviation Gas and Jet Fuel	February 26, 1979	Residual Fuel	June 1, 1976
Naphtha-Based Jet Fuel	October 1, 1976	Ethane and Asphalt	April 1, 1974
Naphthas	September 1, 1976		

[FR Doc. 88-21964 Filed 9-23-88; 8:45 am]
BILLING CODE 6950-01-C

Office of Fossil Energy

Inventories and Storage Task Group; Coordinating Subcommittee of Petroleum Storage and Transportation; National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Inventories and Storage Task Group of the Coordinating Subcommittee on Petroleum Storage and Transportation of the National Petroleum Council.

Date and time: Thursday, October 20, 1988, 9:30 am.

Place: National Petroleum Council, Conference Room 1625 K Street NW., Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, *Telephone:* 202/586-4695.

Purpose of the parent council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the meeting: Discuss surveys and review draft report.

Tentative Agenda

—Opening remarks by Chairman and Government Cochairman.
—Discuss surveys of inventories and storage capacity.
—Review the Inventories and Storage volume draft.
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Inventories & Storage Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the Public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room IE-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 am and 4:00 pm, Monday through Friday, except Federal holidays.

Donald L. Bauer,

Principal Deputy Assistant Secretary, Fossil Energy.

[FR Doc. 88-21963 Filed 9-23-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3453-8]

Science Advisory Board, Environmental Health Committee, Drinking Water Subcommittee; Open Meeting—October 13-14, 1988

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Drinking Water Subcommittee of the Environmental Health Committee of the Science Advisory Board will be held on October 13-14, 1988, at the Westpark Hotel Rosslyn, 1900 N Ft. Myer Drive, Arlington, VA 22209. The meeting will be held from 8:30 a.m. to 5:00 p.m. on October 13th and from 8:30 a.m. to 12:00 p.m. on October 14th.

The purpose of this meeting is for briefings, discussions and analysis of the Office of Drinking Water's activities involved in developing regulations for disinfection, disinfection by-products, filtration and coliforms. Some other briefings will be presented concerning the current activities of the Office of Drinking Water.

The meeting will be open to the public. Any member of the public wishing to make a presentation at the meeting should forward a written statement to Dr. C. Richard Cothern, Executive Secretary, Science Advisory Board (A-101F)), U.S. Environmental Protection Agency, Washington, DC, 20460, or contact him on (202) 382-2552 by October 7, 1988. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: September 19, 1988.

Donald Barnes,

Director, Science Advisory Board.

[FR Doc. 88-21905 Filed 9-23-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3453-7]

Proposed Administrative Settlement and Opportunity To Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed administrative settlement and opportunity for public comment.

SUMMARY: EPA is providing notice of a proposed administrative settlement for recovery of EPA's response and oversight costs pursuant to section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986. Public comment is also solicited by this notice.

Under 42 U.S.C. 9606, EPA is authorized to enter into and to issue Orders requiring among other things, investigation and cleanup of facilities where hazardous substances may have been released. 42 U.S.C. 9607 provides that a party responsible for the release is liable for costs expended by the United States in its response to the problem. 42 U.S.C. 122(h) provides EPA with authority to consider, compromise and settle a claim for costs incurred by the United States if the case has not been referred to the Department of Justice. Because this case is one in which the United States has incurred costs less than $500,000, EPA may settle the claim without the prior written approval of the Attorney General. This Notice pertains to the settlement of a case which has not been referred to the Department of Justice.

In February, 1987, EPA issued Administrative Orders to Samuel Boykin and Charles Ingram, requiring the cleanup of leaking and improperly stored drums of metal plating shop chemicals at a facility located at 1610-1620 Rigel Street, San Diego, California. Mr. Boykin was the owner of the facility and Mr. Ingram was the President of National Anodizing, Inc., which ran a metal plating shop at the facility and abandoned some of the drums. Subsequently, Mr. Charles Halphen and Mrs. Rebecca Boykin were determined to be co-owners of the facility with Mr. Boykin. Mr. Boykin, Mr. Ingram, Mr. Halphen, and Mrs. Boykin were determined by EPA to be responsible parties for the site.

When Mr. Boykin and Mr. Ingram did not comply with the Administrative Orders, EPA conducted a cleanup at the facility, which included characterization and repacking of over 400 containers, shipment of cyanides for re-use by a mining operation, and disposal of the other materials at approved disposal facilities.

EPA spent $221,401.04 to conduct the cleanup. After discussions and negotiations, in August, 1988, Mr. and Mrs. Boykin and Mr. Halphen agreed to

reimburse EPA $221,401.04, representing 100% of the costs expended by EPA during the cleanup. Mr. Ingram was not a party to the settlement. EPA believes that the settlement is fair and in the public interest.

EFFECTIVE DATE: October 26, 1988. Comments will be considered if received before the effective date.

ADDRESS: Comments may be mailed to: Betsy Curnow, United States Environmental Protection Agency, 215 Fremont Street, T–4–4, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Betsy Curnow, (415) 974–8364.

Dated: September 9, 1988.

Jeff Zelikson,

Director, Toxics and Waste Management Division, EPA Region 9.

[FR Doc. 88–21906 Filed 9–23–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3453–9

Proposed Administrative Penalty Assessment and Opportunity to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Administrative Penalty Assessment and Opportunity to Comment.

SUMMARY: EPA is providing notice of proposed administrative penalty assessments for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR Part 22, as amended on an interim final basis of 52 FR 30671 (August 17, 1987). The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, are set forth in the Consolidated Rules, as amended. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of public notice.

Class I proceedings are conducted under EPA's Guidance on Class I Clean Water Act Administrative Penalty Procedures, July 27, 1987. The procedures through which the public may submit written comment on a proposed Class I order are set out in the Guidance. The deadline for submitting public comment on proposed Class I order is thirty days after issuance of public notice.

On the date identified below, EPA commenced the following Class I proceedings for the assessment of penalties.

In the Matter of Northern Telecom Electronics, Inc., 16350 West Bernardo Drive, San Diego, CA 92127, EPA Docket No. IX–FY–88–71; filed on September 14, 1988 with Regional Hearing Clerk. U.S.E.P.A., Region 9, 215 Fremont Street, San Francisco, California 94105, (415) 974–8036; proposed penalty, $25,000, for violation of Federal prohibition against causing interference with the operation of a Publicly Owned Treatment Works (POTW), and violation of Federal discharge prohibitions for pH.

On the date identified below, EPA commenced the following Class II proceedings for the assessment of penalties:

In the Matter of Action Instruments, Inc., dba Action Printed Circuits, 1480 Simpson Way, Escondido, CA 92025; EPA Docket No. IX–FY–88–66; filed on September 14, 1988 with Regional Hearing Clerk, U.S.E.P.A., Region 9, 215 Fremont Street, San Francisco, California 94105 (415) 974–8036; proposed penalty, $125,000, for violations of Federal categorical pretreatment standards and local limits.

In the Matter of Hebdon Electronics, Inc., 655 Opper Street, Escondido, CA 92025, EPA Docket No. IX–FY–88–68; filed on September 14, 1988 with Regional Hearing Clerk, U.S.E.P.A., Region 9, 215 Fremont Street, San Francisco, California 94105 (415) 974–8036; proposed penalty, $125,000, for violations of Federal categorical pretreatment standards for local limits.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the complaints or other documents filed in these proceedings, comment upon the proposed assessments, or otherwise participate in the proceedings should contact the Regional Hearing Clerk identified above. Unless otherwise noted, the administrative record for each of the proceedings is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information.

In order to provide opportunity for public comment, EPA will not issue a final order assessing a penalty in these proceedings prior to 30 days after publication of this notice.

Dated: September 14, 1988.

Keith Takaty,

Acting Director, Water Management Division.

[FR Doc. 88–21904 Filed 9–23–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIOIN COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

September 19, 1988.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501 *et seq.*).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

OMB Number: 3060–0314.

Title: Section 76.209, Fairness doctrine; personal attacks; political editorials.

Action: Extension.

Respondents: Businesses (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 1,225 Responses; 3,185 Hours, 2.6 Hours each.

Needs and Uses: This rule requires cable television system operators to notify: (1) Persons or groups on which personal attacks are made, or (2) the opponent of a candidate endorsed by a cable television system in an editorial, or (3) a candidate opposed by a cable system in an editorial. This notification gives the person or group the right to respond over the licensee's facilities.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-21870 Filed 9-23-88; 8:45 am]

BILLING CODE 6712-01-M

1989 Tariff Review Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission will release the 1989 Tariff Review Plan for Tier I telephone companies by October 7, 1989, along with a general outline of the Tariff Review Plan for Tier II companies. The Tariff Review Plan displays basic cost and demand information and is part of the required annual access tariff filings. This notice is issued as part of an agreement with the Office of Management and Budget to provide advance notice to the public of the issuance of the Tariff Review Plan.

FOR FURTHER INFORMATION CONTACT: Chris Frentrup, (202) 632-0745.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0400.
Title: Tariff Review Plan.
Respondents: Businesses.
Frequency of Response: Annually.
Estimated Annual Burden: 58 Responses; 13,978 Hours, 241 hours each.
Needs and Uses: Certain local exchange carriers (telephone companies) are required to submit Tariff Review Plans in partial fulfillment of cost support material required by 47 CFR 61.38. The information is used by the Commission and public to determine the justness and reasonableness of rates, terms, and conditions in tariffs as required by the Communications Act of 1934, as amended.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-21869 Filed 9-23-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1749]

Petitions for Reconsideration and Applications for Review of Actions in Rule Making Proceedings

September 19, 1988.

Petitions for reconsideration and applications for review have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202-857-3800). Oppositions to these petitions and applications must be filed October 12, 1988. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Chester, South Carolina and Wedgefield, South Carolina). Number of petitions received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Claremore, Locust Grove, and Nowata, Oklahoma and Barling, Arkansas. (MM Docket No. 85-156, RM's 4938, 5403, & 5808). Number of petitions received: 1.

Subject: Revision to amend Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies as it relates to the treatment of certain individual items of furniture and equipment costing $500 or less. (CC Docket No. 87-135). Number of petitions received: 8.

Subject: Amendment of § 73.606(b) Table of Allotments, Television Broadcast Stations. (Lima, Ohio, Muncie, Indiana, Rockford, Illinois and Grand Rapids, Michigan (MM Docket No. 87-417, RM-5931). Number of petitions received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Creswell, Oregon) (MM Docket No. 87-589, RM-6108). Number of petitions received: 1.

Applications For Review

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Claremore, Locust Grove and Nowata, Oklahoma and Barling, Arkansas) (MM Docket No. 85-156, RM's 4938, 5403 & 5808). Number of applications received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Columbia, Greenwood, Hartsville, Lexington and North Augusta, South Carolina) (MM Docket No. 86-72, RM's 5073, 5240, 5404, 5405 & 5406). Number of applications received: 1.

H. Walker Fester III,

Acting Secretary.

[FR Doc 88-21868 Filed 9-23-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearings; Lift Him Up Outreach Ministries, Inc.

1. The Commission has before it the following groups of mutually exclusive applications for new FM stations:

I.

Applicant, City and State	File No.	MM Docket No.
A. Lift Him Up Outreach Ministries, Inc.; Spencer, OK.	BPH-860703MA	88-431
B. Jackson Broadcasting, Ltd.; Spencer, OK.	BPH-860703MB	
C. University of Oklahoma; Spencer, OK.	BPH-860703MC	
D. Oklahoma City Counseling Center, Inc.; Spencer, OK.	BPH-870702MF (PREVIOUSLY DISMISSED).	

Issue Heading and Applicants

1. Misrepresentation, B
2. Comparative, A-C
3. Ultimate, A-C

II.

Applicant, City and State	File No.	MM Docket No.
A. W.L. Savage d/b/a Screamer Mountain Radio; Clayton, GA.	BPH-870917MA	88-402
B. Richard T. Turner, Jr.; Clayton, GA.	BPH-870918NK	

Issue Heading and Applicants

1. Comparative, A,B
2. Ultimate, A,B

III.

Applicant, City and State	File No.	MM Docket No.
A. Randolph Victor Bell; Evansville, Indiana.	BPH-870331OP	88-403
B. M. Elaine Hulse and William S. Horn, a Partnership; Evansville, Indiana.	BPH-870429MJ	
C. Gail A. Dunn d/b/a Gail Dunn Broadcast Associates; Evansville, Indiana.	BPH-870429MK	
D. S. Jerry Kissinger d/b/a S.J. Kissinger Co.; Evansville, Indiana.	BPH-870429MQ	

Applicant, City and State	File No.	MM Docket No.
E. Tri State Community Development and Communications Corporation; Evansville, Indiana.	BPH-870430MR	
F. Counsellor FM Limited Partnership; Evansville, Indiana.	BPH-870430MU	
G. Evansville Skywave, Inc.; Evansville, Indiana.	BPH-870430OK	

Issue Heading and Applicants

1(a). Misrepresentation, C
1(b). Qualifications, C
2. Environmental, C
3. (See Appendix), E
4. Site Availability, F
5(a). (See Appendix), F
5(b). (See Appendix), F
5(c). Qualifications, F
6. Comparative, A11
7. Ultimate, A11

IV.

Applicant, City and State	File No.	MM Docket No.
A. James Boyd Pate; Winfield, AL.	BPH-870903MC	88-405
B. Eloise F. Thomley, Kermit E. Minga & Geneva H. Dove, d/b/a Winfield Broadcasting; Winfield, AL.	BPH-870909MJ	
C. William Edward Nichols; Winfield, AL.	BPH-870910MG	
D. Winfield Radio Joint Venture; Winfield, AL.	BPH-870910NX	
E. John Self; Winfield, AL.	BPH-870910OD	

Issue Heading and Applicants

1. Comparative, A-E
2. Ultimate, A-E

V.

Applicant, City and State	File No.	MM Docket No.
A. W. Greg Ryberg, Leslie Pope Garnett and Rebecca T. Robbins d/b/a GRR Marketing; New Ellenton, SC.	BPH-870313NM	88-404
B. Blessed FM Partnership; New Ellenton, SC.	BPH-870313NR	
C. Bose Gowdy; New Ellenton, SC.	BPH-870313MC (Previously Dismissed).	

Issue Heading and Applicants

1. Comparative, A,B
2. Ultimate, A,B

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in consolidated proceedings upon the issues listed above for each proceeding. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to that particular applicant.

3. Non-standardized issues in these proceedings, are set forth in an Appendix to this Notice. A copy of the complete HDO's in these proceedings are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-21871 Filed 9-23-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. 88-931]

FSLIC Insurance Premium

Date: September 15, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), has adopted a resolution pursuant to which the Corporation orders the assessment against each insured institution of an additional premium for FSLIC insurance in an amount equal to one quarter of one-eighth of one percent (one thirty-second of one percent) of the total amount of the accounts of the insured members of each insured institution determined as of June 30, 1988.

EFFECTIVE DATE: September 26, 1988.

FOR FURTHER INFORMATION CONTACT: Mary A. Creedon, Principal Deputy Executive Director FSLIC, (202) 254-2029; or Deborah Siegel, Attorney, Office of General Counsel (202) 377-6848, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

WHEREAS, The Federal Home Loan Bank Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"), may authorize the Corporation, pursuant to Section 404(c) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1727(c) (1982), to assess against each institution the accounts of which are insured by the Corporation pursuant to Section 403 of the NHA, 12 U.S.C. 1726 (1982) ("insured institution"), additional premiums for such insurance until the amount of such premiums equals the amount of all losses and expenses of the Corporation, *provided* that the total amount so assessed in any one year against any insured institution shall not exceed one eighth of one per centum of the total amount of the accounts of the insured members of such institution and *provided further* that the amount of the additional premium for the calendar year 1988 may not exceed one-twelfth of one percentum of the total amount of the accounts of the insured members of such institution unless the Bank Board determines that severe pressures on the Corporation exist which necessitate an infusion of additional funds; and

Whereas, The Bank Board, as operating head of the Corporation, by Resolution No. 85-142, dated February 22, 1985, by Resolution No. 85-437, dated June 5, 1985, by Resolution No. 85-770, dated August 28, 1985, by Resolution No. 85-1142, dated December 9, 1985, by Resolution No. 86-213, dated March 6, 1986, by Resolution No. 86-582, dated June 10, 1986, by Resolution No. 86-941, dated September 2, 1986, by Resolution No. 86-1253, dated December 15, 1986, by Resolution No. 87-281 dated March 16, 1987, by Resolution No. 87-610 dated May 27, 1987, by Resolution No. 87-950 dated September 9, 1987, by Resolution No. 87-1254 dated December 14, 1987, and by Resolution No. 88-256 dated April 7, 1988, and by Resolution No. 88-537 dated June 29, 1988, ordered assessments against each insured institution of an additional premium for insurance in an amount equal to one thirty-second of one per centum of the total amount of the accounts of the insured members of each insured institution determined as of December 31, 1984, for the first assessment, as of March 31, 1985, for the second, as of June 30, 1985, for the third, as of September 30, 1985, for the fourth, as of December 31, 1985, for the fifth, as of

March 31, 1986, for the sixth, as of June 30, 1986, for the seventh, as of September 30, 1986, for the eighth, as of December 31, 1986, for the ninth, as of March 31, 1987, for the tenth, as of June 30, 1987, for the eleventh, as of September 30, 1987 for the twelfth, as of December 31, 1987 for the thirteenth; and as of March 31, 1988 for the fourteenth; and

Whereas, The Bank Board has considered memoranda of the Corporate Accounting Branch and the Chief Financial and Administrative Officer, Office of the FSLIC, (a copy of which memoranda are in the Minute Exhibit file), describing the impact of the collection of the additional premiums for insurance assessed pursuant to Resolution No. 85–142, dated February 22, 1985, Resolution No. 85–437, dated June 5, 1985, Resolution No. 85–770, dated August 28, 1985, Resolution No. 85–1142, dated December 9, 1985, Resolution No. 86–213, dated March 6, 1986, Resolution No. 86–582, dated June 10, 1986, Resolution No. 86–941, dated September 2, 1986, Resolution No. 86–1253, dated December 15, 1986, Resolution No. 87–281, dated March 16, 1987, Resolution No. 87–610, dated May 27, 1987, Resolution No. 87–950, dated September 9, 1987, Resolution No. 87–1254, dated December 14, 1987, Resolution No. 88–256, dated April 7, 1988, and Resolution No. 88–537, dated June 29, 1988 upon the Corporation's insurance reserves:

Now, therefore, it is resolved, That on the basis of the administrative record, the Bank Board finds and determines that the Corporation has incurred substantial losses during calendar years 1981 through the second quarter of 1988; and

Resolved further, that the Bank Board finds and determines that:

1. Losses and expenses incurred by the Corporation, as defined in Resolution No. 85–142, require the assessment of additional insurance premiums pursuant to Section 404(c) of the NHA in addition to the additional insurance premiums assessed pursuant to Resolutions No. 85–142, No. 85–437, No. 85–770, No. 85–1142, No. 86–213, No. 86–582, No. 86–941, No. 86–1253, No. 87–281, No. 87–610, No. 87–950, No. 87–1254, No. 88–256, and No. 88–537, in order to maintain the insurance reserves of the Corporation at a level adequate to meet in part the Corporation's losses and expenses and to protect the insured members of insured institutions;

2. Severe pressures on the Corporation exist which necessitate an infusion of additional funds;

3. Postponement of a reduction in the assessment of an additional premium, as provided in section 404(c)(2) of the NHA, will improve the financing environment for selling obligations of the Financing Corporation organized pursuant to the Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987;

4. It is appropriate, therefore, to provide for the assessment of an additional insurance premium at this time, pursuant to Section 404(a)(2) and 404(c)(1) of the NHA, by order of the Corporation; and

Resolved further, that the Corporation hereby orders the assessment against each insured institution of an additional premium for insurance for the third quarter of 1988, in an amount equal to one thirty-second of one per centum of the total amount of the accounts of the insured members of such insured institution determined as of June 30, 1988; and

Resolved further, that the additional insurance premium assessed pursuant to this Resolution shall be payable on or about October 6, 1988; and

Resolved further, that the Executive Director or a Deputy Director of the FSLIC, or a designee of either of them, ("Director"), shall determine the amount of the additional premium due, including an offset of one quarter of twenty percent (five percent) of each insured institution's pro rata share of the statutorily prescribed amount as provided in § 404(e)(2) of the NHA, to be paid on October 6, 1988, by each insured institution, and shall notify each insured institution of such amount at least fifteen (15) days prior to the date such amount is due; and

Resolved further, that the Director, on behalf of the Corporation, is hereby authorized to take all other actions necessary or appropriate to determine and collect the additional insurance premium authorized and ordered by this Resolution; and

Resolved further, that the Secretary shall forward this Resolution for publication in the **Federal Register.**

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–21956; Filed 9–23–88; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–739]

First Federal Savings Bank, Rock Hill, SC; Final Action; Approval of Conversion and Holding Company Applications

Date: September 14, 1988.

Notice is hereby given that on September 8, 1988, the General Counsel, and the Executive Director of the Office of Regulatory Activities (or their respective designees), acting pursuant to delegated authority, approved the application of First Federal Savings Bank, Rock Hill, South Carolina ("First Federal") for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion, and the application of South Carolina Federal Corporation ("SCFC") to acquire control of First Federal through the merger of that association with South Carolina Federal Savings Bank, a wholly owned subsidiary of SCFC.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–21957 Filed 9–23–88; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–000050–055

Title: Pacific Coast/Australia-New Zealand Tariff Bureau

Parties:

Columbus Line

Associated Container Transportation (Australia), Ltd.

Hyundai Australia Direct Line

Blue Star LIne, Ltd.

Australia-New Zealand Direct Line
Pacific Australia Direct Line
Synopsis: The proposed modification would add an additional category of associate membership in the conference to accommodate joint service operations which are affilated with Tariff Bureau members. The parties have requested a shortened review period.

Agreement No.: 202–000093–045
Title: North Europe-U.S. Pacific Coast Conference
Parties:
Hapag-Lloyd AG
Compagnie Generale Maritime
Incotrans BV
Synopsis: The proposed modification would delete Conference jurisdiction over traffic moving intermodally via gateways other than U.S. West Coast ports.

Agreement No.: 203–010977–006
Title: Hispaniola Discussion Agreement
Parties:
United States Atlantic and Gulf/ Hispaniola Steamship Freight Association
Zim Israel Navigation Co.
Tropical Shipping and Construction Co. Ltd.
Seaboard Caribe Ltd.
Kirk Line Ltd.
U.S.A. Tecmarine Incorporated d/b/ a/ Tecmarine Lines
Synopsis: The proposed modification would eliminate the geographic limitation on Kirk Line Ltd.'s, participation in the agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: September 21, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–21901 Filed 9–23–88; 8:45 am]

BILLING CODE 6730–01–M

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.: 224–011068–001
Title: Portland Terminal Agreement
Parties: Port of Portland, Evergreen Marine Corp. (Taiwan), Ltd.

Synopsis: The agreement provides for a proration of the basic agreement's minimum annual guarantee if Evergreen terminates the agreement and enters into a new agreement providing Evergreen's continued service to the Port of Portland.

Agreement No: 224–200154
Title: Port Everglades Terminal Agreement
Parties: Port Everglades Authority Sea-Land Service, Inc. (Sea-Land)

Synopsis: The proposed agreement provides for Sea-Land's lease of a parcel of vacant land, office space and roofed area adjacent to the office space at Port Everglades, Florida.

By Order of the Federal Maritime Commission.

Dated: September 21, 1988

Joseph C. Polking,

Secretary.

[FR Doc. 88–21960 Filed 9–23–88; 8:45 am]

BILLING CODE 6730–01–M

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

[BOAC #950001]

Scholarships; Closing Date for Nominations from Eligible Institutions of Higher Education.

Notice is hereby given that, pursuant to the authority contained in the Harry S. Truman Memorial Scholarship Act. Pub. L. 93–642 (20 U.S.C. 2001), nominations are being accepted from eligible institutions of higher education for Truman Scholarships. Procedures are prescribed at 45 CFR 1801, and were published in the **Federal Register** on June 19, 1976 (43 FR 26366).

In order to be assured of consideration, all documentation in support of nominations must be received by the Truman Scholarship Review Committee, CN 6302, Princeton, N.J. 08541–6302 postmarked no later than Thursday, December 1, 1968.

Malcolm C. McCormack,

Executive Secretary.

[FR Doc. 88–21923 Filed 9–23–88; 8:45 am]

BILLING CODE 6820–AB–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Cooperative Agreement With the Institute of Medicine of the National Academy of Sciences; Availability of Funds for Fiscal Year 1988

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of funds in Fiscal Year 1988 for a cooperative agreement with the Institute of Medicine of the National Academy of Sciences (IOM/NAS) to enhance the education and practice of health care providers in recognizing, treating, and preventing injury or illness associated with exposure to hazardous substances by developing activities on environmental toxicology and epidemiology related to health education. No other applications are solicited or will be accepted.

Authority

This cooperative agreement is authorized by section 104(i)(1) (5) and (14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). The Catalog of Federal Domestic Assistance number is 13.161.

Background

The National Academy of Sciences (NAS) is a unique institution because of its ability to assemble the best scientific and medical talent in the country and apply study procedures that ensure objectivity and maximum credibility. The NAS established a committee to study the role of physicians in the field of occupational and environmental medicine. This study is now completed and contains specific recommendations to improve the role of the primary care physician in recognizing, diagnosing, treating, and preventing disease or injury as a result of exposure to hazardous substances.

The cooperative agreement will allow the organization to stimulate and promote fundamental advances in the fields of Environmental Health Education and Toxicology through conducting public and scientific symposia, workshops, and disseminating information and recommendations contained in the committee report.

Reasons for Proposing the Institute of Medicine of the National Academy of Sciences as The Recipient of This Cooperative Agreement

The Institute of Medicine of the National Academy of Sciences (IOM/NAS) has the ability to attract a high caliber of medical personnel to address significant health policy concerns at a national level.

One such concern is the delivery of health care in the area of environmental medicine so as to better serve the public. Specifically, IOM/NAS addressed the question of how to improve the role of physicians in recognizing, treating, and preventing disease or injury as the result of exposure to hazardous substances. The focus of the IOM/NAS study is the primary care physician, or perhaps more accurately, the provider carrying out primary care or, performing the first contact "gatekeeper" role.

The IOM/NAS committee on *The Role of the Physician in Occupational and Environmental Medicine* identified a specific need for a single access point for physicians to receive information concerning environmental hazards and the management of their health effects. The committee also concluded that because of the wide range of information needed, primary care providers would best be served by a single, unified information system available on a State-wide or regional basis. Available to all health care providers by phone, the single access center would provide assistance or refer callers to the appropriate sources of assistance. The established network of Poison Control Centers may lend itself to providing this service as a supplement to its current responsibilities.

Disincentives to increased physician involvement in environmental medicine have often been attributed to the lack of comprehensive, readily available information which can provide current peer reviewed, clinically relevant information. Currently, a single comprehensive access system providing information concerning the prevention and management of individuals exposed to hazardous substances is not available to clinicians.

Purpose and Cooperative Activities

A. Purpose

The overall goal of this cooperative agreement is to enhance the education and practice of health care providers in recognizing, treating, and preventing injury or illness associated with exposure to hazardsous substances as recommended in the recent IOM/NAS study: *The Role of the Physician in Occupational and Environmental Medicine.*

Specific objectives of the cooperative agreement are as follows:

1. Improve the access of health care practitioners to a "single access" information resource to improve clinical practice.

2. Enhance the availability and visibility of a responsive, peer-reviewed, knowledge base of clinically relevant information to improve clinical practice.

3. Enhance the linkage of established local clinical networks (hospital, private, group practice, academically based, etc.) to a single access information resource to improve clinical practice.

4. Enhance the training and education function of academically based clinical progams by improving the availability and visibility of a single access information resource.

B. Cooperative Activities

1. IOM/NAS Activities

a. Disseminate to the health care provider community the appropriate environmentally related recommendations and supporting documentation contained in the NAS study: *The Role of the Physician in Occupational and Environmental Medicine.*

b. Demonstrate methods and models to enhance the access of health care practitioners to a single access information resource to improve clinical management and prevention of injury or disease related to the exposure to hazardous substances.

c. Demonstrate methods and models of the technical data base(s) which could be utilized by a single access information resource so as to improve clinical management and prevention activities.

d. Disseminate the results of activities (b) and (c) above to the health care practitioner communities most concerned about injury and illness associated with exposure to hazardous substances.

2. ATSDR Activities

a. Collaborate with the IOM/NAS in disseminating among the medical community the relevant environmentally related recommendations and supporting documentation contained in the NAS study: *The Role of the Physician in Occupational and Environmental Medicine.*

b. Collaborate with the IOM/NAS in demonstrating methods and models to enhance and improve access of information necessary for health care providers in recognizing, preventing, and treating illness or injury associated with the exposure to hazardous substances.

c. Collaborate with the IOM/NAS in demonstrating specific technical computerized data bases and print materials to be utilized by a single access information system.

d. Collaborate with the IOM/NAS in disseminating the results of (b) and (c) above by identifying private and public medical communities and institutions with specific interest in recognizing, preventing, and treating illness or injury associated with exposure to hazardous substances.

Evaluation Criteria

The application will be reviewed and evaluated based on the following:

1. Estimated cost of the project to the Government is reasonable considering the anticipated results.

2. Project personnel are well qualified by training and/or experience for the support sought and the applicant organization has adequate facilities and manpower.

3. The project objectives are identical with, or are capable of achieving, the specific program objectives.

4. The proposed activities, if well executed, are capable of attaining project objectives and an evaluation plan is proposed.

Reporting Requirements

Annual progress and financial status reports are required no later than 90 days after the end of each budget period. Final progress and financial status reports are required 90 days after the end of the project period.

Availability of Funds

Approximately $150,000 will be available in Fiscal Year 1988 to fund this cooperative agreement. It is expected that the cooperative agreement will begin on or about September 29, 1988, and depending upon fund availability, will be funded for a 12-month budget period within a 3-year project period. Funding estimates may vary and are subject to change.

Other Reviews

This program is eligible for coverage under Executive Order 12372, "Intergovernmental Review of Federal Programs." An applicant should consult the office or official designated as the single point of contact in his or her State for more information on the process the State requires to be followed in applying for assistance, if the State has selected the program for review.

Where to Obtain Additional Information

Information regarding the business aspects of this project may be obtained from Terry Maricle, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Mailstop E14, Atlanta, Georgia 30305, or by calling (404) 842–6575 or FTS 236–6575.

Information regarding the technical aspects of this project may be obtained from Max Lum, Ed.D., Agency for Toxic Substances and Disease Registry, (404) 488–4630 or FTS 236–4630.

Dated: September 20, 1988.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 88–21980 Filed 9–23–88; 8:45 am]

BILLING CODE 4160–70–M

Supplemental Funds Available for Fiscal Year 1988: National Research Council, National Academy of Sciences

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of supplemental funds to the existing cooperative agreement with the National Research Council of the National Academy of Sciences (NRC/NAS) to support efforts to develop activities on environmental toxicology and epidemiology. No other applications are solicited or will be accepted.

Authority

This cooperative agreement is authorized by section 104(i) (1) and (5) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). The Catalog of Federal Domestic Assistance number is 13.161.

Background

The National Research Council of the National Academy of Sciences (NRC/NAS) was awarded $840,000 on September 19, 1987, to further the scientific and technical foundations for environmental sciences, environmental epidemiology, environmental toxicology, public health, and related fields.

The NRC/NAS is a unique institution because of its ability to assemble the best scientific talent in the country applying study procedures that ensure objectivity and maximal credibility. The NRC/NAS established its Board of Environmental Studies and Toxicology (BEST) to provide advice to a number of Federal Agencies on basic scientific questions affecting the development of environmental toxicology, environmental epidemiology, and related fields.

The purpose of this supplement is to stimulate and promote fundamental advances in the fields of environmental health and toxicology with the research community through conducting public and scientific symposia, workshops and long-term committee reviews. These activities will allow the identification of major scientific issues, research needs, and research gaps on these and related topics.

Reasons for Proposing NAS/NRC as Recipient of This Cooperative Agreement

The capacity of the National Research Council (NRC) to play a unique role in advising the Federal Government on matters of science and technology stems from the net impact of several interrelated attributes of the institution and the manner in which it carries out its studies. One of these attributes is that the NRC can elicit the participation of virtually any scientist whom it invites to serve on a committee. The result is some 800 committees peopled by about 8,000 volunteers who may or may not be members of the Academy.

The credibility of the NRC reports is maximized by the recognized impartiality of the institution, which manufactures no product, possesses no funds to disperse, has no power of decision over the scientific establishment, and carries no executive or regulative authority. Thus, neither the NRC nor the transient committees having immediate responsibility for a given study can fairly be charged with a vested interest in the outcome of deliberations. Members provide their professional expertise without monetary compensation, in service to the Nation through the NRC.

Based on the above, NRC/NAS merits being characterized as the only qualified source of expertise, warranting its justification as a sole source recipient.

Purpose and Cooperative Activities

A. Purpose

The overall goal of this supplement is to enhance ways of assessing how chemicals affect the public health and the environment, as well as interpreting cancer and other mortality trends.

Specific objectives of the supplemental agreement are as follows:

1. By applying epidemiologic techniques, improve the understanding of the basic mechanisms of toxicology in the immune process and more accurately estimate exposures.

2. Enhance the use of biochemical and molecular markers in environmental health research.

3. Improve the ability to analyze national trends in mortality to indicate important patterns in cancer and other causes of death related to environmental exposures.

4. Enhance the identification and evaluative methods for assessing and managing environmental exposures to lead in children under two years of age.

B. Cooperative Activities

1. NRC/NAS Activities

To achieve the above objectives the following studies will be performed:

a. *U.S. National and Local Trends in Cancer Mortality.* A study to identify national and local trends in cancer mortality. The study will focus and examine the environmental health aspects of several factors, including geographic patterns, sex differences, racial differences, and potentially miscoded and competing causes of death. (1 year study/$25,000)

b. *Developing Consensus on Biologic Markers in Environmental Health Research—Interrelationship of Toxic Exposures and Immune Response.* To refine the ability to understand how chemicals affect public health and the environment. To disseminate the results of identifying, evaluating, and assessing the use of biochemical and molecular markers in environmental health research. (2 year study/$200,000)

c. *Assessing Lead Exposure in Critical Populations.* To evaluate and identify major issues in testing, monitoring and sampling for environmental and biological levels of lead at low levels of exposure, and to recommend improved methods to monitor human childhood exposure to lead. (2 year study/$400,000)

2. ATSDR Activities

a. Collaborate with the NRC/NAS in demonstrating the relevant cancer and mortality trends associated with patterns identified.

c. Collaborate with the NRC/NAS in disseminating the results of identifying, evaluating, and assessing the use of biochemical and molecular markers in environmental health research.

c. Collaborate with the NRC/NAS in identifying and evaluating the major issues in testing and monitoring for environmental and biological levels of lead.

Evaluation Criteria

The application will be reviewed and evaluated based on the following:

1. Estimated cost of the project to the government is reasonable considering the anticipated results.

2. Project personnel are well qualified by training and/or experience for the support sought, and the applicant organization has adequate facilities and manpower.

3. Insofar as practicable, the proposed activities, if well executed, are capable of attaining project objectives.

4. Project objectives are identical with, or are capable of achieving, the specific program objectives.

Reporting Requirements

The NRC/NAS shall submit an annual workplan in response to this supplemental proposal.

Annual progress and financial status reports are required no later than 90 days after the end of each budget period. Final progress and financial status reports are required 90 days after the end of the project period.

Availability of Funds

Approximately $325,000 will be available in Fiscal Year 1988 to fund this cooperative agreement. It is expected that the cooperative agreement will begin on or about September 29, 1988, and depending upon fund availability, will be funded for a 12-month budget period within a 2-year project period. Funding estimates may vary and are subject to change.

Other Reviews

This program is eligible for coverage under Executive Order 12372, "Intergovernmental Review of Federal Programs." An applicant should consult the office or official designated as the single point of contact in his or her state for more information on the process the State requires to be followed in applying for assistance, if the State has selected the program for review.

Where to Obtain Additional Information

Information regarding the business aspects of this project may be obtained from Terry Maricle, Grants, Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Mailstop E14, Atlanta, Georgia 30305, (404) 842-6575 or FTS 236-6575.

Information regarding the technical aspects of this project may be obtained from Mr. Richard I. Gerber, Agency for Toxic Substances and Disease Registry, (404) 488-4630 or FTS 236-4630.

Dated: September 20, 1988.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 88-21909 Filed 9-23-88; 8:45 am]

BILLING CODE 4160-70-M

Centers for Disease Control

Immunization Practices Advisory Committee Meeting

ACTION: Notice of meeting.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control announces the following Committee meeting:

Name: Immunization Practices Advisory Committee.

Time and Date: 8:30 am. 5:00 pm. October 11, 1988, 8:30 am – 4:00 pm– October 12, 1988.

Place: Conference Room 207, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open.

Purpose: The Committee is charged with advising on the appropriate uses of immunizing agents.

Matters to be Discussed: The Committee will discuss Hepatitis vaccine, polio vaccine, pneumococcal vaccine, and other vaccines; and consider other matters of relevance among the Committee's objectives. Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Mary E. Guinan, M.D., Ph.D., Assistant Director for Science, and Executive Secretary of ACIP, Centers for Disease Control (1-2047), 1600 Clifton Road, NE., Atlanta, Georgia 30333. *Telephones:* FTS: 236-3702; Commercial: 404/639-3702.

Dated: September 20, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-21915 Filed 9-23-88; 8:45 am]

BILLING CODE 4160-18-M

Committee on Vital and Health 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 (NCVHS) Subcommittee on Minority Health Statistics established pursuant to 42 U.S.C 242k, section 306(k)(2) of the Public Health Service Act, as amended, announces the following Subcommittee meeting (working session).

Name: National Committee on Vital and Health Statistics Subcommittee on Minority Health Statistics.

Time and date: 10:00 a.m.—3:00 p.m.—October 17, 1988.

Place: Room 2005, O'Hare Hilton Hotel, O'Hare Airport, Chicago, Illinois 60666.

Status: Open.

Purpose: The Subcommittee will discuss and draft recommendations to the full Committee concerning unmet statistical data needs for research and policy formulation on minority populations. The discussion will be based on testimony from previously held hearings on this issue.

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: September 20, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-21916 Filed 9-23-88; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration

Medicaid Program; Hearing Reconsideration of Disapproval of a California State Plan Amendment 87-15

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

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on November 15, 1988 in San Francisco, California to reconsider our decision to disapprove California State Plan Amendment 87-15.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk October 11, 1988.

FOR FURTHER INFORMATION, CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966-4468.

This notice announces an administrative hearing to consider our decision to disapprove California State Plan Amendment 87-15.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for

reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish is copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that information in a notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issues in this matter are: (1) Whether California's proposed plan amendment violates section 1902(a)(17)(B) of the Social Security Act (the Act) because making payment would not take into account all resources available to the recipient; (2) whether California's proposed plan amendment violates Medicaid statute and regulatory requirements at 42 CFR 433.139 regarding third-party liability which require cost avoidance rather than expenditure recovery; (3) whether California's proposed plan amendment violates section 1915(g) of the Act by inappropriately including non-case management costs (Department of Developmental Services costs) in the rate to be paid for case management services; and (4) whether California's proposed plan amendment violates regulations at 42 CFR 447.325 by making payments in excess of the upper limits on payment.

Califorina submitted State plan amendment 87–15 to provide targeted case management services to the developmentally disabled. The Health Care Financing Administration (HCFA) determined that the amendment must be disapproved because it violated statutory and regulatory requirements for the 4 reasons cited above as well as for 2 other reasons: (1) The amendment would make duplicate payment for case management services provided to residents of intermediate care facilities for the mentally retarded (ICFs/MR) and (2) the amendment would violate freedom of choice requirements at section 1902(a)(23) of the Act. On the last day of the 90-day statutory review period the State telecopied to HCFA a revised amendment. This revised version continued to be at variance with the statute and regulations and did not alter the disapproval of the amendment. However, HCFA has determined, based on that information, that the two bases of disapproval related to duplicate payments for case management services provided residents of ICFs/MR and freedom of choice are no longer an issue.

The notice to California announcing an administrative hearing to reconsider the remaining 4 issues in the disapproval of the plan amendment reads as follows:

Ms. Diane Shell Campbell,
Deputy Director and Chief Counsel,
Department of Health Services,
California Health and Welfare Agency,
714/744 P Street,
Sacramento, California 95814.

Dear Ms. Campbell: I am advising you that your request for reconsideration of the decision to disapprove California State Plan Amendment 87–15 was received on August 22, 1988.

California State Plan Amendment 87–15 would provide targeted case management services to the developmentally disabled. You have asked for a reconsideration of the 6 bases for disapproval contained in my letter of August 5, 1988. Based on our review of the revised amendment you telecopied to the Health Care Financing Administration on August 5, we believe our concerns related to duplication of payment for case management services provided to residents of intermediate care facilities for the mentally retarded (ICFs/MR) and freedom of choice have been resolved. The remaining bases for disapproval have not been adequately addressed by the revised amendment. Accordingly, I am granting your request for a reconsideration on the 4 remaining issues. These are: (1) Whether the amendment violates section 1902(a)(17)(B) of the Social Security Act (the Act) because making payment would not take into account all resources available to the recipient; (2) whether the amendment violates Medicaid statute and regulatory requirements at 42 CFR 433.139 regarding third party liability which require cost avoidance rather than expenditure recovery; (3) whether the amendment violates section 1915(g) of the Act by inappropriately including non-case management costs (Department of Developmental Services costs) in the rate to be paid for case management services; and (4) whether the amendment violates regulations at 42 CFR 447.325 by making payments in excess of the upper limits on payment.

I am scheduling a hearing on your request to be held on November 15, 1988, at 10:00 a.m. in the 21st Floor Conference Room, 100 Van Ness Avenue, San Francisco, California. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966–4468.

Sincerely,

William L. Roper,
Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316) 45 CFR 201.4)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: September 21, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88–21947 Filed 9–23–88; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Delegations of Authority

Notice is hereby given that in furtherance of the delegation of September 1, 1982, by the Assistant Secretary for Health to the Administrator, Health Resources and Services Administration (HRSA), the Administrator, HRSA, has delegated to the Director, Bureau of Health Care Delivery and Assistance (BHCDA), with authority to redelegate, all of the authorities under section 329 of the Public Health Service (PHS) Act (42 U.S.C. 254b), and section 330 of the PHS Act (42 U.S.C. 254c), pertaining to the Migrant Health Centers Program and the Community Health Centers Program, respectively, excluding the authroity to issue regulation.

Provision was made for delegations and redelegations within BHCDA to remain in effect. The May 1, 1986, delegation to the PHS Regional Health Administrators pertaining to sections 329 and 330 of the PHS Act was superseded.

These delegations become effective on October 1, 1988.

Dated: September 15, 1988.

David N. Sundwall,

Administrator, Health Resources and Services Administration.

[FR Doc. 88–21892 Filed 9–23–88; 8:45 am]

BILLING CODE 4160-15-M

Part D, Subparts II and III of Title III of the Public Health Service Act, as Amended; Delegation of Authority

Notice is hereby given that in furtherance of the delegation to the Administrator, Health Resources and

Services Administration (HRSA), on April 11, 1988, by the Assistant Secretary for Health, the Administrator, HRSA, delegated to the Director, Bureau of Health Care Delivery and Assistance, with authority to redelegate, all the authorities under Part D, Subparts II and III of Title III of the Public Health Service (PHS) Act, as amended, pertaining to the National Health Service Corps, excluding the authorities delegated to PHS Regional Health Administrators and the authority delegated to the Director, Indian Health Service, under section 3381.

The May 1, 1986, delegation to the Director, Bureau of Health Professions, pertaining to the designation of health manpower shortage areas under section 332 was superseded. Provision was made for all delegations and redelegations made to officials within HRSA and the PHS Regions to continue in effect provided they were consistent with the delegation.

The above delegation was effective on September 19, 1988.

Date: September 19, 1988.

David N. Sundwall,

Administrator, Health Resources and Services Administration.

[FR Doc. 88-21907 Filed 9-23-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-88-1866]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to Omb for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submission will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal; is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 20, 1988.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Proposal: Disclosure of Social Security Numbers and Employer Identification Numbers by Applicants and Participants in HUD Programs (FR-2501).

Office: Inspector General.

Description of the need for the Information and its proposed Use: Section 165 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) authorizes HUD to require applicants and participants in any HUD program involving loans, grants, interests or rental assistance of any kind, or mortgage or loan insurance, to disclose their Social Security Numbers or Employer Identification Numbers to HUD.

Form Number: None.

Respondents: Individuals or Households, Businesses or Other For-Profit, Non-Profit Institutions, and Small Business or Organizations.

Frequency of Submission: On Occasion.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours	=
Urban Homesteaders		769		1		0.0056	4.3
Individuals/Families Seeking Relocation Assistance		3,724		1		.0056	20.9
Businesses/Farms Seeking Relocation Assistance		608		1		.0056	3.4

Total Estimated Burden Hours: 28.60.

Status: New.

Contact: Dennis Raschka, HUD, (202) 426-6493, John Allison, OMB, (202) 395-6880.

Date: September 20, 1988.

Proposal: Development Program of Indian Housing Authority and Indian Low-Income Housing Program Development Cost Budget

Office: Public and Indian Housing

Description of the need for the Information and its proposed use: This information is needed by HUD to assure that legal, administrative, or programmatic requirements are met. The information will be used to control the cost of housing units, their design, and total project cost.

Form number: HUD-53045 and 53045A.

Respondents: State or Local Governments.

Frequency of submission: On Occassion.

Reporting burden:

	Number of respondents	× Frequency of response	× Hours per response	= Burden hours
Budget and Administrative Statement	130	1	12	1,560

Total Estimated Burden Hours: 1,560.
Status: Reinstatement.
Contact: Patricia S. Arnaudo, HUD (202) 755–1015, John Allison, OMB, (202) 395–6880.
Date: September 20, 1988.

[FR Doc. 88–21968 Filed 9–23–88; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collections Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

September 16, 1988.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Budget Clearance Office and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone number (202) 395–7340.

Title: Financial Assistance and Social Services Program (25 CFR 20). OMB approval number: 1076–0017.

Abstract: These forms request financial, demographic and employment information on clientele for the purpose of determining eligibility to receive financial assistance. These forms allow the Bureau worker to determine the degree of unmet need and arrange for a monthly payment.

Bureau Form Number: 5–6601, 5–6603, 5–6604, 5–6605, 5–1201B.

Description of Respondents: Individuals whose needs have not been met and some form of subsistence is required.

Estimated completion time:

Form and Time
6601—7 minutes
6603—12 minutes
6604—17 minutes
6605—9 minutes
1201B—9 minutes

Annual Response: 213,288.
Annual Burden Hours: 180,315.
Bureau Clearance Officer: Cathie L. Martin (202) 343–3577.

Hazel E. Elbert,
Deputy to the Assistant Secretary, Indian Affairs (Tribal Services).

[FR Doc. 88–21924 Filed 9–23–88; 8:45 am]
BILLING CODE 4310–02–M

Proclamation of Certain Lands as Part of the Jicarilla Apache Reservation

September 1, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reservation proclamation.

SUMMARY: By Proclamation issued on September 1, 1988, pursuant to authority contained in section 7 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 467), the lands described below, known locally as the Theis Ranch and located in Rio Arriba County, New Mexico, were added to and made a part of the Jicarilla Apache Indian Reservation.

New Mexico Principal Meridian

Parcel A—Acquired by Warranty Deed Recorded in Book 158, Page 73–77

A tract of land lying and being situate within the Tierra Amarilla Grant in Rio Arriba County, New Mexico and being more particularly described as follows, to wit:

Beginning at the southwest corner of the tract herein described, which point is on the westerly boundary of the Tierra Amarilla Grant and is marked by a stone marked with a cross on top and the letters "TG" on the East and bears S. 0°08' W., 689.70 feet to the Twenty-Four (24) mile post on the west boundary of the Tierra Amarilla Grant marked by a brass cap. From said point of beginning thence S. 90°00'00" E., 17,711.10 feet; thence N. 00°00'00" E., 18,222.20 feet; thence S. 90°00'00" E., 19,077.70 feet; thence S. 00°00'00" W., 3,201.10 feet; thence S. 90°00'00" E., 31,677.50 feet; thence N. 03°04'00" W., 5,762.20 feet; thence N. 28°39'00" E., 8,910.00 feet; thence N. 00°39'00" E., 791.00 feet; thence N. 06°24'00" E., 2,449.20 feet; thence S. 90°00'00" W., 2,428.90 feet; thence N. 37°52'00" W., 10,584.00 feet; thence N. 90°00'00" W., 21,00.00 feet; thence N. 48°42'00" W., 1,424.00 feet; thence N. 90°00'00" W., 7,571.40 feet; thence N. 48°18'00" W., 2,440.50 feet; thence N. 69°00'00" W., 2,448.60 feet; thence N. 70°25'00" W., 1,924.50 feet; thence N. 90°00'00" W., 10,060.00 feet; thence N. 38°06'00" W., 645.00 feet; thence N. 61°03'00" W., 1,071.00 feet; thence N. 31°21'00" W., 5,694.30 feet; thence N. 12°54'00" W., 1,536.00 feet; thence N. 23°38'00" W., 6,090.60 feet; thence N. 16°45'00" E., 1,160.00 feet; thence N. 08°15'00" E., 303.00 feet; thence N. 05°00'00" W., 690.00 feet; thence N. 20°45'00" W., 535.00 feet; thence N. 33°55'00" W., 957.00 feet; thence N. 22°45'00" W., 1,611.00 feet; thence N. 61°05'00" E., 1,403.00 feet; thence N. 27°15'00" W., 1,105.00 feet; thence N. 37°00'00" W., 1,375.00 feet; thence N. 66°45'00" W., 923.00 feet; thence N. 85°55'00" W., 275.00 feet; thence N. 65°00'00" W., 802.00 feet; thence N. 36°55'00" W., 1,334.00 feet; thence N. 41°45'00" W., 1,170.00 feet; thence N. 66°50'00" W., 290.00 feet; thence N. 70°10'00" W., 1,510.00 feet; thence N. 70°55'00" W., 2,860.00 feet; thence N. 55°55'00" W., 2,841.00 feet; thence N. 90°00'00" W., 82.00 feet; thence S. 00°11'00" W., 34,059.80 feet; thence S. 25°27'00" E., 1,259.90 feet; thence S. 00°08'00" W., 35,617.00 feet to the point and place of beginning. Containing 54,843.44 acres, more or less, as shown on a plat prepared by Cipriano Martinez dated February 7, 1985 and entitled Plat showing the lands of "The Theis Company" within the Tierra Amarilla Grant, Rio Arriba County, New Mexico;

Subject To, Less and Excepting Therefrom

(1) That certain parcel of land known as Iron Springs Vega, containing about 91.4 acres, more or less, as set forth in Deed from Charles C. Catron to Chama Valley Land Company dated June 12, 1909, recorded in Book 4, page 119, records of Rio Arriba County, New Mexico, and any access thereto, if any, being the only exception within the exterior boundary of the property conveyed herein set out in said deed.

(2) The subdivision lots located in El Vado Acres, sometimes known as Laguan Vista Subdivision and as Canada Laguna Subdivision, as shown on plat filed April 25, 1932 in the Office of the County Clerk of Rio Arriba County, New Mexico and described on Quitclaim Deed filed for the record on November 6, 1987, and recorded in the land records of Rio Arriba County in Book of Deeds 158, pages 78 and 79.

(3) Those certain parcels of land conveyed for highway purposes by stipulated judgment in *State Highway Department of New Mexico v. Theis Company*, a partnership entered September 21, 1971, recorded in Misc. Book 109A, page 479, records of Rio Arriba County, New Mexico.

(4) That certain parcel of land conveyed for highway purposes by Quitclaim Deed from Theis Company, a co-partnership to State Highway Department of New Mexico dated September 30, 1971, recorded in Misc. Book 113, page 156, records of Rio Arriba County, New Mexico.

Parcel B—Acquired by Quitclaim Deed Recorded in Book 158, Pages 78–79

The following described real estate, and improvements thereon, lying and being

situate in the County of Rio Arriba, State of New Mexico:

The following described lots located in El Vado Acres, sometimes known as Laguna Vista Subdivision and as Canada Laguna Subdivision, as shown on plat filed April 25, 1932 in the office of the County Clerk of Rio Arriba County, New Mexico.

Lots 1, 2, 5, 7, 8, 10, 11, 17, 20, 23, and 26 and 29, Block 1; Lots 1, 2, 4, to 10 inclusive, 12, 13, 15, to 18 inclusive, 27 and 28, Block 2; Lots 2 to 7 inclusive, 13 to 17 inclusive, 20, 26, 27 and 28, Block 3; Lots 1 to 8 inclusive, Block 4; Lots 1 to 10 inclusive, 14 to 17 inclusive and 19 to 25 inclusive, Block 6; Lots 1 to 5 inclusive and 8 to 30 inclusive, Block 7; Lots 1 to 6 inclusive, 8, 9, 10, 12, 13, 17 to 20 inclusive, and 30, Block 8; Lots 6 to 10 inclusive, 14, 15, 21 and 24 to 27 inclusive, Block 9; Lots 1 to 15 inclusive, 28, 29, and 30, Block 12; Lots 14–18 inclusive and 21 to 24 inclusive, Block 13; Lots 28, 29 and 30, Block 14; Lot 18, Block 15.

Parcel C—Acquired by Mineral Deed Recorded in Book 120, Pages 832–834

The following described minerals to-wit:

The greater of an undivided twenty-five percent (25%) interest or five thoudand five hundred (5,500) net mineral acres in and to all oil and gas and all other minerals owned by Grantor in, or and under that certain real property situate in the County of Rio Arriba, State of New Mexico, more particularly described in Exhibit A attached hereto and incorporated by reference herein. Grantor shall have the executive leading rights to the undivided interest in the oil and gas and all other minerals in, on and under the real property described below as Exhibit A which is granted to Grantee by Grantor by this mineral deed.

Exhibit A

A tract of land lying and being situate-within the Tierra Amarilla Grant in Rio Arriba County, New Mexico and being more particularly described as follows, to wit:

Beginning at the southwest corner of the tract bearing described which point is on the westerly boundary of the Tierra Amrailla Grant and is marked by a stone marked with a cross on top and the letters "TG" on the East the bears S. 0'08' W., 369.70 feet to the Twenty-Four (24) mile post on the west boundary of the Tierra Amarilla Grant marked by a brass cap. From said point of beginning thence S. '00'00" E., 17,711.10 feet; thence N. 00'00'00" E., 18,222.20 feet; thence S. 90°00'00" E., 19,077.70 feet; thence S 00°00'00" W., 3,201.10 feet; thence S. 90°00'00" E., 31,677.50 feet; thence N. 03°04'00" W., 5,762.20 feet; thence N. 28°39'00" E., 8,910.00 feet; thence N. 00°39'00" E., 791.00 feet; thence N. 06°24'00" E., thence N. 06°24'00" E., 2,449.20 feet; thence S. 90°00'00" W., 2,428.90 feet; thence N. 37°52'00" W., 10,584 feet; thence N. 90°00'00" W., 21,000.00 feet; thence N. 48°42'00" W., 1,424 feet; thence N. 90°00'00" W., 7,571.40 feet; thence N. 48°18'00" W., 2,440.50 feet; thence N. 69°00'00" W., 2,448.60 feet; thence N. 70°25'00" W., 1,924.50 feet; thence N. 90°00'00" W., 10,060.00 feet; thence N. 38°06'00" W., 645.00 feet; thence N. 61°03'00" W., 1,071.00 feet; thence N. 31°21'00" W., 5,694.30 feet; thence N. 12°54'00" W., 1,536.00 feet; thence N. 23°38'00" W., 6,090.60 feet; thence N. 16°45'00" E., 1,160.00 feet; thence N. 08°15'00" E., 303.00 feet; thence N. 05°00'00" W., 790.00 feet; thence N. 20°45'00" W., 535.00 feet; thence N. 33°55'00" W., 957.00 feet; thence N. 22°45'00" W., 1,611.00 feet; thence N. 61°05'00" E., 1,403.00 feet; thence N. 27°15'00" W., 1,105.00 feet; thence N. 37°00'00" W., 1,375.00 feet; thence N. 66°45'00" W., 923.00 feet; thence N. 85°55'00" W., 275,00 feet; thence N. 65°00'00" W., 802.00 feet; thence N. 36°55'00" W., 1,334.00 feet; thence N. 41°45'00" W., 1,170.00 feet; thence N. 66°50'00" W., 290.00 feet; thence N. 70°10'00" W., 1,510.00 feet; thence N. 70°55'00" W., 2,860.00 feet; thence N. 55°55'00" W., 2,841.00 feet; thence N. 90°00'00" W., 82.00 feet; thence S. 00°11'00" W., 34,059.80 feet; thence S. 25°27'00" E., 1,259.90 feet; thence S. 00°08'00" W., 35,617.00 feet to the point and place of beginning. Containing 54,843.44 acres, more or less as shown on a plat prepared by Cipriano Martinez entitled Plat showing the land of the "The Theis company" within the Tierra Amarilla Grant, Rio Arriba County, New Mexico.

The above described parcels are subject to all valid rights, reservations, rights-of-way, exceptions and easements of record. The notice is published pursuant to authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs at 209 DM 8.1.

W.P. Ragsdale,

Acting Assistant Secretary, Indiam Affiars.

[FR Doc. 88–21926 Filed 9–23–88; 8:45 am]

BILLING CODE 4310-02-M

Proclamation of Certain Lands as Part of the Jicarilla Apache Reservation

September 1, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reservation proclamation.

SUMMARY: By proclamation issued on Sept. 1, 1988, pursuant to authority provided in section 7 of the Act of June 18, 1984 (48 Stat. 984; 25 U.S.C. 467), the following described lands, known locally as the El Poso Ranch, and located in Rio Arriba County, New Mexico, were added to and made a part of the Jicarilla Apache Indian Reservation.

Parcel A—Acquired by Warranty Deed Recorded in Book 149, Pages 953–963

Certain real estate containing twenty-six thousand eight hundred ninety-eight and eight one hundredths (26,898.08) acres, more or less; as described in the Dependent Resurvey and Survey of the El Poso Ranch Tract, accepted by the United States Department of the Interior, Bureau of Land Management on June 4, 1984, and recorded in the Rio Arriba County records, at Book 149, page 958–963; *excepting* therefrom all subdivisions as shown on the Dependent Resurvey of El Poso Ranch showing all subdivisions and acreage thereof filed in the Records of the County Clerk of Rio Arriba County, New Mexico Book E–132, Page 1112, dated January 13, 1982, consisting of 718.748 acres, more or less, and further *excepting* and *excluding* therefrom that certain tract beginning at AP 41, on the east boundary of the El Poso Ranch Tract within the Tierra Amarilla Grant; thence, N. 1°46' W., 135.112 chains distance to AP 42; thence, S. 0°02'; E., 132,930 chains distance to rebar, ½ inch diameter with a plastic cap marked AGV LS5221; thence, S. 62°35' E., 4.60 chains to AP 41, the point of beginning, containing twenty-seven and thirteen hundredths (27.13) acres, more or less; including an undivided twenty-five percent (25%) non-executive mineral interest in and to all oil and gas and all minerals in, on and under the approximately twenty-six thousand eight hundred ninety-eight and eight one hundredths (26,898.08) acres, as more particularly described above, but *excepting* all minerals in, on and under the subdivisions described above, the tract containing 27.13 acres, more or less, described above, and the "Cooper-Neel" tract more particularly described below.

Cooper-Neel Tract

All that certain portion of the Tierra Amarilla Grant, Rio Arriba County, State of New Mexico, described as follows, to-wit:

Beginning at a point on the West boundary line of the said Tierra Amarilla Grant, 4,622.4 feet Northerly from the Southwest corner thereof, an old crossmark scribed on top of sandstone ledge at southerly edge of high mesa, also marked "S.W.C.A.E.M.B." and running; thence South 48 degrees 13 minutes East 710 feet, a large boulder on a protruding point of said mesa marked "1–A–E.M.B." on top:

Thence South 77 degrees 24 minutes east 193 feet to the Southeast corner of the tract of E.M. Biggs, a ledge rock on the edge of said mesa, marked "1,S.E.C.A.E.M.B.," whence a pine 16 inches diameter, blazed and scribed "S.T.A.S.E.C.B.N.B." bears North 4 degrees 30 minutes East 19.9 feet:

Thence North 40 degrees 14 minutes east 8,499 feet; a sandstone 30"x30" on edge of said mesa and marked "LA 5 EMB" on top whence a spruce 10 inches diameter blazed on marked "B.T.A." bears South 63 degrees 20 minutes East 12 feet:

Thence North 35 degrees 41 minutes East 1,190 feet to ledge rock on edge of said mesa, Marked "1–A, 6 E.M.B.", thence North 33 degrees 16 minutes east 595 feet to a ledge rock on edge of said mesa marked "A.7 E.M.B." Thence North 12 degrees 31 minutes East 1,490 feet to a point on the South line of a tract designated as "Tract No. 1" and formerly deeded to one E.M., Biggs by the Arlington Land Co., herein mentioned a sandstone 8"x12"x24" on the edge of said mesa and marked "N.E.C.A.E.M.B." on south side and "E.M.B." on north side, whence a pipe 18 inches diameter, blazed and marked "A.T.N.E.C.A.E.M.B." bears South 51 degrees 40 minutes West 20.7 feet; thence coincident with the South line of said Biggs Tract North 59 degrees 22 minutes East 15,258.5 feet to the center line of the Chama River.

Thence Southerly and easterly following the meanders of the center line of said River a distance of 2.73 miles, more or less to a point due east on the Southwest corner of said Grant.

Thence West coincident with the south line of said grant, as the same is marked by mile posts, 28,512 feet to the Southwest corner of the Tierra Amarilla Grant as foresaid, pile of stones, one of which is marked "T.A.S.M. Cor." whence a high bluff bears north 39 degrees West the south end of a prominent mesa bears North 31 degrees 30 minutes East, and running thence, coincident with the West line of said grant, North 4,622.4 feet to the point of beginning, containing 6.475 acres, more or less, magnetic variations 14 degrees, 10 minutes East during March 1913.

Excepting and excluding from the main tract described above the following described tract containing 160 acres, more or less, to wit:

Beginning at the Northeast corner of said main tract of land, thence West 700, thence South 2,000 feet, thence South 22 degrees EAst 5,110 feet; thence East 800 feet to a point on the meander of the center line of the said center line of Chama River northwesterly to the point of beginning.

Excepting also 564 acres, more or less, together with certain rights-of-way, etc., as more fully described and set forth in that certain deed dated November 6, 1930, in which Armwell L. Cooper and Blanche D. Cooper, his wife and Ellison A. Neel and Serena S. Neel, his wife, conveyed to Middle Rio Grande Conservancy District the above acreage and rights-of-way, etc., and which deed was filed for record February 10, 1931, in the Office of the County Clerk of Rio Arriba County, New Mexico and was recorded in Book 25, at page 202, on the same day.

Net acreage covered in 6,263.6 acres, more or less.

Subject to a right-of-way for railway 100 feet wide acres said tract of land as shown be deed to the New Mexico Lumber Company.

Subject also to those certain right-of-way reservations contained in that certain deed from the Arlington Land Company to R.J. Martin and J.N. Borders, dated April 1919, which said deed is recorded in Book 21–A, pages 377–578, of the Records of Rio Arriba County, New Mexico.

SUBJECT, also to that certain Partial Judgment entered in this cause, wherein the defendants, Helen W. Benedict, Leland A. Stonwell (Now Succeeded as Trustee by Edward F. McGee) and United States Trust Company of New York, Trustees under the last Will and Testament of John F. Andrus, Deceased and adjudged to be the owners of the minerals in and under that tract known as the Cooper-Neel Tract.

Parcel B—Acquired by Warranty Deed Recorded in Book 149, Pages 964–966

Begin at a point on the northerly right-of-way line of Laguna Vista Drive, from which Corner 68 of the Middle Rio Grande Conservancy District's El Vado Reservoir Site, as shown on the plat of same filed February 15, 1956 at page 169 of Plat Book of Rio Arriba County, New Mexico, bears S 55° 01′ E 2, 016.67 feet distant; thence N 36° 53′ E, along said northerly line, 422.32 feet; thence, northeasterly, along said northerly line and a curve to the right (R–362.95 feet, Central Angle 32° 58′, cord N 53° 22′ E 205.96 feet), 208.83 feet; thence northerly, along a curve to the left (R–28.75) feet, Central Angle–120°12′ cord-N 9°45′ E 49.85 feet), 60.31 feet to a point on the westerly right-of-way line of the Lakeshore Drive; thence, N 50°21′W, along said westerly line, 526 feet; thence westerly along a curve to the left (R–88.96 feet, Central Angle- 59°24′, cord-N 80°03′ W 88.15 feet), 92.23 feet to a point on the southerly right-of-way line of Mesa View Road; thence S 70° 15′ W, along said southerly line, 270.28 feet; thence S 16° 35′ E 833.78 feet to the point and place of beginning, and being the same land described in a Deed William A. Maddox and wife, Frances Maddox to Amarillo National Bank of Amarillo, Texas and W.V. Maddox, Trustees, on page twelve (12) of Exhibit "A" of said Deed, and said Deed being recorded in Book 107 pages 307–325 of Deed Records of Rio Arriba County, New Mexico. Conveyance is made subject to any leases, public right-of-way or easements on said described land. Tract contains 10.17 acres more or less, including an undivided twenty-five percent (25%) non-executive mineral interest in and to all oil and gas and all other minerals in, on and under said tract.

The above described parcels contain 26,421.38 acres, more or less, which are subject to all valid rights, reservations, right-of-way and easements of record.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

W.P. Ragsdale,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 88–21925 Filed 9–23–88; 8:45 am]

BILLING CODE 4310-02-M

Proclamation of Certain Lands as Part of the Reservation of the Pueblo of Acoma

September 1, 1988.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reservation proclamation.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

SUMMARY: On September 1, 1988, by proclamation issued pursuant to authority contained in section 7 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 467), the following-described lands, known locally as the Los Cerritos Tracts, and located in Cibola County, New Mexico, were added to and made a part of the Pueblo of Acoma Indian Reservation.

Parcel A

A tract of land situated in Section 22, T. 10 N., R 7 W., N.M.P.M., within the Cubero Land Grant, Cibola County, New Mexico, more particularly described as follows:

From the point of beginning, being the northeast corner of said tract, the northeast corner of section 22, a marked stone, bears N. 39°26′53″ E. and is 898.76 feet distant; then from said point of beginning, S. 4°10′04″ E. and 2345.20 feet along the westerly right-of-way of Road #32 of Acomita; then N. 88°15′15″ W. and 208.69 feet; then S. 4°25′33″ E. and 205.78 feet; then S. 88°03′59″ E. and 207.83 feet to a point on said westerly right-of-way; then 5.4°10′04″ E. and 267.96 feet along said right-of-way; then along a curve of radius 1481.49 feet and to the left, an arc distance of 357.66 feet, along said right-of-way; then S. 18°00′00″ E. and 19.72 feet along said right-of-way; then along a curve of radius 1360.58 feet and to the right, an arc distance of 484.64 feet along said right-of-way; then S. 2°24′32″ W. and 276.69 feet along said right-of-way and to a point on the northerly right-of-way of Interstate 40; then S. 85°49′34″ W. and 505.09 feet along said northerly right-of-way of I–40; then N. 20°14′18″ E. and 99.53 feet; then N. 76°34′51″ W. and 602.94 feet; then N. 0°26′22″ E. and 429.94 feet; then N. 76°28′46″ W. and 1912.87 feet; then N. 0°33′10″ E. and 2723.09 feet to a point on the southerly right-of-way of U.S. Highway 66; then N. 86°53′51″ E. and 2556.47 feet to the point and place of beginning, and containing an area of 203.6223 acres more or less.

Parcel B

A tract of land situated within Section 22 and Section 27, T. 10 N., R. 7 W., N.M.P.M., Cibola County, New Mexico, and being more particularly described as follows:

From the point of beginning, being the southwest corner of said tract, the one mile post on the North boundary of the Acoma Pueblo Grant bears S. 63°43′51″ W. and is 1399.87 feet distant. Then from the above said point of beginning, N. 00°10′19″ E. a distance of 317.26 feet; then EAST a distance of 192.73 feet; then N. 09°53′04″ E. a distance of 276.53 feet; then S. 80°03′03″ E. a distance of 289.27 feet; then S. 01°13′01″ W. along the Westerly right-of-way line of the Road #32 to Acomita a distance of 1.36 feet to a point of curve; then along the said right-of-way line, and along a curve of radius 2823.99 feet an arc length of 544.23 feet; then N. 89°50′30″ W. a distance of 462.29 feet to the point and place of beginning, and containing an area of 5.2359 acres, more or less.

Parcel C

A tract of land situated within the northeast quarter of Section 27, T. 10 N., R. 7 W., N.M.P.M., Cibola County, New Mexico, and being more particularly described as follows:

From the point of beginning, being the southwest corner of said tract, the one mile post on the North boundary of the Acoma Pueblo Grant bears N. 84°41′41″ W., and is 1258.48 feet distant. Then from the above said point of beginning, N. 00°10′19″ E., 635.28 feet; then S. 89°55′29″ E., 439.48 feet; then along the

Westerly right-of-way line of Road #32 to Acomita, along a curve of radius 2823.99 feet an arc length of 702.18 feet; then No. 84°41'41" W. a distance of 185.37 feet to the point and place of beginning, and containing an area of 4.6909 acres, more or less.

Parcel D

A tract of land situated in the Northwest quarter of Section 26 and Northeast quarter of Section 27, T. 10 N., R 7 W., N.M.P.M., Cibola County, New Mexico, and being more particularly described as follows:

From the point of beginning, being the southeast corner of said tract, the ½ mile post on the North boundary of the Acoma Pueblo Grant bears S. 84°41'41" E., and is 450.98 feet distant. Then from the above said point of beginning N. 84°41'41" W. a distance of 655.46 feet; then along the Easterly right-of-way line of the Road #32 to Acomita, along a curve of radius 2903.99 feet an arc length of 820.58 feet; then EAST a distance of 95.38 feet; then SOUTH a distance of 555.02 feet; then EAST a distance of 280.00 feet; then SOUTH a distance of 275.00 feet to the point and place of beginning, and containing an area of 5.8746 acres, more or less.

Parcel E

A tract of land situated in the Southeast quarter of Section 22 and the Southwest quarter of Section 23, T. 10 N., R. 7 W., N.M.P.M., within the Cubero Land Grant, Cibola County, New Mexico, and being more particularly described as follows:

From the point of beginning, the Northwest corner of Section 23, a marked stone, bears N. 8°36'21" W. and is 3707.25 feet distant; then from said point of beginning S. 0°20'23" W. and 1065.78 feet to a point on the northerly right-of-way of Interstate 40; then N. 82°00'23" W. and 713.10 feet along said right-of-way to a point on the easterly right-of-way of Road #32 to Acomita; then N. 2°24'32" E. and 276.36 feet along said easterly right-of-way; then along a curve of radius 1440.58 feet and to the left, an arc distance of 513.14 feet, along said right-of-way, then N. 18°00'00" W. and 19.72 feet along said right-of-way; then along a curve of radius 1401.49 feet and to the right, an arc distance of 173.84 feet, along said right-of-way, then S. 89°50'39" E. and 819.55 feet to the point and place of beginning, and containing an area of 16.9816 acres, more or less.

The above-described parcels contain 236.41 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

W.P. Ragsdale,

Acting Assistant Secretary; Indian Affairs.

[FR Doc. 88-21927 Filed 9-23-88; 8:45 am]

BILLING CODE 4310-02-M

Pueblo of Laguna, NM; Proclaiming Certain Lands as Part of the Reservation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reservation proclamation.

SUMMARY: By proclamation issued on September 1, 1988, pursuant to authority provided in section 7 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 467), the following described lands, known locally as the Harrington Ranch and located in Cibola and Valencia Counties, New Mexico, were added to and made a part of the Pueblo of Laguna Indian Reservation, New Mexico

New Mexico Principal Meridian

Township 7 North, Range 3 West

Section 3 All
Section 5 All
Section 7 All
Section 9 All
Section 15 All
Section 17 All
Section 19 All
Section 21 All
Section 27 All
Section 29 All
Section 31 All
Section 33 All

Township 7 North, Range 4 West

Section 1 All
Section 2 Lots 2, 3, S/2 NE/4, W/2 SE/4, E/2 SW/4 SW/4, SW/4 SE/4 NW/4
Section 3 All
Section 4 SW/4
Section 5 All
Section 6 Lots 1, 2, 3, 4, 5, 6, 7, S/2 NE/4, SE/4 NW/4, E/2 SW/4, SE/4
Section 7 All
Section 9 All
Section 10 N/2
Section 11 All
Section 13 All
Section 14 N/2 NE/4
Section 15 All
Section 17 All
Section 19 All
Section 21 All
Section 23 All
Section 25 All
Section 27 All
Section 29 All
Section 31 All
Section 33 All
Section 35 All

The above described parcels contain 20,723.17 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary, Indian Affairs by 209 DM 8.1.

W.P. Ragsdale,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 88-21928 Filed 9-23-88; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[NV-930-08-4212-11; N-48797, et al.]

Battle Mountain District; Tonopah Resource Area; Realty Action; Nye County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty Action; Classification of Federal Lands for lease or sale for recreation and public purposes in Nye County, Nevada.

SUMMARY: In response to an application from Nye County, Nevada, for a shooting range, the following described lands have been examined and found to be suitable for lease or sale under the authority of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et. seq.*):

Mount Diablo Meridan

T. 12 S., R. 46 E.,
sec. 33, W½E½, E½W½;
A parcel of land containing 320 acres.

These lands are not required for any Federal purpose. Disposal is consistent with the Bureau's planning for this areas and would be in the public interest.

The lands described in this notice meet the criteria for classification set forth in 43 CFR 2410.1–2 and 2430.4. They will not be offered for lease or sale until classification becomes effective.

The patent, if issued, would contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals contructed by the authority of the United States pursuant to the Act of August 30, 1890, (43 U.S.C. 94).

2. All mineral deposits in the lands so patented, and to the United States, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law.

and would be subject to:

1. The provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official land records at the time of patent issuance.

3. Any other reservations the Authorized Officer, BLM, determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this Notice in the Federal Register, the above described public lands will be segregated from all forms of appropriation under the public land laws, including locations under the

mining laws, except as to applications under the mineral leasing laws and application under the Recreation and Public Purposes Act. The segregative effect will end upon issuance of patent or as specified in an opening order to be published in the **Federal Register**.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain, Nevada 89820. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: September 6, 1988.

Michael C. Mitchel,

Acting for the District Manager, Battle Mountain District.

[FR Doc. 88-21929 Filed 9-23-88; 8:45 am]

BILLING CODE 4310-HC-M

[UT-020-08-4410-12]

Salt Lake District; Proposed Resource Management Plan and Final Environmental Impact Statement for Pony Express Resource Area, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Proposed Resource Management Plan and Final Environmental Impact Statement.

SUMMARY: Pursuant to section 202(f) of the Federal Land Policy and Management Act (FLPMA) and section 103(2)(C) of the National Environmental Policy Act (NEPA), the Bureau of Land Management (BLM) has prepared a proposed Resource Management Plan (RMP) and final Environmental Impact Statement (EIS) for the Pony Express Resource Area, Utah.

The proposed RMP and final EIS is published in an abbreviated format and is designed to be used with the Draft RMP/EIS published in May 1988. This proposed RMP and final EIS when combined with the Draft EIS describe and analyze four alternatives for management of public lands and resources in Salt Lake, Tooele, and Utah Counties. The proposed plan is patterned after Alternative 2. It focuses on resolving three planning issues but also addresses all resource programs. When the Resource Management Plan becomes final, it will provide a comprehensive management framework for the public lands and resources in Salt Lake, Tooele, and Utah Counties.

Three areas would be designated as areas of critical environmental concern (ACECs). These areas and the resource-use limitations associated with each are identified as follows:

ACEC

Limitations	Horseshoe Springs (760 acres)	North Deep Creek Mts. (28,260 acres)	North Stansbury Mts. (10,000 acres)
Limited ORV Designations	X	X	X
Seasonal Closures for Crucial Habitats	X	X	X
Avoidance Areas for Trans/Utility Corridors	X	X	X
No Harvest of Saw Timber or Pinyon Pine except for Management Purposes		X	X
Visual Resources	Class IV	Class II & III	Class II & III
Unavailable for Ownership Adjustments	X	X	X
Fluid Mineral Leasing Category	Cat. 2	Cat. 3	Cat. 3
Grazing Systems Use Restrictions	X		

FOR FURTHER INFORMATION CONTACT: Dennis Oaks, Team Leader, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119, (801) 524-5453.

SUPPLEMENTARY INFORMATION: The proposed RMP will be approved no earlier than thirty days after publication in the **Federal Register** of the Environmental Protection Agency's notice of filing. Approval will be withheld on any portion of the plan protested until final action has been completed on such protest. Protests must conform to the requirements of 43 CFR 1610.5-2 and be filed with the Director of the Bureau of Land Management within thirty days of publication of the notice of filing.

Dean H. Zeller,

Salt Lake District Manager.

[FR Doc. 88-21914 Filed 9-23-88; 8:45 am]

BILLING CODE 4310-DQ-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-290 (Sub-No. 35)]

Southern Railway—Carolina Division and Southern Railway Co.; Abandonment and Discontinuance of Service in Lancaster and Kershaw Counties, SC

The Commission has issued a certificate authorizing Southern Railway-Carolina Division to abandon, and Southern Railway Company to discontinue service over, a 7.4-mile line of railroad between Kershaw (milepost SB-59.4) and Westville (milepost SB-52.0) in Lancaster and Kershaw Counties, SC. 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 1152.

Noreta R. McGee,

Secretary.

[FR Doc. 88-21967 Filed 9-23-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Order Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent order in *United States* v. *Akzo Coatings of America, Inc. et al.*, Civil Action No. 88–CZ–73748DP, has been lodged with the United States District Court for the Eastern District of Michigan. The proposed consent order concerns cleanup of a hazardous waste site known as the Rose Township site, which is located near Detroit, Michigan. The proposed consent order requires defendants to perform a cleanup at the site.

The Department of Justice will receive for a period of thrity (30) days from the date of this publication comments relating to the proposed consent order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Akzo Coatings of America, Inc. et al.*, D.J. Ref. 90–11–2–221.

The proposed consent order may be examined at the office of the United States Attorney, Federal Building, 231 West Lafayette, Detroit, Michigan 48226 and the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the consent order may be examined at the Environment Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Aveune, Washington, DC 20530. A copy of the proposed consent order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $10.00 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–21930 Filed 9–23–88; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Department Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping reporting requirements.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Mine Safety and Health Administration

Survey of Substance Abuse Programs in the Mining Industry
One-time survey
Mining Industry
4,400 respondents; 15 minutes per response; 1,100 burden hours

MSHA plans to conduct a study of the substance abuse programs in the mining industry. This study will provide the Mining Industry Committee on Substance Abuse and MSHA with specific information about the number of mine sites conducting substance abuse programs and training. The information collected will be used to develop policies, procedures, and training initiatives regarding substance abuse in the mining industry. The results will be reported to the Secretary of Labor for inclusion in the report to Congress mandated by the Drug Abuse Act of 1986. Respondents will have the option of a written response or reporting by telephone.

Signed at Washington, DC this 20th day of September, 1988.

Terry O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 88–21866 Filed 9–23–88; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL CREDIT UNION ADMINISTRATION

Privacy Act of 1974; Systems of Records Publication

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of publication of systems of records.

SUMMARY: In accordance with 5 U.S.C. 552a(3)(4), NCUA publishes its Systems of Records as currently maintained by the Agency.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

EFFECTIVE DATE: September 26, 1988.

FOR FURTHER INFORMATION CONTACT: Roy De Loach, Staff Attorney, Office of

General Counsel, at the above address, or telephone (202) 357–1030.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 552a(e)(4), the National Credit Union Administration (NCUA), hereby publishes its Systems of Records as currently maintained by the Agency. These systems were last published in the **Federal Register** on December 30, 1981 (46 FR 63141).

REGULATORY PROCEDURES

Regulatory Flexibility Act

NCUA's Systems of Records notice does not have any impact on small credit unions.

Paperwork Reduction Act

NCUA's Systems of Records does not contain any collection of information requirements.

Executive Order 12612

NCUA's Systems of Records notice does not affect state regulation of credit unions.

By the National Credit Union Administration Board on September 7, 1988.

(Section 3, 88 Stat. 1897 (5 U.S.C. 552))

Becky Baker,

Secretary of the Board.

TABLE OF CONTENTS

List of Systems

Note— See Appendices for general "routine uses" applicable to each system of records and for a listing of the locations of NCUA Regional Offices.

NCUA–1

SYSTEM NAME:

Employee Security Investigations Containing Adverse Information, NCUA.

SYSTEM LOCATION:

Personnel Office, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NCUA employees on whom a routine Office of Personnel Management (OPM) security investigation has been conducted, the results of which contain adverse information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Arrest records and/or information on moral character, integrity, or loyalty to the United States.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Records maintained pursuant to OPM requirements. A separate notice is published because these records are maintained separately to provide extraordinary safeguards against unwarranted access and disclosures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Records are reviewed by the NCUA Security Officer. If the records are determined to be of a substantive nature, they are referred to Regional Director for whatever action, if any, is deemed necessary. (2) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper hard copy.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are maintained in a locked file cabinet accessible only to the Security Officer and his designated assistant.

RETENTION AND DISPOSAL:

If the investigation is favorable to the employee, the record is destroyed. If the investigation uncovers adverse information and the employee is terminated, the record is held for two years; if the employee is retained, the record is destroyed. If the investigation uncovers severe adverse information the record is retained for two years whether the employee is retained or terminated.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Office of Personnel Management (OPM) Security Investigations Index, FBI Headquarters investigative files, fingerprint index of arrest records, Defense Central Index of Investigations, employers within the last five years, listed references, and personal associates, school registrars and responsive law enforcement agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

In addition to any exemption to which this system is subject by Notices published by or regulations promulgated by the OPM, the system is subject to a specific exemption pursuant to 5 U.S.C. 552a(k)(5) to the extent that disclosures would reveal a source who furnished information under an express promise of confidentiality, or prior to September 27, 1975, under an express or implied promise of confidentiality.

NCUA–2

SYSTEM NAME:

Grievance Records, NCUA.

SYSTEM LOCATION:

Personnel Office, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees who have submitted grievances with

NCUA in accordance with Part 771 of the OPM's regulations. These case files contain all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiners' findings and recommendations, a copy of the original and final decision with related correspondence and exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; E.O. 10987; 3 CFR 1959–1963 Comp., p. 519.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information is used by the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulations.

(2) Information is used by any source from which additional information is requested in the course of processing a grievance to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

(3) Information is used by a Federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(4) Information is used by the congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

(5) Information is used by another Federal agency or by a court when the Government is party to a judicial proceeding before the court.

(6) Information is used by the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

(7) Information is used by NCUA in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

(8) Information is used by officials of the Office of Personnel Management, the Merit Systems Protection Board, including the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

(9) Information (that is relevant to the subject matter involved in a pending judicial or administrative proceeding) is used to respond to a request for discovery or for appearance of a witness.

(10) Information is used by officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

(11) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are retrievable by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Records are disposed of three (3) years after closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Office, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURE:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Request to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained; testimony of witness; agency officials; related correspondence from organization or persons.

NCUA–3

SYSTEM NAME:

Payroll Records System, NCUA.

SYSTEM LOCATION:

(1) Controller's Office, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

(2) General Services Administration, Region VI, Kansas City, Missouri.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of NCUA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Salary and related payroll data, including time and attendance information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 703; 44 U.S.C. 3301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information is used to ensure proper compensation to all NCUA employees and to formulate financial reports and plans used within the agency or is sent to the General Services Administration (GAS). (2) Also, information is used to document time worked and provide a record of attendance to support payment of salaries and use of annual, sick, and nonpaid leave. (3) Users of the time and attendance information include the employee's supervisor, the office's timekeeper, the payroll officer, and the GSA National Payroll Center in Kansas City, Missouri. (4) Further information in this system is used to make reportings to state and local taxing authorities. (5) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are retrieved by name or social security number.

SAFEGUARDS:

Records are maintained in secured offices, accessible by written authorization only.

RETENTION AND DISPOSAL:

Records are retained and disposed in accordance with GSA policy.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Primary: Payroll Officer, Controller's Office, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456; (2) Secondary: Office Timekeepers, National Credit Union Administration, Central Office (1776 G Street, NW., Washington, DC 20456) and Regional Offices (see Appendix B for Regional Offices' addresses).

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURE:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Information is primarily obtained from the individual whom the record concerns, the Office of Personnel Management, and the GSA. Also, time and attendance information is prepared and submitted by the timekeeper in a given employee's office.

NCUA-4

SYSTEM NAME:

Verified Employee Mailing List.

SYSTEM LOCATION:

Office of Information Systems, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NCUA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the following information for each employee: Name, address, telephone number, birthdate, ethnic and sex codes, GS grade, employee type, and employee identification number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information is used to produce mailing labels and make reporting to the EEO Director and other NCUA employees with an official need for a listing of NCUA employees. (2) Also, the information is used to generate an NCUA telephone directory for distribution to all NCUA employees. (3) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer readable media.

RETRIVEABILITY:

Records are retrievcable by employee name or identification number.

SAFEGUARDS:

Accessibility is limited to specific written requests. The file itself is password protected.

RETENTION AND DISPOSAL:

Information is maintained on active, retired, and deceased employees for an indefinite period of time.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Office, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURE:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

NCUA Form 1042 is completed for each new employee by personnel staff or the regional office manager. Form 1051 is completed by same to report changes.

NCUA-5

SYSTEM NAME:

Travel Advance and Voucher Information System, NCUA.

SYSTEM LOCATION:

Controller's Office, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All NCUA empolyees who have traveled in the course of performing their duty and who have been reimbursed for the expense of such travel.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information from the following forms: Travel Vouchers (NCUA 1012), reimnbursement for COS Expenses (NCUA 1302) Authorization of Moving and Related Travel Expenses for COS (NCUA 11301), Travel Orders (NCUA 1500), Suspension Statements (NCUA 1399), Application for Advance of Funds (NCUA 1399), and Travel Voucher Cover Sheet (NCUA 1364).

AUTHORITY FOR MAINTENANCE OF SYSTEM:

5 U.S.C. 5701-5752; Executive Order 11609 (July 22, 1971); Executive Order 11012 (March 27, 1962); 5 U.S.C. 4101-4118; Federal Travel Regulations, FPMR 101-7, Chapter 2, Section 6.3.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USER AND THE PURPOSES OF SUCH USES:

(1) Records are used to provide documentary support for reimbursements to employees for on-the-job travel expenses.

(2) Users of the information include first and second line supervisors, NCUA accounting staff, and budgeting staff.

(3) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper hard copy form and in an on-line ADP system.

RETRIEVABILITY:

Records are retrievable by social security number.

SAFEGUARDS:

The paper hard copy records are maintained in secured offices.

The computer disc is located in a secured office and its access is limited to user employees who know the logical identification access number.

RETENTION AND DISPOSAL:

Records are maintained in the Division of Financial Operations until the annual GAO audit is completed. After the audit, the paper hard copy records are stored in a Federal Records Center for a minimum of three years and the computer disc is purged.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Accounting Services Division, Controller's Office, National Credit Union Administration, 1776 G Street NW, Washington, DC 20456.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Records are prepared by the individual whom the record concerns.

NCUA-6

SYSTEM NAME:

New Examiner Training Files, NCUA.

SYSTEM LOCATION:

(1) Regional Office where new employee is assigned (See Appendix B for Regional Office's locations.)

(2) Office of Examination and Insurance, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456. At the end of the training period in the Region, the records are transferred to the Personnel Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NCUA examiners, from entry level to one year on staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biweekly training reports, training progress reports, on-the-job trainers' evaluations of classroom training, trainees' evaluation of training program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4101–4116.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information is used to determine the retention or termination of a new examiner after 23 weeks of on-the-job training. (2) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper hard copy.

RETRIEVABILITY:

Records are retrievable by employee name.

SAFEGUARDS:

Records are maintained in metal file cabinets in secured offices of each Regional Office and in secured offices in the Washington Central Offices.

RETENTION AND DISPOSAL:

Records are purged annually for those employees no longer participating in the program.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Files are maintained in NCUA's six Regional Offices (see Appendix B for Regional Office's locations).

(2) Office of Examination and Insurance, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456. At the end of the training period in the Region, the records are transferred to the Personnel Office.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORDS PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained; on-the-job trainers; supervisors; Office of Personnel Management.

NCUA-7

SYSTEM NAME:

Region I Employee Development/ Correspondence Records, NCUA.

SYSTEM LOCATION:

Region I Regional Office, National Credit Union Administration, 9 Washington Square, Washington Avenue Extension, Albany, New York 12205.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NCUA Region I employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information on NCUA examiners and professional staff related to some or all of the following areas: Work performance appraisals; district management; chartering efforts; reactions from FCU officials; personal development plans; copies of personnel records; supply and equipment information; training; work performance; suggestions; awards; travel vouchers; and data on leave and pay activities. Also, the system contains information on NCUA clerical staff related to: Work performance and development activities, which may include work product samples; memos or notations from professional staff; personal development plans; evaluations by superiors; copies of personnel records; and data on pay and leave activity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) The information in this system is used for recording time and attendance, controlling equipment inventories, training staff, evaluating employee work performance, and conducting general administrative matters. (2) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper hard copy.

RETRIEVABILITY:

Records are indexed alphabetically by name.

SAFEGUARDS:

Physical security consists of maintaining records in locked metal file cabinets within secured offices.

RETENTION AND DISPOSAL:

Current and relevant information is maintained generally for a period of at least one to two years. Obsolete material is maintained in the same file cabinets and is periodically destroyed or returned to the originator.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Region I Regional Office, National Credit Union Administration, 9 Washington Square, Washington Avenue Extension, Albany, New York 12205.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the Regional Director where the system is located. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURE:

Upon request, the Regional Director will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the Regional Director.

RECORD SOURCE CATEGORIES:

Sources may include the individual whom the record concerns, supervisors of the individual, fellow employees, credit union officials, administrative officer or office assistant, and other persons whom the individual may encounter in the course of work performance. For payroll- and personnel-related information, the sources may include the General Service Administration and Office of Personnel Management.

NCUA-8

SYSTEM NAME:

Region II Employee Development/ Correspondence Records, NCUA.

SYSTEM LOCATION:

Region II Regional Office, National Credit Union Administration, Eighth Floor, 1776 G Street NW., Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NCUA Region II employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information on NCUA examiners and professional staff related to some or all of the following areas: Work performance appraisals; district management; chartering efforts; reactions from FCU officials; personal development plans; copies of personnel records; supply and equipment information; training; work performance; suggestions; training awards; travel vouchers; and data on leave and pay activities. Also, the system contains information on NCUA clerical staff related to: Work performance and development activities, which may include work product samples; memos or notations from professional staff; personal development plans; evaluations by superiors; copies of personnel records; and data on pay and leave activity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) The information in this system is used for recording time and attendance, controlling equipment inventories, training staff, evaluating employee work performance, and conducting general administrative matters.

(2) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are indexed alphabetically by name.

SAFEGUARDS:

Physical security consists of maintaining records in locked metal file cabinets within secured offices.

RETENTION AND DISPOSAL:

Current and relevant information is maintained generally for a period of one to two years. Obsolete material is maintained in the same file cabinets and is periodically destroyed or returned to the originator.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Administration, Region II Regional Office, National Credit Union Administration, Suite 800, 1700 G Street NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the Regional Director where the system is located. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURE:

Upon request, the Regional Director will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the Regional Director.

RECORD SOURCE CATEGORIES:

Sources may include the individual whom the record concerns, supervisors of the individual, fellow employees, credit union officials, and other persons whom the individual encounters in the course of work performance. For payroll- and personnel-related information, the sources may include the General Services Administration and the Office of Personnel Management.

NCUA-9

SYSTEM NAME:

Region III Employee Development/ Correspondence Records, NCUA.

SYSTEM LOCATION:

Region III Regional Office, National Credit Union Administration, 7000 Central Parkway, Suite 1600, Atlanta, GA 30328.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NCUA Region III employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information on NCUA examiners and professional staff related to some or all of the following areas: Work performance appraisals; district management; chartering efforts; reactions from FCU officials; personal development plans; copies of personnel records; supply and equipment information; training; work performance; suggestions; awards; travel vouchers; and data on leave and pay activities. Also, the system contains information on NCUA clerical staff related to: Work performance and development activities

which may include work product samples; memos or notations from professional staff; personal development plans; evaluations by superiors; copies of personnel records; and data on pay and leave activity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) The information in this sysem is used for recording time and attendance, controlling equipment inventories, training staff, evaluating employee work performance, and conducting general administrative matters.

(2) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper hard copy.

RETRIEVABILITY:

Recordsd are indexed alphabetically by name.

SAFEGUARDS:

Physical security consists of maintaining records in locked metal file cabinets within secured offices.

RETENTION AND DISPOSAL:

Current and relevant information generally for a period of one to two years. Obsolete material is maintained in the same file cabinets and is periodically destroyed or returned to the originator.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Region III Regional Office, National Credit Union Administration, 7000 Central Parkway, Suite 1600, Atlanta, GA 30328.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the Regional Director where the system is located. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the Regional Director will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the Regional Director.

RECORD SOURCE CATEGORIES:

Sources may include the individual whom the record concerns, supervisors of the individual, fellow employees, credit union officials, and other persons whom the individual encounters in the course of work performance. For payroll- and personnel-related information, the sources may include the General Service Administration and the Office of Personnel Management.

NCUA-10

SYSTEM NAME:

Region IV Employee Development/ Correspondence Records, NCUA.

SYSTEM LOCATION:

Region IV Regional Office, National Credit Union Administration, 300 Park Boulevard, Itasca, IL 60143.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NCUA Region IV employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information on NCUA examiners and professional staff related to some or all of the following areas: Work performance appraisals; district management: Chartering efforts; reactions from FCU officials; personal development plans; copies of personnel records; supply and equipment information; training; work performance; suggestions; awards; travel vouchers; and data on leave and pay activities. Also, the system contains information on NCUA clerical staff related to: Work performance and development activities, which may include work product samples; memos or notations from professional staff; personal development plans; evaluations by superiors; copies of personnel records; and data on pay and leave activity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301: 44 U.S.C. 3301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) The information in this system is used for recording time and attendance, controlling equipment inventories, training staff, evaluating employee work performance, and conducting general administrative matters.

(2) Standard routine uses as set forth in Appendix A.

POLICES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper hard copy.

RETRIEVABILITY:

Records are indexed alphabetically by names, NCUA employee numbers, and NCUA property inventory (decal) numbers.

SAFEGUARDS:

Physical security consists of maintaining records in metal file cabinets within secured offices.

RETENTION AND DISPOSAL:

Current and relevant information is maintained generally for a period of one to two years. Obsolete material is maintained in the same file cabinets and periodically destroyed or returned to the originator.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Administration, Region IV Regional Office, National Credit Union Administration, 300 Park Boulevard, Itasca, IL 60143.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the Regional Director where the system is located. If there is no record on the individual, the individual will be so advised.

RECORDS ACCESS PROCEDURE:

Upon request, the Regional Director will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Records to amend or correct a record should be directed to the Regional Director.

RECORD SOURCE CATEGORIES:

Source may include the individual whom the record concerns, supervisors of the individual, fellow employees, credit union officials, and other persons whom the individual encounters in the course of work performance. For payroll- and personnel-related information, the sources may include the General Services Administration and the Office of Personnel Management.

NCUA-11

SYSTEM NAME:

Region V Employee Development/ Correspondence Records, NCUA.

SYSTEM LOCATION:

(1) Region V Regional Office, National Credit Union Administration, 4807 Spicewood Springs Road, Building 5, Austin, Texas 78759.

(2) Region V, Austin Suboffice, 320 6th Street, Room 202, Sioux City, Iowa 51101

(3) Development files on the examiners are maintained by the Supervisory Examiners in their home offices, not in the Regional Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NCUA Region V employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information on NCUA examiners and professional staff related to some or all of the following areas: Work performance appraisals; district management; chartering efforts; reactions from FCU officials; personal development plans; copies of personnel records; supply and equipment information; training; work performance; suggestions; awards; travel vouchers; and data on leave and pay activities. Also, the system contains information on NCUA clerical staff related to: Work performance and development activities, which may include work product samples; memos or notations from professional staff; personal development plans; evaluations by superiors; copies of personnel records; and data on pay and leave activity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) The information in this system is used for recording time and attendance, controlling equipment inventories, training staff, evaluating employee work performance, and conducting general administrative matters.

(2) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper hard copy.

RETRIEVABILITY:

Records are indexed alphabetically by name.

SAFEGUARDS:

Physical security consists of maintaining records in metal file cabinets within secured offices. Cabinets may be locked depending on the nature of the information which they contain.

RETENTION AND DISPOSAL:

Current and relevant information is maintained generally for a period of one to two years. Obsolete material is maintained in the same file cabinets and is periodically destroyed or returned to the originator.

SYSTEM MANAGER(S) AND ADDRESS:

Regional Director, Region V Regional Office, National Credit Union Administration, 4807 Spicewood Springs Road, Building 5, Austin, TX 78759.

NOTIFICATION PROCEDURE:

Examiners may inquire as to whether the system contains a development record pertaining to the individual by addressing a request in person or by mail to the examiner's supervisory examiner at the supervisory examiner's home office. All other individuals may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the Regional Director where the system is located. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURE:

Upon request, the Regional Director or the appropriate supervisory examiner will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the Regional Director.

RECORD SOURCE CATEGORIES:

Sources may include the individual whom the record concerns supervisors of the individual, fellow employees, credit union officials, and other persons whom the individual encounters in the course of work performance. For payroll- and personnel-related information, the sources may include the General Services Administration and the Office of Personnel Management.

NCUA-12

SYSTEM NAME:

Region VI Employee Development/ Correspondence Records, NCUA.

SYSTEM LOCATION:

(1) Region VI Regional Office, National Credit Union Administration, 2890 N. Main Street, Suite 101, Walnut Creek, CA 94596.

(2) Development files on the examiners are maintained by the supervisory examiners in their home offices, not in the Regional Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NCUA Region VI employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information of NCUA examiners and professional staff related to some or all of the following areas: Work performance appraisals; district management; chartering efforts; reactions from FCU officials; personnel records; supply and equipment information; training; work performance; suggestions; awards; travel vouchers; and data on leave and pay activities. Also, the system contains information on NCUA clerical staff related to: Work performance and development activities, which may include work product samples; memos or notations from professional staff; personal development plans; evaluations by superiors; copies of personnel records; and data on pay and leave activity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3301

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) The information in this system is used for recording time and attendance, controlling equipment inventories, training staff, and conducting general administrative matters.

(2) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper hard copy.

RETRIEVABILITY:

Records are indexed alphabetically by name.

SAFEGUARDS:

Physical security consists of maintaining records in metal file cabinets within secured offices. Cabinets may be locked depending on the nature of the information which they contain.

RETENTION AND DISPOSAL:

Current and relevant information is maintained generally for a period of one to two years. Obsolete materials are maintained in the same file cabinets and are periodically destroyed or returned to the originator.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Region VI Regional Office, National Credit Union Administration, 2890 N. Main Street, Suite 101, Walnut Creek, CA 94596.

NOTIFICATION PROCEDURE:

Examiners may inquire as to whether the system contains a development record pertaining to the individual by addressing a request in person or by mail to the examiner's supervisory examiner at the supervisory examiner's home office. All other individuals may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the Regional Director where the system is located. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the Regional Director or the appropriate supervisory examiner will set forth the procedures for gaining access to available records.

RECORD SOURCE CATEGORIES

Sources may include the individual whom the record concerns, supervisors of the individual, fellow employees, credit union officials, and other persons whom the individual encounters in the course of work performance. For payroll- and personnel-related information, the sources may include the General Services Administration and the Office of Personnel Management.

NCUA-13

SYSTEM NAME:

Emergency Information (Employee) File, NCUA.

SYSTEM LOCATION:

Personnel Office, National Credit Union Administration, 1776 G Street, NW, Washington, DC 20456.

OF RECORDS IN THE SYSTEM

This system contains personal information on an employee, i.e., height, weight, hair color, eye color, current address, and telephone number. Also, this system identifies the individual to contact in case of an emergency involving the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) The Personnel Office uses certain personal information for preparing the employee ID cards. (2) The information on the individual to contact in cases of emergency is used by Personnel and others on a need-to-know basis. (3) The Security Officer maintains a list of all employees, with their addresses and telephone numbers. This list is updated monthly. The listed information is used when there is a national emergency. (4) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper hard copy.

RETRIEVABILITY:

Records are indexed alphabetically by name.

SAFEGUARDS:

Records are maintained in locked file drawer.

RETENTION AND DISPOSAL:

Records are disposed of after an employee is separated from the agency.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Director, Personnel Office, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456. (2) Security Officer, Administrative Office, at the same address above.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the appropriate system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURE:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the appropriate system manager listed above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

NCUA-14

SYSTEM NAME:

Employee Injury File, NCUA.

SYSTEM LOCATION:

Personnel Office, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any employee who has sustained a job-related injury or disease.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of reports submitted by individual who has sustained a job-related injury or disease. Copies of any further claims made regarding the same injury or disease or any other material required for documenting and adjudicating the claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Occupational Safety and Health Act of 1970, 29 CFR Part 1960.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

(1) Information is maintained to provide appropriate data to the Department of Labor, when needed, for adjudication of a claim, (2) Further, information is used for reporting purposes as required by the Department of Labor on a recurring basis. (3) Use of information is limited to the Personnel Office. (4) Standard routine use as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper.

RETRIEVABILITY:

Records are indexed by NCUA Region, and date of injury.

SAFEGUARDS:

Records are maintained in locked file drawer.

RETENTION AND DISPOSAL:

Records are disposed of five years after the year to which they relate.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Office, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, then individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained; superiors of individual; individual's physician; hospital attending individual; Department of Labor.

NCUA-15

SYSTEM NAME:

Investigative Reports Involving Any Crime or Suspected Crime Against a Credit Union, NCUA.

SYSTEM LOCATION:

Office of Examination and Insurance, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system covers credit union members, credit union employees, or other individuals involved or suspected of involvement in criminal activities against a federally-insured credit union.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative reports relating to possible felonies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1789.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information is used to determine if any further agency action should be taken. (2) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper hard copy and computer readable magnetic media.

RETRIEVABILITY:

System is indexed by credit union name and suspect name.

SAFEGUARDS:

Records are maintained in a separate locked cabinet accessible only to the Director, Office of Examination and Insurance, and designated assistants. The records are further secured by computer passwords accessible only by designated assistants.

RETENTION AND DISPOSAL:

Records are stored indefinately on computer media. Paper copies are held on site, then transferred to long-term storage.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Examination and Insurance, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURE:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Credit union officials, NCUA examiners, and other Federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is subject to a specific exemption pursuant to 5 U.S.C. 522a(k)(2), as the system of records is investigatory material compiled for law enforcement purposes.

NCUA-16

SYSTEM NAME:

Freedom of Information Act Bills Delinquent 30-Days or More, NCUA.

SYSTEM LOCATION:

Administrative Office, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records includes information pertaining to any Freedom of Information Act (FOIA) requestor who has an outstanding payment of at least 30 days due NCUA as a result of processing their FOIA request.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the following information for any person or organization having an outstanding bill of 30 days or more for FOIA services: requestor's name, company name or organization, address, date of invoice, invoice number, amount due, phone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1789.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system are used to identify requestors who are at least 30 days delinquent in their payments. These records will be used by the NCUA for collection of the amount due, as well as to identify subsequent requests made by the same individuals. The information may also be disclosed to a consumer reporting agency. The information disclosed to a consumer reporting agency is limited to: (1) Information necessary to establish the identity of the individual, including name, address, and taxpayer identification number; (2) the amount, status, and history of the claim; and (3) the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper hard copy and computer disk.

RETRIEVABILITY:

Records in this system are retrievable by requestor's name, company name or organization, date of invoice, and invoice number.

SAFEGUARDS:

Physical security consists of storing records on a password protected floppy diskette and a hard copy secured in a metal file cabinet which is accessible only to those individuals responsible for collecting outstanding payments.

RETENTION AND DISPOSAL:

Records are retained until payment is received. Once payment is received, all information is deleted from the system.

SYSTEM MANAGER(S) AND ADDRESS:

Freedom of Information Officer, Administrative Office. National Credit Union Administration, 1776 G Street, NW., Washington DC 20456.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the

individual, the individual will be so advised.

RECORD ACCESS PROCEDURE:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

The source of records for this system of records is the FOIA request files.

NCUA-17

SYSTEM NAME:

Acquired Assets and Share Payout Records System, NCUA.

SYSTEM LOCATION:

Records within this system of records are located at one of two NCUA Liquidation Centers: Region II (Capital) and Region V (Austin) for a period of time necessary to answer inquiries of credit union members and to transfer share and loan record information to the Director, Department of Insurance, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456 or an outside purchaser or a loan collection servicer. After such time, the remaining records are transferred for storage to one of twelve General Services Administration record storage centers. For liquidations occurring in Regions I, II or III records are located in Region II. For liquidations occurring in Regions IV, V or VI, records are located in Region V, (see Appendix B for states covered by each Regional Office).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of liquidating federally-insured credit unions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Share and account balances; personal data regarding income and debts; payment history.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1787.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Data used for payment of insurance claims to shareholders in liquidating federally-insured credit unions. (2) Also, data is used in the collection of outstanding loans, which may include referral of information to the General Accounting Office or the Department of Justice. (3) Generally, information is used for all purposes necessary to close out the affairs of the liquidated credit union and carry out all appropriate liquidations-related functions of NCUA, including referral of necessary information to facilitate a purchase of the credit union's assets by NCUA or sale to a third party (before or after such purchase), referral of noncredit information address locators, or referral of information to a surety company in pursuit of a fidelity bond claim. (4) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is initially compiled on data conversion sheets prepared by NCUA examiners acting as on-site liquidators. This data is stored on computer disks, from which loan registers may be prepared and furnished to NCUA Regional Offices or prospective purchasers of the assets of closed credit unions. In addition to data stored on computer disks, the following records are maintained on paper hard copy; data conversion sheets, loan registers, essential share and loan documents, and members' filed claim forms. Copies of share and loan documents, incoming payments, and loan portfolios may also be maintained on microfilm copy.

RETRIEVABILITY:

Records are indexed by name of member and by name of closed insured credit union.

SAFEGUARDS:

Records are maintained in secured offices.

RETENTION AND DISPOSAL:

Information is disposed of five years after date of charter cancellation.

SYSTEM MANAGER(S) AND ADDRESS:

(1) NCUA Region II Regional Office, Eighth Floor, 1776 G Street, NW., Washington, DC 20006. (2) NCUA Region V Regional Office, Spicewood Springs Road, Building 5, Austin, TX 78759.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised. Written inquiries should include name of inquirer, name of closed insured credit union of which inquirer was a member, and share and loan account numbers, if known, in addition to any requirements of Part 790 of NCUA Rules and Regulations (12 CFR Part 790).

RECORD ACCESS PROCEDURE:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained; outside address locators; and share and loan account files of the liquidating credit union of which the individual was a member.

NCUA-18

SYSTEM NAME:

Member Accounts; Credit Unions Closed for Involuntary Liquidations, NCUA.

SYSTEM LOCATION:

Records within this system of records are located at one of two NCUA Liquidation Centers: Region II (Capital) and Region V (Austin) for a period of time necessary to answer inquiries of credit union members and to transfer share and loan record information to the Director, Examination and Insurance, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456 or an outside purchaser or a loan collection services. After such time, the remaining records are transferred for storage to one of twelve General Services Administration record storage centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information is maintained on those individuals who were members or employees of a federally-insured credit union closed for liquidation and for which the Board served as liquidating agent pursuant to 12 U.S.C. 1787. Records in this system are subject to the provisions of the Privacy Act only upon completion of the liquidation of a closed federally-insured credit union and three years after the cancellation of the credit union charter. Prior to such time, records of a closed insured credit union which are held by the Board, only in its capacity as liquidating agent for the closed credit union, are not "agency records" within the meaning of the Privacy Act, and thus the provisions of the Act have no applicability.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information concerning an individual's membership in and share and loan transactions with the credit union which has been closed for liquidation; membership card; individual share and loan ledgers; notes; security documents; promissory notes and extension agreements, if any. Also included are employee payroll records and data. As further explained above, in the "Categories of Individuals * * *" portion of this descriptive system notice, records of a closed insured credit union are generally subject to the provisions of the Privacy Act after completion of the liquidation of the credit union and three years after the cancellation of the credit union charter.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1766(c) and 1787.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Actions necessary to close out the affairs of liquidating federally-insured credit union, including: (a) Referral of information to affected credit union members, the NCUA Loan Management System, and any purchasers of the closed credit union's assets; (b) referral of information to the credit union's surety in pursuit of fidelity information to any appropriate agency or official in the course of collecting a claim of the United States. (2) Standard routine uses as set forth in Appendix A. (While it is the full intent to comply with the spirit of the Privacy Act with regard to records maintained within this described system, it should again be noted that the provisions of the Privacy Act of 1974, including a limitation of routine uses to those described herein, do not technically apply to the records until they become "agency" records, i.e., until such time as they revert to NCUA three years after the cancellation of the charter of a closed credit union.)

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records on individual credit union members or employees in this system of records are maintained on member account documents as compiled by individual credit unions prior to entering liquidation.

RETRIEVABILITY:

Member and employee records are generally ordered or indexed by account number.

SAFEGUARDS:

Records within this system are maintained under the control of a designated agent for the liquidating agent who makes only such disclosures from the records as are necessary or part of responsibilities under the Federal Credit Union Act (12 U.S.C. 1751–1795).

RETENTION AND DISPOSAL:

The records are maintained in one of the two liquidation centers indicated under the lcoation section of this notice, for a period necessary to answer inquiries of credit union members and transfer appropriate share and loan information. The records are disposed of five years after charter cancellation.

SYSTEM MANAGER(S) AND ADDRESS:

The system managers for this system of records are the two Regional Directors located at the Regional Offices at which the liquidation centers are located.

NOTIFICATION PROCEDURE:

If an individual wants to find out whether the records of a closed credit union within this system inlude records pertaining to that individual, the individual should contact by mail or in person, the Regional Director for Region II if the closed credit union was located in Region I, II or III, or the Regional Director of Region V if the closed credit union was located in Regions IV, V or VI, (see address in Appendix B). The inquiry should contain the name of the closed credit union, the inquirer's credit union account number (if known), a description of the records sought, the approximate dates covered by the record, and the name of the system of records. If there is no record on the individual, the individual will be so advised.

RECORDS ACCESS PROCEDURES:

Upon request, the Regional Director will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the Regional Director for Region II if the closed credit union was located in Regions I, II or III, or the regional Director for Region V if the closed credit union was loacted in Region IV, V or VI.

RECORD SOURCE CATEGORIES:

The sole source of information for this system or records is the member-related files and accounting records of federally-insured credit unions which have been closed for liquidation and for which the Board, or its designee, serves as liquidating agent.

NCUA–19

SYSTEM NAME:

Trusteed Account Records System, NCUA.

SYSTEM LOCATION:

Records within this system of records are located at one of two NCUA Liquidation Centers: Region II (Capital) and Region V (Austin) for a period of time necessary to answer inquires of credit union members and to transfer share and loan record information to the Director, Office of Examination and Insurance, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456 or an outside purchaser or a loan collection services. After such time, the remaining records are transferred for storage to one of twelve General Services Administration record storage centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Share balance and last known addresses of individuals by whom or on whose behalf insured share account payout claims have been filed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1787.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information is used to ensure proper payment of all trusteed account funds. (2) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer printout forms or accounting work papers and members account statements.

RETRIEVABILITY:

Records are retrievable by individual name, credit union name, or a combination thereof.

SAFEGUARDS:

Records are stored in secured offices.

RETENTION AND DISPOSAL:

Records are maintained until processing of claims is completed and, thereafter, are escheated to the appropriate state agency.

SYSTEM MANAGER(S) AND ADDRESS:

The system managers for this system of records are the two regional Directors

located at the liquidation centers listed in "SYSTEM LOCATION" above.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURE:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Files of federally-insure credit unions which are closed for liquidation.

NCUA-20

SYSTEM NAME:

Investigation Files, NCUA.

SYSTEM LOCATION:

Office of Internal Auditor, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

CATEGORIES OF INDIVIDUALS COVERED BY HE SYSTEM:

Employees of the NCUA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1766(i)(1) and 1799(a)(7).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information gathered is used for intra-agency purposes. (2) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Reports are maintained on paper hard copy.

RETRIEVABILITY:

This system is indexed by name of complainant.

SAFEGUARDS:

Records are maintained in a locked file cabinet and are accessible only to the Director, Office of Internal Audit and designated assistants.

RETENTION AND DISPOSAL:

After the report is reviewed by the Board and has served its intended purpose, it is retained for ten years and then destroyed unless otherwise directed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Inernal Auditor, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

The sources of records maintained in the system of records are the individual about whom the record is maintained, supervisors, other NCUA employees, credit union employees, members of the public and files maintained within NCUA.

NCUA-21

SYSTEM NAME:

Consumer Complaints Against Federal Credit Unions, NCUA.

SYSTEM LOCATION:

Information is maintained in NCUA's six Regional Offices (see Appendix B for Regional Offices' locations).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who submit complaints concerning operating Federal credit unions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaint letters, investigation reports, and related correspondence concerning the complainants and the involved Federal credit union.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1766(i)(1) and 1789(a)(7): 5 U.S.C. 301; 15 U.S.C. 1601–1693.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information may be disclosed to officials of Federal credit unions and other persons mentioned in a complaint or identified during an investigation. (2) Disclosures may be made to the Federal Reserve Board, other Federal financial regulatory agencies, the Federal Financial Institutions Examination Council, the White House Office of Consumer Affairs, and the Congress or any of its authorized committees in fulfilling reporting requirements or assessing implementation of applicable laws and regulations. (Such disclosures will be made in a nonidentifiable manner when feasible and appropriate.) (3) Referrals may also be made to other Federal and nonfederal supervisory or regulatory authorities when the subject matter is a complaint or inquiry which is more properly within such agency's jurisdiction. (4) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper or computer media.

RETRIEVABILITY:

Records are retrievable from files by Federal credit union name, by complainant name, or assigned control number.

SAFEGUARDS:

Records are maintained in secured offices in either a file cabinet or on computer media.

RETENTION AND DISPOSAL:

Records are retained for three years, then destroyed. Consumer's name, Federal credit union's name, subject of complaint, date received, and date resolved are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

The information is maintained in NCUA's six Regional Offices (see Appendix B for Regional Offices' location).

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURE:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Request to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Complaintant (and his or her representative, which may include, e.g., a member of Congress or an attorney); Federal credit union officials; employees and members of the credit union involved; and NCUA examiners and central files on Federal credit unions.

NCUA-22

SYSTEM NAME:

Litigation Case Files, NCUA.

SYSTEM LOCATION:

Office of General Counsel, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained in files by the case name of individuals who are: The subject of NCUA investigations made in contemplation of legal action; involved in civil litigation with NCUA; involved in administrative proceedings; involved in litigation of interest to NCUA; or pursuing tort claims.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in case files include: Investigative reports relating to possible felonies or violations of the Federal Credit Union Act; transcripts of testimony or affidavits; documents and other evidentiary matter, pleadings and other documents filed in court; orders filed or issued in civil, administrative or criminal proceedings; correspondence relating to investigatory or litigation matters; information provided by the individual under investigation or from a Federal credit union; and other memoranda gathered and prepared by staff in performance of their duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1766, 1786, 1787, and 1789; 28 U.S.C. 2671–2680.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) The staff of the Office of General Counsel may use such records to render legal advice concerning investigations or courses of legal action; to represent NCUA in all judicial and administrative proceedings in which NCUA or any of its employees who, within the scope of employment and in an official capacity, is a party; or to intervene as an amicus curiae. (2) Standard routine uses set forth in Appendix A.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURE:

Requests to amend or correct a record should be directed to the system manager listed above.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Record source categories vary depending upon the legal issue but generally are obtained from the following: NCUA staff and internal agency memoranda; Federal employees and private parties involved in torts; contracts; Federal credit union files or officials; general law texts and sources; law enforcement officers; witnesses and others; administrative and court pleadings, transcripts or judicial orders/decisions; evidence gathered in connection with the matter involved; and from individuals to whom the records relate.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is subject to the specific exemption provided by 5 U.S.C. 552a(k)(2), as the system of records is investigatory material compiled for law enforcement purposes.

Appendix A—Standard Routine Uses Applicable to NCUA Systems of Records

1. In the event that a system of records maintained by this Agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records in the system or records may be referred, as a "routine use," to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

2. A record from a system of records may be disclosed as a "routine use" to a Federal, State, or local agency which maintains civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. A record from a system of records may be disclosed as a "routine use" to a Federal agency, in response to its request, for a matter concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

4. A record from a system of records may be disclosed as a "routine use" to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. Further, a record from any system of records may be disclosed as a "routine use" to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

5. A record from a system of records may be disclosed as a "routine use" to officers and employees of a Federal agency for purposes of audit.

6. A record from a system of records may be disclosed as a "routine use" to a member of Congress or to a congressional staff member in response to an inquiry from the congressional office made at the request of the individual about whom the record is maintained.

7. A record from a system of records may be disclosed as a "routine use" to the officers and employees of the General Services Administration (GSA) in connection with administrative services provided to this Agency under agreement with GSA.

8. It shall be a routine use of the records maintained by this agency to disclose them to the Department of Justice when

(a) The Agency, or any component thereof; or

(b) Any employee of the Agency in his or her official capacity; or

(c) Any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the Agency determines the litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided, however, that in each case, the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

9. It shall be a routine use of records maintained by this Agency to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when

(a) The Agency, or any component thereof; or

(b) Any employee of the Agency in his or her official capacity; or

(c) Any employee of the Agency in his or her individual capacity where the Agency has agreed to represent the employee; or

(d) The United States, where the Agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the Agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

Appendix B—List of Regional Offices (Addresses and States Covered by Each Region)

I. NCUA Region I Regional Office: 9 Washington Square, Washington Square Extension, Albany, NY 12205, Phone: (518) 472–4554.

States covered: Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, Vermont, Virgin Islands.

II. NCUA Region II Regional Office: Eighth Floor, 1776 G Street, Washington, DC 20006, Phone: (202) 682–1900.

States covered: District of Columbia, Delaware, Maryland, Pennsylvania, Virginia, West Virginia.

III. NCUA Region III Regional Office: 7000 Central Parkway, Suite 1600, Atlanta, GA 30328, Phone: (404) 396–4042.

States covered: Arkansas, Alabama, Republic of Panama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina.

IV. NCUA Region IV Regional Office: 300 Park Boulevard, Suite 155, Itasca IL 60143, Phone: (312) 250–6000.

States covered: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, North Dakota, Ohio, South Dakota, Wisconsin.

V. NCUA Region V Regional Office: 4807 Spicewood Springs Road, Building 5, Austin, TX 78759, Phone: (512) 482–4500.

States covered: Arizona, Colorado, Iowa, Kansas, Minnesota, Nebraska, New Mexico, North Dakota, South Dakota, Oklahoma, Texas, Utah, Wyoming.

VI. NCUA Region VI Regional Office: 2890 N. Main Street, Suite 101, Walnut Creek, CA 94596, Phone: (415) 486–3490.

States covered: Alaska, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Washington.

[FR Doc. 88–21813 Filed 9–23–88; 8:45 am]
BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATE: Interested parties are invited to submit written data, comments, or views with respect ot these permit applications by October 28, 1988. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202)357–7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on June 21, 1988.

The applications received are as follows:

1. Applicant

Arthur L. DeVries, 524 Burrill Hall, University of Illinois, Urbana, Illinois 61801

Activity for Which Permit Requested

Introduction of non-indigenous species into Antarctica. The applicant proposes to introduce up to 20 specimens of New Zealand Black Cod (*Notothenia angustata*) into Antarctica for a study of the role of antifreeze glycopeptides in freezing avoidance. Specimens will be kept in a laboratory aquarium; no specimens will be released to the antarctic environment.

Location

McMurdo Station, Antarctica

Dates

October 1988–February 1989

2. Applicant

John T. Shields, Manager, Palmer Station, ITT/Antarctic Services, Inc., 621 Industrial Avenue, Paramus, New Jersey 07652

Activity for which permit requested

Enter Specially Protected Area. The applicant requests permission to enter Litchfield Island, Specially Protected Area, to inspect a survivial cache located on Litchfield Island. The inspection of this cache is an operational requirement for boating safety and is conducted twice annually during December and March.

Location

Litchfield Island, Arthur Harbor, Antarctica

Dates

October 1988–March 1990

Charles E. Myers,

Permit Office.

[FR Doc. 88–21931 Filed 9–23–88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-320]

GPU Nuclear Corp.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 55, Operators' Licenses, relative to Facility Operating License No. DPR–73, issued to GPU Nuclear Corporation (the licensee), for the Three Mile Island Nuclear Station Unit 2 (TMI–2), located in Londonderry Township, Dauphin County, Pennsylvania. By Order for Modification of License, dated July 20, 1979, the licensee's authority to operate the facility was suspended and the licensee's authority was limited to maintenance of the facility in the present shutdown cooling mode (44 FR 45271). By further Order of the Director, Office of Nuclear Reactor Regulation, dated February 11, 1980, a new set of formal license requirements was imposed to reflect the post-accident condition of the facility and to assure the continued maintenance of the current safe, stable, long-term cooling condition of the facility (45 FR 11292). The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

Environmental Assessment

Identification of Proposed Action

The actions being considered by the Commission are exemptions from 10 CFR Part 55 pertaining to the requirement to administer operating tests for operators and senior operators in a simulation facility and an exemption from the hourly watchstanding requirements to maintain an operator's license.

Exemption from the requirement to administer operating tests for operators and senior operators in a simulation facility would eliminate the licensee's need for an NRC approved or certified simulation facility. Exemptions would be granted with regard to simulator requirements to sections 10 CFR 55.45(b), Implementation—(1) Administration, 10 CFR 55.45(b)(2) Schedule for facility licensees, 10 CFR 55.45(b)(4) Application for an approval of simulation facilities, 10 CFR 55.45(b)(5) Certification of simulation facilities, and 10 CFR 55.59(a)(2) Requalification requirements.

A reduction in the hourly watchstanding requirements to maintain an operating license also requires an exemption since the regulations specify the number of hours required. The exemption would allow the licensee to reduce the hourly watchstanding requirement for maintenance of an operator's license from seven 8-hour shifts or five 12-hour shifts to four 8-hour shifts per quarter. The exemption would also permit the licensee to reduce from 40 hours to two 8-hour shifts the watchstanding requirements necessary to reinstate a licensed operator who fails to meet the quarterly watchstanding requirement. Exemptions would be granted, conditioned on the revised hourly watchstanding requirements, to sections 10 CFR 55.53(e) and 10 CFR 55.53(f).

The Need for the Proposed Action

TMI–2 is currently in a post-accident, cold shutdown, long-term recovery mode, with sufficient decay heat removal assured by direct heat loss from the reactor coolant system to the reactor building atmosphere.

The licensee has requested to the requirements that licensed operators utilize a simulation facility when taking an operating test. Due to the unique cold shutdown, partially defueling condition of TMI–2, there is no plant-referenced simulator or simulation facility that reflects the current condition of TMI–2. The time to design, procure, install, and begin to operate a simulation facility would exceed the period of time in which licensed operators would be required at the facility. Furthermore, due to the changing nature of the cleanup effort, any design of a simulator would be quickly outdated. The use of the facility as a simulation facility is not practical since this would require facility manipulations not authorized by the facility license.

Exemption will be granted to 10 CFR 55.45(b)(1), 10 CFR 55.45(b)(2), 10 CFR 55.45(b)(4), 10 CFR 55.45(b)(5) and 10 CFR 55.59(a)(2) to the extent that the regulations require a simulation facility or the use of a simulation facility to grant or maintain operator's licenses.

The licensee also has requested a reduction in the hourly watchstanding requirements to maintain an operator's license. This requested reduction also requires an exemption. Current requirements specify the number of hours a licensed operator must actively perform the functions of an operator or senior operator in a calendar quarter. These requirements were based on the assumption that the operators would be controlling an operating facility which is not the case at TMI–2. The TMI–2 operators function largely to prevent a criticality in a reactor in which the potential for a criticality is greatly reduced from operating facilities. Furthermore, the potential for recriticality at TMI–2 decreases on an almost daily basis as defueling progresses. In contrast to operating facilities TMI–2 is essentially in a static mode with little change from day to day. The principal operator activity is monitoring various plant parameters to assure the continued safe shutdown of the facility and assist the ongoing decontamination and defueling activities. The NRC staff recognizes that a reduction in the hourly watchstanding requirements is warranted.

Based on a review of the operator licensing requirements the NRC staff finds that reducing the hourly watchstanding requirements for maintenance of an operators license to four 8-hour shifts per quarter appropriate. Further the staff finds that if a licensed operator fails to meet the quarterly requirement, then before resumption of functions authorized by a license the licensee must complete a minimum of two 8-hour shifts.

Therefore an exemption would be granted to the requirements of 10 CFR 55.53(e) and 10 CFR 55.53(f) to the extent that it reduces the hourly watchstanding requirements to the hours specified above.

Environmental Impact of the Proposed Action

The staff has evaluated the proposed exemptions and concludes that in light of the current and future condition of the facility described above, there are no significant radiological or nonradiological impacts to the environment as a result of this action. The exemptions remove the specific training requirements which no longer applicable to the TMI–2 configuration.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Programmatic Environmental Impact Statement for TMI–2, dated March 1981.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request. No other agencies or persons were consulted.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the letter from GPUN dated December 28, 1987 which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the State Library of Pennsylvania, Government Publications Section, Education Building, Walnut Street and Commonwealth Avenue, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 20th day of September 1988.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects I/II.

[FR Doc. 88–21942 Filed 9–23–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–220]

Niagara Mohawk Power Corp., Nine Mile Point Nuclear Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuing an exemption from certain requirements of 10 CFR Part 50, Appendix J, to the Niagara Mohawk Power Corporation (the licensee), for the Nine Mile Point Nuclear Station, Unit 1 (NMP–1), located at the licensee's site in Scriba, New York.

Environmental Assessment

Identification of Proposed Action: The proposed action would exempt the licensee from meeting certain requirements of 10 CFR 50, Appendix J, until startup following the next refueling outage. Appendix J requires containment isolation valves to be Type C leakage tested. In the past the licensee has not included the four containment isolation valves in the condensate return lines from the emergency condensers (39–03, –04, –05, –06) in the Type C testing program. The licensee did not consider them to be containment isolation valves. However, by letter dated May 6, 1988 the NRC transmitted to the licensee a safety evaluation (SE) concerning the licensee's leakage rate testing program. In that SE the staff stated its finding that the subject valves needed to be included in the Type C testing program. These valves, particularly the inside check valves which were designed to be held closed by high reactor water pressure (1000 psig) rather than Type C air pressure (35 psig), were not designed to meet the criteria of the Appendix J, Type C leak test. Consequently, these valves have been unable to pass the Type C leakage criteria.

The licensee has proposed that a schedular exemption be granted from the requirement to perform Type C leakage testing of the emergency condenser condensate return line valves (39–03, –04, –05, and –06) and from the requirement that the leakage of these valves be included in the $0.60L_a$ acceptance criteria for Type B and Type C tests. The requested exemption is for the period up to and including the next refueling outage. The schedular exemption was requested to allow time to procure needed hardware and to develop and install the necessary changes to meet the requirement of 10 CFR 50, Appendix J.

The licensee's request for this exemption, and the basis therefor are contained in its letter dated June 23, 1988.

The Need for the Proposed Action: The exemption is required in order to permit the licensee to startup from the current outage and operate the plant while the necessary changes are developed and the necessary hardware is procured. The licensee has estimated the development, procurement, and installation of the required changes may take 18 to 24 months. Without this exemption the restart and operation of this plant would be delayed until the necessary changes and testing were completed.

Environmental Impact of the Proposed Action: The exemption would allow the changes needed to the isolation valves on the emergency condenser condensate return lines to meet the requirements of 10 CFR, Appendix J, to be completed during the next refueling outage. The exemption would allow the plant to be operated during the period of time necessary to determine the necessary changes and procure the necessary hardware.

The licensee has stated that the effects of a design basis loss-of-coolant accident (LOCA) involving emergency condenser tubing with the condensate return line valves leaking beyond Appendix J limits are bounded by the existing LOCA analysis in the Final Safety Analysis Report (FSAR). Furthermore, the failure of the subject valves to meet Appendix J leakage limits will not increase the probability of uncovery of or damage to the fuel, or failure of accident mitigation systems such as the emergency core cooling system (ECCS). The requested exemption will not affect normal radiological plant effluents nor increase normal occupational exposure.

The emergency condenser system will automatically isolate in the event system integrity is significantly compromised. In addition, the subject valves are normally closed during normal plant operation. If the leakage in these lines exceeds 10 gpm, the leakage can be detected by steam from the condenser vent or a reactor coolant system imbalance. If there is excessive leakage, the licensee has stated that the reactor will be shut down.

Furthermore, the requested exemption is for a period of one cycle (approximately 24 months). The probability of a LOCA with system leakage oustide containment during this time period is low.

Therefore, based on the low probability of a LOCA during this time frame and the considerations discussed above, the staff concludes that granting the proposed exemption will not increase the probability of an accident and will not result in any post-accident radiological releases significantly in excess of those previously determined for Nine Mile Point Nuclear Station, Unit 1. Moreover, the proposed exemption would not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the exemption does not affect non-radiological plant effluents and has no other environmental impact.

Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action: The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Therefore, alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. Such action would not reduce the environmental impacts of the Nine Mile Point Nuclear Station, Unit 1 operations and would result in unwarranted delays in plant startup and operation.

Alternative Use of Resources: These actions associated with the granting of the proposed exemption as detailed above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Nine Mile Point Nuclear Station, Unit No. 1," dated January 1974.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's submittal that supports the proposed exemption discussed above. The NRC staff 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 exemption.

Based upon the foregoing enviornmental assessment, the Commission 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 the exemption as listed herein, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Penfield Library, State University College, Owsego, New York 13126.

Dated at Rockville, Maryland, this 6th day of September 1988.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1, Division of Reactor Projects I/II.

[FR Doc. 88–21943 Filed 9–23–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on October 6–8, 1988, in Room P–114, 7920 Norfolk Avenue, Bethesda, Md. Notice of this meeting was published in the Federal Register on August 23, 1988.

Thursday, October 6, 1988

8:30 a.m.–8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest.

8:45 a.m.–9:45 a.m.: Important Safety Related Issues (Open)—Discuss proposed hierarchical structures for important safety related issues identified by ACRS members.

9:45 a.m.–11:30 a.m.: High Temperature Gas Cooled Reactor (Open)—Discussion of proposed report regarding conceptual design features of DOE's proposed high temperature gas cooled reactor.

11:30 a.m.–12:30 noon: Centrifugal Enrichment Plant (Open/Closed)—Review and comment regarding the request for construction and operation of this proposed centrifuge plant for enrichment of nonradioactive isotopes. Portions of this session will be closed as required to discuss detailed information related to security plans for a proposed nuclear facility.

1:30 p.m.–3:30 p.m.: Nuclear Power Plant Valve Testing (Open/Closed)—Review and comment regarding proposed in-situ testing of motor-operated valves in nuclear power plants.

Portions of this session will be closed as required to discuss Proprietary Information applicable to this matter.

3:30 p.m.–5:30 p.m.: PRISM Nuclear Power Plant (Open)—Review and comment regarding the conceptual design features of this liquid metal cooled nuclear power system.

5:30 p.m.–6:30 p.m.: Appointment of ACRS Members (Closed)—This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Friday, October 7, 1988

8:30 a.m.–9:30 a.m.: High-Temperature Gas-Cooled Reactor (Open)—Continue discussion of proposed report regarding this matter.

9:30 a.m.–12:00 noon: NRC Quantitative Safety Goals (Open)—Review and comment regarding proposed implementation plan for NRC quantitative safety goals.

1:00 p.m.–1:30 p.m.: Future ACRS Activities (Open)—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full committee.

1:30 p.m.–3:00 p.m.: Diagnostic Evaluation Program (Open)—Briefing regarding the conduct and results of Diagnostic Evaluations conducted by the NRC Staff at three nuclear power plants.

3:00 p.m.–4:45 p.m.: Evaluation of Operating Experience (Open)—Briefing regarding NRC Staff systematic evaluation of nuclear facilities.

4:45 p.m.–5:30 p.m.: Supply of Misrepresented Equipment (Open)—Briefing by representatives of the NRC Staff regarding NRC activities to resolve problems associated with supply and use of misrepresented equipment in nuclear power plants.

5:30 p.m.–6:15 p.m.: ACRS Subcommittee Activities (Open)—Hear and discuss reports of designated ACRS subcommittee chairmen and members regarding the status of assigned activities including quality assurance in nuclear facilities.

Saturday, October 8, 1988

8:30 a.m.–12:00 noon and 1:00 p.m.–2:30 p.m.: Preparation of ACRS Reports (Open/Closed)—Preparation of ACRS reports regarding matters considered during this meeting.

Portions of this session will be closed as required to discuss Proprietary Information and to discuss detailed information related to security plans for a proposed nuclear facility.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 1987 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)), to discuss information related to the safeguarding of a specific facility (5 U.S.C. 552b(c)(3)), and to discuss Proprietary Information applicable to the matters being considered (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 8:15 a.m. and 5:00.

Dated: September 21, 1988.

Andrew L. Bates,

Acting Advisory Committee Management Officer.

[FR Doc. 88-21944 Filed 9-23-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-259, 50-260, and 50-296]

Tennessee Valley Authority; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR-33, DPR-52 and DPR-68 issued to Tennessee Valley Authority (TVA or the licensee), for the operation of the Browns Ferry Nuclear Plant (BFN), Units 1, 2 and 3, located in Limestone County, Alabama.

The licensee proposes to update and correct Table 3.7.A, "Primary Containment Isolation Valves," to reflect changes due to plant modifications and the Appendix J (10 CFR Part 50) program. This is Technical Specification (TS) change 251 submitted in the licensee's application dated August 2, 1988. The proposed changes would combine the existing 10 CFR Part 50, Appendix J, valve testing tables (Tables 3.7.D.E, and F) into Table 3.7.A and delete the testable penetration tables (Tables 3.7.B, C, and H) from the Technical Specification (TS). Specific valves would be added to Table 3.7.A due to either plant modifications or the licensee's Appendix J program. In addition, other valves, having either no containment isolation function or having been physically removed by modifications, would be deleted. Table 3.7.A would receive minor administrative corrections and section 3.7/4.7 would be changed in order to clarify certain requirements.

Before issuance of the proposed amendment, the Commission will have made findings required by the Atomic Energy Act of 1954 (the Act), as amended, and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination is provided by the licensee in its submittal and is given below.

NRC has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from an accident previously evaluated, or (3) involve a significant reduction in the margin of safety.

A discussion of these standards as they relate to this amendment follows:

1. The proposed amendment will not involve an increase in the probability or consequences of an accident previously evaluated. There is no change in the BFN commitment to comply with the provisions of Appendix J to 10 CFR 50, and by incorporating the valve testing tables into Table 3.7.A, confusion regarding the requirements of primary containment isolation valves will be reduced.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed since it does not eliminate or modify any requirements or commitment to comply with the provisions of 10 CFR Part 50, Appendix J, or BFN Technical Specification 3/4.7.A.

3. The margins of safety will not be reduced since the requirements of and the BFN commitment to comply with the provisions of 10 CFR 50, Appendix J, and BFN Technical Specification 3/4.7.A remain unchanged.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice.

By October 26, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by the proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceedings; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions should be limited to matters within the

scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination of the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the request for amendment involves a significant hazards consideration, any hearing held would take place before the issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and state comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Suzanne C. Black: petitioner's name and telephone number; date petition was mailed; plant name; and publication data and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036, attorneys for the licensee.

Nontimely filings of the petition for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board designated to rule on the petition and/or requests, that the request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room located at Athens Public Library, South Street, Athens, Alabama 35611.

Dated at Rockville, Maryland, this 19th day of September 1988.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 88–21945 Filed 9–26–88; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Power Plan Amendments; Columbia River Basin Fish and Wildlife Program

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of final protected areas amendments to the Columbia River Basin Fish and Wildlife Program and the Northwest Conservation and Electric Power Plan.

SUMMARY: On November 15, 1982, pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, *et sec.*) the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (program). The Council adopted the Northwest Conservation and Electric Power Plan (power plan) on April 27, 1983. The program and the power plan have been amended from time to time since then. Major revisions of the program were adopted in 1984 and 1987, and a major revision of the power plan was adopted in 1986. On April 14, 1988 the Council voted to initiate rulemaking pursuant to section 4(d)(1) of the Northwest Power Act to amend the program and the power plan to incorporate measures to protect critical fish and wildlife habitat from new hydropower development. On August 10, 1988, the Council adopted amendments, and on September 14, 1988 adopted a response to comments. This notice contains a brief description of the final amendments.

SUPPLEMENTAL INFORMATION: In 1987, the Council released a staff issue paper that proposed that the Council designate the river reaches identified in the studies as "protected areas," where future hydropower development should not occur. In a six-month period for public comment, the Council had the benefit of a substantial public debate over the policy issues involved in the staff proposal, and over the information in the Council's data base.

At its April 1988 meeting, the Council proposed to amend the program and the power plan to provide that in protected areas where anadromous or wild resident fish were present, there is an unacceptable risk that hydropower development would destroy critical fish habitat, and therefore no hydropower development should occur. In non-wild resident fish and wildlife protected areas, the Council proposed to amend the program and the power plan to provide that mitigation is more feasible, and that hydropower development should occur only if it would not result in a "net loss" of non-wild resident fish or wildlife.

Written comments on the proposed amendments were received through July 8, 1988, and further oral consultations were inititated by the Council until August 10, 1988.

On August 10, 1988, the Council approved protected areas amendments that adopted many features of the proposed amendments, and also made several significant changes. In brief, the final amendments adopted a single standard for all protected areas: because protected areas represent the region's most valuable fish and wildlife habitat, hydropower development should not be allowed in any protected

areas, but should be focused in other river reaches. The final amendments do not apply to any existing projects. The Council adopted several procedures designed to ensure that the Protected Areas List, and the data that support it, are kept accurate and up-to-date.

Comments made in the written comments and oral consultations are summarized, and the Council's responses provided, in a document entitled "Northwest Power Planning Council, Protected Areas Response to Comments," adopted on September 14, 1988.

On September 14, 1988, the Council also adopted a Protected Areas List reflecting changes and corrections based on public comment received through August 10, 1988.

FOR FURTHER INFORMATION CONTACT: A copy of the final amendments, the Council's response to comments, and the Protected Areas List are available on request. Those wishing to receive a copy of any of these documents should contact Judy Allender at the Council's central office, 851 SW, Sixth Avenue, Suite 1100, Portland, Oregon 97204.

Edward Sheets,

Executive Director.

[FR Doc. 88-21867 Filed 9-23-88; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-26097; File No. SR-NASD-86-34)

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Prompt Payment for Investment Company Shares

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 21, 1986 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change and filed and amendment thereto on September 8, 1988, as described in Items I, II, and III below, which Items have been prepared by the NASD The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change adds a new paragraph (m) to Article III, Section 26 of the NASD Rules of Fair Practice that establishes time frames within which members must transmit payments for Investment Company shares to investment companies or their agents.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Since 1955 prompt payment by NASD members for mutual fund shares which they have sold to customers has been governed by the NASD Board of Governors' Prompt Payment Interpretation. That Interpretation does not include a definition of the term "prompt payment". It is proposed that the interpretation be rescinded and the proposed amendment to Article III, Section 26 substituted. This section will define the term of "prompt payment" in two different sets of circumstances. Paragraph 1 of the proposed rule change will require members, including underwriters, who engage in direct retail transactions with customers to transmit payments which are received from customers to mutual funds or their agents by the later of the trade date plus five (5) business days or the end of one (1) business day following receipt of the customers payment for such shares. The amendment to the proposed rule change was adopted in response to advice by the staff of the Commission's Division of Market Regulation that the provision in the rule regarding transmittal of funds irrespective of receipt of payment was a requirement that could cause broker-dealers to violate the provisions of Section 11(d)(1) of the Securities Exchange Act of 1934.[1] The amendment to the proposed rule change would remove the requirement that payments be transmitted in instances in which customer payments have not been received by the member, thereby alleviating concern that the rule would result in impermissible extensions of credit in violation of Section 11(d)(1) of the Act.[2] The proposed rule change also will require members that are underwriters and that engage in wholesale transactions with other members to transmit payments received from such members to the funds of their agents by the end of two (2) business days following the receipt of such funds.

These changes are consistent with Section 15A(b)(6) of the Securities Exchange Act, which requires that NASD rules be designed to facilitate transactions in securities and remove market impediments, and with section 17A(a)(1) in that they will aid in ensuring the prompt clearance and settlement of investment company transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NASD solicited comments from members regarding the proposed rule change in Notices to Members 85-58 and 85-86. A total of 40 responses were received to Notice to Members 85-58 and 17 responses to Notice to Members 85-86. Copies of the Notices to Members and comment letters have been submitted to the Commission as Exhibit 2 to this filing. The most frequent areas of comment related to the practicality of the timeframes set forth in the rule, the timing of implementation and whether the scope of the rule should be broadened. The NASD Board of

[1] Section 11(d)(1) prohibits a person that acts as both a broker and a dealer from effecting transactions in which the broker-dealer extends, maintains or arranges credit for the customer on a security that is part of a new issue in which it participated as a member of the selling group or syndicate within 30 days prior to the transaction. Since investment company shares are continuously in registration and members normally offer these shares pursuant to a sales agreement with a principal underwriter, it is the Commission's position that members that are broker-dealers and that offer investment company shares are subject to the provisions of Section 11(d) of the Act.

[2] In response to the Division's concerns with the original proposal of November 21, 1986 regarding extensions of credit, the NASD requested that the Commission not publish the proposed rule change until the Association filed an amendment.

Governors considered all of these comments and made several changes to the proposals based upon such review. The NASD responded to these and other comments in the filing with the Commission.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to sumbit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statement with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulations, pursuant to delegated authority, 17 CFR 200.30-3(a)(12)

Dated: September 21, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-21952 Filed 9-23-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26093; File No. SR-NASD-88-32]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Concerning the Authority of the Director of Arbitration To Fill Vacancies on Arbitration Panels

On July 22, 1988, the National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder, and an amendment thereto on August 2, 1988, to amend sections 21 and 24 of the NASD Code of Arbitration Procedure ("Code") to give the NASD Director of Arbitration authority to fill any vacancy on an arbitration panel that occurs prior to or after commencement of a hearing session.

The proposed rule change is intended to improve the efficiency of the internal procedures of its Arbitration Department, which recently has experienced an unprecedented increase in the number of arbitration filings. The proposed rule change will significantly expedite the processing of arbitration claims by reducing the delay between the initiation and conclusion of proceedings where an arbitrator is unable to continue in that capacity. At the same time, the parties retain the right to receive the name and employment history of the replacement arbitrator, to make further inquiry regarding the replacement arbitrator's background and to challenge the replacement arbitrator within the parameters of section 22 of the Code.[2]

Notice of the proposed rule change, together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Release No. 25986, August 9, 1988) and by publication in the **Federal Register** (53 FR 30883, August 16, 1988). No comment letters were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to the NASD, and in particular the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned rule change be, and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: September 19, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-21917 Filed 9-23-88; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1).

[2] Under section 22 of the Code, a party wishing to exercise a peremptory challenge must do so by notifying the Director of Arbitration in writing within five business days of notification of the identity of the persons named to the panel. The amendments to sections 21 and 24 clarify that the parties' right to assert a peremptory challenge under section 22 must be within the five-day period specified in section 22, or the time remaining for the first hearing session under section 21 or the next hearing session under section 24, whichever is shorter.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

September 20, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Cineplex Odeon Corporation
Common Stock, No Par Value (File No. 7-3912)

Fibreboard Corporation
Common Stock, $0.01 Par Value (File No. 7-3913)

Best Buy Co., Inc.
Common Stock, $0.10 Par Value (File No. 7-3914)

Organogenesis, Inc.
Common Stock, $0.01 Par Value (File No. 7-3915)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 11, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-21918 Filed 9-23-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of Munitions Control

[Public Notice 1081]

Standards Identifying High-Risk Exports

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of standards that have been developed for identifying high-risk exports for regular end-use verification.

EFFECTIVE DATE: October 1, 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 (AECA) (22 U.S.C. 2778), which governs the export of defense articles and defense services. Pursuant to new section 38(g)(7) and Executive Order No. 11958, the Department of State, in coordination with law enforcement and national security agencies, has developed standards for identifying high-risk exports for regular end-use verification.

The Department consulted with the Departments of Defense, Commerce, Energy, Justice and Treasury, the Central Intelligence Agency, and the Nuclear Regulatory Commission in formulating standards that may signal an illegal export or diversion, and therefore warrant end-use verification. The standards listed below are not exhaustive, but are provided as a means of increasing public awareness and assisting the private sector's efforts to combat illegal exportation of defense articles and technical data. Members of the public are invited to submit recommendations regarding the standards to the Office of Munitions Control, SA-6, Room 800, Department of State, Washington, DC 20520.

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 No. 12291 (46 FR 13193). It implements a statutory requirement that entered into force on December 22, 1987.

In accordance with these authorities, and in coordination with the federal departments and agencies mentioned above, the Department of State has developed the following standards for identifying high-risk exports for regular end-use verification:

1. Requested equipment does not match known requirements or inventory of foreign end-user.
2. Requests for spare parts are in excess of projected needs or are for systems not in the foreign end-user's inventory.
3. There is a private intermediary in the proposed export, particularly in sales involving major weapon systems.
4. Customer or purchasing agent is reluctant to provide foreign end-use or foreign end-user information.
5. Performance/design requirements are incompatible with the foreign end-user's resources or environment, or with the foreign consignee's line of business.
6. Stated end-use is incompatible with the customary or known applications for the equipment being purchased.
7. Stated end-use is incompatible with the foreign consignee's line of business.
8. Stated end-use is incompatible with the technical capability of the foreign consignee or foreign end-user.
9. Customer is willing to pay cash for a large value item or order.
10. Little or no customer business background information is available.
11. Apparent lack of customer familiarity with the commodity's performance/design characteristics or uses.
12. Customer/purchasing agent refuses installation or service contracts that are normally accepted in similar transactions.
13. Vague delivery dates or delivery locations that are inconsistent with the type of commodity or established practices.
14. Freight forwarders are designated as foreign consignees or foreign end-users.
15. Use of foreign intermediate consignee(s) whose location/business is incompatible with purported foreign end-user's nature of business or location.
16. Packaging or packing requirements inconsistent with shipping mode and or destination.
17. Suspect or inadequate information is available on foreign intermediate consignee or foreign end-user.
18. Evasive responses to questions regarding any of the above, as well as whether equipment is for domestic use, export or reexport.

Dated: September 21, 1988.

William B. Robinson,

Director, Office of Munitions Control, Bureau of Politico-Military Affairs, Department of State.

[FR Doc. 88-21913 Filed 9-23-88; 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

September 16, 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. 45812

Dated Filed: September 14, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope:

Description: Competing Application of Continental Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations and Orders 88-7-43 and 88-8-67, to the application of United Airlines, Inc., filed in Docket 45777 in order to authorize Continental to provide scheduled foreign air transportation of persons, property and mail between the terminal point Los Angeles, California and the coterminal points Mazatlan, Puerto Vallarta, Guadalajara, and Acapulco, Mexico.

Docket No. 45820

Dated Filed: September 14, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 14, 1988.

Description: Application of Continental Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Act and Subpart Q of the Regulations, requests an amendment of its certificate of public convenience and necessity for Route 29-F reissued by Order 86-8-78 (August 26, 1986), to permit Continental to operate flights between points in the United States and Puerta Plata, Dominican Republic.

Docket No. 45822

Dated Filed: September 14, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 12, 1988.

Description: Application of Delta Air Lines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, applies for a new or amended certificate of public convenience and necessity authorizing Delta to provide scheduled foreign air transportation of persons, property, and mail in the U.S. Route B.2 market.

Docket No. 45824

Date Filed: September 15, 1988.

Due Date Answers, Conforming Applications, or Motions to Modify Scope: October 13, 1988.

Description: Application of Iraqi Airways, pursuant to section 402 of the Act and Subpart Q of the Regulations, requests that it be issued a permit authorizing it to engage in foreign air transportation of passengers, property and mail between Baghdad, Iraq and the United States coterminal points New York City and Detroit via the intermediate point Paris, France at a maximum frequency of two round-trip transatlantic flights per week.

Docket No. 45829

Date Filed: September 15, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: October 13, 1988.

Description: Application of Northwest Airlines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations to permit Northwest to provide air transportation services between the U.S. and Australia via Japan.

Docket No. 45783

Date Filed: September 12, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope:

Description: Amendment No. 1 to the Application of Continental Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations and Orders 88-7-43 and 88-8-67, by amending Paragraph 3 of the initial application.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-21912 Filed 9-23-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Proposed Advisory Circular 20-PA; Public Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice announces the availability of and requests comments on proposed Advisory Circular (AC) 20-PA, Public Aircraft. The proposed AC provides guidance that status as a public aircraft does not permit operations outside of the United States of a U.S.-registered aircraft without a U.S. airworthiness certificate.

DATE: Comments must identify the AC file number, P8-230-0052, and be received by October 26, 1988.

ADDRESSES: Copies of the proposed AC can be obtained from and comments may be directed to the following: Federal Aviation Administration, Airworthiness Certification Branch, AIR-230, Aircraft Manufacturing Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Earl S. Seabrooks, Airworthiness Certification Branch, AIR-230, Aircraft Manufacturing Division, Room 333, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591 (202) 267-8361.

SUPPLEMENTARY INFORMATION:

Background

This proposed AC provides guidance that status as a public aircraft under the Federal Aviation Act does not permit an aircraft to operate overseas without an airworthiness certificate.

Comments Invited

Interested persons are invited to comment on the proposed AC listed in this notice by submitting such written data, views, or arguments as they desire. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final AC.

Comments received on the proposed AC may be examined before and after the comment closing date in Room 333, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays, except Federal holidays, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC, on September 20, 1988.

Anthony J. Merrill,

Acting Manager, Aircraft Manufacturing Division.

[FR Doc. 88-21890 Filed 9-23-88; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

Bureau of Educational and Cultural Affairs; Central American Program of Undergraduate Scholarships (CAMPUS); Request for Proposals for Fiscal year 1989

Grant applications are invited from accredited institutions interested in hosting groups of Central American undergraduate students in the fourth Central American Program of Undergraduate Scholarships (CAMPUS 4). Authority for the program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 86-256 (Fulbright-Hays Act). USIA anticipates awarding approximately six grants under this competition.

I. General Program Information

Program Goals

The objectives of the program are to improve the range and quality of educational alternatives for young Central Americans of limited Financial means, to match educational opportunities with Central American needs, and to build lasting links between the U.S. and Central America.

B. Program Scope and Calendar

Approximately 85 upper division transfer students from Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama and Belize will be sponsored for approximately 30 months of English language traning and undergraduate study toward a bachelor's degree. USIA will award grants to approximately six accredited American colleges and universities to host these participants in nationally diverse groups of 12 to 16 students, organized by fields of study.

About 80 of the participants will be Spanish-speaking students from Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama, who will begin their programs with intensive English language traning in January, 1990, commence regular academic coursework by September, 1990, and continue for a maximum total of 30 months through the end of the Spring term in May or June, 1992.

About five of the participants will be English-speaking Belizean students, who will begin their programs with regular academic coursework in September, 1990, and continue for a maximum total of 30 months through January, 1993 at the latest, or until the ending date of the previous complete academic session.

CAMPUS scholarship awards for all students will be for a maximum total of approximately 30 months in length, including English language traning as needed, appropriate academic programs, and program enhancements as specified below. Project length may be slightly shorter than 30 months to match the host institution academic calendar, but extensions of scholarships beyond 30 months will not be available.

Applicant institutions should pledge administrative and faculty commitment, as well as instructional and counseling support, to implement an extensive range of program elements and to assist students in meeting degree requirements and achieving academic success.

C. Student Characteristics

1. No older than 30 years of age;
2. Citizen and resident of country in which the application is made;
3. Non-elite socio-economic background (i.e., could not afford to study in the U.S. on own or family finances, as determined through a country-specific means examination);
4. Record of academic excellence, teaching ability, and/or related work experience;
5. Good health; nominees will have passed physical and dental examinations;
6. All finalists will have been interviewed to ascertain: general leadership potential or likelihood of multiplier effect in the educational sector; probability of earning a degree in allotted time; reasonable promise or ability to adapt well to the U.S. university environment; personal maturity, including evidence of independence; and motivation for returning to work or study in home country.

D. Academic Program

CAMPUS students will enroll in undergraduate academic coursework and work toward earning a bachelor's degree from their U.S. host institution during the period of their CAMPUS sponsorship. Unless otherwise specified, entering CAMPUS students will successfully have completed at least two years of college-level study at a recognized Central American academic institution. In selecting student grantees, the Agency wil seek those who, by prior academic preparation and performance, are likely to succeed in upper division (third and fourth year) undergraduate coursework at a U.S. institution.

E. Level of Study

Host institutions are expected to provide a substantive undergraduate study program up to 30 months in length. If, after arrival, the assessment of a participant's prior studies indicates that a bachelor's degree can be earned before the program expiration date, or that a bachelor's degree cannot be earned within the sponsorship period, USIA will work the host institution to determine an appropriate course of action.

Applicant institutions should be prepared to offer options such as a double undergraduate major, concentration of related minor courses or of courses in American studies, or access to limited graduate coursework, all up to a maximum total of 30 months. No extensions will be granted. Students who finish approved programs before the end of the 30-month period may choose to return home early.

F. Fields of Study

Institutional grantees should expect to offer academic programs in two or more of the five following areas:

1. *Business Administration* (including management, accounting marketing, and finance);
2. *Communications* (including print and electronic journalism, mass media and public relations);
3. *Education* (including administration, guidance, special education, teaching specialities in levels pre-K through secondary and TESOL);
4. *Social Sciences* (including anthropology, agricultural economics, economics, geography, history, international relations, political science, psychology and sociology);
5. *Biological Sciences* (including biology, botany, ecology, genetics, marine biology, plant physiology, zoology and natural resources management).

G. Intensive English Language Program

For the Spanish-speaking students, institutions shall provide intensive English programs responsive to widely varying levels and rates of individual ability and progress, to enable students to achieve adequate English fluency to enter regular academic courses in the Fall, 1990. Experience with the CAMPUS program to date suggests that approximately eight months of intensive instruction should be sufficient to achieve this goal. Language training should take place on the same campus as the academic program.

The program should provide a minimum of 20 contact hours of instruction per week in all skill areas (reading, writing, grammar, pronunciation, listening, conversation, and vocabulary) with special tutoring and academic support as needed. Instruction should be competency-based; graduated levels of study at all proficiency levels should be available simultaneously; please note that CAMPUS may include students with no previous exposure to English. ESL training should also include at least five hours of weekly language laboratory training in listening, comprehension, and pronunciation. Institutions may design specially tailored courses for CAMPUS students, but it is preferable they undertake some of their curriculum integrated with other ESL students in regular courses, and not solely be grouped together.

During language training, opportunities should be provided for academic enrichment and intellectual stimulation. Once moderate proficiency is achieved, academic subject matter and study and composition skills should be introduced to the ongoing English training curriculum. Enhancement programming should link opportunities for English-language conversation with introductions to unique elements of U.S. society, politics, or culture.

The host institution should be prepared to admit qualified students to regular academic coursework as soon as possible.

H. Special Program Elements

Projects shall address the needs of this special student population by providing orientation programs addressing issues of social and cultural adaptation, introduction and preparation to U.S. scholarly traditions and classroom methodology, ongoing intercultural counseling, appropriate undergraduate coursework, and intellectual, cultural, and social enhancement activities to strengthen understanding of U.S. society, promote group support, and enrich personal experiences. Guided cultural and social activities, e.g. attending a play, concert, lecture, film, baseball game, etc., are encouraged and should be offered during the entire length of the program. To the extent possible, faculty members or local citizens with special expertise in the activity to be pursued should accompany the students to enrich their experience.

I. Student Selection

Selection will be conducted by a joint private sector-USIA team working in

close cooperation with Central American organizations, higher education institutions and USIS posts. The team will review applications, transcripts, and test scores, hold interviews, and recommend candidates and their proposed placement for final review by the Agency and the Board of Foreign Scholarships. USIA recognizes that the achievement of an undergraduate degree within 30 months depends on the students' prior academic preparation and English language skills, as well as their scholastic accomplishments while in the U.S. In selecting student participants, consideration will be given to probable class standing and likely credit transfer equivalencies.

J. Admission and Credit Transfer

Once student participants are identified, their application dossiers will be sent to a prospective host institution, which will have a specified time in which to review participant qualifications and confirm admission. We refer U.S. institutions to the recently published AACRAO/NAFSA guide, *The Admission and Placement of Students from Central America*, for information on the educational systems from which the students will come.

Soon after the students arrive, faculty and administrators at grantee institutions will determine students' transferrable credits and design individual academic programs accordingly. Members of the CAMPUS selection team will be available upon request to assist host institutions in assessing transcript/grade/credit equivalencies.

K. Arrival Orientation Program

A three-day plenary orientation program (arranged by USIA) will be provided for the Spanish-speaking participants at their port of entry to the U.S. beginning January 14, 1990. Each U.S. host institution will be expected to appoint a Spanish-speaking CAMPUS staff member to attend the orientation program (at USIA expense), in order to welcome the students, present information to facilitate their academic and personal transition, and then escort the students to the host institution on January 17, 1990 to begin intensive English language study.

L. Program for English-speaking Belizean Participants

CAMPUS 4 students from Belize will arrive in the U.S. in August or September, 1990, in time to attend the host university's regular orientation program for entering foreign and/or American students, and to begin their academic programs with the majority of the CAMPUS 4 students. Belizeans are expected to be fluent in English, although some may benefit from study and writing skills enhancement courses appropriate for American undergraduates. The placement of Belizean participants at CAMPUS 4 institutions will be primarily determined by field of study. Because the Belizeans will arrive after the other students, program coordinators are asked to make special efforts to integrate them into the CAMPUS group.

II. Substantive Proposal Contents and Review Criteria

Following are the areas which should be specifically addressed in proposals, with indications of the review criteria by which they will be evaluated:

A. Academic Program

Clear and specific description of sound, measurable, and feasible academic goals; quality and breadth of academic program offerings, including range and quality of course offerings and other institutional resources; evidence of instructional and support-program flexibility as appropriate; and institutional commitment to devote these resources to the project.

B. Language Program

Quality, range, and availability of multi-level intensive English language training capabilities and related institutional resources, designed to integrate the Spanish-speaking CAMPUS student both intellectually and culturally into academic study as quickly as possible; evidence of instructional and support-program flexibility as outlined above; and institutional commitment to devote these resources to the project.

C. Orientation and Cultural Enhancement Programming

Quality and breadth of content, frequency and manner of presentation of initial and on-going orientation to the U.S.; quality and nature of cultural enhancement programs and range of other opportunities for learning about U.S. society; quality and availability of proposed faculty and local human resources and special materials.

Quality and nature of international student services, integration of CAMPUS with existing international program; method and effectiveness of issuing IAP–66 forms and monitoring J–1 visas in accordance with USIA regulations.

D. Cultural Integration/Personal Counseling

Quality of attention to overall cultural integration in housing and hosting arrangements, e.g., live-in experiences with American families during part of the scholarship period; living with U.S. students; description of plans to recruit and monitor host families committed to active long-term involvement with CAMPUS students.

Availability and quality of bilingual personal counselors with intercultural expertise; attention to re-entry issues.

E. Academic Counseling/Monitoring

Quality of and approach to academic counseling and intensive academic monitoring; commitment and accessibility of departmental faculty; comprehension of Central American transfer issues; flexibility to design individual student programs as needed; ability to provide quality tutorial assistance as necessary; potential for and monitoring of non-paid internships appropriate to academic goals.

F. Administration Services

1. Quality, commitment, involvement, and Spanish-language facility of project director and other key personnel; experience in the administration of international exchange programs.

2. Commitment and capability to evaluate Central American university credentials and determine credit transfer; commitment to examine the appropriateness of academic regulations to CAMPUS student needs.

3. Quality of attention to scheduling and monitoring participant tuition and maintenance payments; maintenance payments should be for the duration of the scholarship and include all semester breaks and vacation periods; students returning home during vacation periods may not receive maintenance for time spent outside the U.S.

4. Quality of attention to processing and monitoring student health insurance enrollment and claims in accordance with Agency procedures and in communication with Agency and insurance carrier staff; furnishing insurance information to each grantee; assisting in claims filing and individual problem-solving. Please note that the USIA basic health and accident insurance coverage is provided in addition to any other required coverage by the institution.

5. Design, flexibility, and responsiveness to program goals of room and board arrangements, throughout the duration of the scholarship, including semester breaks and vacation periods, except as noted

above for students who leave the United States during these periods.

6. Plan for ongoing individual academic monitoring and overall program evaluation; the Agency reserves the right to monitor all elements of the program through staff or outside contractor visits.

G. Cost Effectiveness

Affordable cost will be an important factor in the final selection of institutional grantees; proposals should describe institutional offers of cost-sharing. Final grantee selection among highly competitive program proposals will be based in part on the cost-effectiveness of the proposals and the ability of the Agency to fund an optimal number of students. Specific budget format and guidelines are provided below.

H. Past Experience

Institutions should briefly describe prior experience in conducting programs with comparable features that drew on relevant institutional resources and abilities.

III. Technical Format Requirements

In order to be eligible for review, institutional proposals must fulfull the technical format requirements specified below. Institutions which do not adequately address all the requirements described in this section will be eliminated from consideration.

N.B.: All proposals should base program and budget planning on a group of 14 Spanish-speaking students with the possible addition of an English-speaking Belizean student, as specified below.

A. Applicants must submit an original proposal and 11 copies (total of 12) to USIA at the address below; each proposal must include:

B. A completed, signed bureau of Educational and Cultural Affairs Grant Application cover Sheet, available from the address or telephone number listed below.

C. A completed, signed USIA Assurance of Compliance form, available from the address below.

D. A double-spaced, typed abstract, maximum two pages.

E. A detailed description of the proposed project (including project milestones and relevant academic calendar information) not to exceed twenty (20) typed and paginated double-spaced pages; the text should address specifically and in detail each substantive program element described in section II.

F. Appendices should be kept to a minimum and must include:

1. Short vitae (two pages maximum) of the project director and other key personnel, including academic and cultural advisors and ESL directors; Spanish language skills should be identified;

2. Documentation of institutional support for the project, including a signed letter of commitment from the institution's President or acting President and other supporting documents affirming the institution's ability to execute the proposed project;

3. A summary of the institution's international student programs.

G. Course catalog (12 copies).

H. Budget:

1. A detailed three-column Budget Outline (following sample format, below) indicating funds requested from USIA, contributions by the applicant institution, and total costs of expenditures on specific items including tuition, maintenance, cultural activities, administration, and other program-related costs for a group of 14 Spanish-speaking students;

2. In addition to the Budget Outline, institutions must provide a Budget Explanation, describing how specific cost items were computed, e.g., tuition and fees @ $500 per semeter × 4 semesters = $2,000/student × 14 = $28,000, and providing details of institutional cost-sharing;

3. A separate Budget Outline and Budget Explanation should be provided for a potential additional student from Belize, with dates reflecting the Belizean program and adapted to the institution's academic calendar;

4. Budgets must be signed by the appropriate university officer, who should consult Office of Management and Budget circulars A–21 and A–110 regarding questions on costs; a copy of the Negotiated Indirect Cost Rate Agreement must be included if USIA coverage of indirect costs is requested.

Guidelines for proposal preparation must be strictly followed. Review by specially-convened Agency review committees will be consistent with standard Bureau procedures, Congressional requirements, and review by the Agency's Office of General Counsel. Regional and program balance will be considered, in addition to the criteria mentioned above. Review committee recommendations will be forwarded to the USIA Associate Director of the Bureau of Educational and Cultural Affairs for final disposition. Depending on final student profile, potential grantee institutions may be asked to modify subject offerings and make budgetary revisions.

Final proposals should be addressed to:

USIA CAMPUS 4, Academy for Educational Development, 1255 23rd Street, NW., Fourth Floor, Washington, DC 20037, Telephone: (202) 862–1907

Complete proposals must be received by 5 p.m. Eastern Standard Time Tuesday, November 30, 1988.

CAMPUS 4 BUDGET OUTLINE

	Amount/Source of Funds		
	USIA	University	Total
English Language Program (indicate specific dates)			
1. Student Costs:			
a. Tuition and fees	X	Y	X+Y
b. Room and board (including breaks)			
c. Maintenance allowance ($140–170 monthly per local living costs)			
d. Clothing/settling-in allowance	$500	$7,000	$7,000
e. Books and materials			
f. Cultural activities			
2 Administrative Costs:			
a. Faculty salaries			
b. Administration			
c. Other (identify any other costs and describe indirect costs if applied)			
Academic Program (indicate specific dates)			
1. Student Costs:			
a. Tuition and fees	X	Y	X+Y

CAMPUS 4 BUDGET OUTLINE—Continued

	Amount/Source of Funds		
	USIA	University	Total
b. Room and board (including breaks)			
c. Maintenance allowance ($140–170 monthly, per local living costs)			
d. Second clothing allowance	$300	$4,200	$4,200
e. Books and materials			
f. Cultural activities			
2. Administrative Costs:			
a. Faculty salaries			
b. Administration			
c. Other (identify any other costs and describe indirect costs if applied)			
Total	$XXX,XXX	$YYY,YYY	$XYX,YXY

Date: September 13, 1988.

Warren Obluck,

Deputy Director, Office of Academic Programs.

[FR Doc. 88–21955 Filed 9–23–88; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 186
Monday, September 26, 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 36389, Monday, September 19, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Monday, September 26, 1988.

CHANGE IN THE MEETING:

Open Session

Proposed Recordkeeping Modifications to 29 CFR Part 1602, "Report and Records" and CFR Part 1627, "Records to be Made or Kept Relating to Age," has been taken off the agenda.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat, (202) 634–6748.

Dated: September 20, 1988.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc 88–22061 Filed 9–22–88; 2:57 pm]

BILLING CODE 6750-06-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 35408 Tuesday, September 13, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (Eastern Time) Tuesday, September 20, 1988.

CHANGE IN THE MEETING: The Closed Session of the meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat, (202) 634–6748.

Dated: September 20, 1988.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc 88–22062 Filed 9–22–88; 2:57 pm]

BILLING CODE 6750-06-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; special meeting.

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 28, 1988, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are.

Open Session [1]

1. Summary Prior Approvals;
2. Final Capital Adequacy Regulations;
3. Regulations on Receivers;
4. Regulations on Funding and Assistance Corporations Collateral Issues;
5. Proposed Regulations on Lending Authority of FCBs and BCs;
6. Regulations on Mergers of PCAs and FLBAs Under Section 411 of the Agricultural Credit Act of 1987;

Closed Session [1]

7. FCA Operations; and
8. Jackson FLB/FLBA, in Receivership.

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (4), (5) and (9).

Dated: September 22, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88–22020 Filed 9–22–88; 2:57 pm]

BILLING CODE 6705-01-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 10:10 a.m. on Tuesday, September 20, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider a matter relating to the Corporation's corporate activities.

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 matter 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 matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(2) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(9)(B).

The meeting was held in Room 6221 of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: September 20, 1988.

Federal Deposit Insurance Corporation.

M. Jane Williamson,

Assistant Executive Secetary.

[FR Doc. 88–21958 Filed 9–21–88; 4:52 pm]

BILLING CODE 6714-01-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 4:23 p.m. on Tuesday, September 20, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act; and (2) a recommendation regarding the Corporation's assistance agreement with an insured bank.

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 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 Room 6221 of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: September 21, 1988.

Federal Deposit Insurance Corporation.

M. Jane Williamson,

Assistant Executive Secretary.

[FR Doc. 88-21959 Filed 9-21-88; 4:52 pm]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

September 21, 1988.

The following notice of meeting is published pursuant to section 3 (a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

TIME AND PLACE: September 28, 1988, 12:00 Noon.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda

884th Meeting—September 28, 1988, Regular Meeting (12:00 Noon)

CAP-1.
Project No. 3195-206, Sayles Hydro Associates

CAP-2.
Project No. 9694-003, Power Resources Development Corporation

CAP-3.
Project No. 2512-003, Elkem Metals Company

CAP-4.
Project Nos. 10338-000 and 001, Longhill Associates Project No. 10492-000, Town of Groton, Massachusetts and Groton Electric Light Department

CAP-5.
Project No. 6765-004, BMB Enterprises, Inc.

CAP-6.
Project No. 2842-011, City of Idaho Falls

CAP-7.
Project No. 10418-002, City of Harrisburg, Pennsylvania

CAP-8.
Project No. 2179-002, Merced Irrigation District

CAP-9.
Docket No. EL87-9-000, Electric Consumers Protection Act, Section 8(d) Study

CAP-10.
Docket No. ER88-544-00, Ohio Edison Company

CAP-11.
Docket Nos. ER88-544-000 ER88-558-000 and ER85-598-001, ER85-607-000, ER85-621-000, ER85-634-000, ER85-648-000, ER85-763-000, ER86-262-000, ER86-341-000, ER87-593-000 and ER88-465-000, Niagara Mohawk Power Corporation

CAP-12.
Docket No. ER88-533-000, Allegheny Generating Company Docket No. EL88-8-000, Maryland People's Counsel, *et al.*, v. Allegheny Generating Company

CAP-13.
Docket No. ER88-540-000, Louisiana Power & Light Company

CAP-14.
Docket No. ER88-302-002, Pacific Gas and Electric Company

CAP-15.
Docket No. ER83-726-002, Boston Edison Company

CAP-16.
Docket No. ER88-447-001, Vermont Electric Power Company, Inc.

CAP-17.
Docket No. ER84-348-009, American Electric Power Service Corporation

CAP-18.
Docket No. ER88-275-001, Public Service Company of New Mexico

CAP-19.
Docket No. QF88-262-001, Everett Energy Corporation

CAP-20.
Docket Nos. ER80-573-000, ER84-604-000 and ER85-477-000, Southwestern Public Service Company

CAP-21.
Docket No. EL87-39-000, Idaho Power Company

CAP-22.
Docket No. ER88-539-000, Public Service Company of Colorado

CAP-23.
Docket No. ER85-720-011, The Connecticut Light and Power Company

CAP-24.
Docket No. ER88-531-000, Commonwealth Edison Company of Indiana, Inc.

CAP-25.
Docket No. ER88-83-002, Southern California Edison Company

CAP-26.
Docket No. EL88-35-000, Texas Utilities Electric Company

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CAP-28.
Docket No. QF88-371-000, Gamma Mariah, Inc.
Docket No. QF88-364-000, Gamma Mariah, Inc.
Docket No. QF88-365-000, Alpha Joshua, Inc.
Docket No. QF88-366-000, Beta Willow, Inc.
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Docket No. QF88-368-000, Alpha Mariah, Inc.
Docket No. QF88-369-000, Beta Mariah, Inc.
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CAP-29.
Project No. 1388-001, Southern California Edison Company

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CAM-1.
Docket No. FA85-71-002, Central Illinois Public Service Company

CAM-2.
Docket No. RM87-13-001, 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

CAM-3.
Docket No. RM88-18-000, Statement of Cash Flows to Replace Statement of Changes in Financial Position in FERC Annual Report Forms

CAM-4.
Docket No. GP87-10-001, Union Texas Products Corporation

CAM-5.
Docket No. GP88-4-001, Barnhart Company

CAM-6.
Docket No. GP87-60-000, Transcontinental Gas Pipe Line Corporation v. Enstar Petroleum Company

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CAG-1.
Docket No. RP88-243-000, Transcontinental Gas Pipe Line Corporation

CAG-2.
Docket No. RP88-249-000, Tennessee Gas Pipeline Company

CAG-3.
Docket No. RP88-246-000, ANR Pipeline Company

CAG-4.
Docket Nos. RP88-180-002 and 003, Trunkline Gas Company

CAG-5.
Docket No. RP88-244-000, Natural Gas Pipeline Company of America

CAG-6.
Docket No. RP88-240-000, Panhandle Eastern Pipe Line Company

CAG-7.
Docket Nos. RP88-217-001, 004 and TM89-1-22-000, CNG Transmission Corporation

CAG-8.
Docket Nos. TQ89-1-31-000, RP88-147-001, RP88-45-008 and RP88-248-000, Arkla Energy Resources, Division of Arkla, Inc.

CAG-9.
Docket No. RP88-242-000, Granite State Gas Transmission, Inc.

CAG-10.
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Docket No. RP88-241-000, Panhandle Eastern Pipe Line Company

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Docket No. RP88-239-000, Trunkline Gas Company

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Docket No. RP88-182-000, Gas Research Institute

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CAG-15.
Docket No. TQ88-2-27-000, North Penn Gas Company

CAG–16.
Docket No. TA89–1–11–000, United Gas Pipe Line Company
CAG–17.
Docket No. TA89–1–32–000, Colorado Interstate Gas Company
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CAG–20.
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CAG–22.
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Docket No. RP88–68–005, Transcontinental Gas Pipe Line Corporation
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CAG–42.
Docket No. IS88–24–000, Texas Eastern Products Pipeline Company
CAG–43.
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CAG–45.
Docket No. RP88–177–002, Texas Gas Transmission Corporation
CAG–46.
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(B) Docket Nos. RP88–193–001 and 003, Midwestern Gas Transmission Company
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Docket No. IS87–14–001, Buckeye Pipe Line Company, L.P.
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Docket No. RP82–125–021, Tennessee Gas Pipeline Company
CAG–60.
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CAG–61.
Docket No. CI88–197–001, Tenneco Oil Company
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CAG–63.
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Docket No. CP85–437–011, Mojave Pipeline Company
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Docket No. CP86–286–002, Williams Natural Gas Company
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I. Licensed Project Matters

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Reserved

II. Electric Rate Matters

ER–1.
Docket No. QF87–345–000, City of Burlington, Vermont Electric Department and Winooski One Partnership. Request for certification as a qualifying small power production facility.
ER–2.
Docket No. EC88–2–000, Utah Power & Light Company, PacifiCorp, PC/UP&L Merging Corporation. Opinion on proposed merger.
ER–3.
Docket No. EC88–23–000, Tucson Electric Power Company, San Diego Gas & Electric Company, SD Acquisition Corp. (California) and San Diego Acquisition Corp. (Arizona). Request for approval of proposed merger.

Miscellaneous Agenda

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M–2.
Reserved

I. Pipeline Rate Matters

RP–1.
(A) Docket Nos. TQ89–1–33–000 and TM89–1–33–000, El Paso Natural Gas Company. Order concerning request to suspend collection of its deferred account balance.
(B) Docket Nos. RP88–44–000, 008 and RP88–202–000, El Paso Natural Gas Company. Order concerning certain terms, conditions, and imbalance charge in tariff.
(C) Docket No. RP88–184–001, El Paso Natural Gas Company. Order concerning treatment of confidential material, procedures for electing to challenge prudence, relationship of GIC to "litigation" extension in Commission order and related matters.
RP–2.
Docket Nos. TA85–1–18–003 and TA85–2–18–002, Texas Gas Transmission Corporation. Opinion concerning whether any "abuse" existed to deny passthrough of gas costs.
RP–3.
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II. Producer Matters

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III. Pipeline Certificate Matters

CP–1.
Docket Nos. CP87–131–000, 001, CP87–132–000 and 001, Tennessee Gas Pipeline Company. Application to construct facilities and transport gas to supply Ocean State power plant. Also application to construct and operate Niagara Spur, Phase II.
CP–2.
Docket Nos. CP87–479–003 and CP87–480–001, Wyoming-California Pipeline Company. Order on applications for rehearing and/or modification of July 1, 1988 order.
CP–3.
Docket No. CP86–494–001, Moraine Pipeline Company. Order on rehearing concerning deferred issues.

Lois D. Cashell,

Secretary.

[FR Doc. 88–22018 Filed 9–22–88; 1:42 pm]
BILLING CODE 6717–01–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 1–88

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Thurs., Sept. 29, 1988 at 10:00 a.m., Routine Business

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111-20th Street, N.W., Washington, D.C. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111-20th Street, NW., Room 400, Washington, DC 20579. Telephone: (202) 653–6155.

Dated at Washington, D.C. on September 21, 1988.

Judith H. Lock,

Administrative Officer.

[FR Doc. 88–22086 Filed 9–22–88; 8:45 am
BILLING CODE 4410–01–M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1408]

TIME AND DATE: 10 a.m. (CDT), Wednesday, September 28, 1988.

PLACE: Jaycee Civic Center, 2701 Park Avenue, Paducah, Kentucky.

STATUS: Open.

AGENDA

Approval of minutes of meeting held on September 7, 1988.

ACTION ITEMS

Old Business

1. Proposed Industrial Service Policy Revisions.

New Business

A—Budget and Financing

A1. Payments to the U.S. Treasury from Net Power Proceeds.
A2. Short-Term Borrowing from the Treasury.
A3. Authority to Write Off Uncollectible Accounts Receivable.

B—Purchase Awards

B1. Invitation CC–30359A—Requirement Contract for Crushed Limestone for Units 1 and 2 at Paradise Fossil Plant.

C—Power Items

C1. Revised Arrangements for TVA Financial Support of Regional Industrial Development Associations (RIDAs).

D—Personnel Items

D1. Proposed Supplement No. 3 to Personal Services Contract No. TV–71484A with Hay Management Consultants at Atlanta, Georgia.

E—Real Property Transactions

E1. Grant of Easement to the State of Tennessee for the Construction, Operation, and Maintenance of a Highway Affecting 0.52 Acres of Land at Great Falls Reservior in Warren County, Tennessee.
E2. Proposed Sale of Singleton Materials Engineering Laboratory to Digital Engineering, Inc. and Proposed Personal Services Contract No. TV–75528A with Digital Engineering, Inc., for Services to be Performed by Singleton Materials Engineering Laboratory (SMEL).

F—Unclassified

F1. Supplement No. 4 to Contract No. TV–67169A with the U.S. Department of Energy to Provide Assistance in the Redesign of Information Systems.

F2. Supplement No. 3 to Contract No. TV–35326A with the Tennessee Upper Duck River Development Agency to Extend Date for Their Repayment of Monies.

F3. Payments to States and Counties in Lieu of Taxes for Fiscal Year Ending September 30, 1988, as Provided Under Section 13 of the TVA Act, as Amended.

F4. TVA Contribution to Retirement System for Fiscal Year 1989.

F5. Revision to TVA Code Relating to Services of Consultants.

F6. Revision to TVA Code Relating to Personal Services Contracts.

F7. Revisions to TVA's Ethics Rules on Financial Interests and on Acceptance of Gifts, Entertainment, and Favors.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager of Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: September 21, 1988.

William L. Osteen, Jr.,

Associate General Counsel and Assistant Secretary.

[FR Doc. 88–21993 Filed 9–22–88; 11:14 am]

BILLING CODE 8120–01–M

Corrections

Federal Register
Vol. 53, No. 186
Monday, September 26, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 795 and 799

[OPTS-42073A; FRL 3441-8]

2-Mercaptobenzothiazole; Final Test Rule

Correction

In rule document 88-20124 beginning on page 34514 in the issue of Wednesday, September 7, 1988, make the following corrections:

§ 795.70 [Corrected]

1. On page 34525, in the first column, in § 795.70(c)(3)(ii), in the 14th line, "R <2" should read "R >2".

2. On page 34526, in the first column, in § 795.70(d)(1)(vi), *Equation 10* should read: "$Pn(C_o/C)_{SHW}=(k_{1o}/k)[1-exp(-kt)] + k_pt$.".

3. On the same page, in the third column, in § 795.70(d)(2)(ii), in the third line, "1.0 x 10_2 M" should read "1.0 x 10^{-2} M".

4. On the same page, in the same column, in § 795.70(d)(2)(iii), in the third line, "6.000 mL" should read "6.00 mL".

5. On the same page, in the same column, in § 795.70(d)(2)(iv), in Table 2, in the middle column, in Category B and C, "<" should read ">".

6. On the same page, in the same column, in § 795.70(d)(2)(v), in the sixth line, after "reverse" insert "phase".

7. On page 34527, in the first column, in § 795.70(d)(2)(vi), in the sixth and seventh lines "$Pn(C_o/C_t)SHW$" should read "$Pn(C_o/C_t)_{SHW}$".

8. On the same page, in the third column, in § 795.70(d)(6)(ii), in the sixth line, "10_2" should read "10^{-2}".

9. On the same page, in the same column, in § 795.70(d)(6)(ii)(A), in the first line, "10^{-5}M" should read "10^{-5} M".

10. On the same page, in the same column, in § 795.70(d)(6)(ii)(B), in the first line, "10_{-5}" should read "10^{-5}".

11. On page 34528, in the right hand column, in § 795.70(d)(6)(iii)(C), in the third line, "$Pn(A_{370}/A_{370})$" should read "$Pn(A^{\circ}_{370}/A_{370})$"

12. On page 34529, in the first column, in § 795.70(d)(6)(iii)(H), *Equation 21*, "0.258d^{-1}" should read "0.258 d^{-1}".

13. On the same page, in the same column, in § 795.70(d)(6)(iii)(I), *Equation 23*, "2.7d" should read "2.7 d".

14. On the same page, in the second column, in § 795.70(e)(2)(ii), in the second line, "actino-meter" should read "actinometer".

15. On the same page, in the same column, in § 795.70(e)(2)(ii)(C), in the fourth line, "pyridine" was misspelled.

16. On the same page, in the third column, in § 795.70(e)(2)(ii)(G), (e)(2)(ii)(I), and (e)(2)(ii)(J), in the second line, "date" should read "data".

§ 799.2475 [Corrected]

17. On page 34531, in the third column, in § 799.2475(e)(3)(ii), the second "*(ii)*" should read "(ii)".

18. On the same page, in the same column, in § 799.2475(e)(4)(i)(A), in the fourth line, after "oral" insert "route".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42054B; FRL-3431-9]

Testing Consent Orders on Aniline and Seven Substituted Anilines

Correction

In rule document 88-18727 beginning on page 31804 in the issue of Friday, August 19, 1988, make the following corrections:

1. On page 31806, in the second column, in the 27th line from the bottom, "3,4-dichloroaniline" was misspelled.

2. On page 31807, in the second column, in the third complete paragraph, in the 20th line, "daphnids" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42054A; FRL-3431-8]

Termination of Rulemaking for Certain Chemicals in the Anilines Category

Correction

In proposed rule document 88-18728 beginning on page 31814 in the issue of Friday, August 19, 1988, make the following corrections:

1. On page 31815, in the second column, in the first complete paragraph, in the fourth line from the bottom, "dichloroaniline" was misspelled.

2. On the same page, in the third column, in table 2, in entry "827-94-1", the chemical name should read "2,6-Dibromo-4-nitroaniline".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-240082; FRL-3435-1]

State Registration of Pesticides

Correction

In notice document 88-19299 beginning on page 33531 in the issue of Wednesday, August 31, 1988, make the following corrections:

1. On page 33531, in the first column, the docket line was inaccurate and should read as it appears in the heading of this document.

2. On the same page, in the second column, under **Arizona**, in the fifth paragraph, in the second line, "Chemical" was misspelled.

3. In the same column, also under **Arizona**, in the eighth paragraph, in the third line, "D-Z-H" should read "D-Z-N".

4. On the same page, in the third column, under **Connecticut**, in the second paragraph, the first line should read "*EPA SLN No. CT 88 0007*. CT".

5. On page 33532, in the third column, under **Oregon**, in the first paragraph, in the third line "Miticide" was misspelled.

6. On page 33533, in the first column, under **Wisconsin**, in the first paragraph, in the third line, "Diazinon" was misspelled.

7. In the same column, also under **Wisconsin**, in the second paragraph, beginning in the fifth line, "*chrysoteuchia topiaria*" was misspelled.

BILLING CODE 1505-01-D

federal register

Monday
September 26, 1988

Part II

Environmental Protection Agency

40 CFR Parts 35, 124, 141, 143, 144, 145, and 146

Safe Drinking Water Act—National Drinking Water Regulations, Underground Injection Control Regulations; Indian Lands; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 35, 124, 141, 142, 143, 144, 145, and 146

[FRL-3304-2]

Safe Drinking Water Act—National Drinking Water Regulations, Underground Injection Control Regulations; Indian Lands

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Safe Drinking Water Act (SDWA) Amendments of 1986 (Pub. L. 99-339) require EPA to promulgate regulations specifying those provisions of the Act for which it would be appropriate to treat Indian Tribes as States. This rule allows Tribes to be treated as States for purposes of administering a Public Water System or Underground Injection Control program. The rule establishes procedures for: (a) Determining eligibility of Indian Tribes to apply for treatment as States; (b) if found eligible, to apply for primary enforcement responsibility (primacy) on Indian lands; and (c) to receive grants to support EPA approved Public Water System and Underground Injection Control regulatory programs. EPA in a separate notice proposed rules for administration of Wellhead Protection and Sole Source Aquifer Demonstration programs by Indian Tribes (52 FR 46712, December 9, 1987).

EFFECTIVE DATE: The amended requirements contained in this rule found at 40 CFR Parts 35, 124, 141, 142, 143, 144, 145, and 146 will take effect October 26, 1988. In accordance with 40 CFR 23.7, this regulation shall be considered final Agency action for the purpose of judicial review at 1:00 p.m. eastern time on October 11, 1988.

ADDRESSES: Public comments, supporting documents, and the public docket for this rulemaking are available for review during normal business hours at the Environmental Protection Agency, Room 1003 East Tower, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION: Contact Al Havinga, State Programs Division, Office of Drinking Water (WH-550E), Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460, telephone (202) 382-5555.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Statutory Authority

The June 19, 1986 amendments to the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*) added a new section 1451 entitled "Indian Tribes." The amendments authorize EPA to treat Indian Tribes as States, delegate primary enforcement responsibility for the Public Water System (PWS) and Underground Injection Control (UIC) programs, and provide grant and contract assistance to Indian Tribes where appropriate. The amendments require EPA to promulgate regulations by December 19, 1987, specifying those provisions of the Act where it is appropriate to treat an Indian Tribe as a State.

Section 1451 of the Safe Drinking Water Act establishes certain criteria an Indian Tribe must meet before treatment as a State is authorized: (1) "The Indian Tribe is recognized by the Secretary of the Interior and has a governing body carrying out substantial governmental duties and powers;" (2) "the functions to be exercised by the Indian Tribe are within the area of the Tribal Government's jurisdiction;" and (3) "the Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of * * * [the Act] and of all applicable regulations." The amendments state that Indian Tribes "may not assume or maintain primary enforcement responsibility in a manner less protective of the public health than such responsibility may be assumed or maintained by a State". However, an Indian Tribe "shall not be required to exercise criminal enforcement jurisdiction for purposes of complying with" the requirements for primary enforcement responsibility.

Because funds are limited and will be allocated on the basis of the Tribe's workload many Indian Tribes may decide it is not cost-effective or otherwise beneficial to apply for primary enforcement authority. For these Tribes, and Tribes otherwise deemed not eligible for "treatment as a State", the EPA's Regional Offices will continue to regulate public water systems and injection wells on their reservations. This issue is discussed more fully in Section III (E)(1).

II. Background

A. EPA's Indian Policy

This rule is consistent with Federal policy statements regarding Indian Tribes. On January 24, 1983, President Reagan signed a Federal Indian Policy Statement providing for treatment of Tribal governments on a government-to-government basis and supporting the principle of self-determination and local decision-making by Indian Tribes. The EPA responded to the President's statement by developing a discussion paper entitled "Administration of Environmental Programs on Indian Lands" in July 1983 and subsequently adopted the EPA Indian Policy Statement and Implementation Guidance in November 1984.

The EPA's policy is "to give special consideration to Tribal interests in making Agency policy and to ensure the close involvement of Tribal governments in making decisions and managing the environmental programs affecting reservation lands." In practice, EPA's policy is to work directly with Tribal governments as independent authorities for reservation affairs and not as political subdivisions of States.

B. Statutory and Regulatory Background

The Safe Drinking Water Act was adopted on December 16, 1974 (Pub. L. 93-523) and amended in 1977 (Pub. L. 95-190), 1979 (Pub. L. 96-63), 1980 (Pub. L. 96-502), and 1986 (Pub. L. 99-339). The statute was enacted to protect the quality of drinking water supplies

throughout the United States by establishing four major programs: Public Water System, Underground Injection Control, Wellhead Protection, and Sole Source Aquifer Demonstration programs. The Public Water System program establishes drinking water quality standards; the Underground Injection Control program protects groundwater by regulating the injection of fluids into the ground; the Wellhead Protection program is designed to protect aquifers from contamination through controls of the area around public water supply wells; and the Sole Source Aquifer Demonstration program is designed to protect "critical aquifer protection areas" within aquifers designated as "sole source aquifers."

The Safe Drinking Water Act allows States to assume primary enforcement responsibility (primacy) to administer Public Water System and Underground Injection Control programs. The Safe Drinking Water Act also authorizes EPA to support Public Water System and Underground Injection Control programs by providing financial and technical assistance to develop and administer these programs. Currently, EPA administers the Public Water System and Underground Injection Control programs on Indian lands. However, the 1986 Safe Drinking Water Act Amendments change the relative roles and responsibilities of Indian Tribes and the EPA by enabling Indian Tribes to apply to EPA for "treatment as a State" and, if approved, subsequently to apply for primary enforcement responsibility for the Public Water System and Underground Injection Control programs.

The EPA formed a workgroup in August 1986 to draft regulations that would implement the Safe Drinking Water Act Amendments pertaining to Indian Tribes. In October 1986, the workgroup circulated draft material to all Indian Tribes and States for comment. On July 27, 1987, EPA proposed at 52 FR 28112 to amend the National Drinking Water regulations found at 40 CFR Parts 141, 142, and 143; the Underground Injection Control regulations found at 40 CFR Parts 144, 145, and 146; the Public Water System and Underground Water Source Protection Grant regulations found at 40 CFR Part 35; and EPA's generic permitting procedures at 40 CFR Part 124. These regulations will enable Indian Tribes to be treated as States and enable Tribes meeting the "treatment as a State" criteria to apply for primary enforcement responsibility and financial assistance for the Public Water System and Underground Injection Control programs.

Copies or the proposed regulations were sent to each Federally recognized Alaska Native Village and Indian Tribe prior to publication in the **Federal Register** to enable Indian Tribes and Alaska Native Villages additional time to comment on the proposed rule. The following final rule reflects the comments on the July 27, 1987 proposal and the Agency's response.

C. Public Comments on the Proposal

The EPA requested comments on all aspects of the July 27 proposal. A summary of the major comments and the Agency's response to the issues raised are presented in the following section. The Agency's detailed response to the comments received are presented in the document "Response to Comments Received on the Proposed Indian Primary Enforcement Responsibility Requirements of July 27, 1987," which is available in the public docket for this rulemaking.

The EPA received 38 written comments on the proposed rule. Twenty-two written comments were received representing the views of 32 Indian Tribes and Alaska Native Villages, nine written comments were received from States or Federal Agencies, five written comments were received from public or professional organizations, and two written comments were received from private industry.

The EPA held three public hearings on the proposed rule: August 17, 1987 in Washington, DC; August 25, 1987 in Spokane, Washington; and September 3, 1987 in Denver, Colorado. Fourteen individuals representing eleven Indian Tribes, one professional organization, one industry, and one private individual made oral statements at the public hearings.

III. Summary and Explanation of Today's Action

A. Statutory, Regulatory and Programmatic Framework

1. Statutory and Regulatory Framework

Under the existing Safe Drinking Water Act requirements, Indian Tribes are currently treated as "municipalities." Today's rule implements section 1451 of the Safe Drinking Water Act which authorizes EPA to treat an Indian Tribe as a State if the Indian Tribe meets the eligibility criteria. Once eligible, the Indian Tribe may apply for primacy under sections 1413, 1422, and 1425 of the Act. The statute provides that Indian Tribes which do not meet the criteria will still be treated as municipalities with Federal regulatory oversight.

States and eligible Indian Tribes may apply for primary enforcement authority for a Public Water System program under section 1413 of the Safe Drinking Water Act; a Class I, II, III, IV, and V Underground Injection Control program under section 1422 of the Act; and a Class I, III, IV, and V Underground Injection Control program under section 1422 and/or a Class II Underground Injection Control program under section 1425 of the Act. States and Indian Tribes treated as States may also apply to receive technical and/or financial assistance for primary enforcement responsibility under section 1443 of the Act. The EPA discusses later in this notice how specific provisions of sections 1442, 1443, and 1444 affect Indian Tribes.

With respect to the Underground Injection Control program, EPA would like to clarify that eligible Indian Tribes can apply for primacy for the Class II program under section 1425 of the Act separately from primacy for the Class I, III, IV, and V program. However, an Indian Tribe would only need to apply for "treatment as a State" once for the Underground Injection Control programs since an EPA determination of "treatment as a State" will cover both the 1422 and the 1425 programs.

A Tribe must show the appropriate jurisdiction and capability and otherwise qualify for treatment as a State in order to subsequently apply for Public Water System and Underground Injection Control grants and primacy. For example, if the Tribe is designated for "treatment as a State" for the Public Water System program, the Tribe would then be treated as a State for only those provisions of the Act and EPA regulations relating to the Public Water System program (*e.g.*, SDWA sections 1412, 1413, 1414, 1415, 1416, 1443(a)). The Tribe would not be eligible to participate in other programs or grants contained in the Act until EPA approved the corresponding separate application for "treatment as a State." For programs authorized by the Safe Drinking Water Act, EPA intends to approve Indian Tribes for "treatment as a State" on a program-by-program basis. As is the case for States, an Indian Tribe must have its own legal authorities to administer a program under the Safe Drinking Water Act; EPA cannot delegate its own authority.

The EPA received several comments suggesting that EPA should require Indian Tribes to apply once for "treatment as a State" for all EPA water programs. The Agency finds that this

comment has merit. When all regulations under the Safe Drinking Water and Clean Water Acts stipulating how Tribes shall be treated as States are final, the Agency will develop procedures to implement a single application procedure. Most qualifications are of a general nature and need only be provided when a Tribe first applies for "treatment as a State" under the Safe Drinking Water or the Clean Water Acts. However, the Agency believes that even with a streamlined application procedure, some qualifications such as §§ 142.76(c), 142.56(d)(6), 145.76(c), and 145.56(d)(6) will need to be demonstrated for each program. For example, an Indian Tribe may possess the requisite jurisdiction to regulate public water systems on certain lands but lack the authority to regulate underground injection wells on these lands. Consequently, the Agency has revised the final rule to enable Indian Tribes which have previously been designated as a State to provide only that information which is unique to the Public Water System or Underground Injection Control programs (§§ 142.76(f) and 145.56(f)).

2. Programmatic Framework

Today's rule establishes a three-step process for an Indian Tribe to assume primary enforcement responsibilty for the Public Water System and Underground Injection Control programs. The first step is to receive designation for "treatment as a State."

The four criteria an Indian Tribe must meet for "State" designation for the Public Water System and Underground Injection Control programs are set forth in 40 CFR 142.72 and 145.52 respectively.

After receiving "State" designation for a program, a Tribe is then eligible to apply for a grant to develop the program (the second step) and primacy (the third step). EPA anticipates that typically Indian Tribes will apply for a development grant before applying for primacy. Furthermore, EPA expects that most Indian Tribes will need the full three and/or four years (this issue is discussed more fully in section III (D)(5)) to develop the corresponding public Water System and Underground Injection Control programs. Consequently, EPA anticipates that applications for primary enforcement responsibility would not occur until near the end of the program development process.

Before a Tribe can receive a development grant, the Tribe must submit a development plan for EPA approval. This plan must outline in detail what activities the Tribe will undertake to obtain primacy, how the Tribe will carry out these activities, and the specific time frame in which the Tribe will accomplish these activities. The EPA will on an annual basis evaluate Tribal adherence to the development plan. The Regional Administrator will not give a continuation award to any Tribe unless it demonstrates reasonable progress towards assuming primary enforcement responsibility within the three year or four year period.

Approximately six to twelve months before completion of the program development process, Tribes would formally apply to EPA for primacy. If the Tribe has followed the development plan, it typically would meet the programmatic requirements as well as possess the necessary administrative and technical capability to assume primacy. Excepting the "treatment as a State" designation, the process outlined above is similar to the process States currently use to obtain primacy. However, as discussed later in this notice, Indian Tribes are afforded longer development times than States in order to gain the necessary expertise to assume primacy.

B. Treatment of Indian Tribes as States

This rule creates procedures for Indian Tribes to apply to EPA for "treatment as a State." After "State" designation, Tribes are subsequently eligible to apply for financial assistance and primacy for the Public Water System and Underground Injection Control programs. This rule creates procedures set forth in a new Subpart H under Part 142 (National Primary Drinking Water Regulations Implementation), and a new Subpart E under Part 145 (State UIC Program Requirement), each titled: "Treatment of Indian Tribes as States." Subparts H and E establish criteria Indian Tribes must meet for "treatment as a State", list the information the Tribe must provide in its application to EPA, and provide a procedure for EPA to formally review applications for "treatment as a State." The requirements a Tribe must meet under Subparts H and E are identical.

Under this rule, a Tribe is eligible for treatment as a State if it meets the four criteria listed in §§ 142.72 and 145.52. The four eligibility criteria are: (1) The Indian Tribe must be recognized by the Secretary of the Interior; (2) the Indian Tribe must have a governing body carrying out substantial governmental duties and powers over a defined area; (3) the Tribe must demonstrate that the public water systems and/or underground injection wells it will regulate are within the area of its jurisdiction; and (4) the Tribe must demonstrate that it is "reasonably expected to be capable" of administering (in a manner consistent with the terms and purposes of the Act and all applicable regulations) an effective Public Water System and/or Underground Injection Control program.

The EPA's review of the comments revealed general support for the proposed approach to treating Tribes as States. However, the support was qualified by the view that some criteria for "treatment as a State" were too demanding. One of the commenters argued that the criteria in Parts 142 and 145 should be eliminated since there is no statutory basis for the requirement that Tribes must go through a "prequalification" process that was not required of States. However, section 1451(a) of the Act clearly specifies that the Agency is authorized to treat Tribes as States and subsequently to award grants and delegate primacy only to those Tribes which meet the criteria for "treatment as a State" set forth in section 1451(b). The Agency must ensure that a Tribe meets the statutory criteria in section 1451(b)(1) before it is empowered to treat the Tribe as a State under the Act.

Another commenter stated that the statutory criteria contained in section 1451(b)(1) of the Safe Drinking Water Act are "boiler plate." The commenter stated that the language of 1451(b)(1) was "* * * simply to reaffirm that Tribal primacy programs would be no less rigorous than the States." This view is based upon the commenter's reading of the legislative history and discussion with "individuals involved" in the development of the 1986 Amendments. The Agency cannot presume that such statutory language is superfluous. The Agency finds nothing in the legislative history to support this interpretation of section 1451(b)(1). Moreover, if this view were correct, there would have been no need to state in section 1451(b)(2) that "Indian Tribes [may not] assume or maintain primary enforcement responsibility in a manner less protective of the public health than such responsibility may be assumed or maintained by a State."

1. Federal Recognition

With respect to Federal recognition as an Indian Tribe, the Secretary of the Interior periodically publishes a list of Federally recognized Tribes. If the applicant appears on this list it need only state that this is so. If the Tribal name does not appear on this list because the list has not been updated, the Tribe can still provide appropriate

documentation to EPA verifying that it is Federally recognized.

2. "Substantial Governmental Duties and Powers"

The second criterion that a Tribe must satisfy to be treated as a State is that the Tribe has a governing body which is "carrying out substantial governmental duties and powers." The Agency received several comments on this issue. A number of the commenters suggested that most Indian Tribes will be able to meet this criterion because most Tribal governments do, in fact, carry out substantial governmental duties and powers.

One of the commenters stated that the phrase "carrying out substantial governmental duties and powers" was only designed to "limit eligibility to those Tribes that are Federally-recognized" and that "[f]ew if any Tribes do not carry out substantial governmental duties and functions." The same commenter stated that if more is required than establishing that the Indian Tribe is Federally recognized, then the regulations should establish a presumption that a "federally-recognized" Tribe does carry out "substantial governmental duties and functions." The Agency cannot presume that the statutory phrase "carrying out substantial governmental duties and powers" is superfluous. If the terms "Federally recognized" and "carrying out substantial governmental duties and powers" are synonymous, then the latter phrase would necessarily be redundant.

The Agency does not find any evidence in the legislative history that the only purpose of this language was to limit the eligibility determination to the issue of whether a Tribe was Federally recognized. Moreover, the essential significance of Federal recognition is that a given recognized Tribe is eligible to receive services and participate in programs which are available only to Indians because of their status as Indians. Although Federal recognition may imply that the Tribe has some form of governmental structure (*i.e.*, has some identity as a governmental entity), this does not automatically mean that a particular applicant which is a Federally recognized Tribe is, in fact, currently "carrying out substantial governmental duties and powers."

The same commenter stated that the Agency's use of the Indian Governmental Tax Status Act (Pub. L. 97-473) in the discussion of this requirement accompanying the proposed rule (52 FR 28113) was inappropriate. The commenter stated that the Internal Revenue Service (IRS) has presumed that Federally recognized Tribes carry out "essential governmental functions" (the language in the Tax Status Act), and thus IRS has established a "conclusive presumption" that a Federally recognized Tribe does, in fact, carry out "essential governmental functions."

The EPA made reference to the Tax Status Act because of IRS's interpretation of the phrase "substantial governmental functions"; the IRS regulations state that the police power, the power to tax, and the power of eminent domain are the usual types of basic governmental functions performed by sovereigns. In construing the term "carrying out substantial governmental duties and powers" in Section 1451(b)(1) of the Safe Drinking Water Act, EPA is not bound by the decision of IRS to presume that Federally recognized Tribes carry out "essential governmental functions", especially since the purposes of the two statutes are different.

The Agency believes that this second criterion will not pose a barrier to treatment of Tribes as States. Based on the comments received, the Agency believes that most Tribes will be able to meet this requirement with relative ease. The Agency recognizes that, in general, Federally recognized Tribes do carry out "substantial governmental duties and powers." However, the Agency has a statutory obligation to make this determination on a case-by-case basis. Therefore, the Agency does not believe that it is appropriate to create a presumption (whether conclusive or rebuttable in nature) that all Federally recognized Tribes are "carrying out substantial governmental duties and powers."

The comments expressed the general view that the proposed requirements for submission of documentation (*e.g.*, Tribal constitutions, codes, etc.) would be unduly burdensome and unnecessary. Based on the comments received, the Agency is relaxing the proposed rule so as not to require such documentation initially. Rather, the Agency will require a narrative statement: (1) Describing the form of Tribal government; (2) describing the types of substantial governmental functions currently performed; and (3) identifying the source of the authority to perform these functions (e.g., Tribal constitutions, codes, etc.). The Agency is, however, continuing to require documentation to support the Tribe's claim of jurisdiction. Additionally, the Agency is reserving the right to request supplemental information as it may deem necessary.

Finally, one commenter inquired as to whether an applicant must be exercising each of the types of substantial governmental functions listed in § 142.76(b)(1) and § 145.52(b)(1) (*i.e.*, police powers affecting the health, safety and welfare, taxation, and power of eminent domain) to meet this criterion. The Agency merely intended the listed types of functions as examples. It is not necessary that an applicant be currently performing each such function to qualify for "treatment as a State."

3. Jurisdiction

The third requirement a Tribe must meet for "treatment as a State" is that the functions to be exercised by the Tribe must be within the "area of the Tribal Government's jurisdiction." EPA interprets this statutory language to mean that the Tribal government must have both the subject matter and geographical jurisdiction necessary to administer a Public Water System and/or Underground Injection Control program.

A number of commenters urged that the Agency should automatically assume (or establish a rebuttable presumption to the effect) that a Tribal government has the necessary jurisdiction to administer and enforce either the Public Water System program or the Underground Injection Control program within the exterior boundaries of the particular Tribe's reservation. The concern of the commenters appears to have been two-fold. First, many commenters expressed the view that Tribes should not face the burden of proving their jurisdiction, *i.e.*, that they should receive the same general recognition of sovereign authority that EPA accords States when reviewing applications for primacy. A related, but different, concern is that EPA should not establish a process for resolving jurisdictional disputes that allows States to impede Tribal assertions of jurisdiction over reservation lands. This second concern is addressed in Section III(B)(5) of this preamble.

The Agency recognizes that there is substantial support for the general proposition that a Tribal government has jurisdiction to administer a Public Water System and/or Underground Injection Control program within the exterior boundaries of the Tribe's reservation. The Agency does not believe, however, that it is appropriate to establish a rebuttable presumption concerning Tribal governmental jurisdiction on reservation lands. EPA is under a duty to ensure that all public water systems and underground injection control activities are being regulated by EPA, the Tribes, or States. Just as when EPA considers an

application for State primacy, EPA must not delegate enforcement responsibility to a Tribe unless the Tribe can adequately show it possesses the requisite jurisdiction. Establishment of a presumption regarding Tribal jurisdiction would not be protective of human health and the environment since Tribal authority may, in some instances, be in question.

The inappropriateness of establishing a presumption is exemplified by the comments of the Penobscot Tribe of Maine requesting that EPA promulgate special regulations to enable the Penobscot Tribe to be treated as a State for purposes of both the Public Water System and Underground Injection Control programs. This request is based on the fact that under the terms of the Maine Indian Land Claims Settlement Act of 1980 (25 U.S.C. 1721 *et seq.*) and the Maine Implementation Act (30 Me. Rev. Stat. Ann. section 670 *et seq.* (1979, as amended 1981)) the State has limited, but not clearly defined, regulatory jurisdiction over the lands within the exterior boundaries of the Tribe's reservation. presumably, the other two Federally recognized Tribes which were parties to the Maine Settlement Act, the Passamaquoddy Tribe and the Houlton Band of Maliseet Indians, are subject to the same jurisdictional infirmity. In addition, different jurisdictional problems may arise with respect to complex ownerships potentially involving Federal, State, and Tribal jurisdiction within so-called "checkerboard areas" (*i.e.*, fee lands owned by non-Indians or non-Indian entities interspersed with Indian owned lands within the exterior boundaries of reservations).

The request that a given Tribe establish its jurisdiction for either a Public Water System program or an Underground Injection Control program is not meant to be a barrier or deterrent to that Tribe's attainment of primacy. Rather, it reflects the need to identify at an early date the presence or absence of a key element to effective administration of either program. The EPA recognizes its statutory responsibility not to delegate enforcement authority to a Tribe unless the Tribal government possesses the necessary regulatory authority. Therefore, EPA believes that it would be inappropriate to develop special procedures to allow Tribes which do not meet the statutory criteria under section 1451(a) nonetheless to be treated as a State as requested by the Penobscot Tribe. Furthermore, EPA believes it lacks the statutory authority to make funds available under section 1443 to Tribes which do not qualify for "treatment as a State", as further requested by the Penobscot Tribe.

Several commenters suggested that for jurisdictional determinations the Agency should include a definition of "Indian lands" in the regulations which equates Indian lands with "Indian Country." The pertinent text of 18 U.S.C. 1151 is as follows:

> * * * the term "Indian Country", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

One of the commenters noted further that the draft Underground Injection Control Direct Implementation Regulations (52 FR 17684) proposed to adopt the 18 U.S.C. 1151 definition and that, to be consistent, it should also be used in these regulations.

The EPA's recognition that there is substantial support for the general proposition that a Tribal government has jurisdiction to administer a Public Water System and/or an Underground Injection Control program within the exterior boundaries of a Tribe's reservation does not require the Agency to adopt a definition of "Indian lands" which equates this term with the term "Indian Country."

The adoption of the "Indian Country" definition within the Underground Injection Control Direct Implementation draft regulations reflects EPA's basic concern with ensuring that all underground injection activities on all lands, including Indian lands, are regulated. By contrast, the basic concern addressed by these regulations is to allow an eligible Indian Tribe to regulate public water systems and underground injection activities located only on those lands over which the Tribe adequately demonstrates its jurisdiction. In short, the underlying concern addressed by these regulations is not as broad as the basic concern addressed by the Underground Injection Control Direct Implementation proposed regulations of May 11, 1987.

Furthermore, EPA believes that adoption of the proposed definition of "Indian Country" would tend to generate additional jurisdictional disputes. This is because the term "Indian Country" encompasses areas which are "dependent Indian communities." The issue of whether a particular area constitutes a "dependent Indian community" is inherently complex; what constitutes the proper resolution of this issue will be the subject of sharply divergent. views among the affected governmental entities. To effectively increase the number of potentially disputed areas would not be in the best interest of the public health. Also, regulated entities carrying on activities within disputed areas would be presented with uncertainty as to whether a particular Indian Tribe or another governmental entity was the proper regulatory authority.

Finally, the comments received from Indian Tribes indicate a basic concern with obtaining authority to administer Public Water System and Underground Injection Control programs within the exterior boundaries of their respective reservations. The Agency does not need to adopt the definition of "Indian Country" to meet this basic concern. EPA notes that this rule is not intended to, and does not, preclude a Tribe from applying for "treatment as a State" with respect to any lands over which it believes it has jurisdiction.

To assist EPA in reviewing the Tribe's assertion of jurisdiction, the Agency is adding a requirement to §§ 142.76(c) and 145.56(c) that the Tribe submit a statement signed by the Tribal Attorney General or an equivalent official explaining the legal basis for the Tribe's regulatory jurisdiction to administer a Public Water System and/or Underground Injection Control program. The statement is similar to the statement currently required of States applying for Underground Injection Control primacy (40 CFR 145.24). It is a logical supplement to the jurisdictional documentation mentioned in §§ 142.76(c) and 145.56(c) of the proposed rule, which is still required under this final rule (a map, copies of tribal codes and ordinances, etc.) The Attorney General's statement with the supporting documentation will assist EPA in verifying that the Tribe has the necessary jurisdiction to run a Public Water System and/or Underground Injection Control program.

4. Tribal Capability

The fourth criterion that a Tribe must meet is that in the Administrator's judgment it must be "reasonably expected to be capable" of administering an effective program. In making his determination as to whether a Tribe has shown that it is "reasonably expected to be capable" of

administering an effective Public Water System and/or Underground Injection Control program, the Administrator will consider six factors: (1) the Tribe's previous management experience; (2) existing environmental or public health programs administered by the Tribe; (3) its accounting and procurement systems; (4) the mechanism(s) in place for carrying out the executive, legislative, and judicial functions of the Tribal government; (5) the relationship between the owner/operator of the public water systems and/or underground injection wells and the administrative agency of the Tribal government which is, or will be, designated as the primacy agent; and (6) the technical and administrative capabilities of the staff to administer and manage the Public Water System and/or Underground Injection Control program(s) or a plan describing how the Tribe intends to obtain the additional technical and administrative staff necessary to manage either program.

One commenter noted that the Agency should look at general management experience. EPA agrees and emphasizes that the description of the Tribe's previous management experience may include information which indicates that the Tribe has the general managerial expertise to administer an effective Public Water System and/or Underground Injection Control program. One source of information that a Tribe may use to demonstrate managerial capability is administration of programs and services under contracts authorized by the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), the Indian Mineral Development Act (Pub. L. 97–382), and the Indian Sanitation Facilities Construction Activity Act (Pub. L. 86–121).

The Agency recognizes that many Tribes may not have experience in administering environmental programs. Although lack of this experience will not preclude a Tribe from demonstrating the required capability, the presence of such experience will be of significant importance to the Agency.

Some comments were received with respect to the proposed requirement that a Tribe describe the "technical and administrative capabilities of the staff to administer and manage an effective" Public Water System and/or Underground Injection Control program. The commenters stated that few Tribes have existing technical staff to operate such programs. Therefore, in response, the Agency is changing §§ 142.72, 142.76, 145.52, and 145.56 to require that a Tribe show that it has either the necessary staff or a viable plan to acquire the additional technical and administrative expertise. This presumes that while a Tribe may not yet possess all the necessary existing technical and adminstrative expertise to administer these programs at the outset, at a minimum, it must possess the administrative and technical expertise necessary to begin development of a Public Water System and/or Underground Injection Control program.

The EPA, in its July 27 notice, proposed to require a Tribe to supply information on its accounting and procurement system. The purpose of this requirement is to make an applicant demonstrate its capability to track program funding. A description of this function may be included in the Tribe's discussion of previous managerial experience. This requirement is unchanged from the July 27 proposal.

The EPA is requesting information on the Tribe's executive, legislative, and judicial functions to assure that the Tribe has the capability to: enact enforceable public water system and/or underground injection control regulations, administer and enforce effectively those regulations, and adjudicate alleged violations of those regulations.

Some commenters felt that it is inappropriate for the Agency to expect Tribes to have separate executive, legislative, and judicial branches, as do State governments. The Agency is not requiring that Tribal governments have the same structure as State governments. On the other hand, the Agency believes it is appropriate to request Tribes to make a showing that their respective Tribal governments do, in fact, carry out the legislative, executive, and judicial functions necessary to administer effectively a Public Water System and/or Underground Injection Control program.

The EPA's evaluation of the Tribe's capability will also consider the relationship between the existing or proposed Tribal agency which will assume primary enforcement authority and the owner/operator of the public water systems and/or the underground injection wells the agency would regulate. A common situation among Indian Tribes is that the Tribe is the owner/operator of the public water systems and/or the injection wells. Tribal ownership of the public water systems or underground injection wells could result in a conflict of interest if EPA delegated primary enforcement responsibility to the Tribe, since the Tribe would be regulating itself.

Many comments were received indicating that Tribes believe they would not be in a conflict of interest situation if they owned and operated the public water systems and/or the underground injection wells they would be regulating under primacy. The preamble to the proposed rule indicated that Tribes would have to resolve the owner/operator conflict in order to receive primacy, but not for treatment as a State designation. The Agency still believes that the independence of the regulator and regulatee is necessary to best assure effective and fair administration of these programs.

However, the resolution of the matter is not meant to require the Tribes to divest themselves of these systems (*i.e.*, sell the systems). As stated in the proposed regulations, a possible solution to the problem could be the development of a Tribal utility authority or an independent environmental commission. Failure to resolve the owner/operator conflict will not preclude a Tribe from being eligible for "Treatment as a State", but is intended to signal Tribes at an early date about a potential bar to primacy that must be resolved. Resolution of the regulator/regulatee issue relative to primacy will be evaluated on a case-by-case basis.

One of the commenters pointed out that States are sometimes owners/operators of public water systems over which they have primary enforcement responsibility. Examples the commenter pointed out include State universities, prisons, and hospitals. The Agency is aware of this situation; however, the actual number of these types of systems in States is quite small in proportion to the total inventory. In addition, State infrastructures are typically such that the State agency operating the State public water systems is not the same State agency that has primary enforcement authority. This is in contrast to the typical situation exhibited by Indian Tribes which own and operate most or all of the public water systems on their reservations.

The Agency considered in its July 27 proposal whether the eligibility and primary enforcement requirements would tend to exclude the smaller Tribes. To address the concerns of small Tribes, as reflected in several of the comments, EPA will consider applications by a group or consortium of Tribes within the same geographical area. However, the applicant must still meet all the eligibility requirements to be treated as a State, particularly the jurisdictional requirement. In response to a comment, EPA in this rule will include a definition of "Interstate Agency" in § 142.2 for the Public Water System program. A definition,

"Interstate Agency" for the Underground Injection Control program was previously proposed.

As stated earlier in this notice, many Tribes, particularly the smaller Tribes, may feel that it is not cost-effective or otherwise beneficial to apply for primary enforcement responsibility because of funding and workload consideration. The Agency anticipates that, in general, a certain mininum size (as determined by tribal populations, the size of the regulated community, and the number of entities regulated) will prove necessary for Tribes to effectively and efficiently administer these programs. The EPA further anticipates that, in general, the smaller Tribes will have difficulty obtaining the required expertise to administer effectively these programs. Consequently, the Agency encourages smaller Tribes to consider consortiums or intertribal agencies as ways to obtain the necessary expertise to administer these programs and to make the attainment of primacy cost-effective and beneficial to the Tribe. The Agency will consider and evaluate all applications it receives, regardless of the applicant's size, on a case-by-case basis.

5. Process for Evaluating Applications

Within thirty days after receipt of a Tribe's complete application for treatment as a State (which has all the information required in § 142.76 and/or § 145.56), EPA will notify appropriate governmental entities (*e.g.*, neighboring Tribal and State governments) of the receipt of the application and the substance of the Tribe's jurisdictional assertions. Each of the governmental entities will have thirty days after receipt of the notice to submit comments to EPA. Comments will be limited solely to the issue of the Tribe's assertion of jurisdiction. EPA will not consider comments directed to whether the Tribe meets EPA's other requirements for treatment as a State.

If an Indian Tribe's asserted jurisdiction is subjected to a competing claim, the Administrator, after consultation with the Secretary of the Department of the Interior, or his designee, and in consideration of comments received, will evaluate the validity of any challenge to the Tribe's jurisdictional claim for the Public Water System and/or Underground Injection Control programs and make a final decision on the Tribe's jurisdictional claim. If the Administrator concludes that the Tribe has not adequately demonstrated its jurisdiction with respect to an area in dispute, then Tribal primacy will be restricted accordingly. Any such determination by the Administrator is not a determination of a Tribe's general regulatory jurisdiction, but only jurisdiction relative to administration of the Public Water System and/or Underground Injection Control programs.

This procedure does not imply that States or Federal agencies have veto power over Tribal applications for "treatment as a State." Rather, the procedure is simply intended to ensure that the Tribe has the necessary jurisdiction to administer a Public Water System and/or Underground Injection Control program.

The EPA received several comments stating that the Agency should approve all applications for "treatment as a State" within a specified time period (*i.e.*, 90 or 120 days). Though the Agency agrees with the intent of the suggestions, it does not believe that it will be possible to approve or disapprove all applications for "treatment as a State" within a designated time frame. The Agency fully anticipates that there will be instances where the jurisdictional and capability determinations will require the Agency to go back to a Tribe for clarification or additional information. Likewise, the Agency's experience with State primacy applications for the Underground Injection Control and Public Water System programs indicates that at times many meetings and communications between EPA and a State are necessary before all requirements are met. The Agency believes that the same process of negotiation and communication with Tribes will be beneficial in ensuring that Tribes meet the "treatment as a State" criteria in an expeditious manner.

If the Administrator determines that a Tribe meets all the requirements of Subpart H and/or Subpart E, a Tribe is then eligible to apply for a development grant and primary enforcement responsibility for the Public Water System and/or Underground Injection Control programs and associated funding to administer effective programs.

One commenter suggested that applications for "treatment as a State" and for development grants occur at the same time. An applicant should note that EPA will not award a development grant until the applicant is found eligible to be treated as a State. Though EPA sees no reason to bar an applicant from applying for "treatment as a State" and for a development grant simultaneously, it cautions applicants to contact the appropriate EPA Regional Office to ensure that the requirements to be treated as a State and to receive a development grant are understood.

C. Requirements for Primary Enforcement Responsibility

1. Tribal Primacy Requirements

As stated above, Tribes which meet the requirements for treatment as States are eligible to apply for primary enforcement responsibility for these programs. The EPA has promulgated regulations specifying requirements for primary enforcement responsibility for the Public Water System program (40 CFR Part 142) and the Underground Injection Control program (40 CFR Part 145). States and Indian Tribes treated as States must meet the minimum program requirements specified in these parts for EPA to grant primary enforcement responsibility.

The EPA considered in its July 27 proposal which requirements currently applicable to States seeking primacy should apply to Indian Tribes. Section 1451(b)(2) of the Safe Drinking Water Act is instructive. It states that "[n]othing in this Section shall be construed to allow Indian Tribes to assume or maintain primary enforcement responsibility for public water systems or for underground injection control in a manner less protective of the health of persons than such responsibility may be assumed or maintained by a State." In the July 27 Federal Register notice, EPA proposed that, except for the laboratory certification and the criminal enforcement responsibility requirements, as described below, all primary enforcement responsibility requirements for Public Water System and/or Underground Injection Control programs applicable to States also apply to Indian Tribes. The Agency in this rule retains the same requirements for Indian Tribes as described in the July 27 proposal.

One of the commenters expressed concern about the ability of non-Indians generally to participate in the Tribal regulatory decision-making process. The EPA points out that the requirements for primacy include the provisions for public participation by the affected population in the Tribal regulatory decision-making process (See 40 CFR Part 124). Specifically, the applicant must afford public participation in regulatory decisions pertaining to, but not limited to, rulemaking, permit hearings, and aquifer exemptions. This will ensure that the concerns of the non-Indian portion of the affected population are brought to the attention of the Tribal government. It should also be noted that the Indian Civil Rights Act of 1968 (Pub. L. 90-284) affords non-Indians as well as Indians certain protections which are

similar in nature to "due process" or "equal protection" safeguards.

Four commenters stated that the primary enforcement requirements proposed for Tribes were more stringent than those that States must meet. The EPA disagrees. As stated in the July 27 proposal, Tribes must meet the *same* requirements as States *except* in the areas of laboratory certification and criminal enforcement responsibility. The commenters may have misunderstood the Agency's July 27 proposal by confusing the requirements Tribes must meet for "treatment as a State" with the primary enforcement responsibility requirements. These two sets of requirements are separate and distinct. Section 1451(b)(1) of the Act effectively requires the Agency to develop regulations that enable Tribes to be treated as States. The Agency has done this by establishing the criteria Tribes must meet to be treated as States under subparts H and E. The Agency fully intends that once Tribes do meet the regulatory requirements for "treatment as a State" that they will be treated in the same manner as States except where noted in this rule (*i.e.*, grant match requirements, developmental grant time frames, primary enforcement responsibility requirements, etc.).

Several commenters stated that EPA should be flexible in the primary enforcement requirements that Tribes must meet. They stated that some Tribes may not be able to meet all the requirements and that EPA should consider a waiver of some primacy requirements to enable the applicant to receive primacy. The EPA believes that additional flexibility beyond waiver of the criminal enforcement and laboratory certification requirements would be inappropriate and might be less protective of the public health and the environment. Two commenters suggested that Indian Tribes should be able to apply for "partial primacy" for certain parts of the program(s). The EPA's policy for the Public Water System and Underground Injection Control programs is to delegate primary enforcement responsibility for all program activities and not allow partial program delegations. Consequently, when an Indian Tribe or State applies for Public Water Supply primacy under section 1413 of the Safe Drinking Water Act, it must assume all the requirements found in § 142.10. Likewise, when an Indian Tribe applies for Underground Injection Control primacy programs under sections 1422 and/or 1425 of the Safe Drinking Water Act, it must assume all the requirements found in §§ 145.11, 145.12, 145.13 (as amended for Indian Tribes), and 145.14. However, a Tribe may apply for primacy over a particular class of injection wells without applying for primacy over other classes.

2. Primacy Requirements Not Applicable to Tribes

The Agency has determined that it is inappropriate to require Tribes to meet the primary enforcement responsibility requirements found in § 142.10(b)(3), development of a laboratory certification program, and § 145.13 pertaining to criminal enforcement jurisdiction. Section 142.10(b)(3) requires a State seeking primacy for a Public Water System program to establish and maintain a State program for the certification of laboratories conducting analytical measurements of drinking water contaminants. To comply with the statute, EPA is amending § 142.10(b)(3) so that an Indian Tribe will not have to establish a separate or independent laboratory certification program in order to receive primary enforcement responsibility. If a Tribe chooses to avail itself of the laboratory certification waiver provision, EPA will require each Tribe to demonstrate that it has access to a State or EPA certified laboratory to conduct all required analyses through formal agreements or other arrangements.

The EPA received four comments on this issue, each supporting the laboratory certification waiver. The commenters stated that the laboratory certification requirements could bar small tribes from seeking primacy and that, in general, most Tribes would not be able to develop a laboratory certification program. The EPA agrees. The waiver in § 142.10(b)(3) is promulgated as proposed.

Section 145.13 of the Underground Injection Control regulations requires that a State have criminal enforcement authority to obtain primacy. Likewise, § 142.10(b)(vi) requires that a State have authority to assess civil *or* criminal penalties to obtain primacy for Public Water System programs. EPA interprets section 1451 to mean that criminal enforcement jurisdiction shall not be a requirement for granting primacy to Indian Tribes. Therefore, this rule amends § 145.13 to state that Tribes will not be required to possess and/or exercise criminal enforcement authority as a condition of obtaining primary enforcement responsibility. Instead, § 145.13 requires Tribes to develop a memorandum of agreement with EPA to refer criminal enforcement matters to the Administrator in an appropriate and timely manner. EPA is not making a similar change to § 142.10, since for Public Water System primacy a Tribe need not have criminal enforcement authority.

All commenters favored this change though two commenters expressed concerns about how this process will work. One commenter voiced the concern that care should be taken to ensure that specific language is developed detailing conditions under which a Tribe will refer criminal enforcement cases to EPA. The EPA shares this concern and will require that all proposed memoranda of agreement be submitted simultaneously with the primary enforcement responsibility application to ensure that criminal enforcement cases are referred in a timely manner. Another commenter wrote that the criminal enforcement referrals in § 145.13 should not bar or remove Tribal courts from the enforcement process. The EPA agrees and believes that the process outlined in this rule will not interfere with authorized Tribal enforcement activities. Tribes retain their own authority to pursue criminal enforcement cases. The EPA points out that a Tribe's criminal enforcement jurisdiction does not extend to non-Indians unless Congress has explicitly so provided by treaty or statute. The procedure outlined in § 145.13 does not diminish Tribal criminal enforcement authority.

3. Administrative Options Available to Tribes

Several commenters urged that these regulations should allow Indian Tribes flexibility to meet the primary enforcement requirements. For example, several of the comments stated that Tribes should be able to meet program requirements through contracts, grants, or memoranda of agreement with States or the Indian Health Service. The EPA agrees that there are various administrative and organizational options available to Tribes in implementing the Public Water System and Underground Injection Control programs. However, the Agency cautions that not all program functions can be accomplished through a contract, grant, or a memorandum of agreement. For example, EPA will not approve delegation of the enforcement function through a contract or memorandum of agreement because that would be inconsistent with EPA's primacy policies. For activities such as plan review and inspections, the Tribe may consider other administrative arrangements. Tribes should be aware that EPA will require the Tribe to have the basic "in-house" capabilities to attain and administer Public Water System and/or Underground Injection

Control programs. Administrative arrangements which result in "paper" or "shell" programs will be unacceptable to the Agency.

Three commenters wrote that EPA should establish "core *primacy* requirements" for all EPA programs so Tribes will only have to apply a single time for all Agency programs. The EPA believes that this is administratively infeasible since Agency programs have different statutory bases and consequently different program requirements.

4. Primacy Technical Assistance

Two commenters stated that EPA has a statutory obligation under section 1442 of the Safe Drinking Water Act to assist Tribes to obtain "regulatory primacy" by providing technical assistance. To the extent that funds are available for technical assistance to Tribes under section 1442, the EPA will give eligible Tribes (i.e., Tribes which have met the "treatment as State" criteria) priority to help them obtain "regulatory primacy" for the Public Water System and the Underground Injection Control programs. After addressing the needs of eligible Tribes, the Agency will consider providing Tribes which do not meet the requirements for "treatment as a State" with technical assistance. Regardless of whether funds are available, it is the responsibility of the Tribes to gain the basic capabilities to meet the "treatment as a State" criteria.

To ensure that eligible Tribes receive adequate technical assistance, the Agency, in fiscal year 1988 has allocated two additional staff positions in the Public Water System Program to provide technical and programmatic assistance to Tribes which are developing or applying for primary enforcement responsibility programs. In subsequent years the Agency will reevaluate its Public Water System and Underground Injection Control program staffing needs in light of the applications received.

D. Program Grants

The requirements for program grants to States are found at 40 CFR Part 35, Subpart A. This rule addresses grant eligibility, initial reserve or set-aside funds for use on Indian lands, grant-match requirements, grant reallocations, and grants to develop Indian Public Water System and/or Underground Injection Control programs.

In both the Public Water System and Underground Injection Control programs, EPA allocates available funds on the basis of a formula. Congress appropriates a fixed amount of funds for these programs each year. The amount appropriated in any year may not equal the amount desired by eligible States or Tribes treated as States. As discussed later in this notice, this situation often accounts for the fact that States actually contribute more to the program costs than the required minimum of 25%. It is important to note that the denial of a grant application submitted by an Indian Tribe treated as a State or a State is not a denial of a right or an entitlement.

1. Grant Eligibility

This rule expands the list of jurisdictions eligible to receive Public Water System and/or Underground Injection Control grants to include Indian Tribes meeting the requirements of Subparts H and/or E (Treatment of Indian Tribes as States). It implements section 1451 of the Safe Drinking Water Act which authorizes EPA to make grant and contract assistance available to eligible Indian Tribes.

One commenter stated that there is no legal justification for requiring that Indian Tribes meet the criteria for "treatment as a State" in order to apply for program grants. However, EPA does not interpret sections 1443 and 1451 as allowing the issuance of a section 1443 grant to a Tribe before it is designated as a State.

2. Reserves for Indian Lands

Beginning in Fiscal Year 1989 (October 1, 1988) EPA annually will reserve up to 3% and 5% respectively of the Public Water System and Underground Water Source grant funds for development or primacy grants to eligible Tribes and to EPA Regions for direct implementation purposes on Indian lands. It is EPA's intent that once the reserve amounts are established each year that these funds will only be used for development or primacy grants by Indian Tribes or by EPA Regions for use on Indian lands. EPA intends to use these funds for Indian programs even if the February 1 deadline passes and the funds are reallocated. This deadline is further discussed in section four which addresses reallocation.

EPA intends to make development or primacy grants available to eligible Tribes according to an equitable formula. The Agency is now considering several formula options. A possible option includes applying to the Tribes the same formula now used for States. The current formula for the PWS program assigns 10% of the available funds to land area, 30% to population, 48% to community water systems and 12% to non-community water systems. If this option is used, a particular Tribe's grant would be determined by adding its percentage of the national Indian total for each factor. For the UIC program, the assigned weights are 10% to land area, 10% to population, 14% to Class I wells, 41% to Class II wells, 10% to Class III wells, 4% to Class IV wells and 11% to Class V wells. Again, individual grants are based on that recipient's percentage of the national total for each factor.

While EPA's intention is to allocate available grant funds by formula at the beginning of each fiscal year, in the first few years after primacy becomes possible for Indian Tribes it will be very difficult to anticipate the number of Tribes that may become eligible for grants during the year. Therefore, initially EPA will reserve or set sufficient grant funds aside to assure that funds will be available to make grants to Tribes that qualify. This reserve or set-aside will also cover EPA's costs of implementing the two programs on Indian lands.

In the July 27 **Federal Register** notice, EPA proposed to limit the reserve to not more than 3% of Public Water System and 5% of the Underground Injection Control program grants. Many commenters stated that the proposed set asides (or reserves) of up to 3% and 5%, respectively, were inadequate. A number of commenters stated that the reserves should be minimum amounts rather than maximum amounts. Five commenters stated the proposed set asides were too great and would adversely impact existing State programs. The EPA believes that the reserves for Indian lands as proposed on July 27 are adequate and at the same time will not have an adverse effect on existing State programs. Historically, EPA has spent about 1% of the Public Water System and just over 2.5% of the Underground Injection Control program grants for its implementation of these programs on Indian lands. The proposed limits of 3% and 5% represent an increase over the historical levels and recognize that Indian Tribes may need additional resources to develop and administer primacy programs.

In the July 27 proposal, EPA estimated that 10–12 Tribes may meet the requirements for primacy. EPA has further refined its estimates based upon Regional data. EPA believes that 25 Tribes may apply for and receive "treatment as a State" designation within the next three years. These Tribes would thus be eligible to apply for financial assistance. However, the Agency still anticipates that only 10–12 of these Tribes will apply for and receive primacy within the next three years.

Included in the record for this rule is an analysis of how the 25 Tribes estimated to receive "treatment as a

State" within the next three years and the 10–12 Tribes estimated to receive primacy within the next three years correlate with the 3% and 5% limits selected as the Public Water System and Underground Injection Control reserves. In light of the foregoing estimate and additional analysis the Agency conducted, the EPA believes that the reserves for Indian Tribes of "up to 3%" and "up to 5%" are sufficient. The Agency intends to reevaluate the funding levels within three years (or sooner if necessary) to ensure their adequacy.

EPA does not anticipate that the full 3% and 5% reserves will be fully utilized by Indian Tribes unless and until each Indian Tribe which might qualify for a grant has applied for and received financial assistance for these programs. EPA does not anticipate, at least initially, that all potentially qualified Indian Tribes will apply for these programs.

The EPA believes that the Public Water System and Underground Injection Control reserves of "up to" 3% and 5% for Indian Tribes will not adversely affect existing State programs. The EPA notes that the Public Water System and Underground Injection Control grants were increased by $5,000,000 and $3,000,000, respectively, in Fiscal Year 1988 over the Fiscal Year 1986 levels. Moreover, given the relatively small number of Tribes which are likely to apply for and receive grants and the small amount of funds which may be reserved compared to the total State allocation, EPA believes that the reserves will not adversely affect existing State programs. Consequently, the reserves established for Indian Tribes are unchanged from the July 27 proposal.

3. Grant Matching Requirements

In the July 27 notice, EPA proposed that Tribes meet a 25 percent match requirement. In addition, the Agency noted that Tribes could use in-kind contributions and Federal matching funds authorized by statute as the Tribal match. The EPA also proposed reducing the Tribal match to ten percent in the event that the Tribe does not have adequate funds to meet the 25 percent match requirement.

Several comments were received with respect to the proposed matching requirements. Several commenters urged the Agency to either eliminate the matching requirement for Tribes or to reduce the current 25 percent minimum applicable to States to ten percent or less. These commenters noted that many Indian Tribes lack a revenue base and thus lack the ability to fund these programs.

Other commenters pointed out that States frequently match Federal grant funds beyond the minimum requirements. This observation is consistent with the study conducted by the Association of State Drinking Water Administrators as reported in its recent draft report entitled "A Survey of Resource Needs of State Drinking Water Programs" of April 16, 1987. The Association conducted an analysis of the actual percentage of program costs contributed by EPA and the primacy States in the Public Water System program. This analysis shows that, on average, EPA contributes 47% of the total program costs with States contributing 53%. Moreover, EPA notes that the 1986 Safe Drinking Water Act Amendments authorizing the Agency to "treat Tribes as States" also imposed additional requirements on States and Indian Tribes to adopt filtration/disinfection regulations, a lead ban, unregulated contaminant regulations and an expanded list of regulated contaminants. Administration of these new requirements will require that Indian Tribes and States obtain additional resources.

After considering the comments, the Agency believes that a matching requirement is appropriate because such a requirement ensures from the outset that Tribes have a financial stake in developing and operating viable Public Water System and Underground Injection Control programs. The Agency acknowledges, however, that many Indian Tribes do not have the revenue base needed to meet the 25% matching requirement. The provisions for a reduction of the required matching funds to 10% address this situation. Further, Tribes which qualify for a 10% reduction should be able to provide the requisite match through in-kind contributions and Federal funds authorized by statute to be used as a match for Public Water System and Underground Injection Control programs. Accordingly, the matching requirements are unchanged from the proposed rule. It is important for Tribes to realize that regardless of the required matching level, the actual percentage of program costs that may be incurred by a given Tribe in the course of adequately administering these programs could easily exceed the 25% matching requirement.

4. Reallocation of Reserve Funds

As stated above, EPA intends to develop a formula to determine the amount of funds available each year to eligible recipients and EPA Regions. Thus, once the number of eligible Tribes stabilizes, there should be no unused funds and no need for reallocation since EPA will allocate funds for its own implementation needs and each eligible recipient at the beginning of each fiscal year.

Until that point of stability is reached, however, EPA will reserve amounts, based on its best estimate of EPA implementation needs, eligible Tribes and likely applicants. Any funds allocated to a Region from this reserve which are not awarded to specific Indian Tribes by February 1 of each fiscal year (four months after the fiscal year begins) may be subject to reallocation to other Regions. Regions which receive reallocated funds may use them for supplemental awards to eligible Indian Tribes or for direct implementation activities on Indian lands. As stated earlier, once EPA reserves these funds, it is the Agency's intent that Indian reserve funds will be used either by EPA Regions for activities on Indian lands or by eligible Indian Tribes. EPA's decision on the actual timing of reallocation (whether it is February 1 or later in the fiscal year) will depend upon a number of factors including how long the current fiscal year's appropriation has been available to Indian Tribes.

A number of comments were received pertaining to the reallocation of funds. Some commenters stated that unallocated reserves for Indian Tribes should be reallocated solely to States, since initially the program grant funds were established only for States. Conversely, numerous comments were received that unallocated reserves should be solely reallocated to Tribes or that the Agency should show a preference for Indian Tribes in the reallocation process. Since the Agency intends to reserve funds each year based on its best estimate of what will actually be used, the amount reserved will, in all likelihood, be less than the 3% and 5% limits. Thus, the Agency does not believe that impacts on State programs will be significant, nor that a preference for States in the reallocation process is appropriate. Rather, the Agency believes that the objectives of the drinking water programs will be better served if, as stated above, the unused funds are reallocated for use on Indian lands.

Three commenters suggested that EPA should extend the reallocation date beyond the February 1 deadline. One commenter suggested May 1 as an appropriate date for Fiscal Year 1988. Except for Fiscal Year 1988 when the promulgation of this rule will delay Tribal applications, EPA believes

February 1 is as late in the Fiscal Year as funds can be withheld and still enable the Agency and eligible Indian Tribes to effectively utilize these funds during the remainder of the Fiscal Year. EPA notes that the reallocation of State funds typically occurs around December 1.

Fiscal year 1988 represents a special case for the reallocation of these reserve funds. In October 1987, the EPA allocated $334,500 for the Public Water System program and $339,000 for the Underground Injection Control program to its Regional Offices for use on Indian lands in Fiscal Year 1988. In addition, the Agency reserved $669,000 and $236,300 respectively for the Public Water System and Underground Injection Control programs for grants to eligible Indian Tribes. However, with the delay in promulgating this rule, the Agency decided in July to reallocate the remaining $236,300 in UIC funds to EPA Regions for grants to primacy States and for direct implementation in States and Indian lands. Within the PWS program, the Agency decided to reallocate $494,000 of the $669,000 amount to EPA Regions for additional grants to States or for direct implementation purposes in States and Indian lands. Until the Fiscal Year 1989 appropriations become available, EPA will continue to reserve the remaining $175,000 of Fiscal Year 1988 Public Water System funds for grants to eligible Indian Tribes and for direct implementation on Indian lands. This amount will assure that there is no interruption in our ability to make grants to all Tribes that may qualify in the near term.

5. Development Grant Time Frames and Grants

The next issue is how much time should be allowed to eligible Tribes to develop Public Water System and Underground Injection Control programs with EPA financial assistance. The proposed rule allowed for two years for the Public Water System and three years for the Underground Injection Control program. A number of commenters pointed out that many Tribes do not have the existing staff or resources to develop a Public Water System program in 2 years, or an Underground Injection Control program in 3 years. In addition, several commenters felt that the lack of Agency funding in past years has contributed to Tribal inability to establish the necessary staff and administrative and technical expertise to apply for Public Water System and/or Underground Injection Control programs. Most commenters proposed that there be no time limitations on Indian Tribes or that there be a provision for waiver from any time frames the Agency establishes, if a Tribe is making a good faith effort to develop a program and is making reasonable progress in this endeavor. Other commenters proposed that, at a minimum, the time frames should be lengthened—for example, to 4 and 5 years, respectively.

In order to make the best use of the limited amount of available grant funds the Agency believes that Indian Tribes receiving Section 1443 (a) and (b) grants should be required to develop primacy within a definite time period. The Agency recognizes that Tribes generally do not possess the resources States have to develop Public Water System and Underground Injection Control programs. After careful consideration of the comments, it is the Agency's best judgment that it should extend the time frames for the development of programs to three years for the Public Water System program and four years for the Underground Injection Control program but with no provision for waiver from these time frames. Tribes which do not achieve primacy within the three and/or four year periods of grant eligibility would be ineligible for further grants until primacy is achieved. The Agency believes that establishing longer time frames, beyond three and/or four years is not warranted in that meeting "treatment as a State" criteria will mean that a Tribe has a basic level of capability. Consequently, three years and four years should be adequate for developing the respective programs. The EPA believes that some Tribes may require less than three or four years to develop their program.

EPA wishes to clarify, however, that Tribes may apply for these programs at any time. Tribes are not required to apply for these programs within three or four years after promulgation of this rule. Further, Tribes are not required to develop their programs within three and/or four consecutive years. For example, after developing a Public Water System program for two years with EPA's financial assistance, a Tribe could then opt to work on program development without EPA financial assistance for a year. Thereafter, the Tribe would still have one more year to develop a program with EPA's financial assistance. Tribes which have received development grants for three years and four years without achieving primacy may continue to develop their programs beyond the three and four-year time limits for the Public Water System and Underground Injection Control programs, respectively, without EPA financial assistance.

A number of comments were received stating that many Tribes may not have the technical staff in place at the time of the development grant application. It is the intent of the Agency to be flexible and recognize that some Tribes may not have each required element in place, such as all the required technical staff needed to administer a Public Water System or Underground Injection Control program at the time the Tribe applies for its initial development grant. Indeed, the purpose of development grants is to ensure that the basic organizational structure is in place which can then be "fine tuned" to meet the primacy requirements.

The EPA will evaluate each Tribal applicant's capability to achieve primacy within the three-year development period for the Public Water System program or four-year development period for the Underground Injection Control Program by reviewing the development grant application that the Tribe submits. With the application, EPA will require that the Tribe submit a development plan specifying how it will develop its Public Water System and/or Underground Injection Control program(s). An applicant will not be awarded additional grants unless it can demonstrate reasonable progress as measured against its development plan commitment during each grant period. As stated earlier, Tribes which fail to obtain primacy within the respective three or four-year grant eligibility development periods will be ineligible to receive further grants until primacy is obtained.

It was suggested by some commenters that the Agency recognize the possibility of Tribes entering into memoranda of agreement with Regional Offices, States, or other Tribes in order to develop primacy programs in an effective manner. The Agency agrees that in many cases such agreements may be beneficial to all parties involved. It should be recognized, however, that the Tribe initiating the agreement is expected to take the lead in assuring all program responsibilities are met. Any such agreements should be entered into with the understanding that the initiating Tribe is expected to assume full programmatic responsibility within a definite period of time. Examples of such agreements could include an inspection program such as conducting sanitary surveys, data entry for purposes of tracking sampling requirements, or laboratory analyses.

E. Other Issues

1. Technical Assistance

Several commenters pointed out that the Agency in its July 27, 1987 proposal made no mention of technical assistance funds authorized under section 1442(g) of the Act. The 1986 Amendments authorized an appropriation of $10,000,000 for each of the Fiscal Years 1987 through 1991 for technical assistance. Subsection (g) states, in part: "Not less than the greater of (1) 3 percent of the the amounts appropriated * * * or (2) $280,000 shall be utilized for technical assistance to public water systems owned or operated by Indian Tribes." To date no funds have been appropriated under section 1442(g) of the Act. The Agency further notes that section 1442(g) specifies that technical assistance funds are to be used for matters such as operator certification, circuit rider programs, and technical assistance visits to community water systems. The Agency interprets section 1442(g) to mean that technical assistance funds can be made available to water systems. Individual Indian public water systems would be eligible to receive technical assistance in the form of circuit rider programs, training, and preliminary engineering studies *if* funds are subsequently appropriated.

Several commenters mentioned that the Agency has not historically provided technical assistance to Tribes. The Agency disagrees. Each EPA Regional Office which has primary enforcement responsibility for Indian reservations annually receives a direct implementation budget. Historically, the Agency's direct implementation budget for Indian lands has been approximately $300,000 for the Public Water System program and $250,000 for the Underground Injection Control program. In addition, approximately eleven and twenty full-time staff are currently assigned to administer the Public Water System and Underground Injection Control programs on Indian lands respectively.

Because the Regional Offices are the primary enforcement agents for programs on Indian lands, each office uses its direct implementation budget to implement requirements of the National Primary Drinking Water and/or Underground Injection Control regulations on Indian lands. In addition to tracking monitoring and reporting requirements, Regional staff also provide on-site technical assistance.

Technical assistance provided by EPA Regional Offices is often coordinated with the Indian Health Service (IHS). Many of the Regions fund "circuit rider" programs that are for the purpose of providing technical assistance to public water system operators on reservations. The circuit riders have a working knowledge of small rural systems such as those found on reservations. In addition to technical assistance, the circuit rider programs (often in conjunction with the IHS) provide training to the Indian operators that can lead to certification. The EPA believes that certified operators, in turn, can contribute greatly (in an indirect way) to a Tribe's in-house technical expertise.

Many commenters asserted that technical assistance and technical assistance funds should be used for construction of new community water systems and/or upgrading existing facilities. With the limited exception of special demonstration projects authorized by section 1444, (for which appropriations are not currently available), there is no statutory authority within the Safe Drinking Water Act for the Agency to fund either the construction of new facilities or the upgrading of existing facilities. The Indian Health Service, the Department of Housing and Urban Development, the Bureau of Indian Affairs, or an individual Indian Tribe each have the requisite authority to construct and/or maintain water systems.

2. Alaska Native Villages

In its July 27, 1987 proposal EPA addressed the question of whether Alaska Native Villages meet the definition of an "Indian Tribe" contained in section 1401 of the Safe Drinking Water Act. The EPA noted that the SDWA definition of "Indian Tribe" does not mention Alaska Native Villages. The EPA stated in its proposal that it believed the legislative history of the Act indicated that Congress intended to exclude Alaska Native Villages from coverage under the "Indian Tribes" amendment (section 1451). Support for this interpretation was derived from the Senate definition of "Indian tribal organization" in S. 124 (*i.e.*, the bill containing the Safe Drinking Water Act amendments that the Senate originally passed) which specifically included Alaska Native Villages. However, since Congress adopted the House definition of "Indian Tribe" (which did not include Alaska Native Villages), EPA concluded that Congress intended to exclude Alaska Native Villages from the definition of "Indian Tribe."

The Agency also noted that, in Section 101 of the Superfund Amendments and Reauthorization Act of 1986 (SARA), Congress specifically referred to "Alaska Native Villages" in the definition of "Indian Tribe". The Safe Drinking Water Act amendments and SARA were both enacted by the same session of Congress. This contrast in definitions constituted additional evidence of Congressional intent to exclude Alaska Native Villages from the scope of the Safe Drinking Water Act amendments.

EPA received two comments during the formal comment period, and additional comments after the formal comment period. EPA also met with representatives of Alaska Native Villages after the formal comment period had closed. All of the comments EPA received during and after the formal comment period disagreed with EPA's conclusion that the legislative history shows Congressional intent to make Alaska Native Villages ineligible to apply for "treatment as a State" for the Underground Injection Control and Public Water System programs. The commenters further asserted that Alaska Native Villages clearly fall within the Safe Drinking Water Act's definition of "Indian Tribe." One commenter noted that major Indian legislation has applied to Alaska Native Villages. EPA notes, however, that whenever Congress has desired to have the term "Indian Tribe" in major Indian legislation encompass Alaska Native Villages it specifically has included them within the respective statutory definitions of "Indian Tribe" (e.g., Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*), and the Indian Child Welfare Act (25 U.S.C. 1901 *et seq.*)).

Based on the legislative history of the Act, the comparisons with SARA, and the specific references to Alaska Native Villages in the definitions of the term "Indian Tribe" contained in major Indian legislation, the Agency has concluded that the SDWA definition of "Indian Tribe" does not include Alaska Native Villages. Consequently, under this rule, Alaska Native Villages will not be eligible to apply for: treatment as a State; primary enforcement responsibility for the Public Water System and Underground Injection Control programs; or financial assistance available to States and Indian Tribes treated as States.

3. Trust Responsibility

One commenter stated that "[p]erhaps the greatest flaw in these proposed regulations is EPA's failure to consider its trust responsibility and develop an affirmative action program to assist Tribes in developing the capability to regulate programs under SDWA."

Several other commenters echoed this viewpoint.

Both the Public Water System program and the Underground Injection Control program are regulatory in nature and designed to protect the public health and overall environmental quality for the benefit of the general public, including Indian Tribes. Specifically, these are not programs applicable solely to Indians because of their status as Indians. Instead, these programs were created to ensure acceptable water quality to all consumers (Indian and non-Indian) and also ensure that underground injection is regulated in an environmentally acceptable manner through promulgated standards.

The purpose of section 1451 of the Safe Drinking Water Act is to authorize the Agency (under certain conditions) to treat Indian Tribes as States and subsequently to allow eligible Indian Tribes to apply for primacy (and the corresponding regulatory responsibilities) under either the Public Water System or the Underground Injection Control provisions. Those Indian Tribes not found eligible for treatment as States, or opting not to apply for treatment as States, are to continue to benefit from existing programs through Regional direct implementation.

In sum, the purpose of the 1986 Amendments is to allow eligible Indian Tribes to participate in the administration of these general regulatory programs. The Agency does not believe that the 1986 Amendments mandate establishment of an "affirmative action program" to assist Indian Tribes, in general, to meet the criteria for "treatment as a State." The scope of EPA's "responsibility," however characterized, is defined by the language of the 1986 Amendments and the provisions of the Safe Drinking Water Act. The EPA believes that its statutory responsibility under the 1986 Amendments is to promulgate regulatory requirements which afford eligible Indian Tribes a fair and reasonable opportunity to attain primacy for Public Water System and/or Underground Injection Control programs and, at the same time, ensure that Tribes assume and maintain primacy in a manner which is "no less protective of the public health than such responsibility may be assumed or maintained by a State." These regulations are consistent with that mandate and with EPA's Indian Policy Statement.

IV. Other Regulatory Requirements

A. Compliance With Executive Order 12291

Executive Order 12291 (46 FR 13193, February 9, 1981) requires that a regulatory agency determine whether a new regulation will be "major" and, if so, that a regulatory impact analysis be conducted. A major rule is defined as a regulation which is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers; individual industries; Federal, State, and local government agencies; or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Since this rule does not meet the definition of a major regulation, the Agency has not conducted a regulatory impact analysis. The proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any response to these comments will be available for viewing at the Environmental Protection Agency, Room 1003 East Tower, 401 M Street SW., Washington, DC 20460.

B. Paperwork Reduction Act

The information collection requirements in this final rule was approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has been assigned control numbers 2040–0090 (Public Water System) and 2040–0042 (Underground Injection Control).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act requires that Federal agencies prepare regulatory flexibility analyses assessing the impacts of proposed rules on entities such as small businesses, small organizations, and small governmental jurisdictions. Such analysis is not required, however, when the head of the agency certifies that a rule will not have a significant economic impact on a substantial number of small entities.

The EPA considers the information required by this rule to be the minimum necessary to administer effectively the Indian provisions of the 1986 Safe Drinking Water Act amendments. Any additional economic impact on the public resulting from reporting and recordkeeping requirements that Tribes adopt as part of a Public Water System and/or Underground Injection Control program(s) is expected to be negligible since owners/operators of public water systems and/or underground injection wells are already reporting to EPA. Awarding primacy to an Indian Tribe will not change the reporting or regulatory requirements, but only the government to which the owner/operator reports. Accordingly, I certify that these regulations, when promulgated, will not have a substantial impact on a number of small entities.

List of Subjects in 40 CFR Parts 35, 124, 141, 142, 143, 144, 145, and 146

Administrative practices and procedures, Air pollution control, Chemicals, Confidential business information, Grant programs—environmental protection, Hazardous materials, Indians, Intergovernmental relations, Penalties, Pesticides and pests, Radiation protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply.

Dated: September 12, 1988.

Lee M. Thomas,

Administrator.

Therefore, for the reasons set forth in the preamble, 40 CFR Chapter I is amended as follows:

PART 35—STATE AND LOCAL ASSISTANCE

Subpart A—Financial Assistance for Continuing Environmental Programs

1. The authority citation for Subpart A is amended to read:

Authority: Secs. 105 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7405 and 7601(a)); secs. 106, 205(g), 205(j), 208 and 501 (a) of the Clean Water Act, as amended (33 U.S.C. 1256, 1285(g), 1285(j), 1288, and 1361(a)); secs. 1443, 1450, and 1451 of the Safe Drinking Water Act (42 U.S.C. 300j–2 and 300j–9); secs. 2002(a) and 3011 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6912(a), 6931, 6947, and 6949); and secs. 4, 23, and 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136(b), 136(u), and 136w(a)).

2. Section 35.105 is amended to add, in alphabetical order, new definitions for "Indian Tribe" and "State" to read as follows:

§ 35.105 Definitions.

* * * * *

"Indian Tribe" means, within the context of the Public Water System Supervision and Underground Water Source Protection grants, any Indian Tribe having a Federally recognized

governing body carrying out substantial governmental duties and powers over a defined area.

* * * * *

"State" means, within the context of the Public Water System Supervision and Underground Water Source Protection grants, one of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or an Indian Tribe treated as a State.

* * * * *

3. Section 35.115 (e) and (f) are revised to read as follows:

§ 35.115 State allotments and reserves.

* * * * *

(e) Public Water System Supervision allotment (Safe Drinking Water Act, section 1443(a)): Population, geographic area, numbers of community and noncommunity water systems and other relevant factors. All jurisdictions except American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands or an individual Indian Tribe treated as a State shall be allotted at least one percent. Up to three percent of the Public Water System Supervision funds shall be reserved each year for use on Indian lands.

(f) Underground Water Source Protection allotment (Safe Drinking Water Act, section 1443(b)): Population, geographic area, extent of underground injection practices, and other relevant factors. Up to five percent of the Underground Water Source Protection funds shall be reserved each year for use on Indian lands.

* * * * *

4. Section 35.155 is amended by adding a new paragraph (c) to read as follows:

§ 35.155 Reallocation.

* * * * *

(c) Public Water System Supervision and Underground Water Source Protection funds reserved for use on Indian lands which are not awarded to specific Indian Tribes by February 1 of a fiscal year, may be reallocated by the Administrator for supplementary awards to Indian Tribes treated as States or to EPA Regions for purposes of direct implementation on Indian lands.

5. Section 35.400 is revised to read as follows:

§ 35.400 Purpose.

Sections 1443(a) and 1451(a)(3) of the Safe Drinking Water Act authorize assistance to States and Indian Tribes treated as States for Public Water System Supervision Programs. Associated program regulations are found in 40 CFR Parts 141, 142, and 143.

6. Section 35.405 is amended by designating existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 35.405 Maximum Federal share.

* * * * *

(b) The Regional Administrator may increase the 75 percent maximum Federal share for an Indian Tribe based upon application and demonstration by the Tribe that it does not have adequate funds (including Federal funds authorized by statute to be used for matching purposes), Tribal funds, or in-kind contributions to meet the required 25 percent Tribal match. In no case shall the Federal share be greater than 90 percent.

7. Section 35.410 is amended by adding a new paragraph (c) to read as follows:

§ 35.410 Limitations.

* * * * *

(c) The limitations in paragraphs (a) and (b), of this section do not apply to funds allotted to Indian Tribes.

8. Part 35 is amended by adding a new § 35.415 to read as follows:

§ 35.415 Indian Tribes.

(a) The Regional Administrator will not award initial section 1443(a) funds to an Indian Tribe unless:

(1) EPA has determined that the Indian Tribe meets the requirements of 40 CFR Part 142, Subpart H—Treatment of Indian Tribes as States; and

(2) The applicant has a Public Water System Supervision Program or agrees to establish one within three years of the initial award and agrees to assume primary enforcement responsibility within this period.

(b) The Regional Administrator shall not give a continuation award to any Indian Tribe unless the Tribe can demonstrate reasonable progress towards assuming primary enforcement responsibility within the three-year period.

(c) After the three-year period expires, the Regional Administrator shall not award section 1443(a) funds to an Indian Tribe unless the Tribe has assumed primary enforcement responsibility.

9. Section 35.450 is revised to read as follows:

§ 35.450 Purpose.

Section 1443(b) of the Safe Drinking Water Act authorizes assistance to States and Indian Tribes treated as States for Underground Water Source Protection Programs. Associated program regulations are found in 40 CFR Parts 124, 144, 145, 146, and 147.

10. Section 35.455 is amended by designating existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 35.455 Maximum Federal share.

* * * * *

(b) The Regional Administrator may increase the 75 percent maximum Federal share for an Indian Tribe based upon application and demonstration by the Tribe that it does not have adequate funds (including Federal funds authorized by statute to be used for matching purposes), Tribal funds, or in-kind contributions to meet the required 25 percent match requirement. In no case shall the Federal share be greater than 90 percent.

11. Section 35.460 is revised to read as follows:

§ 35.460 Limitations.

After September 30, 1983, the Regional Administrator will not award section 1443(b) funds unless the applicant has primary enforcement responsibility for the Underground Water Source Protection program. The above limitation shall not apply to funds allotted to Indian Tribes.

12. Part 35 is amended to add a new Section 35.465 to read as follows:

§ 35.465 Indian Tribes.

(a) The Regional Administrator will not award initial section 1443(b) funds to an Indian Tribe unless:

(1) EPA has determined that the Indian Tribe meets the requirements of 40 CFR Part 145 Subpart E—Treatment of Indian Tribes as States.

(2) The applicant has an Underground Water Source Protection program or agrees to establish one within four years of the initial award and agrees to assume primary enforcement responsibility within this period.

(b) The Regional Administrator shall not give a continuation award to any Indian Tribe unless the Tribe can demonstrate reasonable progress towards assuming primary enforcement responsibility within the four-year period.

(c) After the four-year period expires, the Regional Administrator shall not award section 1443(b) funds to an Indian Tribe unless the Tribe has assumed primary enforcement responsibility.

PART 124—PROCEDURES FOR DECISION MAKING

1. The authority citation for Part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.;* Safe Drinking Water Act, 42 U.S.C. 300f *et seq.;* Clean Water Act, 33 U.S.C. 1251 *et seq.;* and Clean Air Act, 42 U.S.C. 1857 *et seq.*

2. Section 124.2 is amended by adding the definition "Indian Tribe" in alphabetical order and by revising the following definitions to read:

§ 124.2 Definitions.

* * * * *

"Director" means the Regional Administrator, the State director or the Tribal director as the context requires, or an authorized representative. When there is no approved State or Tribal program, and there is an EPA administered program, "Director" means the Regional Administrator. When there is an approved State or Tribal program, "Director" normally means the State or Tribal director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State or Tribal program. (For example, when EPA has issued an NPDES permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval; see § 123.1) In such cases, the term "Director" means the Regional Administrator and not the State or Tribal director.

* * * * *

"Indian Tribe" means (except in the case of RCRA) any Indian Tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over a defined area.

* * * * *

"Person" means an individual, association, partnership, corporation, municipality, State, Federal, or Tribal agency, or an agency or employee thereof.

* * * * *

"State" means one of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (except in the case of RCRA), the Commonwealth of the Northern Mariana Islands, or an Indian Tribe treated as a State (except in the case of RCRA). "State Director" means the chief administrative officer of any State, interstate, or Tribal agency operating an approved program, or the delegated representative of the State director. If the responsibility is divided among two or more States, interstate, or Tribal agencies, "State Director" means the chief administrative officer of the State, interstate, or Tribal agency authorized to perform the particular procedure or function to which reference is made.

* * * * *

3. Section 124.10(c)(1)(iii) is revised to read as follows:

§ 124.10 Public notice of permit actions and public comment period.

* * * * *

(c) * * *

(1) * * *

(iii) Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected States (Indian Tribes). (For purposes of this paragraph, and in the context of the Underground Injection Control Program only, the term State includes Indian Tribes treated as States.)

* * * * *

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for Part 141 is revised to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

2. Section 141.2 (d) and (h) are revised to read as follows:

§ 141.2 Definitions.

* * * * *

(d) "Person" means an individual; corporation; company; association; partnership; municipality; or State, Federal, or tribal agency.

* * * * *

(h) "State" means the agency of the State or Tribal government which has jurisdiction over public water systems. During any period when a State or Tribal government does not have primary enforcement responsibility pursuant to Section 1413 of the Act, the term "State" means the Regional Adminstrator, U.S. Environmental Protection Agency.

* * * * *

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for Part 142 is revised to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

2. Section 142.2 is amended by redesignating paragraphs (f) through (p) as paragraphs (h) through (r) and by adding new paragraphs (f) and (g); and the redesignated paragraphs (i), (k), and (o) are revised to read as follows:

§ 142.2 Definitions.

* * * * *

(f) "Indian Tribe" means any Indian Tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over a defined area.

(g) "Interstate Agency" means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States or Indian Tribes having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

* * * * *

(i) "Municipality" means a city, town, or other public body created by or pursuant to State law, or an Indian Tribe which does not meet the requirements of Subpart H of this part.

* * * * *

(k) "Person" means an individual; corporation; company; association; partnership; municipality; or State, federal, or Tribal agency.

* * * * *

(o) "State" means one of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an Indian Tribe treated as a State.

* * * * *

3. Section 142.3 is amended by adding a new paragraph (c) to read as follows:

§ 142.3 Scope.

* * * * *

(c) Section 1451 of the SDWA authorizes the Administrator to delegate primary enforcement responsibility for public water systems to Indian Tribes. An Indian Tribe must be designated by the Administrator for treatment as a State before it is eligible to apply for Public Water System Supervision grants and primary enforcement responsibility. All primary enforcement responsibility requirements of Parts 141 and 142 apply to Indian Tribes except where specifically noted.

4. Section 142.10 is amended by designating existing paragraph (b)(3) as paragraph (b)(3)(i) and by adding a new paragraph (b)(3)(ii) and by adding paragraph (f) to read as follows:

§ 142.10 Requirements for a determination of primary enforcement responsibility.

* * * * *

(b) * * *

(3)(i) * * *

(ii) Upon a showing by an Indian Tribe of an intergovernmental or other agreement to have all analytical tests performed by a certified laboratory, the Administrator may waive this requirement.

* * * * *

(f) An Indian Tribe shall not be required to exercise criminal enforcement jurisdiction to meet the requirements for primary enforcement responsibility.

5. Part 142 is amended to add a new Subpart H to read as follows:

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

* * * * *

Subpart H—Treatment of Indian Tribes as States

Sec.

Subpart H—Treatment of Indian Tribes as States

§ 142.72 Requirements for treatment as a State.

The Administrator is authorized to treat an Indian Tribe as a State (for purposes of making the Tribe eligible to apply for a Public Water System Program) if it meets the following criteria:

(a) The Indian Tribe is recognized by the Secretary of the Interior.

(b) The Indian Tribe has a tribal governing body which is currently "carrying out substantial governmental duties and powers" over a defined area, (*i.e.*, is currently performing governmental functions to promote the health, safety, and welfare of the affected population within a defined geographic area).

(c) The Indian Tribe demonstrates that the functions to be performed in regulating the public water systems that the applicant intends to regulate are within the area of the Indian Tribal government's jurisdiction.

(d) The Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of administering (in a manner consistent with the terms and purposes of the Act and all applicable regulations) an effective Public Water System program by the existence of management and technical skills necessary to administer an effective Public Water System program or a plan to acquire the additional management and/or technical skills to administer an effective Public Water System Program; by the existence of institutions to exercise executive, legislative, and judicial functions; by a history of successful managerial performance of public health or environmental programs; and by acceptable accounting and procurement procedures.

§ 142.76 Request by an Indian Tribe for a determination of treatment as a State.

An Indian Tribe may apply to the Administrator for a determination that it qualifies for treatment as a State pursuant to section 1451 of the Act. The application shall be concise and describe how the Indian Tribe will meet each of the requirements of § 142.72. The application shall consist of the following information:

(a) A statement that the Tribe is recognized by the Secretary of the Interior.

(b) A descriptive statement demonstrating that the Tribal governing body is currently carrying out substantial governmental duties and powers over a defined area. The statement shall:

(1) Describe the form of the Tribal government;

(2) Describe the types of governmental functions currently performed by the Tribal governing body such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain; and

(3) Identify the sources of the Tribal government's authority to carry out the governmental functions currently being performed.

(c) A map or legal description of the area over which the Indian Tribe asserts jurisdiction; a statement by the Tribal Attorney General (or equivalent official) which describes the basis for the Tribe's jurisdictional assertion (including the nature or subject matter of the asserted jurisdiction); a copy of all documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's asserted jurisdiction; and a description of the locations of the public water systems the Tribe proposes to regulate.

(d) A narrative statement describing the capability of the Indian Tribe to administer an effective Public Water System program. The narrative statement shall include:

(1) A description of the Indian Tribe's previous management experience including, but not limited to, the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), the Indian Mineral Development Act (25 U.S.C. 2101 *et seq.*), or the Indian Sanitation Facilities Construction Activity Act (42 U.S.C. 2004a).

(2) A list of existing environmental or public health programs administered by the Tribal governing body and a copy of related Tribal laws, regulations and policies.

(3) A description of the Indian Tribe's accounting and procurement systems.

(4) A description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the Tribal government.

(5) A description of the existing, or proposed, agency of the Indian Tribe which will assume primary enforcement responsibility, including a description of the relationship between owners/operators of the public water systems and the agency.

(6) A description of the technical and administrative capabilities of the staff to administer and manage an effective Public Water System Program or a plan which proposes how the Tribe will acquire additional administrative and/or technical expertise. The plan must address how the Tribe will obtain the funds to acquire the additional administrative and technical expertise.

(e) The Administrator may, in his discretion, request further documentation necessary to support a Tribal request for treatment as a State.

(f) If the Administrator has previously determined that a Tribe has met the requirement for "treatment as a State" for programs authorized under the Safe Drinking Water or the Clean Water Acts, then that Tribe may provide only that information unique to the Public Water System program (*i.e.*, §§ 142.76(c) and 142.76(d)(6)).

§ 142.78 Procedure for processing an Indian Tribe's application for treatment as a State.

(a) The Administrator shall process a completed application of an Indian Tribe for treatment as a State submitted pursuant to § 142.76 in a timely manner. He shall promptly notify the Indian Tribe of receipt of the application.

(b) Within 30 days after receipt of the Indian Tribe's completed application for treatment as a State, the Administrator shall notify the appropriate governmental entities. Notice shall include information on the substance of and basis for the Tribe's jurisdictional assertions.

(c) Each governmental entity so notified by the Administrator shall have

30 days to comment upon the Tribe's assertion of jurisdiction. Comments by governmental entities shall be limited to the Tribe's assertion of jurisdiction.

(d) If a Tribe's asserted jurisdiction is subject to a competing or conflicting claim, the Administrator, after consultation with the Secretary of the Department of the Interior, or his designee, and in consideration of other comments received, shall determine whether the Tribe has adequately demonstrated the requisite jurisdiction for primacy for the Public Water System Program.

(e) If the Administrator determines that a Tribe meets the requirements of § 142.72, the Indian Tribe is then eligible to apply for development grants and primary enforcement responsibility for a Public Water System Program and associated funding under section 1443(a) of the Act and for primary enforcement responsibility for public water systems under section 1413 of the Act.

PART 143—NATIONAL SECONDARY DRINKING WATER REGULATIONS

1. The authority citation for Part 143 is reviised to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

2. Section 143.2(d) is revised to read as follows:

§ 143.2 Definitions.

* * * * *

(d) "State" means the agency of the State or Tribal government which has jurisdiction over public water systems. During any period when a State does not have responsibi1ity pursuant to section 1443 of the Act, the term "State" means the Regional Administrator, U.S. Environmental Protection Agency.

* * * * *

PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for Part 144 is revised to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f *et seq;* Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. Section 144.3 is amended by adding the definition "Indian tribe" in alphabetical order and by revising the following definitions to read:

§ 144.3 Definitions.

* * * * *

"Approved State Program" means a UIC program administered by the State or Indian Tribe that has been approved by EPA according to SDWA sections 1422 and/or 1425.

* * * * *

"Director" means the Regional Administrator, the State director or the Tribal director as the context requires, or an authorized representative. When there is no approved State or Tribal program, and there is an EPA administered program, "Director" means the Regional Administrator. When there is an approved State or Tribal program, "Director" normally means the State or Tribal director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State or Tribal program. In such cases, the term "Director" means the Regional Administrator and not the State or Tribal director.

* * * * *

"Indian Tribe" means any Indian Tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over a defined area.

* * * * *

"Interstate Agency" means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States or Indian Tribes having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator under the "appropriate Act and regulations."

* * * * *

"Person" means an individual, association, partnership, corporation, municipality, State, Federal, or Tribal agency, or an agency or employee thereof.

* * * * *

"State" means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or an Indian Tribe treated as a State.

"State Director" means the chief administrative officer of any State, interstate, or Tribal agency operating an "approved program," or the delegated representative of the State director. If the responsibility is divided among two or more States, interstate, or Tribal agencies, "State Director" means the chief administrative officer of the State, interstate, or Tribal agency authorized to perform the particular procedure or function to which reference is made.

* * * * *

PART 145—STATE UIC PROGRAM REQUIREMENTS

1. The authority citation for Part 145 is revised to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

2. Section 145.1 is amended to add a new paragraph (h) to read as follows:

§ 145.1 Purpose and scope.

* * * * *

(h) Section 1451 of the SDWA authorizes the Administrator to delegate primary enforcement responsibility for the Underground Injection Control Program to Indian Tribes. An Indian Tribe must establish its eligibility to be treated as a State before it is eligible to apply for Underground Injection Control grants and primary enforcement responsibility. All requirements of Parts 124, 144, 145, and 146 that apply to States with UIC primary enforcement responsibility also apply to Indian Tribes except where specifically noted.

3. Section 145.13 is amended to add a new paragraph (e) to read as follows:

§ 145.13 Requirements for enforcement authority.

* * * * *

(e) To the extent that an Indian Tribe does not assert or is precluded from asserting criminal enforcement authority the Administrator will assume primary enforcement responsibility for criminal violations. The Memorandum of Agreement in § 145.25 shall reflect a system where the Tribal agency will refer such violations to the Administrator in an appropriate and timely manner.

4. In Section 145.21, existing paragraphs (c) through (f) are redesignated as paragraphs (d) through (g) and a new paragraph (c) is added to read as follows:

§ 145.21 General requirements for program approvals.

* * * * *

(c) The requirements of § 145.21 (a) and (b) shall not apply to Indian Tribes.

* * * * *

5. Part 145 is amended to add a new Subpart E to read as follows:

Subpart E—Treatment of Indian Tribes as States

Sec.

Subpart E—Treatment of Indian Tribes as States

§ 145.52 Requirements for treatment as a State.

The Administrator is authorized to treat an Indian Tribe as a State (for

purposes of making the Tribe eligible to apply for an Underground Injection Control Program) if it meets the following criteria:

(a) The Indian Tribe is recognized by the Secretary of the Interior.

(b) The Indian Tribe has a Tribal governing body which is currently "carrying out substantial governmental duties and powers" over a defined area. (*i.e.*, is currently performing governmental functions to promote the health, safety, and welfare of the affected population within a defined geographic area).

(c) The Indian Tribe demonstrates that the functions to be performed in regulating the underground injection wells that the applicant intends to regulate are within the area of the Indian Tribal government's jurisdiction.

(d) The Indian Tribe is reasonably expected to be capable, in the Administrator's judgment of administering (in a manner consistent with the terms and purposes of the Act and all applicable regulations) an effective Underground Injection Control Program by the existence of management and technical skills necessary to administer an effective Underground Injection Control Program or a plan to acquire the additional management and/or technical skills to administer an effective Underground Injection Control Program; by the existence of institutions to exercise executive, legislative, and judicial functions; by a history of successful managerial performance of public health or environmental programs; and by acceptable accounting and procurement procedures.

§ 145.56 Request by an Indian Tribe for a determination of treatment as a State.

An Indian Tribe may apply to the Administrator for a determination that it qualifies for treatment as a State pursuant to section 1451 of the Act. The application shall be concise and describe how the Indian Tribe will meet each of the requirements of § 145.52. The application shall consist of the following:

(a) A statement that the Tribe is recognized by the Secretary of the Interior.

(b) A descriptive statement demonstrating that the Tribal governing body is currently carrying out substantial governmental duties and powers over a defined area. The statement shall:

(1) Describe the form of the Tribal government;

(2) Describe the types of governmental functions currently performed by the Tribal governing body such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain; and

(3) Identify the sources of the Tribal government's authority to carry out the governmental functions currently being performed.

(c) A map or legal description of the area over which the Indian Tribe asserts jurisdiction; a statement by the Tribal Attorney General (or equivalent official) which describes the basis for the Tribe's jurisdictional assertion (including the nature or subject matter of the asserted jurisdiction); a copy of all documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's asserted jurisdiction; and a description of the locations of the underground injection wells the Tribe proposes to regulate.

(d) A narrative statement describing the capability of the Indian Tribe to administer an effective Underground Injection Control program which shall include:

(1) A description of the Indian Tribe's previous management experience including, but not limited to, the administration of programs and services authorized under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), the Indian Mineral Development Act (25 U.S.C. 2101 *et seq.*), or the Indian Sanitation Facilities Construction Activity Act (42 U.S.C. 2004a).

(2) A list of existing environmental or public health programs administered by the Tribal governing body and a copy of related Tribal laws, regulations and policies.

(3) A description of the Indian Tribe's accounting and procurement systems.

(4) A description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the Tribal government.

(5) A description of the existing, or proposed, agency of the Indian Tribe which will assume primary enforcement responsibility, including a description of the relationship between owners/operators of the underground injection wells and the agency.

(6) A description of the technical and administrative capabilities of the staff to administer and manage an effective Underground Injection Control Program or a plan which proposes how the Tribe will acquire additional administrative and/or technical expertise. The plan must address how the Tribe will obtain the funds to acquire the additional administrative and technical expertise.

(e) The Adminstrator may, in his discretion, request further documentation necessary to support a Tribal request for treatment as a State.

(f) If the Administrator has previously determined that a Tribe has met the requirement for "treatment as a State" for programs authorized under the Safe Drinking Water or the Clean Water Acts, then that Tribe may provide only that information unique to the Underground Injection Control program (*i.e.*, §§ 145.76(c) and 145.76(d)(6)).

§ 145.58 Procedure for processing an Indian Tribe's application for treatment as a State.

(a) The Administrator shall process a completed application of an Indian Tribe for treatment as a State submitted pursuant to § 145.56 in a timely manner. He shall promptly notify the Indian Tribe of receipt of the application.

(b) Within 30 days after receipt of the Indian Tribe's completed application for treatment as a State, the Administrator shall notify the appropriate governmental entities. Notice shall include information on the substance and base for the Tribe's jurisdictional assertions.

(c) Each governmental entity so notified by the Administrator shall have 30 days to comment upon the Tribe's assertion of jurisdiction. Comments by governmental entities shall be limited to the Tribe's assertion of jurisdiction.

(d) If a Tribe's asserted jurisdiction is subject to a competing or conflicting claim, the Administrator, after consultation with the Secretary of the Department of the Interior, or his designee, and in consideration of other comments received, shall determine whether the Tribe has adequately demonstrated the requisite jurisdiction for primacy for the Underground Injection Control Program.

(e) If the Administrator determines that a Tribe meets the requirements of § 145.52, the Indian Tribe is then eligible to apply for development grants and primary enforcement responsibility for an Underground Injection Control program and the associated funding under section 1443(b) of the Act and primary enforcement responsibility for the Underground Injection Control Program under sections 1422 and/or 1425 of the Act.

PART 146—UNDERGROUND INJECTION CONTROL PROGRAM: CRITERIA AND STANDARDS

1. The authority citation for Part 146 is revised to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. Section 146.3 is amended by adding the definition "Indian Tribe" in alphabetical order and by revising the following definitions to read:

§ 146.3 Definitions.

* * * * *

"Director" means the Regional Administrator, the State director or the Tribal director as the context requires, or an authorized representative. When there is no approved State or Tribal program, and there is an EPA administered program, "Director" means the Regional Administrator. When there is an approved State or Tribal program, "Director" normally means the State or Tribal director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State or Tribal program. (For example, when EPA has issued an NPDES permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval; see § 123.69). In such cases, the term "Director" means the Regional Administrator and not the State or Tribal director.

* * * * *

"Indian Tribe" means any Indian Tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over a defined area.

* * * * *

"State Director" means the chief administrative officer of any State, interstate, or Tribal agency operating an "approved program," or the delegated representative of the State Director. If the responsibility is divided among two or more State, interstate, or Tribal agencies, "State Director" means the chief administrative officer of the State, interstate, or Tribal agency authorized to perform the particular procedure or function to which reference is made.

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Monday
September 26, 1988

Part III

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Notice of Proposed Rulemaking and Public Hearing Regarding Test Procedures for Refrigerators, Refrigerator-Freezers and Freezers

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-80-118]

Energy Conservation Program for Consumer Products; Notice of Proposed Rulemaking and Public Hearing Regarding Test Procedures for Refrigerators, Refrigerator-Freezers and Freezers

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy (DOE) hereby proposes to amend the test procedures for refrigerators, refrigerator-freezers, and freezers. Test procedures are one part of the energy conservation program for consumer products established pursuant to the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act (NECPA), the National Appliance Energy Conservation Act of 1987 (NAECA) (Pub. L. 100-12) and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988) (Pub. L. 100-357). Among other program elements, the legislation requires that standard methods of testing be prescribed for covered products.

The purpose of today's notice is to prescribe test procedures for rating refrigerators, refrigerator-freezers and freezers with innovative features, such as variable defrost controls (VDC), dual compressor systems, and the quick freeze operation of freezers.

DATES: Written comments (seven copies) in response to this notice must be received November 25, 1988; requests to speak at the public hearing must be received by November 1; the public hearing will be held on November 7, 1988, at 9:30 a.m.

ADDRESSES: Written comments and requests to speak at the public hearing, and copies of statements of each speaker are to be submitted to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Office of Hearings and Dockets, Refrigerator, Refrigerator-Freezer, and Freezer Test Procedures, Docket No. CAS-RM-80-118, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9320.

The public hearing will be held at Room 1E-245, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. Please bring nine copies of the oral testimony to Hearing. Copies of the transcript of the public hearing, and the public comments received, may be obtained at the DOE Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue, SW., Washington DC 20585, (202) 586-5969.

FOR FURTHER INFORMATION CONTACT:

Douglass S. Abramson, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station, CE-132, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station, GC-12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

U.S. Department of Energy, Hearings and Dockets, Forrestal Building, Mail Station CE-43.1, Room 6B-025, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9320.

I. Supplementary Information:

a. Background

The Energy Conservation Program for Consumer Products was established pursuant to Title III, Part B of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94-163). Subsequently, EPCA was amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619), the National Appliance Energy Conservation Act of 1987 (NAECA) (Pub. L. 100-12) [1] and the National Appliance Energy Conservation Amendments of 1988 (NAECA-1988) (Pub. L. 100-357). Among other program elements, section 323 of the Act requires that standard methods of testing be prescribed for covered products, including refrigerators, refrigerator-freezers, and freezers.

The Department of Energy (DOE or the Department) proposed test procedures for refrigerators and refrigerator-freezers, and freezers by notice issued April 21, 1977. (42 FR 21576, April 27, 1977). A public hearing on the proposed test procedures was held on June 14, 1977. The Department issued final test procedures on September 8, 1977. (42 FR 46140, September 14, 1977).

On July 14, 1980, DOE published a response to a petition for rulemaking submitted by the Association of Home Appliance Manufacturers (AHAM), requesting that the burden of test procedures for refrigerators, refrigerator-freezers, and freezers be lessened.

The response included the comments of the National Bureau of Standards (NBS), the AHAM recommendations, and DOE's proposed revised test procedures. (45 FR 47396, July 14, 1980). On October 14, 1981, DOE proposed an amended version of the revised test procedures (46 FR 50544) which defined steady-state conditions and requirements for the test chamber ambient air temperature gradient. The final rule establishing new test procedures for refrigerators, refrigerator-freezers and freezers, was published on August 10, 1982. (47 FR 34517). Editorial corrections to the final rule were published March 29, 1983. (48 FR 13013). The August 1982 final rule established a three-year transition period, expiring on September 9, 1985, for the new test procedures. Subsequently, DOE received four petitions for waivers concerning electronic adaptive defrost controls (ADC). The first petition (Case No. RF-001), received from Whirlpool Corporation (Whirlpool) on November 14, 1984, was published in the **Federal Register** on January 11, 1985. (50 FR 1628). Based on DOE's review of comments and data provided, DOE determined that the test procedures had no provision for determining the interval between defrost cycles for ADC-equipped refrigerator-freezers which would be comparable to normal usage patterns. Based on DOE's review of Whirlpool's field data and comments from two other manufacturers, DOE developed an alternative test method which was included in the Decision and Order granted Whirlpool on August 23, 1985. (50 FR 34186).

The second Petition for Waiver (Case No. RF-002) received from White Consolidated Industries (WCI) on October 23, 1985, was published in the **Federal Register** on December 16, 1985. (50 FR 51284). WCI also had developed an electronic defrost control system (EDC) and requested permission to use the test procedures granted previously to Whirlpool. Based on DOE's review of comments and the Petition for Waiver, DOE developed an alternate test method based on the long-time automatic defrost test in Appendix A1 of Subpart B of 10 CFR Part 430, which was included in the Decision and Order granted WCI. (51 FR 15679, April 26, 1986).

On March 12, 1986, Whirlpool submitted Petitions for Waiver of DOE test procedure requirements for two new ADC-equipped refrigerator-freezers (Case Nos. RF-003 and RF-004). Both petitions were published in the **Federal Register** on May 21, 1986. (51 FR 18655).

[1] Part B of Title III of EPCA as amended by NECPA, NAECA and NAECA-1988 is referred to in this notice as the "Act".

In each petition, Whirlpool requested to use the alternate test procedure granted in Case No. RF–001. Based upon DOE's review of the petitions and the comments received, the Department granted each petition, allowing Whirlpool to use the same test procedure specified in the DOE's Decision and Order in Case No. RF–001. (51 FR 36591, October 14, 1986).

Following an analysis of the two defrost control systems and a review of past comments and data, DOE is proposing a test procedure for variable defrost control (VDC) equipped refrigerator-freezers and freezers based on the long-time automatic defrost test in Appendices A1 and B1 to Subpart B to eliminate the need for the outstanding waivers.

DOE is also proposing to establish test procedures for refrigerator-freezers with dual compressor systems and procedures for freezers with a rapid freezing feature.

II. Discussion:

This proposed rulemaking presents the various developments in the manufacture of refrigerators, refrigerator-freezers, and freezers which have occurred since the August 10, 1982, final rule.

a. Variable Defrost Control

Four petitions for waivers have been granted for refrigerator-freezers equipped with a variable defrost control system. Three were given to the Whirlpool Corporation and one to White Consolidated Industries. Variable defrost control systems are identified differently by each manufacturer, for example, as an adaptive defrost control system (ADC) by Whirlpool, and as an electronic defrost control (EDC) by WCI. DOE is proposing that the term "variable defrost control" (VDC) include these two defrost systems as well as any future products which have electronic or mechanical devices which can change the interval between defrosts by evaluating the operating characteristics and the compressor run time of the product, including demand defrost.

The defrost mechanism on a typical automatic defrost refrigerator-freezer is operated by a timer which counts compressor on-time. The defrost cycle begins after a set compressor on-time, typically 12 hours. The VDC system relies on various inputs, in addition to compressor on time to determine the time between defrost cycles. These inputs could be the number of door openings for refrigerator or freezer compartments, air flow rate across coils, defrost time for previous defrost, outside temperature, etc. Since each manufacturer is likely to take a unique approach to these characteristics, DOE today is proposing a method of testing that can be used by all manufacturers for rating those refrigerator-freezers and freezers with a variable defrost system.

The petitions for waivers identified three problem areas in the existing test procedure. The first is the inability of the current test procedure to determine the interval between defrost cycles for VDC equipment that would be comparable to normal usage patterns. Second is the low humidity conditions normally encountered within the test chamber and the lack of refrigerator and freezer compartment door openings. Third, the time period between defrost cycles would become excessively longer than that which would be expected under normal usage conditions. This lengthening of the period between defrost cycles increases the duration of the test such that the test is unduly burdensome to conduct. Information contained in Whirlpool's petitions for waiver for its ADC device show that door opening frequency and duration are heavily weighted factors in determining the time between defrost periods.

DOE began its development of a VDC test procedure by reviewing the waivers issued and consulting NBS in evaluating data and alternate test procedures. NBS prepared comments analyzing the two methods used in the waivers and offered alternatives for the new test procedure. Concurrent with the NBS evaluation of VDC test procedures, AHAM provided DOE a copy of "Recommended Test Procedure for Determining The Energy Consumption for Adaptive Defrost Refrigerator-Freezers and Freezers." DOE evaluated the AHAM test procedure and is including it in today's proposal as an optional test procedure. As discussed below, DOE believes the AHAM proposed test procedure, a test procedure based on door openings, is a burdensome test method and therefore, not justified as a requirement for testing all VDC-equipped units.

The primary issue in the determination of an appropriate VDC test procedure is the typical time between defrost cycles. In the review of the petitions for waiver, NBS concluded that the time between defrost cycles could be as much as three days (72 hours). This would credit VDC-equipped units with 80 to 90 percent of the maximum energy reduction possible. Further analysis of this issue has led to an NBS study of variable defrost control and the impact of compressor run time for rating refrigerator-freezers.[2] The study presents an analytical method of determining the variables in the rating procedure. DOE contacted Whirlpool Corporation in an effort to gather test data for this proceeding. However, Whirlpool had no available data other than that provided in Case No. RF–001. The Whirlpool data suggested that with limited door openings, ADC units could run for six days before defrosting.

The Department's analysis of all available information has identified the ratio of compressor on-time (CT) to total on-time as typically 50 percent. This implies that an automatic defrost refrigerator-freezer equipped with a 12-hour timer on the compressor should perform one defrost cycle every 24 hours, or once a day. The compressor on-time for VDC models is only one factor used in the control algorithm [3] to determine the time between defrost cycles. Other factors evaluated in the algorithm include door openings, previous defrost duration, frost build-up, and consumer usage factors.

The value of CT calculated using the NBS recommended approach can differ from the value measured in the field due to variations in consumer behavior. The manufacturer establishes the degree of importance assigned to the factors that determine defrost time. The duration between defrost cycles and the value of CT are affected by how the manufacturer's algorithm views the consumer usage pattern. Since the consumer usage pattern is an uncontrollable variable, even for a standard size family, the only controllable element is the manufacturer's input to the algorithm. Therefore, DOE determined that the input values selected by the manufacturer should have boundaries.

Since the compressor on-time (CT) between defrosts does not reach infinity and is not zero for VDC-equipped models, the value CT is bounded by a minimum or least time (CTL) and a maximum time (CTM).[4] These values are specified by the manufacturer and included in the VDC algorithm. NBS evaluated the effect CT had on the per day energy consumption. As part of this evaluation, a frequency factor (F) was created to express the ratios between CT, CTL, and CTM. NBS determined that the value CT had significant effect

[2] "Energy Rating of Refrigerators with Variable Defrost Controls" Bal Mahajan PH.D., P.E., National Bureau of Standards, May 7, 1987.

[3] Algorithm—A mathematical rule or procedure for solving a problem.

[4] A value of infinity would mean tha the unit never defrosts while zero would result in the unit constantly defrosting.

on per day energy consumption when defrost cycles are spaced 6 to 12 hours apart and a lesser effect as the time between defrosts reached 72 hours of compressor on-time. Based on NBS's evaluation of various defrost cycles, DOE proposes that a value of 0.2 for F be representative of VDC-equipped units. Assuming a value of 0.2 for F, allows CT, and then enery use, to be calculated.

The Decisions and Orders issued to Whirlpool (Cases No. RF–003, RF–004) and WCI (Case No. FR–002) did not assign a value for F to be used in the long-time automatic defrost equation. Rather, the value of CT was assigned based on NBS's review of each Petition for Waiver. Whirlpool was assigned a value of 36 hours for CT and WCI assigned 12 hours. Because CT varies by design based on the manufacturers' VDC algorithms, DOE examined alternatives to prescribing CT which would allow VDC-equipped models to be individually evaluated. NBS recommended setting a value of F based on the ratio of CTL and CTM. Based on its review of the petitions for waiver, NBS recommended boundaries for the values of CTL and CTM in the manufacturers' VDC algorithms. These boundaries are set at a minimum or CTL of 12 hours and a maximum or CTM of 84 hours.

AHMA recommended a different approach to determine the value of CT, involving the performance of a third test. The test includes door openings, multiple unit test data for statistical certainty, and specific (different) dry and wet bulb temperatures for the environmental chamber. AHAM provided field test data as support documentation. The data included information on door openings and time between defrost cycles in four geographical regions.

AHAM recommended that a single basic model be tested and the test results be applied to each of the manufacturer's VDC-equipped models. AHAM indicated that this third test would be extremely burdensome if required for all models. DOE agrees that the test is burdensome because of the differing ambient temperature and humidity test conditions, extreme time requirement, over 100 hours, and the addition of door openings. DOE also believes that test results from one basic model can not be assigned to other basic models because varing door styles, capacities and features will impact test results. Therefore, DOE is proposing VDC-equipped models be tested according to the existing long-term defrost test. CT is to be calculated using a value for F of 0.2 and that at the manufacturer's option a test can be performed to determine CT.

An optional third test is included in today's proposed rule which allows manufacturers to determine the value of F and CT. This third test is provided as an optional method of determining the value of CT for manufactures that believe the unit will operate with a substantially better frequency value than the F=0.2 established in the proposed rule. The burden associated with documenting an actual value for CT makes the optional testing of limited use to manufacturers. The test is based on procedures proposed by AHAM and modified by DOE. The only purpose of this test is to determine compressor on-time between defrosts for VDC equipped models. It has no application for any model equipped only with a compressor timer for automatic defrost or with no automatic defrost features. This test, which requires multiple units be tested for statistical compliance, involves door openings in an environmental chamber at specific new ambient conditions. The test requires a stabilization period consisting of three defrost intervals run from the end of one defrost to the end of the next defrost. The average duration between defrosts of the three intervals would establish the value of CT.

The optional test includes 24 fresh food and six freezer compartment door openings each for 12±2 seconds. The purpose of these openings is to trigger the features other than compressor on-time in the manufacturer's algorithm. The door openings allow for the transfer of warm humid air into the respective compartment, thereby increasing frost build-up. Multiple units of the same model will be tested to achieve a 95 percent confidence in the time between defrosts. DOE believes that the time intensiveness of this optional test will lead most manufacturers to accept the DOE value of F and only those VDC systems with exceptionally better values for F will be tested.

b. Method of Testing Dual Compressor Refrigerator-Freezer Units

The concept of dual compressors was raised as an energy efficiency measure during the evaluation of energy conservation standard levels for refrigerator-freezers. This notice, however, does not address the effectiveness of dual compressors in energy efficiency. DOE is proposing to establish test procedures for automatic defrost refrigerator-freezers with dual compressor systems.

A refrigerator-freezer model with a dual compressor system operates as two separate systems, one for each section of the cabinet. The existing test procedure assumes a single system. For the most part, the test procedure is unaffected by dual compressors, however, the defrost energy measurement portion of the test is affected. Since both compressor systems do not defrost at the same frequency or at the same time, the measurement of defrost energy is more complicated for a dual compressor system. The freezer section, although smaller than the refrigerator section, operates more often to maintain the colder temperature. The freezer section also builds frost faster, requiring more defrosts.

To measure the energy consumption of dual compressor refrigerator-freezers, the DOE test procedure in Appendix A1 is used, modified only for those models with automatic defrost. The testing difference occurs because measuring the defrost energy in automatic defrost models is affected by the more frequent operation of the freezer compressor system, which activates more defrosts. Assuming both defrost timers are set for 12 hours of compressor on-time, the freezer will defrost sooner than the refrigerator. DOE proposes that an independent measurement of defrost energy for each system be performed. The test will measure the energy used for two defrost cycles for each system and the time elapsed between cycles. The freezer compressor is considered the primary system since the large temperature difference causes it to cycle more frequently than the refrigerator system. Both systems' energy measurements are included in the total energy equation.

The test conditions remain the same. Additional measurement devices (watt meters, timers, etc.) are incorporated to measure the energy consumption of each compressor system.

DOE expects this proposed method of evaluating energy consumption for dual compressor units to create a minimum burden on manufacturers and to provide a comparison with single compressor units. The proposed test procedures apply to automatic defrost units only; dual systems with manual defrost are to be tested according to the existing test procedure for single compressor units.

c. Through-The-Door-Features

Several manufacturers, in an effort to provide the customer with increased utility and anticipated energy savings, have developed through-the-door, multi-door, and other special door features. These features could result in the unit using more energy during testing due to a lack of insulation. However, because the number of door openings could be

reduced, these features could also result in energy savings. These special features, however, provide utility in the form of convenient ice dispensing to the consumer. The existing DOE test procedure for refrigerators and refrigerator-freezers does not use actual door openings; instead, it increases the surrounding temperature to increase heat transfer to compensate for the exchange of air that occurs during door openings and the internal loads. Therefore, the test procedure cannot measure any energy savings due to reduced door openings.

The Department considered these new designs in its review of information and data for this rulemaking. However, DOE was unable to obtain sufficient documentation and/or test data from manufacturers, trade associations or professional organizations prior to this rulemaking concerning the energy consumption of a door opening. A review of previous rulemakings and available data indicated that one available option was to expand the refrigerator-freezer classes to include all door features. This was viewed as unacceptable because each feature would count the same. DOE also believes that this option most likely would confuse consumers and reduce the potential for energy savings. A second option would be to amend the existing test procedure. However, no data has been presented to support claims that the energy saved by fewer large door openings saves energy above that used to compensate for increased door edge and gasket area and decreased door insulation. Although several manufacturers have expressed a desire to have the models so equipped receive a form of energy credit, the lack of data makes it difficult for DOE to justify amending the existing test procedure. Therefore, DOE is not including any measures in today's notice which would amend test procedures for refrigerator-freezer models with through-the-door features, refreshment centers, or multiple compartment/multidoor refrigerator or freezer sections.

d. Rapid or Quick Freeze Feature

The quick freeze feature is found primarily on freezers. DOE believes that this option is always consumer controlled, i.e., it is operated (turned on and off) manually. Activation of the quick freeze feature places the compressor in a steady-state condition. Its purpose is to freeze rapidly non-frozen items upon placement in the freezer.

The quick freeze feature is an option being introduced on some new models of freezers. Since the current test procedure does not address manually operated options, DOE examined the adequacy of the test procedure to determine if it provides accurate and fair measures of energy consumption. By analyzing the option's function in the freezer, DOE determined that the quick freeze feature acts as a thermostat override, allowing the compressor to operate continuously. However, it also was apparent that the consumer could perform a similar function by adjusting the thermostat to the coldest setting. The quick freeze option, however, gives the consumer a single switch allowing the freezer to return to the original thermostat setting and, in some designs, includes a reminder light.

DOE believes that the test procedure for freezers in Appendix B–1, 10 CFR Part 430 is sufficient for testing models equipped with manually operated features such as quick freeze. DOE proposes to amend the test procedure to indicate that the consumer operated feature, quick freeze, will remain off unless it is necessary to bypass the thermostat to cause the compressor to run continuously as described in section 3.1 of Appendix B1. By this amendment to the test procedure, DOE believes that an option with utility to the consumer will be rated fairly and accurately.

III. Public Comment Procedures

a. Written Comment Procedures

Interest persons are invited to participate in the rulemaking by submitting data, views, or arguments with respect to the proposed amendments set forth in this notice to the address indicated at the beginning of the notice.

Comments should be identified on the outside of the envelope and on documents submitted to DOE with the designation "Refrigerators, Refrigerators-Freezers, and Freezers Test Procedures, Docket No. 80–118. Nine (9) copies are requested to be submitted. All comments received by the date specified at the beginning of this notice and all other relevant information will be considered by DOE before final action is taken on the proposed regulations. Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and 6 copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the infomation and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

b. Public Hearing

1. Procedures for Submitting Requests to Speak.

The time and place of the public hearing are indicated at the beginning of this notice. DOE invites any person who has an interest in today's proposed rule, or who is a representative of a group or class of persons that has an interest in the proposed amendments, to make a request for an opportunity to make an oral presentation. Such requests should be directed to the address indicated at the beginning of this notice. Requests may be hand delivered to such address between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday. Requests should be labeled "Refrigerators, Refrigerator-Freezers, and Freezers Test Procedures, Docket No. CAS–RM–80–118" both on the document and on the envelope.

The person making the request should briefly describe the interest concerned and, if appropriate, state why he or she is a proper representative of the group or class of persons that have such an interest, and give a telephone number where he or she may be contacted.

Each person to be heard is requested to submit seven (7) copies of his or her statement to the address and by the date given at the beginning of this notice. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made with the Office of Hearing and Dockets in advance of the hearing by so indicating in the letter requesting to make an oral presentation.

2. Conduct of Hearing

DOE reserves the right to select the persons to be heard at this hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. Each presentation shall be limited to 20 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553 and section 336 of the Act. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the official statements were made and will be subject to time limitations.

Any interested person who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer to be asked of any person making a statement at the hearing. The presiding officer will determine whether the question is relevant and whether time limitations permit it to be presented for an answer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, Room 1E–152, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday. For information concerning the availability of records at the Freedom of Information Reading Room, call (202) 586–6020. In addition, any person may purchase a copy of the hearing transcript from the reporter.

IV. Environmental Review

Pursuant to section 7(c)(2) of the Federal Energy Administration Act of 1974, a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment.

Since test procedures under the energy conservation program for consumer products will be used only to standardize the measurement of energy usage, and will not affect the quality of distribution of energy usage, prescribing test procedures will not result in any environmental impacts. DOE, therefore, has determined that prescribing test procedures under the energy conservation program for consumer products clearly is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. Consequently, neither an Environmental Statement nor an Environmental Assessment is required for the proposed rule.

V. Review Under Executive Order 12291

The proposed rule has been reviewed in accordance with Executive Order 12291 which directs that all regulations achieve their intended goals without imposing unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments. The Executive Order also requires that regulatory impact analyses be prepared for "major rules." The Executive Order defines "major rule" as any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed rule would amend already-existing test procedures for refrigerators, refrigerator-freezers, and freezers. DOE has determined that any burden imposed on any person, industry, or government entity by the amendment of extent procedures, based in part on commercial standards, is not significant to bring the proposed rules within the definition of "major rule."

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act, Pub. L. 96–345 (5 U.S.C. 601–612), requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. This requirement (which appears in section 603) does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The proposed rule affects manufacturers of refrigerators, refrigerator-freezers, and freezers. As previously discussed, the proposed changes would not have significant economic impact, but rather would simply improve the test procedures. Therefore, DOE certifies that the proposed rule, if promulgated, would not have a "significant economic impact on a substantial number of small entities."

VII. "Takings" Assessment Review

Executive Order 12630 (53 FR 8859, March 18, 1988) directs that, in proposing a regulation, an agency conduct a "takings" review. Such a review is intended to assist agencies in avoiding unnecessary takings and help such agencies account for those takings that are necessitated by statutory mandate.

For purposes of the Order:

"Policies that have takings implications" refers to Federal regulations, proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property.

It appears that there are three parts of the appliance standards program that could conceivably be viewed as having "takings implications." These are testing (certification) requirements, the impacts of standard levels, and possible DOE testing of products for validation.

This proposed rulemaking is concerned with the first part, namely, testing. The Department believes that such a requirement does not constitute a "taking" of private property. The establishment of test procedures involves no exchange of property. Manufacturers maintain control of the property for all intents and purposes.

Therefore, the Department believes that the requirement of testing and the establishment of test procedures as part of the appliance standards program do not represent a "taking" under the provisions of E.O. 12630.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

In consideration of the foregoing, it is proposed to amend Part 430 of Chapter II of Title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, DC, September 9, 1988.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: Energy Policy and Conservation Act, Title III, Part B, as amended by National Energy Conservation Policy Act, Title IV, Part 2, (42 U.S.C. 6291–6309) and National Appliance Energy Conservation Act of 1987 (42 U.S.C. 6291–6309).

2. Subpart B of Part 430 is amended by adding sections 1.11, 3.3, 4.1.2.2, 4.1.2.3, 4.1.2.4, 5.2.1.3, 5.2.1.4, and 5.2.1.5 and adding a sentence at the end of sections 2.1, 3.2, 4.1.2, and 5.1.2 of Appendix A1 as follows:

Appendix A1 (Alternative) to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Refrigerator-Freezers

* * * * *

1.11 "Variable Defrost Control" means a long-time automatic defrost system (except the 14-hour defrost qualification does not apply) where successive defrost cycles are determined by an operating condition variable or variables other than solely compressor operating time. This includes any electrical or mechanical device. Demand defrost is a type of variable defrost control.

* * * * *

2.1 * * * The ambient temperature shall be 80 ± 2°F dry bulb and 67 ± 1°F wet bulb during the stabilization period and during the test period when the unit is tested in accordance with section 3.3.

* * * * *

3.2 * * * Variable defrost control models: 5°F (−15°C) freezer compartment temperature and 38 ± 2°F fresh food compartment temperature during steady-state conditions with no door openings. If both settings cannot be obtained, then test with the fresh food compartment temperature at 38 ± 2°F and the freezer compartment as close to 5°F as possible.

* * * * *

3.3 Variable Defrost Control Optional Test. After a steady-state condition is achieved, the optional test requires door openings for 12 ± 2 second every 60 minutes on the fresh food compartment door and a simultaneous 12 ± 2 second freezer compartment door opening occuring every 4th time, to obtain fresh food and six freezer compartment door openings per 24-hour period. The first freezer door opening shall be simultaneous with the fourth fresh food door opening. The doors are to be opened 60 to 90° with an average velocity for the leading edge of the door of approximately 2 FT/Sec. Prior to the initiation of the door opening sequence, the refrigerator defrost control mechanism may be re-initiated in order to minimize the test duration.

* * * * *

4.1.2 * * * If the model being tested has a variable defrost control, the provisions of section 4.1.2.2 or .3 shall apply. If the model has a dual compressor system the provisions of 4.1.2.4 shall apply.

* * * * *

4.1.2.2 Variable Defrost Control. If the model being tested has a variable defrost control system, the test shall consist of three parts. Two parts shall be the same as the test for long-time automatic defrost (section 4.1.2.1). The third part is the optional test to determine the time between defrost (section 5.2.1.3). The third part is used by manufacturers that choose not to accept the DOE value for F of 0.20, to calcuate CT.

4.1.2.3 Variable Defrost Control Optional Test. After steady-state conditions with no door openings are achieved in accordance with section 3.3 above, the test is continued using the above daily door opening sequence until stabilized operation is achieved. Stabilization is defined as a minimum of three consecutive defrost cycles with times between defrost that will allow the calculation of a Mean Time Between Defrosts (MTBD1) that satisfies the statistical relationship of 95 percent confidence. The test is repeated on at least one more unit of the model and until the Mean Time Between Defrosts for the multiple unit tests (MTBD2) satisfies the statistical relationship. If the time between defrosts is greater than 84 hours (compressor on time) and this defrost period can be repeated on a second unit, the test may be terminated at 84 hours (CT) and the absolute time value used for MTBD for each unit.

4.1.2.4. Dual Compressor Systems with Automatic Defrost. If the model being tested has separate compressor systems for the refrigerator and freezer sections, then the two part method in 4.1.2.1 shall be used. The second part of the method will be conducted separately for each system.

* * * * *

5.1.2 * * * For models equipped with variable defrost controls, compartment temperatures shall be those measured in the first part of the test period specified in 4.1.2.2 above.

* * * * *

5.2.1.3 Variable Defrost Control. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$ET = (1440 \times EP1/T1) + (EP2 - (EP1 \times T2/T1) \times 12/CT$

where ET and 1440 are defined in 5.2.1.1 and EP1, EP2, T1, T2 and 12 are defined in 5.2.1.2

$CT = (CT_L/CT_M)(F \times (CT_M - CT_L) + CT_L)$

CT_L = least or shortest time between defrosts in tenths of an hour (but not less than 12 hours)

CT_M = maximum time between defrost cycles in tenths of an hour (but not more than 84 hours)

F = ratio of per day energy consumption in excess of the least energy and the maximum difference in per day energy consumption

$F = (1/CT - 1/CT_M)/(1/CT_L - 1/CT_M) = (ET - ET_L)/(ET_M - ET_L)$

or F = 0.20 in lieu of testing to find CT

ET_L = least electrical energy used (kilowatt hours)

ET_M = maximum electrical energy used (kilowatt hours)

5.2.1.4 Optional Test Method for Variable Defrost Controls.

$CT = MTBD \times 0.5$

where

MTBD = mean time between defrosts

$$MTBD = \frac{\Sigma X}{N}$$

where

X = time between defrost cycles

N = number of defrost cycles

5.2.1.5 Dual Compressor Systems with Automatic Defrost. The two part test method in 4.1.2.2 must be used, the energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$ET = (1440 \times EP1/T1) + (EP_2 - (EP_F \times T2/T1)) \times 12/CT_F + (EP_2 - EP_R \times T3/T1)) \times 12/CT_R)$

where ET, 1440, EP1, T1, EP2, 12, and CT are defined in 5.2.1.2

EP_F = energy expended in kilowatt-hours during the second part of the test for the freezer system.

EP_R = energy expended in kilowatt-hours during the second part of the test for the refrigerator system.

T2 and T3 = length of time in minutes of the second test part for the freezer and refrigerator systems respectively.

CT_F = compressor on-time between freezer defrosts (tenths of an hour).

CT_R = compressor on-time between refrigerator defrosts (tenths of an hour).

* * * * *

3. Subpart B, Part 430 is amended by adding sections 1.10, 1.11, 3.3, 4.1.2.2, 4.1.2.3, 5.2.1.3, and 5.2.1.4 and adding a sentence to the end of sections 2.1, 2.2., 3.1, 3.2, 4.1.2, and 5.1.2 of Appendix B1 as follows:

Appendix B1 (Alternative) to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Freezers

* * * * *

1.10 "Variable Defrost Control" means a long-time automatic defrost system (except the 14-hour defrost qualification does not apply) where successive defrost cycles are determined by an operating condition variable or variables other than solely compressor operating time. This includes any electrical or mechanical device. Demand defrost is a type of variable defrost control.

1.11 "Quick freeze" means optional feature on freezers which is initiated manually and shut off manually. It by-passes the thermostat control and places the compressor in a steady-state operating condition until it is shut off.

* * * * *

2.1 * * * The ambient temperature shall be 80±2°F dry bulb and 67°F wet bulb during the stabilization period and during the test period when the unit is tested in accordance with section 3.3.

2.2 * * * The quick freeze option shall be switched off unless specified.

* * * * *

3.1 * * * If the model has the quick freeze option, it is to be used to by-pass the temperature control.

3.2 * * * Variable defrost control models shall achieve 0±2° during the steady-state conditions prior to the optional test with no door openings.

3.3 Variable Defrost Control Optional Test. After a steady-state condition is achieved, the door opening sequence is initiated with a 18 ±2°F second freezer door opening occurring every eight hours to obtain three door openings per 24-hour period. The first freezer door opening shall occur at the initiation of the test period. The door(s) are to be opened 60 to 90° with an average velocity for the leading edge of the door of approximately two feet per second. Prior to the initiation of the door opening sequence, the freezer defrost control mechanism may be re-initialized in order to minimize the test duration.

* * * * *

4.1.2 * * * If the model being tested has a variable defrost control the provisions of 4.1.2.2. shall apply.

* * * * *

4.1.2.2 Variable Defrost Control. If the model being tested has a variable defrost control system, the test shall consist of three parts. Two parts shall be the same as the test for long-time automatic defrost in accordance with section 4.1.2.1 above. The third part is the optional test to determine the time between defrosts (5.2.1.3). The third part is used by manufacturers that choose not to accept the DOE value for G of 0.20, to calculate CT.

4.1.2.3 Variable Defrost Control Optional Test. After steady-state conditions with no door openings are achieved in accordance with section 3.3 above, the test is continued using the above daily door opening sequence until stabilized operation is achieved. Stabilization is defined as a minimum of three consecutive defrost cycles with times between defrost that will allow the calculation of a Mean Time Between Defrosts (MTBD1) that satisfies the statistical relationship of 95 percent confidence. The test is repeated on at least one more unit of the model and until the Mean Time Between Defrosts for the multiple unit tests (MTBD2) satisfies the statistical relationship. If the time between defrosts is greater than 84 hours (compressor on time) and this defrost period can be repeated on a second unit, the test may be terminated at 84 hours (CT) and the absolute time value used for MTBD for each unit.

* * * * *

5.1.2 * * * For models equipped with variable defrost controls, compartment temperatures shall be those measured in the first part of the test period specified in 4.1.2.2.

* * * * *

5.2.1.3 Variable Defrost Control. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$ET=(1440\times EP1/T1)+(EP2-(EP1\times T2/T1)\times 12/CT$

where ET and 1440 are defined in 5.2.1.1 and EP1, EP2, T1, T2 and 12 are defined in 5.2.1.2

$CT=(CT_L/CT_M)/(F\times(CT_M-CT_L)+CT_L)$

where

CT_L = least or shortest time between defrost in tenths of an hour (but not less than 12 hours)

CT_M = maximum time between defrost cycles in tenths of an hour (but not more than 84 hours)

F = ratio of per day energy consumption in excess of the least energy and the maximum difference in per day energy consumption

$F=(1/CT-1/CT_M)/(1/CT_L-1/CT_M)=(ET-ET_L)/(ET_M-ET_L)$

F = 0.20 in lieu of testing to find CT

where

ET_L = least electrical energy consumed, in kilowatt hours

ET_M = maximum electrical energy consumed, in kilowatt hours

5.2.1.4 Variable Defrost Control Optional Test. Perform the optional test for variable defrost control models to find CT.

$CT=MTBD\times 0.5$

MTBD = mean time between defrosts

$$MTBD = \frac{\Sigma X}{N}$$

X = time between defrost cycles

N = number of defrost cycles

* * * * *

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Part IV

Department of Labor

Employment and Training Administration

20 CFR Part 606

Federal-State Unemployment Compensation Program; Tax Credits Under the Federal Unemployment Tax Act; Advances Under Title XII of the Social Security Act; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 606

Federal-State Unemployment Compensation Program; Tax Credits Under the Federal Unemployment Tax Act; Advances Under Title XII of the Social Security Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration is issuing final regulations to formally adopt interpretations of statutes under which the agency has delegated responsibilities concerning cap, avoidance, and waiver of tax credit reduction under the Federal Unemployment Tax Act and deferral and delay of payment of interest on advances made to States under Title XII of the Social Security Act. The agency issues these regulations to place in the Code of Federal Regulations its previously announced and disseminated interpretations because the statutes in selected places require regulations and because some of the interpretations might be viewed as substantive in nature. These final regulations represent the first of a two-phase effort to issue comprehensive regulations concerning tax credits, reductions in tax credits related to advances, advances (loans), interest on advances, and relief from tax credit reductions and payment of interest on advances. The first phase includes regulations for relief provisions; the second phase will include the remaining subjects.

EFFECTIVE DATE: October 26, 1988.

FOR FURTHER INFORMATION CONTACT: James H. Manning, Chief, Division of Actuarial Services, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–4519, Washington, DC 20210, Telephone: (202) 535–0640 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under section 3301 of the Federal Unemployment Tax Act (FUTA), employers in all States are assessed an excise tax at a rate of 6.2 percent on a taxable wage base of $7,000. However, employers generally receive a maximum FUTA tax credit of 5.4 percent, resulting in a net Federal tax rate of 0.8 percent.

States with insufficient reserves in their unemployment funds to meet State benefit obligations may borrow funds from the Federal Unemployment Account (FUA) in the Unemployment Trust Fund, pursuant to Title XII of the Social Security Act. If a State does not repay the advances (loans) it may have within a specified period of time, employers in the State begin to lose the FUTA tax credit in increments of at least 0.3 percent each year. Specifically, if a balance of advances is outstanding on two consecutive January firsts, and is not fully repaid prior to November 10 of such second year, the FUTA tax credit applicable for that year for the State's employers is reduced by 0.3 percent. For each succeeding year in which a balance of loans remains outstanding, the reduction increases by at least 0.3 percent (i.e., 0.6, 0.9, 1.2 percent, etc.).

Additional tax credit reduction, above the 0.3 percent incremental increase, will apply to a State beginning with the third and fifth taxable years that a loan balance is still outstanding. Essentially, the additional tax credit reduction above the 0.6 percent increment in the third year, and above the 0.9 percent increment in the fourth year, is the amount, if any, by which the national percentage of all wages subject to the FUTA (that 2.7 percent of taxable wages represents) exceeds the State's average contribution rate on total wages. The additional tax credit reduction above the 1.2 percent minimum beginning with the fifth year is equal to the amount, if any, by which the State's five-year benefit cost rate (or 2.7 percent, if higher) exceeds the State's average employer contribution rate. This additional tax credit reduction for the fifth year also applies thereafter to any succeeding year.

Public Laws 97–35, 97–248, and 98–21 made major changes in the loan and repayment provisions: Interest of up to 10 percent is charged on loans made on or after April 1, 1982 (except for cash flow loans); and States are permitted relief from automatic loan repayment (tax credit reduction) and payment of interest if certain requirements are met. Briefly, the provisions for relief include:

—Limitation (cap) on tax credit reduction

—Avoidance of tax credit reduction

—Waiver of and substitution for fifth-year additional tax credit reduction

—May/September delay of interest payment

—High unemployment deferral of interest payment

—High unemployment delay of interest payment

Phases

The issuance of comprehensive regulations concerning tax credits, reductions in tax credits related to advances, advances (loans), interest on advances, and relief from tax credit reductions and payment of interest on advances will be undertaken in two phases. This final rule primarily concerns tax credit and interest relief and represents the first phase; the second phase will include the remaining subjects.

Amendments to the Federal Unemployment Tax Act

Subsection (f)(1)–(7), added to section 3302 of the Federal Unemployment Tax Act (FUTA) by section 2406 of Pub. L. 97–35, as amended by section 512(b) of Pub. L. 98–21, provides certain conditions under which there may be a limitation on the tax credit reduction that would otherwise apply for a taxable year to employers' FUTA tax liability in States with outstanding loans from the Federal Unemployment Account (FUA).

Subsection (g), added to section 3302 of the FUTA by section 272 of Pub. L. 97–248, provides certain conditions for avoiding the tax credit reduction for a taxable year.

A provision added to section 3302(c)(2) of the FUTA by section 273 of Pub. L. 97–248, sets forth the conditions under which the additional tax credit reduction under subparagraph (B) may be substituted for the additional reduction that otherwise would apply under subparagraph (C).

Amendments to the Social Security Act

Subsection (b), added to section 1202 of the Social Security Act (SSA) by section 2407 of Pub. L. 97–35, as amended by section 274 of Pub. L. 97–248 and by sections 511 and 514 of Pub. L. 98–21, imposes interest on advances, under most conditions, made to States beginning April 1, 1982. Under subsection (b)(2), interest is not assessed on loans obtained January through September and fully repaid prior to October 1, provided no other loan is obtained from October 1 through December 31 of the same calendar year. In general, under subsection (b)(3)(A), any interest charged during a fiscal year must be paid prior to the first day of the following fiscal year.

Subsection (b)(3)(B), added to section 1202 of the SSA by section 2407(a) of Pub. L. 97–35, allows for delaying payment of interest accrued on advances made from May through September and due prior to October 1, to December 31 of the succeeding taxable year. Any interest payment delayed under subparagraph (B) will bear interest the same as if it were a loan.

Subparagraph (C), added to section 1202(b)(3) of the SSA by section 274 of Pub. L. 97–248, as amended by section 511(c) of Pub. L. 98–21, permits, under certain high unemployment conditions, a State to defer payment of 75 percent of the interest otherwise due prior to October 1 of a year. No interest is payable on interest deferred under this paragraph.

Paragraph (9), added to section 1202(b) of the SSA by section 511(a) of Pub. L. 98–21, provides, under certain high unemployment conditions, for delaying for nine months payment of 100 percent of the interest otherwise due prior to October 1 of a year. No interest is payable on interest delayed under this paragraph.

Legislative-action interest deferrals obtained under subsection (b)(8)(A)–(C), added to section 1202 of the SSA by section 511(a) of Pub. L. 98–21, are no longer available. Nevertheless, States must maintain their solvency effort with respect to the deferrals previously approved under paragraph (8).

Discounted interest rates under section 1202(b)(8)(D) of the SSA are no longer available.

Comments Received in Response to the Notice of Proposed Rulemaking

The proposed rule (new Part 606), with accompanying detailed explanation, was published for comment in the **Federal Register** on October 28, 1987, at 52 FR 41463. The Department received timely comments from two State Employment Security Agencies (SESAs). No other comments were received. All comments were given careful consideration in preparing the final regulations in this document.

Section-by-Section Analysis of Comments

Subpart A—General

Section 606.3(c) (In reference to differences in benefit cost ratios)

One State commented that the two benefit cost rates included in section 3302 of the Federal Unemployment Tax Act (FUTA) should be defined alike. Section 606.3(c) provides a definition of the benefit cost ratio for cap purposes relative to section 3302(f)(5). It is acknowledged that this definition differs from the benefit cost rate definition with respect to offset credit reduction provided in section 3302(d)(5). Although section 3302(d)(5) is not relevant to this regulation (but will be included in Phase II of the regulations), the Department has the following comments. Section 3302(d)(5), unlike section 3302(f)(5) (defining the term "benefit cost ratio" for purposes of the cap on tax credit reductions), does not provide for excluding from "total * * * compensation paid" in the numerator any benefit costs reimbursed under Federal law. Under section 3302(f)(5) reimbursed benefit costs such as sharable extended benefits and sharable regular benefits are specifically excludable from total compensation paid in calculating the benefit cost ratio.

In view of this specific contrast in the definitional language of sections 3302(d)(5) and 3302(f)(5), and the different applications of the two provisions, the Department does not believe that the two provisions justifiably can be interpreted to be alike. Accordingly, the Department will implement the differences as they appear in the two statutes, and will make no change in this respect in § 606.3(c) because it precisely tracks the language of section 3302(f)(5).

Section 606.3(c)(1) (In reference to the definition of the benefit cost ratio for cap purposes)

One State was concerned about the definition and subsequent computation of the benefit cost ratio for cap purposes. The regulations define the ratio as the percentage obtained by adding the total sum of compensation paid, which is 100 percent of regular and additional compensation and 50 percent of compensation which is sharable under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970, excluding compensation attributable to services performed for a reimbursing employer, plus interest paid, and then dividing by total remuneration subject to contributions. The State pointed out that the inclusion in the numerator of 50 percent of sharable compensation under EB is problematical since some States pay more than 50 percent of EB as a result of having no waiting week and because of potential Gramm-Rudman-Hollings reductions in the Federal share of EB.

The Department agrees with this comment and adds that not all extended benefits are sharable under section 204 of the 1970 Act. Therefore, the regulations are revised to clarify the point that with respect to EB, only amounts which are reimbursable by the Federal government are excludable from the computation of the benefit cost ratio for cap purposes. The language also is broadened so that it will include any other Federal reimbursements of State unemployment benefits, as the statute provides.

Sections 606.3(k) and (l) (In reference to definitions of taxable and total wages)

Paragraphs (k) and (l) of § 606.3 provide definitions of taxable wages and total wages. A State suggested clarification of the definitions of taxable and total wages to make clearer the distinction between the two terms. The Department agrees with this comment and has simplified the wording of the regulations by providing that "taxable wages" means the total sum of remuneration which is subject to contributions under a State law, and "total wages" means the total sum of all remuneration covered by a State law disregarding any dollar limitation on the amount of remuneration which is subject to contributions under the State law. No substantive change in paragraphs (k) and (l) is intended; the different wording merely simplifies and clarifies these definitions.

Sections 606.3(c)(3) and 606.3(j) (In reference to redefinition of total wages)

In reference to the definition of "total wages" in paragraph (l) of § 606.3, a State suggested referencing this definition in paragraphs (c)(3) and (j) of § 606.3, instead of repeating the definition each place it appears. The Department agrees and has incorporated this suggestion in the final regulations. This is not a substantive change in paragraphs (c)(3) or (j).

Section 606.5 (In reference to verification of estimates and review of determinations)

Two States commented on the process for reviewing cap and interest determinations by the UIS Director. One favored the regulation as long as it incorporates the "existing appeals process"; the other favored a formal, multiple-step "appellate" process and specificity regarding to whom an "appeal" is made. There is no appellate procedure in the statutes with respect to determinations concerning cap and interest relief. This regulation simply incorporates the § 601.5(b) informal discussion process, and permits State input as well as departmental input into the determination process. Because the determinations are made by the UIS Director, it is appropriate to allow States to elevate matters in dispute to a higher level within ETA. The regulations are not intended to set forth a formal appeal process, but only to incorporate elements of the existing informal process of § 601.5(b). The "existing appeals process", if this is a reference to section 3303(b) or 3304(c), is simply inapplicable to determinations under

section 3302, and of course there is no such existing process under Title XII of the Social Security Act. Therefore, no change is made in the final regulations.

Also related to the determinations process, one State suggested "that the regulation have some provision for prior ruling by USDOL on proposed state actions which might later be the subject of determination by the UIS Director". Any such "prior ruling" which actually rises to the level of a ruling in a legal sense would represent a commitment on the point addressed, but departmental comment on proposed legislation would not carry the same degree of commitment. In any case, it does not appear appropriate to address this subject in the regulations.

Subpart B—Tax Credit Reduction [Reserved]

Subpart C—Relief from Tax Credit Reduction

Sections 606.21 (a) and (b) (In reference to reduction in tax effort and decrease in solvency for cap purposes)

One State was concerned about including judicial action with legislative and administrative action in determining impact on tax effort and solvency since the State asserts it has no control over judicial action. State action in the Federal-State unemployment insurance program has always included judicial action, because courts are final arbiters of what the State law means, and "State" as used in the Social Security Act and the Federal Unemployment Tax Act has never been construed to refer solely to the executive or executive and legislative branches of the State government. The State, in fact, has control over judicial actions by virtue of normal constitutional processes; specifically, if a judicial decision results in a negative impact on tax effort and solvency, the legislature has the option of enacting an offsetting change.

Further, judicial action, as with other action, is considered for impact on tax effort and solvency when it is given effect administratively, and the State has the option of enacting changes to offset decisions resulting in negative impact. Judicial action does not include cases still pending on appeal, but a final decision at any level, if given effect, is State action, and when given effect there would be no basis for delaying a determination under Part 606 to afford the State an opportunity to enact corrective or offsetting legislation. Therefore, no change is made in the final regulations.

One State requested further definition of reduction in unemployment tax effort and decrease in solvency in § 606.21 (a) and (b). The Department believes that the terms are appropriately defined in the regulations; furthermore, the regulations include examples of action which impact on tax effort and solvency. Therefore, no change is made in the final regulations.

One State requested clarification of the impact of legislation enacted prior to August 13, 1981, specifically automatic escalating benefit maximum provisions in place prior to that date. The imposition of a temporary freeze on escalating maximums after August 13, 1981, and subsequent removal of such freeze, as provided in legislation enacted into law prior to August 13, 1981, are not considered actions which would result in a reduction of solvency for cap purposes. As provided in the statute and § 606.21 (a) and (b), such escalating provisions do not prevent a State from meeting the cap criteria, and therefore do not impact negatively in the measurement period in which they are given effect. The issue is not whether a freeze and removal of a freeze resulted in a lower maximum weekly benefit amount in a given period (as the State implied), but that the provisions were in effect prior to August 13, 1981. Likewise, the imposition of a temporary tax after August 13, 1981, which expires within a subsequent measurement period, does not impact negatively for cap purposes. As noted below, however, while these rules apply for purposes of a cap, the rules for purposes of interest relief are different. As the effect of prior legislation for cap purposes is clearly set out in the regulations, no change is made in the final regulations.

One State commented on the impact of experience rating with respect to tax effort and solvency. It is recognized that under experience rating, current benefit costs are recouped in future periods. However, the statute provides for determination of impact in the current measurement period. Accordingly, offsetting impact in future periods due to the dynamics of an experience rating system has no bearing on impact within and determinations for current periods. Therefore, no change is made in the final regulations.

Section 606.22(b) (In reference to the anticipated impact statement for cap purposes)

One State commented that the regulation is limiting in that it requires reporting of all legislative, judicial, and administrative actions. The Department agrees that the regulations require all actions to be reported with accompanying estimates of impact. The Department recognizes the impracticality and in some cases the impossibility of developing dollar estimates for insignificant actions, but cannot agree that insignificant actions may be disregarded. Presently, some States report that a sound figure cannot be estimated, and that an action simply has negligible or minor positive or negative impact; if the State assumptions seem reasonable and there is a net positive impact on tax effort and solvency, the determination would favor the State. A minor, nonsubstantive change is made in paragraph (b)(1) of § 606.22 to clarify the regulations and hopefully make them easier to understand, by adding at the end of (b)(1), "and actions for which estimated dollar impact is minor or negligible, indicating whether the impact is positive or negative".

Two States commented that States take numerous actions each year and that to report all actions as the regulation requires for purposes of the anticipated impact statement would be a substantial undertaking. Specifically, one State suggested that only those actions which result in impact be reported. The other State suggested reporting only significant actions, i.e., not including those actions which have minor impact; this would require a definition of "minor" which in itself could be controversial in nature. The statute requires that States take no action to reduce tax effort and solvency for cap purposes. In order for the UIS Director to determine if any actions impact negatively, the regulations appropriately require all actions and the associated impact (positive, negative, or zero) to be reported. In fact, section 3302(f)(6) authorizes the Department, by regulations, collect such information as may be necessary to make cap determinations. Accordingly, no substantive change is made in the regulations, but they are clarified by revising the phrase "and judicial decisions effecting changes in contributions or benefits paid" in § 606.22(b) so that it reads "and judicial decisions given effect". Also, another nonsubstantive change is made in § 606.22(b)(1) as noted above.

One State requested clarification of the impact of legislative action occurring in one period resulting in administrative action in a subsequent period. With respect to action affecting tax effort or solvency, section 3302(f)(2) is interpreted as having reference to State action which takes effect in a 12-month measurement period. Therefore, a change adopted in one period is not considered with respect to that period if it is not given effect until a succeeding

period. For example, legislation may be effective in some future period rather than upon enactment. So the issue is when should action be considered in terms of impact. To provide the most flexibility to the Department and to the States and to meet the intent and requirements of the statute for cap purposes, the regulations provide that actions are considered in the period in which they take effect, rather than the period in which the authorizing action was taken.

One State's comment on the inclusion of judicial action is addressed above in the discussion of § 606.21 (a) and (b).

One State's comment on the benefit cost rate computation is addressed above in the discussion of § 606.3(c).

Section 606.22(e) (In reference to the data to be supplied for the benefit cost ratio computation)

In reference to the change made in § 606.3(c)(1), as previously explained, § 606.22(e) also has been changed to reflect that the total sum of all benefits paid is taken into account, minus any amount reimbursable by the Federal government and benefits paid attributable to services performed for a reimbursing employer.

Section 606.22(f) (In reference to documentation required for cap purposes)

One State commented that the regulation limited the data sources for supporting documentation to Federal reports and pointed out that not all information is available in Federal reports. The Department agrees that not all supporting figures for anticipated impact statements are to be found in Federal reports. Therefore, § 606.22(f) has been revised by adding at the end thereof, "or in other data sources".

Sections 606.23 and 606.24 (In reference to avoidance of tax credit reduction and application therefor)

One State requested clarification of the terms "determined" and "estimated", indicating that the terms are used interchangeably and that estimated figures may not be subject to review. In clarification, some of the figures used in the decisions or determinations by the UIS Director are based on estimates; the regulations simply make clear that such estimates are the UIS Director's, not the State's. In this regard, "determined" has been changed to "estimated" in the parenthetical phrase in § 606.23(a)(1)(i), and in two places in § 606.23(a)(3), to conform usage of the two terms, and "each" is changed to "such" also for clarity.

One State questioned the inclusion of administrative law changes in reference to a net increase in solvency required for avoidance of tax credit reduction. The Department agrees that administrative law changes—and also judicial actions—are inappropriate in this context, since a net increase in solvency for this purpose could be accomplished only by legislative action. The regulations at § 606.23(b)(1) have been revised.

One State requested clarification of the two periods which are to be compared in determining whether a net increase in solvency has occurred. Section 3302(g)(2)(C) of FUTA requires the net increase in solvency to occur in the year avoidance is requested, although the law change which resulted in such net increase may have been enacted after the later of the first advance or September 3, 1982, (the date of enactment into law of subsection (g)). The year for comparison is the year avoidance is requested, and to estimate the net increase in that year the comparison must be made between the State law in effect without the law change and the State law in effect with the law change. The comparison, therefore, is not between different years, but of the same year with and without the law change. The regulation at § 606.23(b) clearly and correctly expresses the rule of comparison required by section 3302(g), but the Department agrees that ambiguity is introduced by the last sentence of § 606.24(b)(2). Therefore, § 606.24(b)(2) has been revised to remove the ambiguity; § 606.23(b)(2) remains unchanged in the final regulations.

Section 606.25 (In reference to waiver of and substitution for additional tax credit reduction)

One State's comment on the benefit cost rate computation is addressed above in the discussion of § 606.3(c).

While not relevant to this regulation, one State commented on the difference in computing additional tax credit reduction under section 3302(c)(2) (B) and (C). It is recognized that additional tax credit reduction for the third and fourth years (section 3302(c)(2)(B)) is calculated on a basis different from the calculation for the additional tax credit reduction beginning in the fifth year (section 3302(c)(2)(C)). The former adjusts (commonly referred to as "2.7 percent equivalent") for situations where a State has a taxable wage base greater than the Federal taxable wage base, while the latter does not. In view of the specific contrast between the two sections, the Department does not believe that the 2.7 percent equivalent adjustment of section 3302(c)(2)(B) can be imputed to section 3302(c)(2)(C). Accordingly, the Department will implement the differences as they appear in the statute. Additional tax credit reduction will be included in Phase II of the regulations.

Subpart D—Interest on Advances (No comments received)

Subpart E—Relief from Interest Payment

Section 606.41(b) (In reference to high unemployment deferral)

One State requested clarification of "week 1" as it relates to the definition of high unemployment. The Department agrees and has amended the final regulations to specify that "week 1" is that week which includes January 1 of the year.

Section 606.42 (a) and (c) (In reference to high unemployment delay)

One State requested a definition of "total unemployment rate" because of different methodologies and data availability among States, and specification of whether or not the rate shall be seasonally adjusted. The Department agrees and has clarified the final regulations at § 606.42(c) to provide that the rate used in the determination is based on seasonally unadjusted civilian total unemployment rate data published by the Department's Bureau of Labor Statistics.

Section 606.42(b) (In reference to high unemployment delay)

One State questioned the requirement that the deferred payment be made prior to July 1 and, thus, does not permit payment on the following business day should the due date fall on a Saturday, Sunday or Federal holiday. It is recognized that when a legal due date occurs on a non-business day (Saturday, Sunday, or Federal holiday), for many commercial and legal purposes one is given until the next business day to comply. However, in the case of due dates for payment of interest in section 1202, the statute is explicit in providing that there shall be no grace period, and in expressing due dates in terms of not later than the specified date. Therefore, the regulations which require payment "not later than the last official Federal business day prior to the following July 1" remain unchanged. This expressly means that, if June 30 falls on a Saturday, Sunday, or a Federal holiday, the interest due must be paid not later than the last Federal business day which precedes such June 30.

Section 606.43 (In reference to maintenance of solvency effort)

One State was concerned regarding the requirements for obtaining a deferral versus the requirements for maintaining a deferral. Section 1202(b)(8) is explicit in providing that the requirements for *obtaining* a deferral are different from the requirements for *maintaining* a deferral. To obtain a deferral a State must take action to improve solvency and that action is judged in terms of its impact on solvency effort when such action is effective which may be two, three, four, etc. years from date of legislative action. To continue a deferral a State is not required to take action; however, any action which a State does take subsequent to obtaining a deferral will be judged in terms of its impact on solvency effort when such action is effective. Without question, it was the intent of the Congress that a State, allowed to defer interest over a four-year period, should maintain its solvency effort over the same four-year period. Therefore, while a State is not required to take any affirmative action to *maintain* its solvency effort, for the purpose of retaining interest payment deferral it also may not take any action which negatively impacts on the action it took to qualify for obtaining the deferral in the first instance. Accordingly, no change is made in the final regulations.

One State also was concerned about the level of solvency effort which must be maintained. To obtain a deferral in the first instance, the statute specifically defines solvency effort as "action [taken] * * * after March 31, 1982, which would have increased revenue liabilities and decreased benefits * * *" (section 1202(b)(8)(B)(ii)(I)). Whatever action was taken was measured in terms of a percentage change over a base period. The statute provides that a certain percentage had to be achieved to obtain a deferral; specifically, 25 percent the first year, 35 percent the second year, and 50 percent the third year. In virtually all cases, the percents achieved by States were greater than those specified, especially for States which also received discounted rates of interest. Further, section 1202(b)(8)(C)(i) provides that: "Once a deferral is approved under clause (ii)(I) of subparagraph (B) a State must continue to maintain its solvency effort;" this expresses the requirement for maintaining solvency effort. Accordingly, it is that percentage which the State achieved with respect to the increase in liabilities and the decrease in benefits which must be maintained. Therefore, no change is made in the final regulations.

One State commented on the method used for determining if solvency effort is maintained. The regulations were intended to provide an accurate and easy means of determining whether solvency effort is maintained by comparing revenue receipts and benefit outlays for the year for which the continuation of deferral is requested with the previous year's receipts and outlays, holding economic conditions constant. However, based on State comments and a thorough review of the issue, the regulations have been revised to account for circumstances when action becomes effective subsequent to the latest deferral. Specifically, § 606.43(b) is revised to provide for a comparison between the base year (first year for which deferral is requested) with changes effective in the year for which continuation is requested and the base year without such changes. Similarly, § 606.43(d)(2) is revised to reflect a comparison between the base year with changes and the base year without changes.

One State's comment on the anticipated impact statement in reference to the reporting of all actions is addressed above in the discussion of § 606.22.

In General

Both States pointed out certain typographical errors in the published document. These and other typographical errors are corrected in the final regulations. In addition, the title is revised to reflect more accurately the content of the final regulations. Section 606.1 is changed to begin with a more general statement of the purpose and scope of Part 606. Section 606.26 is revised to require States to apply under all circumstances for the waiver of and substitution for the additional tax credit reduction beginning in the fifth year; the proposed rule required applying only if the State did not apply for a cap on or avoidance of tax credit reduction. Also, other changes are made to clarify and simplify the final regulations.

Drafting Information

This document was prepared under the direction and control of the Director of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 535–0600 (this is not a toll-free number).

Classification—Executive Order 12291

The rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511) the reporting provisions in this rule have been approved by the Office of Management and Budget under control number 1205–0205, expiring September 30, 1990.

Regulatory Flexibility Act

The Department believes that this rule will have no "significant economic impact on a substantial number of small entities" within the meaning of 5 U.S.C. 605(b), because this rule directly affects only States and States are not "small entities" as that term is defined in 5 U.S.C. 601. The Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 20 CFR Part 606

Labor, Unemployment compensation, Federal Unemployment Tax Act.

Catalogue of Federal Domestic Assistance Number

This program is listed in the *Catalogue of Federal Domestic Assistance* at No. 17.225, Unemployment Insurance.

Words of Issuance

For the reasons set out in the preamble, Part 606 is added to Title 20, Chapter V, of the Code of Federal Regulations to read as set forth below.

Signed at Washington, DC, on September 9, 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

PART 606—TAX CREDITS UNDER THE FEDERAL UNEMPLOYMENT TAX ACT; ADVANCES UNDER TITLE XII OF THE SOCIAL SECURITY ACT

Subpart A—General

Subpart B—Tax Credit Reduction (Reserved)

Subpart C—Relief from Tax Credit Reduction

Subpart D—Interest on Advances

Subpart E—Relief from Interest Payment

Authority: 42 U.S.C. 1102; 26 U.S.C. 7805(a); Secretary's Order No. 4–75 (40 FR 18515).

Subpart A—General

§ 606.1 Purpose and scope.

(a) *In general.* The regulations in this Part 606 are issued to implement the tax credit provisions of the Federal Unemployment Tax Act, and the loan provisions of Title XII of the Social Security Act. The regulations on tax credits cover all of the subjects of 3302 of the Federal Unemployment Tax Act (FUTA), except subsections (c)(3) and (e). The regulations on loans cover all of the subjects in Title XII of the Social Security Act.

(b) *Scope.* This Part 606 covers general matters relating to this part in this Subpart A, and in the following subparts includes specific subjects described in general terms as follows:

(1) Subpart B describes the tax credit reductions under the Federal Unemployment Tax Act, which relate to outstanding balances of advances made under Title XII of the Social Security Act.

(2) Subpart C describes the various forms of relief from tax credit reductions, and the criteria and standards for grant of such relief in the form of—

(i) A cap on tax credit reduction,

(ii) Avoidance of tax credit reduction, and

(iii) Waiver of and substitution for additional tax credit reduction.

(3) Subpart D describes the interest rates on advances made under Title XII of the Social Security Act, dues dates for payment of interest, and other related matters.

(4) Subpart E describes the various forms of relief from payment of interest, and the criteria and standards for grant of such relief in the form of—

(i) May/September delay of interest payments,

(ii) High unemployment deferral of interest payments,

(iii) High unemployment delay of interest payments, and

(iv) Maintenance of solvency effort required to retain a deferral previously granted.

§ 606.2 Total credits allowable.

The total credits allowed to an employer subject to the tax imposed by section 3301 of the Federal Unemployment Tax Act shall not exceed 5.4 percent with respect to taxable years beginning after December 31, 1984.

§ 606.3 Definitions.

For the purposes of the Acts cited and this part—

(a) "Act" means as appropriate the Federal Unemployment Tax Act (26 U.S.C. 3301–3311), or Title XII of the Social Security Act (42 U.S.C. 1321–1324).

(b) "Advance" means a transfer of funds to a State unemployment fund, for the purpose of paying unemployment compensation, from the Federal unemployment account in the Unemployment Trust Fund, pursuant to section 1202 of the Social Security Act.

(c) "Benefit-cost ratio" for cap purposes for a calendar year is the percentage obtained by dividing—

(1) The total dollar sum of—

(i) All compensation actually paid under the State law during such calendar year, including in such total sum all regular, additional, and extended compensation, as defined in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970, and excluding from such total sum—

(A) Any such compensation paid for which the State is entitled to reimbursement or was reimbursed under the provisions of any Federal Law, and

(B) Any such compensation paid which is attributable to services performed for a reimbursing employer, and which is not included in the total dollar amount reported under paragraph (c)(1)(i)(A) of this section, and

(ii) Any interest paid during such calendar year on any advance, by

(2) The total wages (as defined in § 606–3(l)) with respect to such calendard year. If any percentage determined by this computation for a calendar year is not a multiple of 0.1 percent, such percentage shall be reduced to the nearest multiple of 0.1 percent.

(d) "Contributions" means payments required by a State law to be made into an unemployment fund by any person on account of having individuals in his employ, to the extent that such payments are made by him without being deducted or deductible from the remuneration of individuals in his employ.

(e) "Federal unemployment tax" means the excise tax imposed under section 3301 of the Federal Unemployment Tax Act on employers with respect to having individuals in their employ.

(f) "Fiscal year" means the Federal fiscal year which begins on October 1 of a year and ends on September 30, of the next succeeding year.

(g) "FUTA" referes to the Federal Unemployment Tax Act.

(h) "State unemployment fund" or "unemployment fund" means a special fund established under a State law for the payment of unemployment compensation to unemployed individuals, and which is an "unemployment fund" as defined in section 3306(f) of the Federal Unemployment Tax Act.

(i) "Taxable year" means the calendar year.

(j) "Unemployment tax rate" means, for any taxable year and with respect to any State, the percentage obtained by dividing the total amount of contributions paid into the State unemployment fund with respect to such taxable year by total wages as defined in § 606.3(l).

(k) "Wages, taxable" means the total sum of remuneration which is subject to contributions under a State law.

(l) "Wages, total" means the total sum of all remuneration covered by a State law, disregarding any dollar limitation on the amount of remuneration which is subject to contributions under the State law.

§ 606.4 Redelegation of authority.

(a) *Redelegation to UIS Director.* The Director, Unemployment Insurance Service (hereinafter "UIS Director"), is redelegated authority to make the determinations required under this part. This redelegation is contained in Employment and Training Order No. 1–84, published in the **Federal Register** on November 14, 1983 (48 FR 51870).

(b) *Delegation by Governor.* The Governor of a State, as used in this part, refers to the highest executive official of a State. Wherever in this part an action is required by or of the Governor of a State, such action may be taken by the Governor or may be taken by a delegatee of the Governor if the Department is furnished appropriate proof of an authoritative delegation of authority.

§ 606.5 Verification of estimates and review of determinations.

The Department of Labor (hereinafter "Department") shall verify all information and data provided by a State under this part, and the State shall comply with such provisions as the Department considers necessary to assure the correctness and verification of such information and data. The State agency of a State affected by a determination made by the UIS director under this part may seek review of such determination by a higher level official of the Employment and Training Administration.

§ 606.6 Information, reports, and studies.

A State shall furnish to the Secretary of Labor such information and reports and conduct such studies as the Secretary determines are necessary or appropriate for carrying out the purposes of this part, including any additional information or data the UIS Director may require for the purposes of making determinations under Subparts C and E of this part. This collection has been approved by the Office of Management and Budget under control number 1205–0205.

Subpart B—Tax Credit Reduction [Reserved]

Subpart C—Relief from Tax Credit Reduction

§ 606.20 Cap on tax credit reduction.

(a) *Applicability.* Subsection (f) of section 3302 of FUTA authorizes a limitation (cap) on the reduction of tax credits by reason of an outstanding balance of advances, if the UIS Director determines with respect to a State, on or before November 10 of a taxable year, that—

(1) No action was taken by the State during the 12-month period ending on September 30 of such taxable year which has resulted, or will result, in a reduction in the State's unemployment tax effort, as defined in § 606.21(a);

(2) No action was taken by the State during the 12-month period ending on September 30 of such taxable year which has resulted, or will result, in a net decrease in the solvency of the State unemployment compensation system, as defined in § 606.21(b);

(3) The State unemployment tax rate (as defined in § 606.3(j)) for the taxable year equals or exceeds the average benefit-cost ratio (as defined in § 606.3(c)) for the calendar years in the five-calendar year period ending with the calendar year immediately preceding the taxable year for which the cap is requested, under the rules specified in § 606.21 (c) and (d); and

(4) The outstanding balance of advances to the State on September 30 of the taxable year was not greater than the outstanding balance of advances to the State on September 30 of the third preceding taxable year.

(b) *Maximum tax credit reduction.* If a State qualifies for a cap, the maximum tax credit reduction for the taxable year shall not exceed 0.6 percent, or, if higher, the tax credit reduction that was in effect for the taxable year preceding the taxable year for which the cap is requested.

(c) *Year not taken into account.* If a State qualifies for a cap for any year, the year and January 1 of the year to which the cap applies will not be taken into account for purposes of determining reduction of tax credit for subsequent taxable years.

(d) *Partial caps.* Partial caps obtained under subsection (f)(8) are no longer available. Nevertheless, for the purposes of applying section 3302(c)(2) to subsequent taxable years, partial cap credits earned will be taken into account for purposes of determining reduction of tax credits. Also, the taxable year to which the partial cap applied (and January 1 thereof) will be taken into account for purposes of determining reduction of tax credits for subsequent taxable years.

§ 606.21 Criteria for cap.

(a) *Reduction in unemployment tax effort.* (1) For purposes of paragraph (a)(1) of § 606.20, a reduction in a State's unemployment tax effort will have occurred with respect to a taxable year if any action is or was taken (legislative, judicial, or administrative,) that is effective during the 12-month period ending on September 30 of such taxable year, which has resulted in or will result in a reduction of the amount of contributions paid or payable or the amounts that were or would have been paid or payable but for such action.

(2) Actions that will result in a reduction in tax effort include, but are not limited to, a reduction in the taxable wage base, the tax rate schedule, tax rates, or taxes payable (including surtaxes) that would not have gone into effect but for the legislative, judicial, or administrative action taken. Notwithstanding the foregoing criterion, a reduction in unemployment tax effort resulting from any provision of the State law enacted prior to August 13, 1981, will not be taken into account as a reduction in the State's unemployment tax effort for the purposes of this section.

(b) *Net decrease in solvency.* For purposes of paragraph (a)(2) of § 606.20, a net decrease in the solvency of the State's unemployment compensation system will have occurred with respect to a taxable year if any action is or was taken (legislative, judicial, or administrative), that is effective during the 12-month period ending on September 30 of such taxable year, which has resulted in or will result in an increase in benefits without at least an equal increase in taxes, or a decrease in taxes without at least an equal decrease in benefits. Notwithstanding the foregoing criterion, a decrease in solvency resulting from any provision of the State law enacted prior to August 13, 1981, will not be taken into account as a reduction in solvency of the State's unemployment compensation system for the purposes of this section.

(c) *State unemployment tax rate.* For purposes of paragraph (a)(3) of § 606.20, the State unemployment tax rate is defined in § 606.3(j). If such percentage is not a multiple of 0.1 percent, the percentage shall remain unrounded.

(d) *State five-year average benefit cost ratio.* For purposes of paragraph (a)(3) of § 606.20, the average benefit cost ratio for the five preceding calendar years is the percentage determined by dividing the sum of the benefit cost ratios for the five years by five. If such percentage is not a multiple of 0.1 percent, the percentage shall remain unrounded.

§ 606.22 Application for cap.

(a) *Application.* (1) The Governor of the State shall make application.

addressed to the Secretary of Labor, no later than July 1 of a taxable year with respect to which a State requests a cap on tax credit reduction. The Governor is required to notify the Department on or before October 15 of such taxable year of any action occurring after the date of the initial application and effective prior to October 1 of such year that would impact upon the State's application.

(2) The UIS Director will make a determination on the application on or before November 10 of such taxable year, will notify the applicant and the Secretary of the Treasury of such determination, and will cause notice of such determination to be published in the **Federal Register.**

(b) *Anticipated impact statement.* In support of the application by the Governor, there shall be submitted with the application (on or before October 15), for the purposes of the criteria described in §§ 606.20(a) (1) and (2) and 606.21 (a) and (b), a description of all statutory provisions enacted or amended, regulations adopted or revised, administrative policies and procedures adopted or revised, and judicial decisions given effect, which are effective during the 12-month period ending on September 30 of the taxable year for which a cap on tax credit reduction is requested, and an anticipated impact statement (AIS) for each such program action in the following respect—

(1) The estimated dollar effect on each program action upon expenditures for compensation from the State unemployment fund and for the amounts of contributions paid or payable in such 12-month period, including the effect of interaction among program actions, and with respect to program actions for which dollar impact cannot be estimated or is minor or negligible, indicate whether the impact is positive or negative;

(2) If a program action has no such dollar effect, an explanation of why there is or will be no such effect;

(3) A description of assumptions and methodology used and the basis for the financial estimate of the impact of each program action described in paragraphs (b)(1) and (b)(2) of this section; and

(4) A comparision of the program actions described in paragraphs (b)(1) and (b)(2) of this section with the program actions prior to the Federal fiscal year (as defined in § 606.3(f)) which ends on such September 30.

(c) *Unemployment tax rate.* With respect to the unemployment tax rate criterion described in §§ 606.20(a)(3) and 606.21(c), the application shall include an estimate for the taxable year with respect to which a cap on tax credit reduction is requested and actual data for the prior two years as follows:

(1) The amount of taxable wages as defined in § 606.3(k);

(2) The amount of total wages as defined in § 606.3(l); and

(3) The estimated distribution of taxable wages, as defined in § 606.3(k), by tax rate under the State law.

(d) *Benefit cost ratio.* With respect to the benefit cost ratio criterion described in §§ 606.20(a)(3) and 606.21(d), the application shall include for each of the five calendar years prior to the taxable year for which a cap on tax credit reduction is requested, the following data:

(1) The total dollar sum of compensation actually paid under the State law during the calendar year, including in such total sum all regular, additional, and extended compensation as defined in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970, but excluding from such total sum—

(i) The total dollar amount of such compensation paid for which the State is entitled to reimbursement or was reimbursed under the provisions of any Federal law;

(ii) The total dollar amount of such compensation paid which is attributable to services performed for a reimbursing employer, and which is not included in the total amount reported under paragraph (d)(1)(i) of this section;

(2) The total dollar amount of interest paid during the calendar year on any advance; and

(3) The total dollar amount of wages (as defined in § 606.3(l)) with respect to such calendar year.

(e) *Documentation required.* Copies of the sources of or authority for each program action described in paragraph (b) of this section shall be submitted with each application for a cap on tax credit reduction. In addition, a notation shall be made on each AIS of where all figures referred to are contained in reports required by the Department or in other data sources.

(f) *State contact person.* The Department may request additional information or clarification of information submitted bearing upon an application for a cap on tax credit reduction. To expedite requests for such information, the name and telephone number of an appropriate State official shall be included in the application by the Governor.

§ 606.23 Avoidance of tax credit reduction.

(a). *Applicability.* Subsection (g) of section 3302 of FUTA authorizes a State to avoid a tax credit reduction for a taxable year by meeting the three requirements of subsection (g). These requirements are met if the UIS Director determines that:

(1) Advances were repaid by the State during the one-year period ending on November 9 of the taxable year in an amount not less than the sum of—

(i) The potential additional taxes (as estimated by the UIS Director) that would be payable by the State's employers if paragraph (2) of section 3302(c) of FUTA were applied for such taxable year (as estimated with regard to the cap on tax credit reduction for which the State qualifies under §§ 606.20 to 606.22 with respect to such taxable year), and

(ii) Any advances made to such State during such one-year period under Title XII of the Social Security Act;

(2) There will be adequate funds in the State unemployment fund (as estimated by the UIS Director) sufficient to pay all benefits when due and payable under the State law during the three-month period beginning on November 1 of such taxable year without receiving any advance under Title XII of the Social Security Act; and

(3) There is a net increase (as estimated by the UIS Director) in the solvency of the State unemployment compensation system for the taxable year and such net increase equals or exceeds the potential additional taxes for such taxable year as estimated under paragraph (a)(1)(i) of this section.

(b) *Net increase in solvency.* (1) The net increase in solvency for a taxable year, as determined for the purposes of paragraph (a)(3) of this section, must be attributable to legislative changes made in the State law after the later of—

(i) September 3, 1982, or

(ii) The date on which the first advance is taken into account in determining the amount of the potential additional taxes.

(2) The UIS Director shall determine the net increase in solvency by first estimating the difference between revenue receipts and benefit outlays under the law in effect for the year for which avoidance is requested, as if the relevant changes in State law referred to in paragraph (b)(1) of this section were not in effect for such year. The UIS Director shall then estimate the difference between revenue receipts and benefit outlays under the law in effect for the year for which the avoidance is requested, taking into account the relevant changes in State law referred to in paragraph (b)(1) of this section. The amount (if any) by which the second estimated difference exceeds the first estimated difference shall constitute the

net increase in solvency for the purposes of this section.

(c) *Year taken into account.* If a State qualifies for avoidance for any year, that year and January 1 of that year to which the avoidance applies will be taken into account for purposes of determining reduction of tax credits for subsequent taxable years.

§ 606.24 Application for avoidance.

(a) *Application.* (1) The Governor of the State shall make application, addressed to the Secretary of Labor, no later than July 1 of a taxable year with respect to which a State requests avoidance of tax credit reduction. The Governor is required to notify the Department on or before October 15 of such taxable year of any action impacting upon the State's application occurring subsequent to the date of the initial application and on or before November 10.

(2) The UIS Director will make a determination on the application as of November 10 of such taxable year, will notify the applicant and the Secretary of the Treasury of such determination, and will cause notice of such determination to be published in the **Federal Register.**

(b) *Information.* (1) The application shall include a statement of the amount of advances repaid and to be repaid during the one-year period ending on November 9 of the taxable year for which avoidance is requested. If the amount repaid as of the date of the application is less than the amount required to satisfy the provisions of § 606.23(a)(1), the Governor shall provide a report later of the additional repayments that have been made in the remainder of the one-year period ending on November 9 of the taxable year, for the purposes of meeting the provisions of § 606.23(a)(1).

(2) The application also shall include estimates of revenue receipts, benefit outlays, and end-of-month fund balance for each month in the period beginning with September of the taxable year for which avoidance is requested through the subsequent January. Actual data for the comparable period of the preceding year also shall be included in the application in order to determine the reasonableness of such estimates.

(3) The application also shall include a description of State law changes, effective for the taxable year for which the avoidance is requested, which resulted in a net increase in the solvency of the State unemployment compensation system, and documentation which supports the State's estimate of the net increase in solvency for such taxable year.

§ 606.25 Waiver of and substitution for additional tax credit reduction.

A provision of subsection (c)(2) of section 3302 of FUTA provides that, for a State that qualifies, the additional tax credit reduction applicable under subparagraph (C), beginning in the fifth consecutive year of a balance of outstanding advances, shall be waived and the additional tax credit reduction applicable under subparagraph (B) shall be substituted. The waiver and substitution are granted if the UIS Director determines that the State has taken no action, effective during the 12-month period ending on September 30 of the year for which the waiver and substitution are requested, which has resulted or will result in a net decrease in the solvency of the State unemployment compensation system as determined for the purposes of §§ 606.20(a)(2) and 606.21(b).

§ 606.26 Application for waiver and substitution.

(a) *Application.* The Governor of the State shall make application addressed to the Secretary of Labor, no later than July 1 of a taxable year with respect to which a State requests waiver and substitution. Any such application shall contain the supportive data and information required by § 606.22(b) for the purposes of §§ 606.20(a)(2) and 606.21(b). The Governor is required to notify the Department on or before October 15 of such taxable year of action occurring after the date of the initial application and effective prior to October 1 of such year that would impact upon the State's application.

(b) *Notification of determination.* The UIS Director will make a determination on the application as of November 10 of the taxable year, will notify the applicant and the Secretary of the Treasury of the resulting tax credit reduction to be applied, and will cause notice of such determination to be published in the **Federal Register.**

Subpart D—Interest on Advances

§ 606.30 Interest rates on advances.

Advances made to States pursuant to Title XII of the Social Security Act on or after April 1, 1982, shall be subject to interest payable on the due dates specified in § 606.31.[1] The interest rate for each calendar year will be 10 percent or, if less, the rate determined by the Secretary of the Treasury and announced to the States by the Department.

[1] **(Editorial note:** This section will be added at a later date.)

§ 606.31 Due dates for payment of interest. [Reserved]

§ 606.32 Types of advances subject to interest.

(a) *Payment of interest.* Except as otherwise provided in paragraph (b) of this section each State shall pay interest on any advance made to such State under Title XII of the Social Security Act.

(b) *Cash flow loans.* Advances repaid in full prior to October 1 of the calendar year in which made are deemed cash flow loans and shall be free of interest; provided, that the State does not receive an additional advance after September 30 of the same calendar year. If such additional advance is received by the State, interest on the completely repaid earlier advance(s) shall be due and payable not later than the day following the date of the first such additional advance. The administrator of the State agency shall notify the Secretary of Labor no later than September 10 of those loans deemed to be cash flow loans and not subject to interest. This notification shall include the date and amount of each loan made in January through September and a copy of documentation sent to the Secretary of the Treasury requesting loan repayment transfer(s) from the State's account in the Unemployment Trust Fund to the Federal unemployment account in such Fund.

§ 606.33 No payment of interest from unemployment fund. [Reserved]

§ 606.34 Reports of interest payable. [Reserved]

§ 606.35 Order of application for repayments. [Reserved]

Subpart E—Relief from Interest Payment

§ 606.40 May/September delay.

Subsection (b)(3)(B) of section 1202 of the Social Security Act permits a State to delay payment of interest accrued on advances made during the last five months of the Federal fiscal year (May, June, July, August, and September) to no later than December 31 of the next succeeding calendar year. If the payment is delayed, interest on the delayed payment will accrue from the normal due date (i.e., September 30) and in the same manner as if the interest due on the advance(s) was an advance made on such due date. The Governor of a State which has decided to delay such interest payment shall notify the Secretary of Labor no later than September 1 of the year with respect to which the delay is applicable.

§ 606.41 High unemployment deferral.

(a) *Applicability.* Subsection (b)(3)(C) of section 1202 of the Social Security Act permits a State to defer payment of, and extend the payment for, 75 percent of interest charges otherwise due prior to October 1 of a year if the UIS Director determines that high unemployment conditions existed in the State.

(b) *High unemployment defined.* For purposes of this section, high unemployment conditions existed in the State if the State's rate of insured unemployment (as determined for purposes of 20 CFR 615.12) under the State law with respect to the period consisting of the first six months of the preceding calendar year equalled or exceeded 7.5 percent; this means that in weeks 1 (that week which includes January 1 of the year) through 26 of such preceding calendar year, the rate of insured unemployment reported by the State and accepted by the Department under 20 CFR Part 615 must have averaged a percentage equalling or exceeding 7.5 percent.

(c) *Schedule of deferred payments.* The State must pay prior to October 1 one-fourth of the interest due, and must pay a minimum of one-third of the deferred amount prior to October 1 in each of the three years following the year in which deferral was granted; at the State's option payment of deferred interest may be accelerated.

(d) *Related criteria.* Timely payment of one-fourth of the interest due prior to October 1 is a precondition to obtaining deferral of payment of 75 percent of the interest due. No interest shall accrue on such deferred interest.

(e) *Application for deferral and determination.* (1) The Governor of a State which has decided to request such deferral of interest payment shall apply to the Secretary of Labor no later than July 1 of the taxable year for which the deferral is requested.

(2) The UIS Director will determine whether deferral is or is not granted on the basis of the Department's records of reports of the rates of insured unemployment and information obtained from the Department of the Treasury as to the timely and full payment of one-fourth of the interest due.

§ 606.42 High unemployment delay.

(a) *Applicability.* Paragraph (9) of section 1202 (b) of the Social Security Act permits a State to delay for a period not exceeding nine months the interest payment due prior to October 1 if, for the most recent 12-month period prior to such October 1 for which data are available, the State had an average total unemployment rate of 13.5 percent or greater.

(b) *Delayed due date.* An interest payment delayed under paragraph (9) must be paid in full not later than the last official Federal business day prior to the following July 1; at the State's option payment of delayed interest may be accelerated. No interest shall accrue on such delayed payment.

(c) *Application for delay in payment and determination.* (1) The Governor of a State which has decided to request delay in payment of interest under paragraph (9) shall apply to the Secretary of Labor no later than July 1 of the taxable year for which the delay is requested.

(2) The UIS Director will determine whether delay is or is not granted on the basis of seasonally unadjusted civilian total unemployment rate data published by the Department's Bureau of Labor Statistics.

§ 606.43 Maintenance of solvency effort.

(a) *Applicability.* Legislative-action interest deferrals obtained under subsection (b)(8) (A) through (C) of section 1202 of the Social Security Act are no longer available. Nevertheless, States must maintain their solvency effort with respect to any such deferrals approved in 1983, 1984, and 1985 in order for the deferral to continue to apply in each subsequent year of deferral.

(b) *Determination regarding maintenance of solvency effort.* (1) The UIS Director shall determine if there is a net reduction in solvency effort by first estimating revenue receipts and benefit outlays under the law in effect in the 12-month period ending on September 30 of the year for which continuation of deferral is requested as if it were effective in the base year (12-month period for which the first deferral was granted).

(2) The UIS Director shall then compare revenue receipts and benefit outlays for the base year (previously estimated at the time of the original deferral) with revenue receipts and benefit outlays estimated in paragraph (b)(1) of this section.

(3) If the sum of—

(i) The percentage increase in revenue receipts from the base year to the year for which the continuation of deferral is requested (as estimated in paragraph (b)(1) of this section), and

(ii) The percentage decrease in benefit outlays from the base year to the year for which the continuation of deferral is requested (as estimated in paragraph (b)(1) of this section),

is equal to or greater than the sum of such percentages achieved for the 12-month period ending on September 30 of the year for which the latest deferral was obtained, the State will have maintained its solvency effort, but if less, then a reduction in solvency effort will have occurred.

(4) Notwithstanding the results of the calculation in paragraph (b)(3) of this section, if there is no increase in revenue receipts or no decrease in benefit outlays between the base year and the year for which continuation of deferral is requested, then a reduction in solvency effort will have occurred.

(c) *Effect of determination.* (1) If the UIS Director determines that a State has maintained its solvency effort, continuation of deferral will be granted, and the State will be required to timely pay the deferred interest payable prior to October 1 of the year with respect to which such determination is made.

(2) If the UIS Director determines that a State failed to maintain its solvency effort, all deferred interest shall be due and payable prior to October 1 of the year with respect to which such determination is made.

(d) *Application and information.* (1) The Governor of a State which has decided to request continuation of a previously approved deferral of interest payments shall apply to the Secretary of Labor no later than July 1 of the year for which continuation is requested. The Governor is required to notify the Department on or before September 1 of such taxable year of any action impacting upon the State's application which has occurred or will occur subsequent to the date of the initial application and on or before September 30.

(2) In support of the application by the Governor, there shall be submitted for the purposes of the estimates required in paragraph (b) of this section documentation as specified in § 606.22 (b)(1) through (4), (c) and (f) and bearing upon the application for continuation of deferral, in terms of the relevant comparison between revenue receipts and benefit outlays.

§ 606.44 Notification of determinations.

The UIS Director will make determinations under §§ 606.41, 606.42, and 606.43 on or before September 10 of the taxable year, will promptly notify the applicants and the Secretary of the Treasury of such determinations, and will cause notice of such determinations to be published in the **Federal Register**. The UIS Director also will inform the Secretary of the Treasury and cause notice to be published in the **Federal Register** of information with respect to delayed payment of interest as provided in § 606.40.

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Monday
September 26, 1988

Part V

Environmental Protection Agency

40 CFR 761

Polychlorinated Biphenyls; Notification and Manifesting for PCB Waste Activities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 761

[OPTS-62059; FRL-3396-9]

Polychlorinated Biphenyls; Notification and Manifesting for PCB Waste Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing amendments to its disposal and storage regulations for polychlorinated biphenyls (PCBs). This document proposes notification requirements for certain entities who handle PCB waste, requirements for certain entities to prepare and carry a manifest for purposes of tracking the disposal of PCB waste, and requirements that commercial storers of PCB waste obtain approvals from the EPA Regional Administrators, develop closure plans for their facilities, and demonstrate financial responsibility for closure. Also, this notice proposes amendments to the PCB recordkeeping requirements.

These amendments are proposed under section 6(e)(1) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e)(1), which authorizes the EPA Administrator to promulgate rules prescribing methods of disposal for PCBs.

DATES: Written comments must be received by October 26, 1988. If persons request time for oral comment, EPA will hold an informal hearing in Washington, DC, on November 9, 1988. The exact time and location of the hearing will be made available by telephoning the TSCA Assistance Office at the telephone number listed under **FOR FURTHER INFORMATION CONTACT.** Written requests to participate in the informal hearing must be received by the TSCA Assistance Office or postmarked no later than October 26, 1988. For additional information on the hearing and the procedures for filing requests to participate, see Unit V of this preamble.

ADDRESS: Submit written comments, in triplicate, identified by the document control number OPTS 62059, by mail to: TSCA Public Docket Office (TS-793), Rm. NE G004, Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of such a comment that does not contain the CBI should be submitted for inclusion in the public record. Information not marked confidential will be disclosed publicly by EPA by placing it in the public record without prior notice to the submitter. All written comments will be available for public inspection and copying at the TSCA Public Docket Office in Rm. NE G004, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. EB-44, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202-554-1404), TDD: (202-554-0557).

SUPPLEMENTARY INFORMATION: In this document, EPA is proposing amendments to its PCB storage and disposal regulations, which are codified in Subpart D, 40 CFR 761.60 *et seq.*

The information collection requirements of this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1446) and a copy may be obtained from David DiFiore, Information Policy Branch (PM-223), Environmental Protection Agency, 401 M St., SW., Washington, DC. 20460. A copy may also be obtained by calling (202) 382-2744.

The public reporting burden for this collection of information is estimated to average 1.5 hours per response for the notification requirements, 3 hours per response for the Exception and Discrepancy Reporting requirements, and 325 to 460 hours per response for the financial assurance and closure requirements. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing and reviewing the collection of information.

Comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to the Chief, Information Policy Branch (PM-223), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. These comments should also be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ATTENTION: Desk Officer for EPA. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

I. Overview of This Proposed Rulemaking

EPA regulates the disposal and storage for disposal of PCBs under its TSCA section 6(e)(1) authority, rather than its authority to regulate the management of hazardous waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA), unless the PCB waste also meets the definition of RCRA hazardous waste. EPA has identified several areas where improvements are needed in its TSCA program for PCB wastes, and these improvements require the promulgation of additional disposal and storage requirements. EPA has concluded that the most pressing of the needed program improvements are the addition of an effective tracking system for PCB wastes and the addition of an approval mechanism for the commercial storers who act as intermediate storers of PCB wastes prior to their disposal.

This notice proposes to add to the PCB disposal requirements a tracking system for PCB wastes akin to the "cradle-to-grave" tracking system for hazardous wastes which EPA promulgated under RCRA Subtitle C. The proposal includes a requirement that certain entities among those who handle (generate, transport, store, or dispose) regulated PCB wastes must notify EPA of their PCB-waste activities, so that the Agency may obtain basic information about the nature, location, and extent of these activities. The proposal further requires that each such entity notifying EPA obtain from the Agency a unique identification number which will identify that entity in the shipping documents (manifests) and other records and reports that constitute the waste tracking system. The proposal also describes the manifest system that will be implemented to track the movement of PCB waste from the point of generation to the point of disposal, and it describes the recordkeeping and reporting requirements that complete the tracking system.

This notice further proposes to add to the PCB storage regulations an approval mechanism for the commercial storers of PCB wastes. The proposal would specifically require all commercial storers of PCB wastes to prepare closure plans for their facilities, and to demonstrate their financial

responsibility for the closure of their PCB storage areas. Storers of PCB wastes who cannot demonstrate compliance with the proposed rule's financial assurance for closure requirements would be required to cease operations and close their facilities.

II. Authority

This proposed rule is issued pursuant to section 6(e)(1) of TSCA. Section 6(e)(1)(A) gives the Administrator the authority to promulgate rules prescribing the methods for disposal of PCBs. (15 U.S.C. 2605(e)(1)(A)). Furthermore, section 6(e)(1)(B) provides broad authority for EPA to promulgate rules that would:

> * * * (B) require polychlorinated biphenyls to be marked with clear and adequate warnings, and instructions with respect to their processing, distribution in commerce, use, or disposal or with respect to any combination of such activities." 15 U.S.C. 2605(e)(1)(B).

Consistent with this authority, EPA proposes to implement a waste tracking system for PCB wastes which would consist of shipping documents (manifests) and other records and reports which are described by the section 6(e)(1) language. Tracking requirements are necessary for effective management of PCB disposal by EPA, and they function as warnings and instructions to be followed by others in connection with the processing, transport, and disposal of PCB wastes. Therefore, the promulgation of the tracking system proposed today for PCB wastes is clearly authorized by the TSCA section 6(e)(1) language.

EPA also regulates the storage of PCB wastes prior to disposal under its TSCA section 6(e)(1) disposal authority for PCBs. The current requirements for PCB storage facilities are codified at 40 CFR 761.65. Therefore, the amendments proposed today to the § 761.65 storage regulations are also promulgated under section 6(e)(1) of TSCA.

III. Background

A. Regulatory History

TSCA, which became effective on January 1, 1977, includes in section 6(e) specific provisions which demonstrate Congress' intent that commercial activities involving PCBs be eliminated or restricted. In addition to requiring the implementation of a disposal program for PCBs (section 6(e)(1)), Congress established in sections 6(e)(2) and 6(e)(3) phased prohibitions on the new manufacture of PCBs, the use of PCBs, the processing of PCBs, and the distribution in commerce of PCBs. By the terms of the statute, the phase-in of the PCB prohibitions was to begin 1 year after the Act's effective date. However, the statute also conferred authority upon EPA to authorize certain "non-totally enclosed" uses of PCBs upon a showing that the uses would not present unreasonable risks of injury to health or the environment. (15 U.S.C. 2605(e)(2)(B)). Similarly, section 6(e)(3)(B) gives EPA authority to exempt activities from the statutory prohibitions on PCB manufacture, processing, and distribution in commerce. These exemptions, which are effective for 1 year if not renewed, require a showing that the activity will not pose an unreasonable risk of injury to health or the environment, and a showing that good faith efforts have been made to develop substitutes for the PCBs involved in the activity. (15 U.S.C. 2605(e)(3)(B)).

Since the enactment of TSCA, EPA has developed a comprehensive body of regulations implementing section 6(e). In a final rule issued on May 31, 1979 (44 FR 31514), EPA set forth a comprehensive approach to the implementation of the TSCA section 6(e) prohibitions on PCB activities. The May 31, 1979 regulation announced many of the core definitions and policies underlying the national PCB program. Furthermore, this regulation announced the Agency's initial policies and decisions on various requests for use authorizations and requests for exemptions from the statutory prohibitions on new manufacture, processing, and distribution in commerce. The May 31, 1979 regulation also amended and recodified the disposal requirements for PCB wastes, which EPA had originally issued in a regulation published on February 17, 1978 (43 FR 7150).

Since the enactment of TSCA in 1976, the disposal requirements for PCB wastes and the disposal requirements for RCRA "hazardous wastes" have been handled separately. TSCA and RCRA were enacted within several days of each other in October, 1976, and regulations implementing the RCRA hazardous waste management system were published on May 19, 1980 (45 FR 33119). Because Congress called for the creation of a PCB disposal program under TSCA section 6(e)(1) within months of TSCA's effective date, it was necessary for the Agency to initiate the PCB disposal program well before the implementation of the RCRA management system.

The existing PCB disposal regulations at 40 CFR 761.60 *et seq.*, prescribe specific disposal requirements for defined classes of PCB wastes. The classes of wastes are defined in terms of the source, physical state, and PCB concentration of the waste material. The PCB disposal requirements apply generally to PCB materials that contain PCBs at concentrations of 50 parts per million (ppm) or greater. The disposal regulations specify the disposal options available for the various species of "PCBs" and "PCB Items," as they are defined at 40 CFR 761.3. The most significant of the disposal requirements are those specified at 40 CFR 761.60(a) for PCB liquids (primarily, askarel dielectrics and mineral oil dielectrics) and the requirements specified for "PCB Articles," which include "PCB Transformers," "PCB Capacitors," and "PCB-Contaminated Electrical Equipment." (40 CFR 761.60(b)). These PCB liquids and PCB Articles account for the preponderance of all the PCBs that have been produced in the past, and they are the source of much of the PCB waste that is subject to the TSCA disposal regulations.

The PCB disposal regulations generally require that the regulated PCB wastes be disposed of in high-temperature incinerators that accomplish 99.9999 percent PCB destruction, or in alternative disposal processes that accomplish an equivalent level of performance (40 CFR 761.60(a)(1), 761.60(e)). Destruction in approved, high-temperature incinerators is the primary disposal method for PCBs, while disposal in approved chemical waste landfills (§ 761.75) and in alternative processes (alternative thermal, chemical destruction, physical separation, etc.) accounts for the disposition of a relatively small proportion of the total PCBs removed from service.

The PCB disposal regulations are aided by specific marking requirements for PCB Items at 40 CFR 761.40. Also, PCB storage requirements at 40 CFR 761.65 impose design, location, and containment requirements for the storage facilities used to store PCB wastes prior to disposal. The storage requirements are intended to minimize the potential for releases of stored PCBs to the environment, and that potential is further mitigated by the requirement that limits the storage of regulated PCB wastes to a period not exceeding 1 year (40 CFR 761.65(a)). Finally, the existing PCB regulations require that certain records be kept at facilities which use, store, or dispose of PCBs, and these records must include information documenting the use, transfer, and disposition of specific PCB Items (40 CFR 761.180).

B. Generation of PCB Wastes

In this proposal, the term generator of PCB waste is defined and used in order to maintain consistency with the RCRA tracking system for hazardous wastes, which forms the model for much of today's proposal. The generator concept is fundamental to the RCRA hazardous waste management system, and the term has gained such familiarity over the years among those connected with waste management, that its use in this proposed rule is virtually a necessity. However, the term "generator" itself nowhere appears in the current TSCA disposal regulations for PCBs, although the concept of generating waste applies as much to PCB wastes as to any other material.

For purposes of this proposal, "generator of PCB waste" would be defined as any person whose act or process produces PCBs that are regulated for disposal under TSCA, or whose act first causes a "PCB" or "PCB Item" to become subject to the Subpart D disposal requirements of 40 CFR Part 761. For example, the "owners" or "users" of the PCB fluids and PCB Items regulated for disposal under TSCA are, or will become, the typical generators of PCB wastes, at such time as they retire their regulated materials (50 ppm or greater) from service.

In other circumstances, the term generator connotes broader coverage than mere owner or user of PCBs or PCB Items. For example, a transporter who cleans up PCBs that spill from a transport vehicle may be a generator of PCB waste. Likewise, a disposal facility may at times be a generator of PCB waste, such as when it physically separates PCBs from dielectric fluids, and transports the separated phase (e.g., stillbottoms or sludges) containing PCBs to an approved incinerator for destruction. So, beyond the typical case where an owner or user of PCBs removes PCBs or PCB Items from service, PCB waste may also be "generated" by those who respond to PCB spills, those who drain PCB fluids from PCB Articles during servicing or disposal operations, those who process or distribute in commerce PCB wastes in a form other than that previously manifested, and those who remove PCBs from existing disposal sites, including disposal sites that pre-date the Subpart D disposal requirements for PCBs.

This definition is similar to the RCRA definition of "generator" at 40 CFR 260.10, but it differs from the RCRA definition in one important respect. In the context of this proposal, the term "generator of PCB waste" generally refers to the "person" (see 40 CFR 761.3) who creates PCB wastes, and not, as would be the case under RCRA, to the individual sites where particular PCBs or PCB Items were used before they became wastes.

Section 761.3 defines "person" to include individuals, government entities, corporations, and other business associations, so the effect of the proposed definition of "generator of PCB waste" generally would be to consolidate all of the PCB waste created by a given "person" under one generator identification, regardless of the number of sites that "person" might use, own, or control. The only exception is where another regulation expressly calls for a site-specific meaning of the term "generator of PCB waste." In such a case, the more specific requirement controls. The only site-specific reference to generator proposed here is the requirement that the users, owners, or processors of PCBs or PCB Items who maintain their own § 761.65(b) storage facilities for PCBs must submit unique generator notifications to EPA for each of their PCB storage facilities. In cases where the "generator" owns or operates storage facilities, each site of storage would be a unique "generator of PCB waste" for purposes of this regulation. As such, PCB wastes transported from the storage facilities would be manifested from the storage sites, and the manifests would reference the storage facilities' unique EPA identification numbers. The proposal to treat users' and owners' storage facilities as unique generators is discussed further in Unit IV.B.2. of this preamble. Otherwise, all PCB waste generated by a given individual or company would be identified with the one consolidated generator.

Defining "generator of PCB waste" in this manner for TSCA purposes departs from the RCRA Subtitle C approach. This distinction is made necessary by attributes of the PCB waste universe that set it apart from the RCRA universe. Under RCRA, the typical generator of hazardous waste is an industrial facility that regularly produces waste streams that are fairly predictable from the standpoint of both volumes generated and their composition. The generation of these waste streams is a regular occurrence associated with the manufacturing and processing activities engaged in at the specific facilities or sites. In this context, a site-specific definition of "generator" is sensible.

PCBs, on the other hand, are widely dispersed among millions of "sites" involving end use of electrical equipment and similar articles. In this context, a site-specific definition of "generator" would result in an unwieldy waste tracking system that would be neither workable nor cost-effective. For example, if each site where electrical equipment is used were to be treated as a unique generation site, the utilities could be required to submit unique notifications for each of the more than 12 million mineral oil-filled distribution transformers which they own or operate. This result would overwhelm both EPA and the regulated community. Requiring unique notifications would be inefficient administratively, since significant resource burdens would be associated with issuing for each site a unique identification number, which would be used only one time to track the movement of one item of waste.

The consolidated definition of "generator of PCB waste" proposed here will promote greater regulatory efficiency, without the loss of information that EPA would find highly useful. For example, under the proposal, the 12 million individual distribution transformers would be dispersed among 3,320 utility system generators, a far more reasonable and workable result than would be accomplished under a site-specific definition based on site of use. Greater regulatory efficiency is also anticipated for non-utility entities, such as the non-utility industrial users of PCB Transformers and PCB Capacitors, and those who use PCB Transformers in commercial building installations.

EPA requests specific comments on the extent of consolidation that the proposal will accomplish in terms of defining users or owners of PCBs as generators. To what extent will this proposed definition of "generator of PCB waste" reduce the actual number of generator notifications that EPA will receive under this rule? Further, how will the consolidated definition of generator of PCB waste affect the costs associated with manifesting waste shipments and records retention? Will the proposed definition cause conflicts with State hazardous waste programs that currently regulate PCBs, and if so, how could those conflicts be minimized? Alternative definitions of "generator" are also solicited by the Agency.

C. The Universe of PCB Waste

The PCB regulatory universe is not characterized to any significant degree by sites of new manufacture or processing of PCBs as a part of a facility's regular industrial operations. In fact, the amount of regulated PCB wastes associated with "new" manufacturing by chemical manufacturers and processors (see

"excluded manufacturing processes" definition at 40 CFR 761.3) has been estimated at approximately 10,000 to 40,000 pounds of PCBs, an amount which pales in comparison to the 312 million pounds of PCBs that are estimated to be dispersed among the nearly 30 million discrete units of electrical equipment that are potentially subject to TSCA disposal requirements. In terms of total volume, the PCB fluids in electrical equipment are estimated to amount to 1.46 billion gallons of material.

The PCB waste universe is in fact dominated by that component associated with the end use of electrical equipment products, which by design, contain dielectric fluids and insulating fluids. These fluids were laden with PCBs either by purposeful design, or by inadvertent cross-contamination through years of servicing and manufacture. PCBs were introduced into commerce in 1929. Prior to concerns being raised in the early 1970's about their toxicity and persistence, some 1.25 billion pounds were used in the United States by various industries that found PCBs advantageous in their products because of their chemical and thermal stability and their non-flammability.

In terms of intentional production, approximately 965 million of the 1.25 billion pounds of PCBs used in the United States were installed in the dielectric fluids of transformers and capacitors. Another 100 million pounds of PCBs were placed in service in the fluids of hydraulic and heat transfer equipment, while 45 million pounds were used as plasticizers in carbonless copy paper. In addition, there was heavy use (115 million pounds) of PCBs in dispersive applications such as uses as plasticizers in synthetic resins and rubbers, epoxy paints, and protective coatings. PCBs have also been used in machine-tool cutting oils; in high-vacuum oils, mining machinery oils, and the oils used in the compressors of natural gas pipelines; in specialized lubricants and gasket sealers; in printing inks, textile dyes, and synthetic adhesives; in sealers used as water-proofing compounds and putty; and as extenders in investment casting waxes and pesticides. Most of the latter uses dispersed PCBs to the environment years ago, and are no longer controllable by regulation. The "closed" uses such as electrical fluids and coolants are responsible for the greatest volumes of PCB wastes that are subject to the TSCA disposal regulations.

When EPA began its PCB regulatory program in 1978, the Agency estimated that the prior years of PCB usage had already caused some 150 million pounds of PCBs to have been released irretrievably to the environment. EPA estimated that another 290 million pounds of PCBs had been placed in landfills and dumps prior to the enactment of the regulations controlling PCB disposal. However, at the outset of the program, EPA estimated that the great bulk of intentionally produced PCBs, that is some 758 million pounds, was still in service in products, with the use in electrical equipment (transformers, capacitors, etc.) accounting for 750 million pounds of the in-service quantities.

Transformers have a useful life of 30 to 40 years, while capacitors typically have a 15- to 20-year average life. The relatively long life of this equipment suggests that the PCB disposal program will be active for several decades, since most of the PCB-containing electrical equipment has been authorized under the existing regulations for the remainder of its useful life (40 CFR 761.30(a)). However, the fact that the 750 million pounds originally estimated to be in service in electrical equipment has been reduced in 10 years to approximately 310 million pounds indicates that the disposal of PCBs is progressing at an accelerated pace.

This development is due in part to several mandatory equipment phase-outs that were announced in the Electrical Equipment Rule of August 25, 1982 (47 FR 37357) and the more recent PCB Fires Rule of July 17, 1985 (50 FR 29170). The Electrical Equipment Rule required that "PCB Transformers" installed at food and feed facilities be eliminated by October, 1985, while PCB Capacitors at these same facilities must be eliminated by October, 1988. More significantly, this rule requires that nearly one-half of the more than 2.8 million Large PCB Capacitors that were estimated to be in service in 1984 be eliminated from use by October, 1988, unless they are situated in restricted access substation or industrial locations. Finally, by the terms of the July 17, 1985 PCB Fires Rule, a significant number of the nearly 100,000 PCB Transformers that are not located in utility substations may be designated for disposal because of restrictions announced in that rule for PCB Transformers in or near commercial buildings. That rule requires the phaseout of transformers with certain specifications by October, 1990, and the installation of enhanced electrical protection on other units by the same date.

Because of these mandatory phaseout requirements and restrictions, EPA expects that the next 3 years will be a peak period for PCB disposal. Electrical fluids and equipment are expected to account for the preponderance of PCB waste volume, although significant amounts may also be derived from contaminated natural gas pipeline condensates and wastes, hydraulic and heat transfer equipment fluids that are not yet in compliance with the 50 ppm cut-off on authorized use, and PCB-contaminated materials and debris associated with remedial actions at Superfund sites, sites of PCB spills, or pre-TSCA disposal sites.

D. Evaluation of the PCB Disposal Program

1. Background

For a period extending more than 3 years prior to the issuance of this proposal, EPA and the Congress have examined issues and incidents that concern the management of PCB waste disposal under TSCA. Congressional oversight committees have held during this period several hearings which have probed incidents which the committee members believe cast some doubt upon EPA's ability to ensure that PCB wastes are in fact being properly disposed at permitted PCB disposal facilities. In conjunction with this high level of Congressional interest, EPA has itself conducted a thorough evaluation of its PCB disposal program, with a view to identifying those areas where improvements are needed.

The significance of the PCB disposal program evaluation cannot be overstated, since EPA has decided to retain its disposal program for PCBs under TSCA authority for the foreseeable future, rather than proceed with a rulemaking listing PCBs as hazardous wastes subject to RCRA management standards. The Agency found that after 10 years of experience with and adaptation to the TSCA disposal requirements, a wholesale transfer of the program to RCRA would be far more complex and potentially disruptive than originally anticipated. EPA concluded that the administrative process alone (i.e., the listing rulemaking and the necessity of numerous amendments to the RCRA system to accommodate PCBs) would be extremely resource intensive and time consuming with little, if any, additional benefit to health or the environment.

Moreover, EPA does not believe that the necessary regulatory amendments to RCRA could be accomplished in time to deal with the expected peak demand for PCB disposal which EPA anticipates will occur during the next several years, as the mandatory phaseouts for certain electrical equipment become effective.

Indeed, EPA was very concerned that the pendency of a listing regulation during the peak period of PCB disposal would have a disruptive influence on the orderly disposal of large quantities of PCB waste, since some PCB users might be inclined to change their position by accelerating their rate of PCB waste generation, to avoid the costs of RCRA's more burdensome administrative requirements. From the Agency's standpoint, the pendency of a rule bringing PCB disposal under RCRA would essentially preempt any momentum for pursuing the needed amendments to the TSCA program that might be undertaken in time to meet the peak disposal period.

2. Program Evaluation Findings

While a number of Congressional proceedings and reports have probed various aspects of the PCB disposal program, the most significant of these proceedings were hearings conducted by the Subcommittee on Environment, Energy, and Natural Resources, a subcommittee of the Committee on Government Operations in the House of Representatives. The Subcommittee held hearings on August 13, 1986, and again on April 6, 1987. At each of these hearings, Subcommittee members probed incidents which were alleged to reflect permitting and enforcement lapses at TSCA-permitted disposal facilities. At each proceeding, the Subcommittee concluded that there were serious deficiencies in the TSCA program's ability to track the movement of PCB waste from generators to disposers. The lack of a manifest system for PCB wastes was specifically addressed as a significant deficiency in the PCB disposal program. The Subcommittee probed allegations of storage and disposal violations at several permitted disposal facilities, and it found especially troubling the lack of any Agency tracking or permitting oversight over the activities of the transporters and off-site, intermediate storers who may function as commercial "brokers" of disposal services with respect to others' PCB wastes. The inability of disposal program managers to identify definitively the intermediate handlers (commercial storers, brokers, transporters) of PCB wastes was highlighted as a fundamental shortcoming in the current national program, particularly with regard to those entities which operate outside the TSCA disposal permitting program. The PCB program was further criticized because none of the intermediate storers operating outside the disposal permitting process are required to undergo any kind of review that evaluates their qualifications or their financial responsibility for properly closing and cleaning up their facilities.

In response to the findings of the Subcommittee, EPA conducted its own evaluation of its Regional and Headquarters permitting and enforcement functions relating to PCB disposal. This evaluation concluded that there was an urgent need to adopt a means of tracking the movement of PCB waste to its ultimate disposition, and a need to develop definitive data on who, other than permitted disposers, is handling PCB waste, and where it is being handled. The lack of this very basic information is a serious handicap because it contributes to EPA's inability to track the disposal of PCB waste, and the Agency's inability to target PCB storers and brokers for compliance inspections. In addition, EPA's evaluation identified a need to enhance EPA's approval oversight of the disposers currently subject to approvals (permits), and the commercial storers for which there is not currently an approval process.

The program improvements called for in the Subcommittee proceedings and in the Agency's own evaluation constitute an ambitious agenda. The urgency of this agenda is accentuated by the recent decision to retain the PCB disposal program under TSCA, and the imminence of the peak period of PCB disposal. EPA is working on several fronts to develop the needed guidance or rules to cure the deficiencies which the Agency and Congress have identified. However, EPA concludes that the absence of a PCB waste tracking system and the absence of approval authority over the commercial storers of PCB wastes represent the most urgent of the program's deficiencies. Therefore, EPA has focused upon these subjects as the scope of this proposed rule, so that the regulation may be promulgated on an expedited basis.

IV. Discussion of the Proposed Rule

A. Purpose of Proposed Tracking System

The proposed tracking system for PCB wastes serves several objectives aimed at improving the management and enforcement of the national disposal program for PCBs. First, the notification requirement will provide EPA with basic information on the location of and activities engaged in by many of those persons who handle (generate, store, transport, or dispose) PCB wastes.

Second, the collection of this information will facilitate compliance monitoring and enforcement under TSCA by EPA inspectors. A data base of PCB waste handlers will provide EPA with a basis for targeting facilities for site inspections.

Third, the submission of notifications by PCB waste handlers will be a prerequisite to the issuance by EPA of identification numbers to the notifying entities. Upon receipt of notifications, EPA will issue unique identification numbers to all entities required to notify under this rule, unless they have previously been issued numbers by EPA or by State agencies under RCRA hazardous waste authority. The use of the EPA identification numbers will be required in the manifests and the associated reports which together constitute the waste tracking system. When this rule is effective, generators of PCB waste may only turn over their waste to commercial storers, transporters, and disposers of PCB waste who have notified EPA of their PCB waste activities and received EPA identification numbers and any required approvals. Likewise, commercial storers, transporters, and disposers of PCB waste may only accept PCB waste from other commercial storers, transporters, and disposers who have notified EPA of their PCB waste activities.

Fourth, by implementing the notification and manifesting requirements, EPA will be able to track shipments of PCB wastes from the point of generation, through the commercial storage facilities and other intermediate waste handlers, to the TSCA permitted disposal units. This tracking device creates clear lines of accountability among PCB waste handlers. While owners and operators of storage and disposal facilities are required under the current PCB regulations to keep some records on their overall disposition of PCB wastes, the preparation and retention of manifests among facilities' records will provide more uniform and detailed information on the handling of particular waste shipments as they make their way to disposal sites.

Fifth, the use of a manifest system will foster the proper handling of PCB wastes while they are in transport for disposal. The information on the manifest will augment the marking and placarding requirements for containers and transport vehicles in the existing PCB regulations. The information recorded in the manifest will promote protection of health and the environment by serving a notice function for persons handling PCB waste as well as emergency response personnel.

B. Notification

1. Background

Under today's proposal, certain persons who generate, store commercially, transport, or dispose of regulated PCB wastes would file a notification of such activities with EPA and receive an EPA identification number. This notification requirement would apply to brokers of PCB disposal services to the extent that they qualify as transporters or disposers, or as storers of PCB waste subject to the storage facility requirements of 40 CFR 761.65.

The notification requirement proposed today is similar to the notification process which EPA proposed for hazardous waste activities on July 11, 1978 (43 FR 29908). The notification process under RCRA section 3010 was finalized with the publication of a hazardous waste activity notification form on February 26, 1980 (45 FR 12746). The RCRA notification program was based on a direct statutory requirement within section 3010 of RCRA. This section of RCRA requires any person who generates or transports hazardous waste or who owns or operates a facility for the treatment, storage, or disposal of hazardous wastes to notify EPA, or States having authorized hazardous waste programs under RCRA, of their hazardous waste activity. This statutory requirement has enabled EPA to develop a computer database on the hazardous waste handlers who constitute the RCRA-regulated universe. Based upon the evaluation of the PCB disposal program by EPA and the Congress, EPA has determined that a database on the activities of PCB waste handlers is equally necessary. The Agency has further concluded that the creation of this information collection is within TSCA's section 6(e) statutory authority.

Similar to RCRA, EPA is proposing that the TSCA notification process be linked to manifesting under TSCA, which is another subject of this proposal. Upon notification, persons would be issued a unique EPA identification number. On the date 120 days after the effective date of the final rule, it would be illegal to receive regulated PCB wastes from a person who does not have an EPA identification number. Likewise, on this same date, it would be illegal to deliver any regulated PCB waste to another waste handler who does not have an identification number. Generators of PCB waste who are exempted from notification requirements under proposed § 761.205(c)(1) would be deemed as having received by rule the identification number "40 CFR Part 761." In the event a person has notified EPA within the 60-day period provided in the proposed rule, and EPA has not issued or confirmed an identification number for that person, the person would be entitled to use either the number "40 CFR Part 761" or a specific number assigned to that person by EPA or a state under RCRA, until EPA assigns or confirms the use of an identification number under this rule.

EPA proposes that a standard form be used for PCB waste activity notifications under TSCA. The proposed form is set out at § 761.205(a)(3) of this proposed rule, and it is based on existing EPA Form 8700–12, "Notification of Hazardous Waste Activity" (43 FR 12745, as revised 11/85). The form has been tailored to the requirements specified under this rule for notification under TSCA. However, the general format of the Hazardous Waste Activity form has been preserved as far as possible, to facilitate compliance and data entry.

2. Who Must File Notifications

This proposal would require certain generators and all disposers, transporters, and commercial storers of regulated PCB waste to file a notification form identifying their PCB waste facilities and activities. Each generator, transporter, disposer, and commercial storer of PCB waste who notifies under this rule would receive from EPA a unique identification number identifying each facility involved with the handling of PCB wastes. The only generators who would notify EPA as unique facilities under this proposal would be generators who store the PCB wastes they generate at storage facilities which they own or operate, and which are subject to § 761.65(b) storage facility standards.

Generators, commercial storers, transporters, and disposers of PCB waste would check the appropriate box on the form identifying their type of PCB waste activity.

a. *Facilities that have notified previously under RCRA.* In instances where facilities have previously been issued RCRA identification numbers, the facility would indicate on the space provided in Item III of the form their RCRA identification numbers. EPA will use for TSCA purposes the same identification numbers previously issued to facilities by EPA or states under RCRA. However, EPA emphasizes that facilities which have previously notified under RCRA would be required to notify again for purposes of identifying under TSCA the location and nature of their PCB waste activities, as well as their identification numbers previously issued to them.

b. *Notification by generators.* This proposal adopts a different approach than under RCRA regarding the notification requirements that apply to generators of PCB waste. EPA has concluded that it would not be efficient to require separate notifications by all persons who generate PCB waste. The universe of PCB waste generators is dominated by many thousands of end users of PCB electrical equipment. For example, there are about 3,320 utility companies that use and store significant numbers of PCB Items, and there may be as many as 117,000 nonutility facilities that use PCB-containing electrical equipment. While some of these users may possess substantial inventories of PCBs and PCB Items, and therefore routinely generate PCB wastes, many of these users possess only a few PCB articles that would potentially be subject to TSCA disposal requirements. The administrative burden of notification on both EPA and these many end users would be unreasonable where the notification would facilitate the tracking of only one, or a very few articles of PCB waste. The utility to the Agency of a data base that contained information on the one-time or sporadic generators of PCB waste would be far outweighed by the costs of submitting and processing the information.

Therefore, EPA is proposing a notification requirement for generators that focuses upon the larger volume users, owners, and processors of PCBs who store the PCB wastes which they generate at their own § 761.65(b) storage facilities. These are the generators who may be expected to utilize PCB disposal services on a fairly regular or large-scale basis, and for whom it is administratively efficient to require particular information about their PCB waste generation activities. Such generators would not construct and operate their own PCB storage facilites unless they generated PCB wastes with the frequency and volume that would merit incurring the costs of construction and maintenance of these facilities. It is appropriate that these generator/storers be a part of the Agency's database of regular handlers of PCB waste.

In submitting their notifications to EPA, members of this class of generator/storers would submit a notification form for each of their storage areas that is subject to § 761.65(b). EPA would issue a unique identification number to each notifying storage facility, and this identification number would correspond to the physical location of the facility. EPA

anticipates that this class of generators will consist primarily of utilities and other heavy industrial users of PCB electrical equipment. These users typically operate storage and maintenance yards where PCB wastes are likely to be generated or consolidated prior to off-site disposal. Also, members of the transformer service and repair industry would be likely members of this class, because of the significant volumes of PCB waste which they may generate during the routine servicing, rebuilding, repairing, retrofilling, or salvaging of electrical equipment.

c. *Generators who need not notify.* Other generators of PCB waste who do not maintain storage areas subject to the § 761.65(b) storage facility standards would be exempt from the requirements to notify EPA and obtain unique identification numbers. These exempt generators would instead use the generic identification number "40 CFR PART 761" on their manifests in lieu of a unique facility identification number.

This exemption would operate only as an exemption from the generator notification requirement; it would not exempt these generators from the obligation to prepare manifests to accompany their shipments of PCB wastes. As explained more fully in Unit IV.C, this proposed rule would require that all shipments involving PCB wastes be fully manifested, if any part of the shipment contains PCBs at levels equal to or exceeding 50 ppm. Any generator initiating such a waste shipment would initiate a manifest under this proposal.

d. *Other definitions. For the purpose of today's proposed regulation:*

"Commercial Storer of PCB waste" would mean the owner or operator of a storage facility which is subject to the storage facility standards of 40 CFR 761.65(b), and which engages in storage activities involving PCB wastes generated or owned by others. Commercial storers of PCB waste generally perform waste storage services in exchange for a fee or other compensation, but the receipt of compensation would not be necessary to qualify a storage facility as a commercial storer of PCB wastes. It would be sufficient that the facility stores PCB wastes generated or owned by others. Commercial storers of PCB waste would be required to comply with the § 761.65(b) facility standards, the storage facility approval requirements of § 761.65(d), the recordkeeping requirements of § 761.180(b), and the applicable requirements of the tracking system for PCB wastes proposed in this document.

"Transfer facility" would be defined as any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of PCB waste are held during the normal course of transportation. PCB storage areas at transfer facilities would be required to comply with the storage facility standards of § 761.65, but they would be exempt from the approval requirements of § 761.65(d), unless the same PCB wastes are stored at such facilities for longer than 10 consecutive days after they receive PCB wastes. Transport vehicles would not be transfer facilities within the meaning of this definition, unless the transport vehicle is being used for the storage of PCB wastes, rather than for actual transport activities.

The proposed rule also contains definitions of "designated facility," "disposer of PCB waste," "EPA identification number," "manifest," "off-site," " PCB waste," and "transporter of PCB waste."

EPA invites comment on the proposed definitions, and the scope of the notification requirement proposed in this rule. In particular, comments are requested on these subjects:

i. The feasibility of assigning by rule a generic identification number (e.g., "40 CFR PART 761") to be used in manifests by those generators who would be exempted from notification by the proposal, but still subject to Federal manifesting requirements. Will transporters, commercial storers, and disposers of PCB wastes have reservations about accepting wastes and manifests with non unique generator identification numbers?

ii. The appropriateness of designating generators having storage facilities subject to § 761.65(b) facility standards for PCB storage as the class of PCB waste generators who must submit notifications to EPA, and treating each of their storage facilities as unique generators. Is this the most effective criterion for identifying the PCB users, owners, and processors who generate PCB waste with the frequency and in the quantities that warrant inclusion in the Agency's facility-specific database of PCB waste handlers? Are there alternative criteria that would identify other generators of concern without overwhelming the database with many thousands of end users who may individually hold only a small amount of PCB material, or who may generate PCB waste very infrequently?

iii. The feasibility of including PCB storage areas at transfer facilities among the storage facilities subject to the § 761.65 facility standards for the storage of PCB wastes. This proposal would, however, exempt storage at transfer facilities from the approval requirements that apply to commercial storers of PCB waste, unless PCB waste is stored at such facilities for periods exceeding 10 days. This 10-day approval exemption is consistent with the similar exemption under RCRA for storage of hazardous wastes at transfer facilities. The Agency requests comment on the appropriateness of the proposed 10 day exemption from storage approval requirements.

3. Notification Process

EPA is proposing a sample notification form and instructions for all those who may be required to notify. EPA will try to inform those affected by this proposal of the rule's contents, so that the effort to reach the regulated community of PCB waste handlers can have maximum effect. Specifically, EPA will contact relevant industry associations, including associations representing the utilities and the other large non-utility manufacturing industries that are likely to be the heaviest generators of PCB waste. The Agency will also work closely with the several groups who have expressed interest in the issues involved with this regulation, and have indicated their willingness to provide lists of their members to facilitate notification.

Failure of the EPA's outreach efforts to reach any affected person will not, however, relieve that person of the legal requirement to notify under the final rule. Members of the public affected by the final rule are therefore encouraged to obtain or make copies of the rule and included sample Notification Form, and distribute them to the other generators, commercial storers, transporters, and disposers with whom they deal so that all may be in compliance with the requirement to file a notification form within 60 days of the final rule's effective date.

4. When To Notify

Because of the urgency involved in implementing the waste tracking system in time to meet the imminent peak in PCB disposal demand, EPA will promulgate this rule on an expedited basis. This proposed rule announces a public comment period for written comments of only 30 days, and commentors are asked to submit their comments forthwith so that they may be considered in preparing the final rule. EPA intends to promulgate and make effective a final rule under an expedited schedule. The final rule will only

provide for a 60-day period after the rule's effective date for notifications to be received by the Agency. EPA believes that this expedited rulemaking schedule is reasonable in light of the fact that the regulation adopts in large part the existing RCRA tracking system with which most affected persons are already familiar.

EPA recognizes that this expedited schedule poses some potential for confusion among the generators desiring to procure PCB disposal services, as they will need to be certain that they are dealing with transporters, commercial storers, and disposers who have in fact complied with the notification requirements. Therefore, to facilitate an orderly notification process, EPA recommends that entities who perceive that they are likely to be affected by these proposed notification requirements notify EPA during the 90-day period immediately after publication of this proposed rule. The sample notification form proposed in this notice may be used to submit an early notification to EPA. EPA will process these early notifications as soon as possible by issuing identification numbers. Entities which notify early will be assured of receiving the most rapid turnaround in the processing of their notifications. These entitites should have no difficulty in demonstrating to their customers compliance with the requirement to submit a notification no later than 60 days after the final rule's effective date.

EPA emphasizes that the entities who elect to notify early will not waive any objections or other comments which they may wish to submit during the public comment period. The submission of an early notification is entirely independent of the right to comment on the proposal, and no one will be prejudiced by submitting an early notification.

EPA would return to each notifier an acknowledgment of receipt of the notification form, which would include the notifier's EPA identification number. EPA believes that it will be able to process most of the notifications within 120 days of the final rule's effective date. However, EPA may not be able to issue all identification numbers within the 120-day period. Accordingly, EPA is proposing that, in the event a person has notified EPA within the 60-day period provided in the proposed rule, and EPA has not issued or confirmed an identification number for that person within the 120-day period provided, the person would be entitled to use either the number "40 CFR Part 761" or a specific number previously assigned to that person by EPA or a state under RCRA. The person would be entitled to use this number only until EPA assigns or confirms the use of an identification number under this rule. Thus, no person who has notified EPA in a timely fashion will be prevented from continuing its PCB waste activities for lack of an identification number.

In addition, any non-exempt generator, commercial storer, transporter, or disposer of PCB waste who begins PCB waste activities after the effective date of the final regulation would be required, prior to handling any PCB waste, to notify EPA and receive an EPA identification number in accordance with this proposed rule. Such new entrants into the regulated community would not be allowed to operate until they receive an identification number. In the case of disposers of PCB waste and commercial storers of PCB waste, new entrants into these businesses would be required to obtain both EPA identification numbers and final approvals before they could commence disposal or storage operations. The Agency recommends that applicants for TSCA disposal or storage approvals submit their notification forms during the period of review of their disposal or storage approval applications. The Agency emphasizes that in no case would the requirements to notify and obtain identification numbers excuse compliance by any entity with the 1-year limit on storage prior to disposal under 40 CFR 761.65(a).

5. When To Notify

There are numerous Federal officials responsible for distinct pieces of the PCB disposal program, and some states also regulate PCB disposal under their own regulatory programs. EPA believes that the notification process can only work if administered centrally. Therefore, EPA proposes that notifications by PCB waste handlers be submitted to EPA Headquarters at the following address: Chief, Chemical Regulation Branch, Office of Toxic Substances (TS–798), Rm. NE–117, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

6. Information Required for Notification

The proposed notification form is set out at § 761.205(a)(3) of this proposed rule; however, the form will not appear in the Code of Federal Regulations when the final rule is published. This section of the preamble describes the information required on the proposed notification form.

An area at the top of the form is labelled "For Official Use Only." This unnumbered section is to be completed by EPA officials and should be disregarded by the notifier. In this space, EPA will enter any comments, the notifier's EPA identification number, an approval code, and the date on which EPA receives the notification form.

Items to be filled out by the respondent are numbered I through VII. The name of the facility submitting the notification would be indicated in Item I, and if the facility has already received an EPA identification number under RCRA, that number would be supplied in Item II.

Item III would contain the mailing address of the respondent, while Item IV would contain the actual location of the installation, since the location (a physical address) may not be the same as the mailing address. Where mobile disposal facilities are involved, the respondent would be instructed to write "mobile" on the space in Item IV, and to supply on the space in Item III, the mailing address of the facility's installation contact identified in Item V.

Item V, Installation Contact, would contain the name of an individual at the facility who can be contacted by EPA to clarify information on the notification form or provide information in the event of a spill or other emergency. The individual's telephone number would be specified here as well.

Item VI, Type of PCB Waste Activity, would ask the respondent to indicate whether the facility to which the notification applies is a generator, commercial storer, transporter, or approved disposer of PCB waste. "Commercial storer of PCB waste" here would refer to those storage facilities which store PCB wastes owned or generated by others. The term would not apply to the storage sites maintained by the owners or users of PCBs who initially generate PCB waste when they remove PCBs from service. Where transporters and disposers also maintain storage facilities for PCB waste subject to 40 CFR 761.65(b), they would need to check both the commercial storer box and the relevant transporter or disposer box in this section.

The final section of the form, Item VII, Certification, would be signed and dated by the owner, operator, or authorized representative of the installation. An "authorized representative" is a person responsible for the overall operation of the facility.

In preparing this notification form, EPA modified the existing form used under RCRA (EPA Form 8700–12, Rev. 11/85) for notification of hazardous waste activities. EPA believes that this form as modified is adequate for the

purposes of PCB notification under TSCA, considering the similarity of the intent of RCRA hazardous waste activity notification and TSCA PCB notifications. EPA welcomes any comments on this form; however, to the extent that changes to the form are made in the final rule, EPA assures those who elect to notify during the pendency of the rulemaking that they will not be asked to notify anew because of any such changes.

7. Claims of Confidentiality

TSCA section 14 addresses the confidentiality of business information reported to EPA, or otherwise obtained by EPA, in administering TSCA. (15 U.S.C. 2613(a)). EPA's rules implementing section 14 appear in 40 CFR Part 2.

While information submitted in a reporting form may ordinarily be claimed as confidential, EPA has purposely designed the proposed notification form so that its preparation will not require the submission of any data that EPA believes would be confidential business information (CBI) under TSCA. The form would merely ask for the most basic of information regarding the name, location, and general description of PCB waste handling activities engaged in by notifying entities. It does not ask for information on quantities processed, customers, technical processes, financial information, or for any other information which, when linked to a company's name, could adversely affect a company's competitive position.

EPA has determined that the following information will not be treated as confidential business information: The name of the facility, other EPA identification numbers issued to the facility, the facility's mailing address, information about the facility's ownership, the location of the facility, the facility's installation contact, or the type of PCB activities engaged in at the facility. The reasons for this determination are:

(1) The information is reasonably available from other sources.

(2) If disclosed, it is unlikely to affect adversely the submitter's competitive position.

(3) The information is neither commercial nor financial information protected from disclosure under TSCA or the Freedom of Information Act.

This information will be disclosed to the public without further notice to the submitter unless the submitter provides a written justification (submitted with the notification information) which demonstrates extraordinary reasons why the information is entitled to confidential treatment.

8. EPA Identification Number

To maintain consistency with the RCRA notification procedures already in place, and to avoid subjecting those who may already possess RCRA identification numbers to the burden of being assigned multiple numbers, EPA proposes to use the numbering system adopted under RCRA for today's proposal under TSCA.

The RCRA numbering system currently assigns each notifier a 12-digit number. The first 2 characters indicate the State in which the facility is located; the remaining 10 characters are the Dun and Bradstreet Data Universal Numbering (DUN) system numbers. The DUN system provides the most nearly complete listing of U.S. businesses. Federal agencies, which are not included in the DUN system, would be assigned their General Services Administration Real Property Number. State and local government installations would also be assigned unique numbers. Where notifications are submitted by mobile disposal facilities, the identification number that EPA assigns would correspond to the business' corporate headquarters or other business location identified in Item III of the notification form. EPA requests comments on the use of this proposed numbering system. Where there are problems identified with the proposal, EPA requests that alternatives be suggested that would be more workable or efficient.

9. Relationship to CERCLA Notifications

In addition, EPA emphasizes that the notification requirements contained in this proposed rule are in no way related to and would not affect the independent notification requirements under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The proposed rule would not alter the responsibilities of a person in charge of an onshore or offshore facility or vessel to notify the National Response Center of the release of a reportable quantity (RQ) or more of PCBs or any other hazardous substance as defined under CERCLA.

Under CERCLA sections 103 (a) and (b), any person in charge of an offshore or onshore facility or vessel is required to report to the National Response Center as soon as he or she has knowledge of any release of a hazardous substance that is equal to or greater than the RQ. However, as stated in a final rule published on April 4, 1985 (50 FR 13461) regarding RQs, disposal of hazardous substances at a disposal facility in accordance with EPA regulations is not subject to the CERCLA notification requirements. Thus, if PCB wastes are properly disposed of in a TSCA approved facility, and this is properly documented through manifests and other records, CERCLA notification is not required. However, spills and accidents which occur during disposal activities, and which result in releases of an RQ or more of PCB waste, must be reported to the National Response Center. Additionally, any PCB releases (as opposed to disposal) of an RQ or more from a TSCA storage or disposal facility must be reported under CERCLA.

C. Manifesting

1. Background on RCRA Manifesting System

When Congress enacted RCRA in 1976, it included in section 3002 of the Act an express mandate to create a manifest system to assure that hazardous wastes are designated for and in fact arrive at approved treatment, storage, and disposal facilities. On February 26, 1980, EPA issued a rule published in the **Federal Register** which announced the creation of the RCRA manifest system (45 FR 12722). The manifest system is the centerpiece of the "cradle-to-grave" tracking system which EPA and the States rely upon to ensure that hazardous waste designated for off-site management actually reaches its destination. The manifest acts as a control and shipping document that accompanies the waste from its point of generation to its point of destination. The manifest also acts as a record which remains in the files of waste handlers, and from which information may be culled for periodic reports summarizing overall waste activities.

EPA first proposed manifest requirements for hazardous wastes on December 18, 1978 (43 FR 58969). The original manifest regulation of February 26, 1980 designated the information that was required to accompany waste shipments, but it did not prescribe a standard form. At the time, EPA believed that there was greater benefit in a flexible approach to manifesting, fearing that the creation of a standard form would be too rigid a means of reconciling the various requirements of EPA, the States, and the Department of Transportation (DOT).

Shortly after the initiation of the manifest system, EPA received a number of requests to reconsider its decision rejecting a standard form manifest. These petitioners pointed out

that there had arisen among the States a multitude of manifest forms, and that compliance with these differing State forms had created a burden on generators, transporters, and the State programs. The use of varying manifest forms complicated enforcement activities, prevented generators from adopting standard manifesting procedures, and forced transporters to carry multiple manifests for the States through which they moved. EPA responded to these requests by issuing a proposed rule requiring the use of a uniform national manifest (43 FR 9336, March 4, 1982). The final rule adopting the uniform national manifest (49 FR 10490, March 20, 1984) was developed jointly by EPA and DOT, and the uniform manifest has been a RCRA requirement since September 20, 1984.

EPA is proposing in this document to require the use of the Uniform Hazardous Waste Manifest (Uniform Manifest) form by the handlers of PCB wastes. The use of the Uniform Manifest for PCB waste shipments will facilitate compliance with both TSCA and RCRA, and it will avoid the confusion and expense that would arise from the requirement of any other document. EPA believes that the Uniform Manifest can be adapted fairly easily to PCB wastes, with only slight interpretive changes, and a slight change in the copy distribution requirements.

2. EPA's Rationale for Proposing a Manifest System

The most frequently cited deficiency in the TSCA disposal program for PCBs is the absence of sufficient program oversight to assure that regulated PCB wastes are in fact being disposed of at permitted disposal sites. The Agency believes there is some merit in these concerns and has determined that a tracking system based on the Uniform Manifest system requirements can play a valuable role in addressing these concerns.

A valuable attribute of manifesting is that the manifest system shifts some part of the waste tracking "enforcement" burden to the generators of waste. The generator bears the responsibility for demonstrating that the waste which it ships actually arrives at the designated off-site storage or disposal site. The paper trail established by the manifest confirms the physical delivery of waste to commercial storers, transporters, and designated disposers, thereby providing for checks and balances on the activities of waste handlers. In addition, the several reporting requirements allied with the manifest system operate as "red flags" triggering Agency attention when anomalies develop. By documenting the progress of waste from the site of generation to the site of commercial storage or disposal, the routing of the manifest in effect acts as a surrogate for the inspection of each phase of waste handling.

EPA is aware that a manifest system is not infallible. A system that substitutes surveillance of shipping documents for surveillance of actual waste handling is vulnerable to abuse. In a 1985 report entitled "Illegal Disposal of Hazardous Waste: Difficult to Detect or Deter," the General Accounting Office (GAO) highlighted the fact that the RCRA manifest system has not been an altogether successful tool for *detecting* instances of illegal hazardous waste disposal. The GAO report concluded that manifesting was effective in *deterring* illegal disposal practices, but that the unscrupulous waste handler bent on noncompliance could circumvent the existing tracking system.

The GAO report found that many of the waste handlers implicated in investigations of illegal disposal had not notified EPA or the State in accordance with the law. The report also disclosed a lack of diligence by generators in verifying the receipt of waste by disposers, as well as fraud by transporters (e.g., forging the disposer's signature on manifests) as two of the more prevalent shortcomings revealed in the enforcement records that the GAO examined. In today's proposal, EPA includes additional safeguards which are intended to address the concerns identified in the GAO report.

Clearly, a manifest system will not achieve the same level of oversight possible in the ideal world, where enforcement inspectors would be on the scene to verify every aspect of waste handling. That ideal is simply not achievable, and EPA must rely upon more feasible means of monitoring the movement of waste that depends to some extent on cooperation and compliance by the great majority of waste handlers, especially generators. In short, EPA is not aware of a feasible alternative that accomplishes a greater level of oversight and deterrence than the manifest system. Therefore, EPA is proposing a tracking system for PCB wastes modeled after the RCRA Uniform Manifest system. EPA invites comment on the appropriateness of this system for the tracking of PCB waste disposal.

3. Who Must Originate a Manifest

A manifest is a shipping document and record that verifies the disposition of PCB waste after its generation. The manifest requirement proposed today would require all generators of PCB waste at concentrations of 50 ppm or greater to manifest their waste shipments, regardless of whether the generator was required to notify EPA under the proposed notification provision discussed in Unit IV.B. of this document. Where PCB waste shipments consist solely of PCB wastes below 50 ppm, this rule would not require generators to prepare a manifest. Manifests for waste shipments under 50 ppm would be required, of course, if such manifests are required under the laws of a State which regulates PCB disposal.

EPA has rejected the use of any "small quantity generator" exclusion based on volume of PCBs or numbers of PCB Items held by a generator. The frequency with which PCB disposal may occur can be very sporadic for individual generators, and the volumes of waste generated over specified periods of time may vary dramatically because of differences in fluid capacities among individual PCB articles. So, the designation of a small quantity cutoff would be likely to produce arbitrary results. While the utilities would be expected to aggregate their wastes in quantities which exceed any small quantity cutoff, there is a large segment of the total universe of regulated PCBs that is distributed among many end users who own only a few pieces of PCB equipment. It would defeat the purpose of the proposed tracking system if the small quantity cutoff had the effect of so fragmenting the PCB universe that only the waste owned by the utilities and the large industrial users was tracked to disposal. In addition, adopting for PCB wastes the RCRA 100 kg/month small quantities cutoff would be essentially meaningless, since the shipment of even one small PCB Transformer (40 gallons or 235 kg dielectric) would exceed such a cutoff. EPA solicits comment on this aspect of the proposal.

EPA is proposing to require manifests for shipments containing regulated PCB wastes at the 50 to 500 ppm level, as well as for shipments containing higher concentration PCB wastes at the 500 ppm or greater level. The inclusion of the 50 to 500 ppm wastes would extend the coverage of the manifesting requirement to about 129 million gallons of PCB waste, compared to the 42.5 million gallons that would be covered under an option limiting the manifest to the 500 ppm or greater wastes. While one might conclude that the proposed option involves an incremental burden that is about three times that associated with manifesting only the 500 ppm or

greater wastes, EPA has concluded that the actual incremental burden associated with the proposed option is not significant.

EPA consulted with States which regulate PCB disposal and with the operators of TSCA approved disposal facilities. EPA found that each of the approved disposal facilities required a manifest to accompany any shipment of regulated PCB waste, regardless of PCB concentration. These disposal firms require manifests for the PCB wastes they accept as a means of preserving records of firms potentially responsible for contributing toward any remedial actions which might arise at the disposal site. Also, among the 18 States that currently require a manifest to accompany PCB wastes, all but one require a manifest for wastes containing PCBs at the 50–500 ppm level. Because current practice appears to be consistent with the proposed 50 ppm trigger for manifesting, there would not appear to be a significant incremental burden to industry associated with the proposed option.

EPA also considered whether tracking the movement of 50 to 500 ppm PCB wastes would be cost-effective from the Agency's standpoint. The economic analysis supporting this rulemaking projects that the 50 ppm manifesting threshold would subject nearly twice as many manifested PCB waste shipments to EPA's tracking system. Ordinarily, EPA would not actually receive and review this additional volume of manifests. Manifest copies generally would not be submitted to EPA, except when an irregularity in a waste shipment gives rise to the filing of a Discrepancy or Exception Report with EPA. The economic analysis considered the additional number of waste shipments being tracked under the proposed 50 ppm option, and based on several years of experience under RCRA, predicted that fewer than 1% of these shipments would trigger a Discrepancy or Exception Report to EPA. The economic analysis concluded that the number of such reports would number between 65 and 109 annually. The annual incremental costs to EPA of filing and reviewing these reports (assuming $21.75 cost per report) would be nominal.

EPA requests comment on the appropriateness of the proposed 50 ppm trigger for manifesting PCB wastes. In particular, the Agency invites comments which would verify or refute EPA's findings about the extent to which manifesting is already occurring with respect to PCB wastes at the 50 ppm or greater level. EPA also invites comments on the alternative option that would trigger manifesting for Federal purposes only at the 500 ppm PCB level or greater. A regulation that required manifesting for wastes contaminated with PCBs at 500 ppm or greater would theoretically control about 98 percent of the total pounds of "pure" PCBs dispersed among the regulated PCB wastes, while extending coverage to about one-third of the total volume of waste materials. Would this alternative option in fact avoid any significant economic impacts, or does current practice among the States (which this regulation would *not* preempt) and the disposal industry effectively preclude any savings that might be realized under this alternative? EPA would consider including this alternative option (manifesting only at 500 ppm or greater) in the final regulation if comments submitted to EPA rebut the presumption that there are no significant incremental costs associated with the 50 ppm option. Such comments would need to convince the Agency: (1) That a 500 ppm trigger for manifesting would result in a significant reduction in the real costs of manifesting PCB waste; (2) that the adoption of a 500 ppm trigger for manifesting would not be rendered moot by the existing requirements of States and the current practice of disposal firms; and (3) that excluding the 50 to 500 ppm wastes from a Federal manifesting requirements would not create confusion or, because of inconsistencies with State requirements, encourage non-compliance with the States' more stringent requirements.

This proposal would require the manifest to be prepared by the generator at that point in time when the PCB waste is first introduced into commerce in a manner that will cause the waste to leave the generator's control. This latter condition would generally be triggered when the generator turns its waste over to a transporter for delivery to an off-site storage or disposal facility. The condition would also be satisfied when the waste is placed on the generator's own transport vehicle for shipment to a commercial off-site storage or disposal facility, since the waste is then being introduced into commerce in a manner that will cause the generator to lose control of the waste. A manifest need not accompany the shipment via transport vehicle of PCB wastes to a storage facility owned or operated by the end user of PCBs and PCB Items, because these generators have not yet relinquished control over the PCB waste. This exception would apply to both transport via the generator's vehicles and transport by an independent transporter, since, in the latter case, the transporter is presumed to be acting pursuant to the generator's instructions. Apart from the exception for shipments between the end user's own facilities, EPA would construe the provision regarding when PCB waste leaves the generator's control strictly, so that the manifest requirements will have the broadest possible scope. EPA invites comment on using the "loss of control" concept as the criterion for when generators must initiate a manifest. EPA also solicits comment on the appropriateness of the exception for shipments between the end user's own storage facilities.

The Agency emphasizes that this proposal affects only the Federal manifesting requirements for the transport of the PCB wastes that are regulated for disposal under TSCA. No provision or exception contained in this proposal would be construed to alter or limit the applicability of any requirement in existing DOT regulations pertaining to the transport of hazardous materials, including PCBs.

4. Information Required in the Manifest

The manifest which generators would originate is designed to include only the information necessary to identify accurately the persons handling the PCB waste, and the nature and quantity of the waste. These information requirements consist essentially of the Federal Information Requirements described in the March 20, 1984 regulation which announced the adoption of a Uniform Manifest (49 FR 10497). Use of the manifest would not supercede any other requirements for PCB wastes under 40 CFR Part 761.

a. *Manifest document number.* The manifest document number would consist of the generator's EPA 12 digit identification number, plus a unique suffix of up to 5 digits which the generator would add to ensure the uniqueness of the manifest document number for each shipment from each site of generation during a calendar year. The 12 digit identification number would consist of the generator's unique identification number issued after notification to EPA, or the 12 digit reference "40 CFR PART 761" for those generators who would not be required to notify specifically under this rule.

b. *Page number.* Generators would be required to identify on the first page of a manifest the total number of pages in that manifest, i.e., the first page (EPA Form 8700–22) plus the number of continuation sheets, if any. For example, if the manifest consists of only one page, and there is no continuation sheet, then

the correct entry would be "Page 1 of 1." If the manifest consists of one front page (Form 8700–22) and one continuation sheet, the correct entry is "Page 1 of 2."

c. *Generator name and address.* The address to be entered here would be the mailing address of the generator to which the designated storage or disposal facility must return promptly a completed copy of the manifest. The generator would enter the mailing address of the location that will administer the returning manifest forms, which could be the company's billing office, corporate headquarters, or the site of generation. While the address entered here need not identify the particular site of generation, the generator's manifest records would be maintained so that unique waste shipments (identified by the unique manifest document number assigned by the generator) can be identified with the actual sites of generation.

d. *Generator's telephone number.* This would be the number of a person who can provide information about the shipment in the event of an emergency, such as when a transporter cannot deliver the PCB waste to the designated disposer or commercial storer.

e. *Transporter #1: Company name and EPA ID number.* The name and U.S. EPA 12 digit identification number of the initial transporter of the waste would be entered.

f. *Transporter #2: Company name and EPA ID number.* The name and U.S. EPA 12 digit identification number of the second transporter, if applicable, would be entered. Space for additional intermediate transporters is provided on the continuation sheet for entry in the order they are used.

g. *Designated facility name, site address, and U.S. EPA ID number.* The generator would enter the name, site address, and EPA 12 digit identification number of the off-site commercial storage or disposal facility which the generator has designated to receive its PCB waste. The site address is necessary to inform the transporter where the shipment must be delivered. The designated facility should always be an approved facility for the disposal of PCBs, or an off-site commercial storage facility with either interim or final approval under § 761.65(d). Ordinarily, transfer facilities and other temporary storage facilities used by transporters for storage of waste during ordinary transport would not be listed here as designated facilities, unless the PCB waste will remain in storage at such a site for greater than ten days. Likewise, an end user's own storage facility would not ordinarily be listed here as the designated facility, unless the laws of a State or local government require manifests for shipments between the generator's own facilities.

h. *Container number and type.* The generator would indicate both the number of containers, and, using the instructions in Table 1 of the form instructions, the type of containers for each shipment.

i. *U.S. DOT Description (Including: Proper shipping name, hazard class, and ID number).* The generator would complete this section consistent with DOT's regulations at 49 CFR 172.201. The generator would enter the assigned DOT identification number, which consists of a four-digit number preceded by the United Nations (UN) designation for PCBs. The generator would also enter here the total quantity and unit of measure (volume or weight) of the shipment. This measurement would be gross weight when the waste container is to be discarded (e.g, a drum containing waste), and net weight when it is not discarded (e.g., bulk shipments by tank truck). The quantity description would not include fractions.

j. *Special handling instructions and additional information—date of removal from service.* This section would be used by the generator for several purposes. For example, ICC Bill of Lading information, placarding and marking information required by EPA or DOT, or emergency response telephone numbers may be included on this space. However, the primary purpose of this space for the purpose of this proposed rule is to record the date of removal from service for the PCBs and PCB Items contained in the waste shipment. If this space is not adequate for entering all the relevant dates, the generator would attach a typewritten continuation sheet to the manifest. The continuation sheet would list the PCBs and PCB Items contained in the shipment and their dates of removal from service.

k. *Generator certification.* The generator would be required to read, sign, and date the certification statement at the initiation of each waste shipment. To the extent that the form requires a generator of PCB waste to certify to waste minimization efforts, the requirement would be satisfied as long as the generator has not increased the volume of waste by any act that contravenes the dilution prohibition of the PCB disposal regulations. Generators who are "excluded manufacturing processes" or "recycled PCB processes" could certify as long as they are in compliance with the PCB release restrictions set forth for these processes at 40 CFR 761.3.

l. *Acknowledgment of acceptance by transporter.* A transporter would be required to acknowledge on the manifest the acceptance of the waste shipment by signing the manifest and recording the date of acceptance.

m. *Discrepancy indication space.* The Discrepancy Indication Space would be used for recording significant discrepancies, as defined below, between the PCB waste described on the manifest and the PCB waste actually received by the designated PCB storage or disposal facility.

n. *Acknowledgment of acceptance by designated facilities.* The owner or operator of the designated commercial storage or disposal facility would be required to acknowledge here the acceptance of the waste shipment by signing the manifest and recording the date of acceptance.

o. *Optional information required by States.* In addition, the Uniform Manifest form includes optional information spaces to meet the basic information requirements which States have the option of imposing. The optional State information items appear at the upper right portion of the manifest form, and they are shaded and headed by letters (rather than numbers) to set them apart.

5. Copies of the Form

EPA will not print copies or sets of the manifest form for public use. Generators and others needing copies of the form should first contact their State office to determine if their State has printed copies available. If forms are not available from the State, camera-ready copies of the form for printing purposes can be obtained from the State, or the EPA Regional Office, or EPA Headquarters.

6. Use of the Manifest

The manifest under RCRA consists of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated storage or disposal facility with one copy each for their records, and another copy to be returned to the generator. EPA proposes that manifests for PCB wastes under TSCA would also include sufficient copies for the generator, the initial transporter, each intermediate transporter, the designated commercial storage or disposal facility, and another copy to be returned to the generator by the designated facility.

In addition, this proposal would require that generators of PCB waste prepare one additional copy of the manifest. The generator would send this additional copy directly to the designated facility by Registered Mail, Return Receipt Requested, immediately

after the consignment of the waste to the initial transporter. This advance manifest copy would be sent to the designated facility independently of the delivery of the waste. Under this proposal, the generator's obligation to send an advance copy of the manifest to the designated facility would be a non-delegable obligation which only the generator of PCB waste may perform.

EPA is proposing this additional copy requirement on generators as a means of ensuring further the integrity of the manifest system. As previously indicated, the GAO report on detection of illegal hazardous waste disposal activities highlighted several instances in which transporters had forged the designated facility's copy of the manifest and returned it to the generator. The return of the forged copy signified to the generator that the waste had arrived at the designated facility, when in fact, the transporter had dumped the waste or otherwise handled it improperly. The transporter profited by retaining both the shipping fee and the disposal fee, rather than passing the disposal fee on to the designated disposal facility.

The submission of an advance copy of the manifest directly to the designated facility may deter transporters or brokers from acting improperly with respect to the waste. Disposers and commercial storers would be alerted to expect the delivery of the waste, and generators would obtain a preliminary verification (the signed Return Receipt) of the disposal arrangements from the designated facility that is independent of the transporter's efforts. EPA requests comment on the appropriateness and feasibility of this additional verification requirement.

Otherwise, the manifest system proposed here for PCB wastes parallels the operation of the manifest under the RCRA tracking system for hazardous waste. The generator would sign the manifest certification by hand, and obtain the handwritten signature of the initial transporter (who would have an EPA ID Number) and the date of acceptance on all copies of the manifest. The generator would retain a copy of the manifest for its records, and give the remaining copies of the manifest to the initial transporter. The generator also would send by registered mail, return receipt requested, one advance copy of the manifest to the designated commercial storage or disposal facility.

The transporter then would carry the manifest with the waste to the designated facility. If delivery to the designated facility is not possible, the transporter would contact the generator for further instructions, which would be entered in the space provided for additional instructions. If intermediate transporters are involved, an additional copy of the manifest would be prepared by the generator for each additional transporter that will handle the waste. The initial transporter would deliver the entire quantity of waste to the designated subsequent transporter, and he would obtain the subsequent transporter's signature and the date of delivery on the manifest. A copy of the manifest would be retained as a record by the initial transporter, and the remaining copies would accompany the waste. The subsequent transporter would deliver the entire quantity of waste to the designated storage or disposal facility, or to the next transporter, according to the instructions on the manifest. Until the signature of the designated facility or subsequent transporter is obtained, the waste would be considered to be in the custody of the transporter who last signed the manifest.

When the waste is finally delivered to the designated PCB storage or disposal facility, the owner or operator of the designated facility (or his agent) would sign and date each copy of the manifest to certify that the PCB waste covered by the manifest was received at the facility. In addition, the designated facility would note on each copy of the manifest any significant discrepancies between the quantity or type of waste identified on the manifest and the quantity or type of waste received at its facility. For bulk waste, significant discrepancies would be variations greater than 10 percent in weight, and for batch waste, any variation in piece count, such as a discrepancy on one drum or other article in a truckload. Proposed significant discrepancies in type are obvious differences which may be discovered by inspection or analysis, such as when soil or other solids are substituted for liquids, or when waste greater than 500 ppm is substituted for waste below 500 ppm.

The designated facility would keep one copy of the manifest for its records, and it would immediately give the transporter at least one copy of the signed manifest. Within 30 days after the delivery, the designated facility would send a copy of the signed manifest to the generator at the mailing address indicated on the manifest. This transmission of the signed copy of the manifest to the generator would signify the proper completion of the disposal delivery transaction.

Consistent with RCRA requirements, for shipments of PCB wastes within the United States solely by water (bulk shipments only), the generator would send three copies of the manifest, dated and signed, to the owner or operator of the designated PCB facility. Copies of the manifest would not be required for each transporter.

For shipments of PCB wastes by rail within the United States that originate at the site of generation, the generator would send at least three copies of the manifest, dated and signed, to the next non-rail transporter, if any, or the designated facililty, if transported solely by rail.

The manifest requirements for shipments by rail or water are intended to parallel existing RCRA manifest requirements for these industries. The rail and water transporters were exempted from manifesting under RCRA to avoid confusion and duplication of effort, since both industries have their own complex tracking systems that render additional tracking documentation unnecessary.

The preparation of sufficient copies of the manifest would be the responsibility of the generator who initiates the waste shipment. All copies of the manifest supplied by the generator would be required to be legible; it would be a violation of these requirements to ship PCB wastes accompanied by a manifest or continuation sheet for which any copy or part is not legible.

These proposed TSCA provisions for manifesting PCB wastes vary slightly from the current RCRA manifest requirements. Promulgation of final TSCA manifest requirements should in no way alter the existing RCRA manifest provisions.

7. Recordkeeping and Reporting

While notification and manifesting requirements form the core of the waste tracking system, the tracking function is aided by several recordkeeping and reporting requirements. The Agency is proposing today that PCB waste handlers comply with recordkeeping and reporting requirements which are based largely upon the existing TSCA and RCRA requirements.

a. *Retention of manifests as records.* The originator of the manifest (generator) would keep its copy of each manifest until it receives the signed copy from the designated facility that received the PCB wastes. This signed copy would be retained as a record for at least 3 years from the date the PCB wastes were accepted by the initial transporter who took the PCB wastes off-site from the generator. If, however, the generator is subject to the § 761.180(a) annual document requirement, it would retain its signed copies of manifests for the same period

required under § 761.180(a) for its annual document records. The generator would retain its manifest records at the business location identified for records retention on its manifests. This location would also be the site where the generator keeps its § 761.180(a) annual documents, since the preparation of the annual documents will be aided to a great extent by manifest information.

Likewise, the transporter would keep among its records a copy of the manifest signed by the generator and either the next transporter, if applicable, or the commercial PCB storage or disposal facility that is designated for the delivery of the waste. The transporter would retain this copy among its records for at least 3 years from the date that the PCB wastes were accepted by the initial transporter.

The owner or operator of the designated commercial storage or disposal facility would likewise retain at its facility copies of its manifests. The manifest copies would be retained for the same periods as required under § 761.180(b) for the facility's annual document records. These records would be retained at the same location where the facility maintains its annual documents. In this notice, EPA solicits comments as to whether the 5-year record retention requirement for § 761.180(a) and § 761.180(b) should be changed to a 3-year recordkeeping requirement, which would conform with Paperwork Reduction Act guidelines.

In addition, the Agency is proposing that the periods of retention for manifests by all PCB waste handlers be automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

b. *Exception reporting.* Following the RCRA model, today's proposal would require Exception Reporting by all generators who must manifest their PCB waste. Any time a generator does not receive a copy of the manifest signed by the authorized representative of the designated storage or disposal facility within 35 days of the date the waste was accepted by the initial transporter, the generator would be required to contact the transporter and/or the owner or operator of the disposal facility to determine the status of the PCB wastes. If the problem is not reconciled within 45 days from the date the waste was accepted by the initial transporter, the generator would file an Exception Report with the EPA Regional Administrator for the Region in which the waste generation site is located. The Exception Report would be filed if the generator has not received within the prescribed period a copy of the manifest signed by the authorized representative of the designated facility. The Exception Report would include:

(i) A legible copy of the manifest for which the generator does not have confirmation of delivery.

(ii) A cover letter signed by the authorized representative of the generator explaining the efforts taken to locate the PCB wastes and the results of those efforts.

EPA requests comments on this proposal to include Exception Reporting for PCB wastes. In particular, the Agency requests comments on whether there should be further tightening of the generator's recordkeeping requirements to ensure that generators do in fact perform their essential oversight role concerning the operation of the manifest system. The February, 1985 GAO Report on problems with detection of illegal disposal of hazardous waste found that there had been very few Exception Reports filed by generators under RCRA. The GAO concluded that the infrequency with which Exception Reporting has occurred is due largely to non-compliance by generators with the requirement to match their filed manifest copies with the signed copies they later receive from commercial storers and disposers. The Report found that some generators were collecting both copies of the manifest, but not keeping the copies in the same file locations, or otherwise physically matching the manifest copies. The GAO Report also suggested that the miniscule number of Exception Reports may be attributed to a reluctance on the part of generators to "turn in" the low-bid transporters who haul away their waste.

In this notice, EPA solicits comment as to whether the proposed recordkeeping and Exception Reporting requirements applicable to generators are adequate to ensure that the manifest system receives the attention from generators that is necessary to keep the system credible. Should EPA substitute for the proposal another option, such as one that would require the generators to attach the signed designated facility copy to the generator's original copy, and retain the matched copies in its files for 3 years as proof that the transaction was indeed verified? Should EPA require some other record that would demonstrate that the essential manifest matching role has in fact been performed by generators. EPA requests comment on the proposed option and the appropriateness of any alternative approach to generator verification.

c. *One-year exception reporting.* Indefinite storage of waste at approved commercial storage facilities is not an acceptable form of PCB waste management. Section 761.65(a) of the TSCA storage rules for PCB wastes limits the storage of PCB wastes prior to disposal to a period of 1 year. Under the Agency's existing compliance monitoring policies, the 1-year storage period is allocated between storage at approved disposal facilities and storage prior to receipt at the approved disposal facility. The initial generators of PCB waste (i.e., the PCB user, owner, or processor who first removes PCBs or PCB Items from service) are presumed to be in compliance with the 1-year limit on storage if they can show that the storage period prior to delivery to a disposal facility did not exceed 9 months.

EPA is proposing today an additional tracking device that will facilitate the Agency's ability to track compliance with the 1-year storage restriction for PCB wastes.

First, generators would be required to record the dates when their PCBs or PCB Items were removed from service on the manifests that accompany their PCB wastes to commercial storage and disposal facilities. The date when PCBs were removed from service is an existing record requirement in the § 761.180(a) annual document for such generators. The proposal would require that the date of removal from service for each PCB or PCB Item contained in a waste shipment be recorded on the section of the manifest reserved for "Special Handling Instructions and Additional Information." If this space is not adequate for entry of all the relevant dates, the generator would be required to attach to the manifest a typewritten continuation sheet containing this information. This information would then accompany the waste until it reaches the designated facility, thereby providing notice to waste handlers of the time by which lawful disposal must occur.

When manifested PCB waste is received by commercial storers of PCB waste, the commercial storer would note the dates of removal from service in its § 761.180(b) records. At such time as the commercial storer initiates a waste shipment containing the PCBs or PCB Items to another storage or disposal facility, it would prepare a manifest which includes the dates of removal from service for the affected PCBs or PCB Items. In this manner, the PCB waste would ultimately arrive at an approved disposal facility accompanied by the essential information on removal from service. The disposer of PCB waste would then enter the date of removal from service for each PCB or PCB Item among its § 761.180(b) records, which

also require the recording of the date of disposal.

This proposal would require the submission of One-year Exception Reports under two types of circumstances. First, disposers would submit such Exception Reports when they receive PCBs or PCB Items on a date more than 9 months after their removal from service, as indicated on the manifest cover or continuation sheet, and because of other disposal commitments, the disposer cannot (or has not been able to) dispose of the affected PCBs or PCB Items within 1 year of their removal from service.

Second, generators and commercial storers of PCB waste who transfer PCBs or PCB Items directly to disposers would file One-year Exception Reports under other circumstances. Such a Report would be submitted when the generator or commercial storer has transferred PCBs or PCB Items to a disposer prior to the expiration of 9 months from their date of removal from service, but has not received a Certificate of Disposal confirming the disposal of the affected PCBs or PCB Items within 13 months of their removal from service. The proposal specifies a 13-month period in this instance out of recognition that disposers are allowed 30 days from the date of disposal to forward their Certificates of Disposal. So, generators or commercial storers may receive confirmation of proper disposal as late as 1 year and 30 days after the date the waste items were removed from service. Also, such an Exception Report would be required when a Certificate of Disposal confirms a date of disposal for PCBs or PCB Items more than 1 year from their removal from service.

EPA requests comments on the requirement to submit "One-year Exception Reports" in the manner proposed here. Is it feasible to require the dates of removal from service to be included on the manifest or on a separate continuation sheet attached to the manifest? Are there potential difficulties associated with commercial storers having to relay dates of removal from service from the manifests they receive to the manifests they prepare for the waste shipments they later initiate? Are there alternatives that are more feasible than the proposed option? For example, would it be more feasible to let the return copy of the manifest signed by the disposal facility serve as the Certificate of Disposal. Under this option, the disposer of PCB waste would not return the signed copy of the manifest to the generator until disposal of the waste has occurred, and the date of disposal would be placed on the signed manifest copy. EPA requests comments on the relative merits and drawbacks associated with the alternative options.

d. *Certificates of Disposal.* EPA further proposes and requests comments on a requirement that disposal facilities prepare written Certificates of Disposal. EPA is aware that many disposal facilities are already providing such certificates as a service to their PCB disposal clients. Such certificates provide assurances to PCB waste generators, who desire the certificates to rebut any suggestions that they have not acted properly with respect to their PCB wastes. Generators of PCB wastes do not extinguish totally their potential liability for PCB disposal violations by entering into contracts with disposers for disposal services. However, a document containing the disposal facility's certification that disposal of specific wastes has occurred may be relevant in establishing the good faith of the generator's conduct.

This proposal would make the Certificate of Disposal a uniform feature of the PCB disposal regulations. In addition to specifying the content of a proper Certificate, this proposal would make the Certificate of Disposal the final step in the PCB waste tracking system. In particular, the Certificate of Disposal would be returned by the disposal facility to the generators or commercial storers responsible for manifesting the waste shipment to the disposer. While the disposer's return copy of the manifest confirms only the fact of arrival of PCB waste at a disposal facility, the Certificate of Disposal would confirm the fact of disposal itself. Thus, the Certificate of Disposal would be the final element in the tracking loop to ensure that disposal occurs within 1 year from the date that PCBs or PCB Items are removed from service. The Certificate of Disposal would be the basis for One-year Exception Reporting by generators and commercial storers, and it would remain as a record of disposal in the record collections of the disposers and the facilities that receive them.

e. *Discrepancy reporting.* Today's proposal would also require that PCB commercial storage and disposal facilities that receive off-site shipments of PCB waste comply with a Discrepancy Reporting requirement. Manifest discrepancies are differences between the quantity or type of PCB wastes designated on the manifest and the quantity or type of PCB wastes that a designated facility actually receives. These discrepancies were described above in the discussion in unit IV.C.6. of this preamble dealing with the use of the manifest. The Agency is proposing that, upon the discovery of a significant discrepancy by a designated storage or disposal facility, the owner or operator of the designated facility would attempt to reconcile the discrepancy with the appropriate party (e.g., generator or transporter). If the discrepancy is not resolved within 15 days after receiving the PCB wastes, the owner or operator of the designated facility would immediately submit to the Regional Administrator in the Region where its facility is located a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest at issue.

The Agency requests comments about the appropriateness of the Discrepancy Reporting requirement as a component of the PCB waste tracking system.

f. *Unmanifested waste reporting.* The Agency is also proposing to incorporate into this rule another feature of the RCRA tracking system—the Unmanifested Waste Report. This proposal would require a report from the owner or operator of a designated PCB storage or disposal facility whenever the designated facility receives from an off-site source any PCB wastes that are subject to manifesting requirements but which are not accompanied by the required manifest. This proposal would require the owner or operator to submit a copy of the report to the Regional Administrator within 15 days after receiving the waste. The Unmanifested Waste Report would include the following information:

i. The EPA identification number, name, and address of the designated facility.

ii. The date the facility received the PCB waste.

iii. The EPA identification number, name, and address of the generator, transporter, if available.

iv. A description of the quantities and types of PCB waste included in the unmanifested shipment.

v. The method of storage or disposal for the PCB wastes.

vi. The certification signed by the owner or operator of the designated facility or his authorized representative.

vii. A brief explanation of why the PCB wastes were unmanifested, if known.

EPA emphasizes that the preparation of an Unmanifested Waste Report should not be a frequent event for these facilities, since this proposed regulation would otherwise prohibit the acceptance by any transporter, off-site commercial storer, or disposer of any unmanifested PCB waste for which these regulations

require a manifest to accompany the waste.

g. *Annual documents and reports.* The existing PCB regulations impose annual document requirements on facilities that use and store their own PCBs or PCB Items (40 CFR 761.180(a)) and on disposal and storage facilities (40 CFR 761.180(b)). The users' annual documents provide a summary for each calendar year of the amounts of PCBs that were either in use or designated for disposal, as well as information about where and when PCB wastes were shipped. For the storage and disposal facilities, the annual document constitutes a summary of the types and quantities of PCB wastes received during the previous calendar year, the sources of the waste, and the dates the wastes were received and either disposed of at the facility or transferred to another facility. The current regulations require each facility to have available by July 1 of each year, the annual document summarizing the previous calendar year's (January to December) PCB activity. The documents are currently retained at the facilities, and thus are only available to EPA during facility inspections.

EPA is proposing today several amendments to the annual document requirements. These amendments are intended to facilitate the tracking of PCB wastes, to foster consistency with the RCRA tracking system for hazardous wastes, and to provide EPA with up-to-date information on the quantities and types of PCBs that are in service or in commerce for disposal. Significantly, the proposal would require that commercial storers and disposers of PCB waste submit copies of their § 761.180(b) annual documents by July 15 of each year, to the Regional Administrator in the EPA Region where the facility is located. This proposal should have a minimal impact on the regulated facilities. These facilities are already required to prepare and retain the documents on-site, and the only additional cost incurred under this proposal would be the cost of copying the Report and mailing it to the Agency. These minimal costs are greatly outweighed by the value of the information which EPA will have available each year and cumulatively about the PCB waste universe.

i. *Amendments to 40 CFR 761.180(a).* The existing regulation at 40 CFR 761.180(a) requires records and annual documents from certain facilities which use or store at one time PCBs and PCB Items in amounts exceeding any of these thresholds: (1) 45 kilograms (99.4 pounds) of PCBs contained in PCB Containers; (2) one or more PCB Transformers; or (3) 50 or more PCB Large High or Low Voltage Capacitors. This provision applies both to the PCB user's sites of use, and to the sites where the owner or user of PCBs chooses to store its PCBs for use or disposal. The latter type of storage facility could be located at or contiguous to the site of use, or it could be located away from the site of use.

The § 761.180(a) annual document is a distinct written document that must be prepared by the owner or operator of the facility by July 1 of each year, and it must summarize specific information about the previous calendar year's PCB use and PCB waste activity. With regard to PCB waste, § 761.180(a)(1) requires that the annual document include the dates when PCBs and PCB Items are removed from service, are placed into storage for disposal, and are placed into transport for disposal. The quantities reported are required to be broken down by weight in kilograms of PCBs in any PCB Containers or PCB Transformers, as well as the number of PCB Transformers and PCB Large High or Low Voltage Capacitors.

EPA proposes several amendments to 40 CFR 761.180(a). First, the annual document would be required to clearly identify the facility by name, owner, EPA identification number, and address. The owner or operator of multiple facilities could still elect to keep the annual documents for all of its facilities at one facility which it designates and identifies at each facility. The owner or operator who elects to maintain all of its annual documents at one facility is reminded that this option does not allow it to aggregate all of its use and storage data in one document; a distinct, written annual document would be prepared and maintained for each distinct facility. Also, where an owner or operator of multiple facilities designates one location for the retention of its annual documents, it would designate the same location identified as the location of its manifest records.

Second, § 761.180(a) would be amended so that the information required in the document includes the EPA identification number, name, and address of each PCB disposal facility and commercial storage facility to which PCB waste was shipped off-site during the year. This information would be supplied for each PCB or PCB Item identified as removed from service.

Third, the proposed amendments would also require that users who generate PCB wastes and transfer them directly to disposers record the date of disposal for each PCB or PCB Item, as indicated on the Certificate of Disposal returned to them by disposers of PCB waste. These generators would also keep copies of the Certificates of Disposal among their § 761.180(a) records collections, as an aid to verifying disposal and tracking violations of the 1-year limit on storage of PCB wastes.

Also, the annual document would include the name and EPA identification number of each transporter used during the calendar year for off site shipments of PCBs and PCB Items to disposal facilities or commercial storage facilities.

EPA requests comment on the proposed amendments to the annual document requirements for the users of PCBs that generate and/or store their PCB wastes. EPA requests particular comments on the appropriateness of the new information that would be required to be included in the annual documents, and the incremental burdens associated with the proposed amendments.

ii. *Amendments to 40 CFR 761.180(b).* The annual document requirement of § 761.180(b) applies to the owners and operators of storage facilities and approved PCB disposal facilities. The proposal would retain the basic information requirements already specified at § 761.180(b) for PCB wastes received at each disposal or storage facility. The proposed amendments would require several additional items of information to facilitate the waste tracking function, and would rearrange the information requirements into groupings that would allow one to more easily track the storage and disposal histories of specific PCBs and PCB Items handled as waste during the calendar year.

First, the annual document would be required to clearly identify the disposal or storage facility by EPA identification number, name, owner, and address. The calendar year covered by the document would also be identified.

Second, in identifying any facility (generator, commercial storer, other disposer) from which a PCB or PCB Item was received during the previous calendar year, the facility would be identified by its name, owner, and EPA identification number.

Third, where § 761.180(b) currently requires the owner or operator of a facility to identify any PCBs or PCB Items that were transferred to other storage or disposal facilities, the identification of the other storage or disposal facilities would include the facilities' names, addresses, and EPA identification numbers. The identity of the PCBs and PCB Items transferred

would be clearly stated, along with the dates of the transfers.

Fourth, facilities subject to § 761.180(b) would record for each PCB or PCB Item handled as waste during the calendar year the date of removal from service as indicated on the manifest cover or continuation sheet that accompanied the waste when it was delivered to the facility. This record entry would enable commercial storage facilities to reenter this important information on the manifests which they prepare when the affected PCBs or PCB Items are later transferred to another storage or disposal facility. Disposal facilities would likewise enter the dates of removal from service among their § 761.180(b) records. These dates of removal from service could then be compared with the dates of disposal to determine compliance with the l-year limit on storage of PCB wastes. These record entries, in addition to the requirement to retain copies of Certificates of Disposal, would provide the basis for the submission of One-year Exception Reports by commercial storers and disposers of PCB wastes.

The proposed amendments to § 761.180 are intended to clear up some of the ambiguity in the structure of the existing annual document requirements that apply to storage facilities. The existing regulation imposes an annual document requirement at § 761.180(a) on PCB users, who are required to record information on both PCB use and storage at their facilities. Section 761.180(b), however, requires a distinct annual document to be prepared by storage and disposal facilities. Clearly, one annual document should suffice to summarize the PCB waste activities of the PCB users who store their PCBs at their own facilities for disposal. However, the existing regulation is not clear in specifying which types of storage facilities are subject to § 761.180(a), and which storage facilities are covered under § 761.180(b).

This proposal would clarify the scope of the annual document requirements by limiting the coverage of § 761.180(b) to disposal facilities and commercial storage facilities. The amendment proposed here would codify the distinction between the PCB user's storage facilites (which are "generators of PCB waste") and commercial storage facilities that store PCB wastes owned by others. The user's storage sites would be subject only to § 761.180(a), whether the user chooses to store at or contiguous to the site of use, or, at one of its storage facilities located off-site from the site of use. The commercial storage facilities ("Commercial storers of PCB waste") would be subject to the § 761.180(b) annual document requirements. Examples of the commercial storage facilities are storage facilities owned or operated by disposers, transporters, waste brokers, and electrical equipment service companies that drain PCBs from equipment which others own.

The annual document required of commercial storage and disposal facilities under § 761.180(b) would be a distinct written document which summarizes the facilities' PCB waste activities during the previous calendar year (January to December). The document would be prepared by July 1 of each year, and under this proposal, storage and disposal facilities would be required to submit a copy of their annual documents to the Regional Administrator by no later than July 15 of each year. The obligation to submit annual documents would continue until the submission of the annual document for the calendar year during which the facility ceases PCB storage or disposal operations.

Because some data contained in these annual documents may qualify as TSCA CBI, this proposal would require that submitters follow the procedures set forth at 40 CFR 704.7 for asserting CBI claims with respect to their annual documents. Significantly, these procedures would require the submission of a complete copy (for internal use) indicating those parts claimed to be CBI, and a second copy from which any material alleged to be CBI has been deleted.

EPA requests comments on the proposed amendments to the § 761.180(b) annual document requirements, and the proposal to require their submission to the Regional Administrators. Where the proposed requirement to submit annual documents is concerned, the Agency requests comment on the merits of a mandatory, automatic submission requirement versus an option under which annual documents would be submitted to EPA upon request.

D. Approvals for Commercial Storers of PCB Wastes

1. Background

The existing PCB storage and disposal regulations do not contain any permitting or approval authority for commercial PCB storage facilities. This situation has been the subject of Congressional criticism, particularly as it relates to the brokers and other intermediate handlers of PCB wastes who engage in off-site, commercial storage of PCB waste prior to the delivery of the waste to approved disposal facilities. Also, in the case of the storage areas associated with approved PCB disposal facilities, there are not in place specific approval conditions and closure plans relating to their commercial storage operations.

While the commercial storers of PCB wastes are subject to the storage facility requirements of 40 CFR 761.65, they are not subject to the additional oversight that is possible through an approval process, which would enable the Agency to both pass on the qualifications of the facility's principals, and impose appropriate facility standards in the facility's conditions of approval. Particularly, there is no practical means by which EPA may grant or withhold authority to conduct commercial storage operations on the basis of a facility's ability to properly close its commercial PCB storage sites, or to ensure that adequate funds will be available to meet the anticipated closure costs. Likewise, the ability of such facilities to operate outside of a permitting process eliminates the permit revocation and suspension sanctions which may operate as deterrents to regulatory and permit violations. Under these circumstances, facilities which fail can and have become the subject of remedial actions that require the expenditure of public funds, rather than the funds of those responsible for establishing and operating the facilities. EPA can no longer countenance these circumstances.

The August 13, 1986 hearings before the Subcommittee on Environment, Energy, and Natural Resources highlighted the shortcomings in EPA's ability to oversee effectively the activities of the commercial storers of PCB waste under the existing regulations. These proceedings culminated with the enactment by the House of Representatives of a bill that would require an approval process for intermediate handlers of PCB wastes, and compliance by each approved facility with financial assurance requirements that currently apply only to RCRA hazardous waste treatment, storage, and disposal facilities.

This proposal incorporates an approval mechanism for commercial storers that would enable the Agency to evaluate the qualifications and financial responsibility of those entities who engage in the commercial storage of PCB wastes. On the effective date of the final rule, the existing "commercial storers of PCB wastes" would be deemed to have interim approvals to conduct storage activities. The interim authorization would expire 180 days after the rule's

effective date, unless the owner or operator of the commercial storage facility has applied for a final approval prior to the expiration of the 180-day period. For a facility that files a timely application, the period of interim approval would be extended until such time as EPA determines to grant or deny the application for final approval.

The commercial storer who applies for final approval would be required to demonstrate to the Regional Administrator that it is qualified to operate a storage facility in accordance with the PCB storage requirements of § 761.65. In passing upon an applicant's qualifications, the relevant considerations would include not only the technical qualifications of the principals, but also the previous experience (including any enforcement history) of the principals in connection with any PCB waste handling or hazardous waste activity. Also, § 761.65(d) would require that a commercial storer of PCB waste prepare an acceptable closure plan for its storage facility, and that it demonstrate the financial resources necessary to close the facility in accordance with its closure plan. The content of closure plans and the necessary demonstration of financial responsibility are set out in proposed paragraphs (e), (f), and (g) of § 761.65.

2. *Closure Plans*

Closure refers to the period in a facility's existence that begins when wastes are no longer accepted for storage, and during which the owners or operators of the storage facility are required to remove all PCB waste from the facility and decontaminate their equipment, structures, and property. Under this proposal, facility owners or operators would be required to prepare detailed closure plans that identify the steps necessary to bring about final closure. The closure plan will be an essential condition of approval for those facilities that apply for and receive a final storage approval. These closure plans would identify in detail the means the facility will use to close in a manner that will eliminate or minimize the post-closure escape of PCBs to the environment.

The preparation of a detailed closure plan is necessary to ensure that owners and operators analyze their future closure responsibilities and bring their present operating practices into line with those responsibilities. Further, a detailed closure plan is essential to ensure accurate cost estimates and adequate financial assurance. Experience with closure plans under RCRA has instructed the Agency that poorly detailed plans have been accompanied by inadequate cost estimates. Thus, acceptable closure plans would be required to contain sufficient detail so that a third party could conduct closure in accordance with the plan in the event the owner or operator fails to do so.

The closure plan contents specified in this proposal are derived from the RCRA experience and regulations. The RCRA closure plan standards were first published on January 12, 1981 (46 FR 2851), and amended in regulations issued by EPA and published in the **Federal Register** on May 2, 1986 (51 FR 16422). The 1986 amendments were a response to litigation and several years experience under the existing Subpart G closure standards of 40 CFR Parts 264 and 265. The purpose of the 1986 amendments was to clarify the required content of closure plans for RCRA facilities. EPA believes that the revised RCRA closure plan standards are an appropriate framework for the closure plan standards that this proposal would require as part of the TSCA approval process for commercial storers of PCB wastes.

The core requirements of acceptable closure plans are specified in § 761.65(e)(1). The closure plan would describe with particularity the means by which the PCB storage areas of the facility will be closed in a manner that eliminates the potential for post-closure releases of PCBs to the environment which would present unreasonable risks. This threshold requirement is essentially the performance standard that governs all closure operations. Closure may occur with respect to the entire facility or with respect to distinct storage areas contained in the facility. Where distinct storage areas are closed, but not an entire storage facility, the closure is referred to as partial closure.

Second, the extent of projected PCB storage activities during the facility's active life would be identified. The active life of a facility would extend until the time when the completion of closure is certified to the Regional Administrator under § 761.65(e)(7).

For each PCB storage area, and the facility overall, the owner or operator would identify the extent of PCB storage that will occur relative to other wastes, and the maximum projected inventory of PCB wastes that will ever be handled at one time. This information is essential, because it bears upon the facility being able to demonstrate that it in fact has the capacity to store PCB wastes in accordance with the § 761.65 storage requirements. Further, the maximum projected inventory of PCB wastes forms the basis for designating a maximum rated storage capacity for the facility, and for estimating the costs of closure. Financial assurance would be demonstrated in an amount sufficient to close the facility when closure costs would be at a maximum, and that eventually would usually correspond to the maximum allowed inventory of stored PCB waste.

Third, the facility owner or operator would identify in detail the methods and arrangements that will be used during closure for actually removing PCB waste from the facility, and providing for its transportation off-site to other commercial storage or disposal facilities. The commercial storer of PCB waste that removes PCBs in accordance with its closure plan would then be a generator of PCB waste.

Fourth, the closure plan would identify with particularity the steps that the owner or operator will follow during closure to remove PCB residues presenting unreasonable risks from the facility's equipment and structures, as well as to remove residual PCBs, if any, from the soil surrounding the facility. Unlike RCRA closure plans, where decontamination goals and sampling methods are to be developed as elements of the closure plan, the commercial storer of PCB waste under TSCA would identify the steps needed (cleanup methods, cleanup goals, sampling methods) to accomplish compliance with the risk-based, nationwide PCB Spills Cleanup Policy, which EPA issued for publication in the **Federal Register** of April 2, 1987 (52 FR 10688). This description would include any other activities, e.g., ground-water monitoring, run-on and run-off control, facility security, that will be necessary during closure to ensure compliance with the closure performance standard.

In addition, for each § 761.65(b) PCB storage area at a commercial storage facility, the closure plan would include a schedule for closure that identifies the total time required to complete closure, and the time required for the various intervening activities entailed by final closure. If a closure trust fund is selected by the facility as its financial assurance mechanism, the closure plan would identify the expected year that final closure will occur. This requirement would bear upon the calculating of the "pay-in" period for funding the trust, since trust funds would be funded in annual installments paid into the trust each year until the year of closure.

Finally, the proposal includes provisions specifying the criteria and procedures for modifying a facility's

closure plan, which action may be initiated by either the facility owner or operator, or, the Regional Administrator when cause exists to believe that changed circumstances will affect the closure plan, the time for closure, or the closure costs. The changed circumstances that would justify a closure plan modification are discribed at 40 CFR 761.65(e) (3) and (4).

The proposal also includes a timetable for when certain closure events must occur and when required notices must be given. Generally, the commencement of closure would be preceded by written notice to the Regional Administrator at least 60 days prior to the date when final closure is expected to begin. The date when closure is expected to begin would ordinarily be no later than 30 days after the receipt of the last shipment of PCB waste for storage at the facility. This date could be extended for good cause.

The timetable in § 761.65(e)(5) would require that all PCB wastes that were in commercial storage at the facility be removed in accordance with the closure plan within 90 days of the receipt of the last quantities of PCB waste. All closure activities would be completed within 180 days, and the facilities would certify the completion of closure (or partial closure) in a written notice to the Regional Administrator within 60 days of the date that closure is completed. The certification that closure has been completed in accordance with the closure plan would be signed by an independent professional engineer, as well as the facility's owner or operator. The deadlines in § 761.65(e)(5) would be extended by the Regional Administrator for reasonable periods where good cause for the delay is shown.

3. *Financial Assurance of Closure*

The proposal includes at § 761.65(f) a procedure for preparing a written estimate of the cost in current dollars of closing the PCB storage areas of the facility in accordance with the closure plan. The current closure cost estimate which would be kept at the facility is the closure cost estimate adjusted annually for the effects of inflation and any approved modifications to the closure plan. The closure cost estimate would assume that closure occurs during that point in time when the closure costs would be most expensive, and it would assume closure by a third party not related to the commercial storer, using current market costs for disposal, storage, and decontamination.

The proposal would require that the commercial storers of PCB waste demonstrate financial responsibility for closure by passing specific financial tests or by acquiring specific financial instruments that will make available adequate funds to meet the closure cost estimates. The proposal would allow owners or operators to choose from a number of mechanisms, including trust funds, surety bonds, letters of credit, corporate guarantees, insurance policies, as well as the financial test. The Agency believes that there is ample justification for imposing these requirements, based upon the several instances in which facilities that have gone out of business or that have been forced to close have been found not to have sufficient resources at the time of closure to provide for adequate cleanup. If the expenditure of public resources is to be avoided, it is incumbent that owners and opertors of approved facilities make provision for closure funds during the active life of their facilities.

In this notice, EPA is proposing that closure plans and financial assurance requirements be established for all commercial PCB storage facilities and storage facilities of permitted PCB disposers. This provision assures the public that cleanup can be achieved after closure of the facility. EPA solicits comments on whether closure plans and financial assurance requirements are necessary, particularly since the manifest system included in this regulation will provide a means to track the generation and transfer of PCBs (including the length of time held in storage) and may provide an incentive for generators to ensure the proper and timely disposal of PCBs. Generators should recognize this incentive, since they could be held responsible for the cleanup costs at abandoned sites. EPA also solicits comments on: (1) Any information and data on the costs and impacts of these provisions, particularly on small commercial storage facilities; and (2) what alternatives to these provisions may exist to ensure cleanup of abandoned sites (e.g., requiring storage facilities to disclose closure and financial plans during contract negotiations.

The financial assurance mechanisms proposed today for commercial storers of PCB wastes are essentially the same as the mechanisms allowed under RCRA regulations at Subpart H of 40 CFR Parts 264 and 265. The development of these mechanisms and the specifics of their operation have been discussed in numerous RCRA-related rule documents which EPA has issued and published in the **Federal Register**. The reader is referred to the following **Federal Register** documents for a detailed discussion of these mechanisms: 45 FR 33260 (May 19, 1980); 46 FR 2821 (January 12, 1981); 47 FR 15032 (April 7, 1982); and 51 FR 16422 (May 2, 1986). For brevity, this preamble provides only a brief description of the proposed financial mechanisms, with particular attention to any changes from the RCRA mechanisms. Comments may, however, address EPA's reasoning in adopting the financial responsibility requirements included in the cited **Federal Register** documents.

i. *Financial test.* The financial tests consist of criteria that compare the closure cost estimate to specific ratios composed of net worth, net income, total liabilities, current assets and liabilities, net working capital, and current bond issuance ratings. Once the elements are identified in the firm's financial statements, the calculation of the test ratios is straightforward. The demonstration is presented in a letter from the firm's chief financial officer, which would be supported by reports from the firm's independent certified public accountant. The financial test is not intended as a test of potential insolvency; rather, it is designed to ensure that those who pass the test will have adequate resources to establish one of the alternative forms of assurance should he later fail the test.

EPA here proposes the same financial test criteria that are currently in effect for hazardous waste facilities under 40 CFR 264.143(f). Also, the demonstration of financial assurance would be satisfied by a letter from the firm's chief financial officer containing wording similar to that specified at 40 CFR 264.151(f). The only variations proposed from the RCRA requirements are language changes intended only to make the provisions conform to TSCA statutory and regulatory authorities.

The financial test mechanism would be satisfied when a parent corporation which meets the test's criteria guarantees that it will perform closure or establish a closure trust fund in the event that its subsidiary corporation fails to perform in accordance with its closure plan. In addition to meeting the financial test criteria, the guarantor corporation would submit a written corporate guarantee with the wording specified at 40 CFR 264.151(h), modified only to conform to the TSCA statutory and regulatory authorities.

ii. *Closure trust fund.* Under this mechanism, the owner or operator of the commercial PCB storage facility would enter into a written trust agreement appointing a trustee to manage a fund established by the owner or operator for the benefit of EPA. The fund would be established to meet the costs of closure, and the trust instrument would set forth

the powers and obligations of the trustee with respect to the management and use of the fund. When instructed by the Regional Administrator, the trustee would reimburse the owner or operator, or other persons, for expenditures made in closing the facility, in the amounts directed by the Regional Administrator. The "corpus" of the trust would consist of the annual payments which the owner or operator makes to the fund during the "pay-in" period, and these amounts would be invested or otherwise managed by the trustee.

EPA proposes here that owners or operators of commercial PCB storage facilities may satisfy their financial assurance obligations by establishing a closure trust fund under the conditions described in 40 CFR 264.143(a), utilizing a trust instrument with the wording specified at 40 CFR 264.151(a). This proposal would modify the RCRA language to the extent of conforming it to TSCA statutory and regulatory authorities.

In addition, EPA proposes that the "pay-in" period for commercial storers of PCB waste be limited to a period not exceeding 3 years. This proposed "pay-in" period differs from the ten-year period used under RCRA because of the difference between the types of storage facilities regulated under RCRA and under this rule. Under RCRA, storage facilities for the management of hazardous wastes can include land disposal units (e.g., landfills or surface impoundments), while under the TSCA PCB rules, PCB storage facilities are places where PCB Articles and PCB Containers are kept for less than one year prior to disposal. RCRA trust funds allow for an extended pay-in period because of a concern for the substantial costs associated with such measures as capping and securing the facility at closure, as well as the continuing costs of conducting long-term ground water monitoring for a closed landfill or surface impoundment. In the case of closing a PCB storage area, however, One need not take into account the post-closure care associated with these types of land disposal units. Once the PCB storage facility has been closed, there are no long-term costs. Thus, there is no compelling case for extending the "pay-in" period for the 10 or more years allowed for "pay-in" under RCRA, and the Agency believes that 3 years represents a sufficient period of time to fund a commerical storage facility's closure trust fund. EPA solicits comments on this proposed three-year pay-in period for closure trust funds. EPA requests comments as well on the relative merits of an alternative option that would adopt the RCRA ten-year closure trust pay-in period for PCB storage facilities' closure trust funds.

iii. *Surety bonds.* This proposal also incorporates two additional RCRA financial assurance mechanisms that allow surety companies to act as guarantors of closure obligations. The first is a surety bond that guarantees the payment of the "penal sum of the bond" into a standby closure trust fund, in the event the owner or operator of the facility fails to perform the guaranteed closure obligations. The second is a surety bond under which the surety company guarantees that upon the owner's or operator's breach of its closure obligations, it will either perform closure as guaranteed by the bond, or, deposit the amount of the "penal sum of the bond" into a standby trust fund.

EPA proposes here that commercial storers of PCB waste under TSCA may satisfy their financial assurance obligations by obtaining surety bonds conforming to the requirements of either 40 CFR 264.143(b) (guaranteeing payment into trust funds) or 40 CFR 264.143(c) (guaranteeing performance of closure). The only modifications proposed to the RCRA language are those necessary to cause the requirements and instruments to conform to TSCA statutory and regulatory authorities.

iv. *Closure letter of credit.* Consistent with § 264.143(d) and § 264.151(d) of the RCRA regulations, EPA proposes that commercial storers of PCB waste under TSCA may choose to demonstrate financial assurance for closure by obtaining an irrevocable letter of credit from their bank or other financial institution. The irrevocable letter of credit instrument assures that the financial institution that issues it will make available a specific sum of money over a specific time period on behalf of its customer (the facility owner or operator) for the benefit of the party in whose favor the letter is written. The beneficiary can draw on the credit by presenting the sight drafts or other documents specified in the letter. Under this proposal, the financial institution would issue the letter in favor of the appropriate Regional Administrator, and the facility owner or operator would establish the account in the amount of the current closure cost estimate. The funds would be paid into a standby closure trust fund from which closure expenditures would be reimbursed.

EPA proposes that irrevocable letters of credit for closure under TSCA would comply with the requirements specified for these instruments under RCRA, modified only to the extent of causing them to conform to TSCA statutory and regulatory authorities.

v. *Closure insurance.* To the extent such insurance is available to cover PCB storage facilities' closure obligations, EPA proposes to allow closure insurance, as decribed at 40 CFR 264.143(e), as another means of satisfying today's proposed financial responsibility obligations under TSCA. The proposal includes only those modifications to the § 264.143(e) and § 264.151(e) language as are necessary to cause the requirements to conform with TSCA statutory and regulatory authorities. As required under RCRA, the face amount of the policy would equal at least the current closure cost estimate, and the policy would guarantee the availability of funds up to the face amount to cover closure expenditures. The insurer would reimburse persons who present itemized bills to the Regional Administrator for closure expenditures which are determined by the Regional Administrator to be in accordance with the closure plan or otherwise justified.

vi. *Combination of mechanisms.* Under today's proposal, the owner or operator of a commercial PCB storage facility could meet its financial assurance obligations by establishing more than one mechanism for his facility. The combination would be limited to trust funds, letters of credit, and insurance policies, and surety bonds guaranteeing payment into trusts. The combined instruments would meet the financial responsibility requirements of TSCA if the combination of mechanisms provides financial assurance in an amount at least equalling the current closure cost estimate. The Regional Administrator could look to any or all of the instruments to provide for closure of the facility.

E. Relationship to State Law

Unlike the RCRA program for hazardous wastes, the TSCA section 6(e)(1) disposal program for PCB wastes is fundamentally a Federal program, administered by the EPA Regional Administrators and the Assistant Administrator for Pesticides and Toxic Substances. The enforcement of the Federal program has been delegated to the Regional Administrators, while the authority to issue approvals for PCB disposal processes is currently shared by the Regional Administrators and the Assistant Administrator for Pesticides and Toxic Substances. At the same time, the States may concurrently regulate PCB disposal within their jurisdictions, without supplanting the Federal

requirements. To date, at least 18 States have elected to regulate various aspects of PCB disposal, often pursuant to their authorized RCRA hazardous waste programs.

A major component of this proposed rule is the requirement imposed on certain generators, transporters, commercial storers, and disposers of PCB waste to notify EPA of their PCB waste handling activities and obtain identification numbers to use on their manifests and other records. This TSCA requirement would be independent of any requirement under state or local law or under a state-administered RCRA program. Thus, a generator exempt from the notification requirements imposed by this proposed rule may be independently required to obtain and use a unique identification number by a state or local government. Any such state or local requirement would not be preempted by these Federal requirements.

Persons subject to this proposed rule and to state-administered RCRA programs would be able to use the same identification number for the manifesting and recordkeeping requirements of both programs. The identification numbers to be used under this proposed rule, as well as those used under state-administered RCRA programs, are the Dun and Bradstreet Data Universal Numbering (DUN) system numbers. Persons subject to notification under this proposed rule who have already been issued an identification number under a state-administered RCRA program would be required to supply EPA with the previously issued number in their TSCA notifications. EPA will verify that these numbers are unique and conform to the DUN system, and authorize as far as possible the use for TSCA purposes of previously issued identification numbers. Under this process, regulated persons will benefit from the administrative convenience of using the same number for both state and TSCA purposes. EPA will issue such persons a distinct TSCA identification number only in those cases where a previously issued number does not conform to the DUN system, or is not unique.

This rule also requires PCB waste handlers to comply with manifesting requirements for the regulated PCB wastes which they handle. This proposed rule would utilize the RCRA Uniform Manifest to facilitate implementation of this requirement throughout the United States. The Uniform Manifest includes optional information spaces to meet basic information requirements which states have the option of imposing. The optional state information items appear at the upper right portion of the manifest form, and they are shaded and headed by letters (rather than numbers) to set them apart.

As required by Department of Transportation (DOT) regulations issued under section 112 of the Hazardous Materials Transportation Act, 49 U.S.C. 1811(a), states are not permitted to require any information on the space of the Uniform Manifest specified for "special handling instructions and additional information," on the back of the form, or on any continuation sheet, as a condition of transportation.

Since PCB waste generators may obtain pre-printed or camera-ready copies of the Uniform Manifest from State agencies, it should be noted that the instructions which may accompany these manifests may not reflect all the requirements which EPA may include in the final rule. Specifically, the following elements of the proposed PCB waste tracking system under TSCA would not be covered on the pre-printed instructions accompanying the Uniform Manifest: (1) The transmittal by the generator (registered mail, return receipt requested) of an advance copy of the manifest to the commercial storer or disposer of PCB wastes; (2) One-Year Exception Reporting and the related requirement to note dates of removal from service of PCBs and PCB Items on manifests; and (3) requirements related to Certificates of Disposal for PCB wastes.

It is essential that all PCB waste handlers understand fully any deviations from the RCRA tracking requirements that appear in the final rule, since reliance upon pre-printed instructions issued by states with the Uniform Manifest will not excuse the responsibility to comply fully with TSCA requirements for PCB wastes.

This proposed rule also would impose new TSCA approval requirements for commercial storers of PCB wastes who store PCB wastes owned or generated by others at storage facilities subject to Federal facility standards specified at 40 CFR 761.65. The proposed rule would require, among other things, that commercial storers of PCB wastes develop closure plans and financial responsibility mechanisms similar to those required of facilities which manage hazardous waste under RCRA. In those states which regulate PCB storage and disposal practices under their state-administered RCRA programs, the new TSCA approval requirements for commercial storers would be independent of the state requirements. Thus, the fact that a facility storing PCB wastes commercially may have a RCRA permit or RCRA interim status would not excuse the requirement to obtain a Federal approval to store PCB wastes commercially. Likewise, the fact that such a facility is aleady covered by a state's RCRA closure plan and financial responsibility requirements would not excuse the new TSCA requirements to develop closure plans and demonstrate financial responsibility for closure. However, the burden of these concurrent State and Federal approval requirements should be mitigated, since in many cases, compliance with the RCRA closure and financial responsibility standards should be highly persuasive evidence of compliance with the similiar TSCA approval standards.

F. Economic Impact

EPA analyzed the economic impacts associated with the notification, manifesting, recordkeeping and reporting, and storage approval requirements proposed in this rulemaking. The Regulatory Impact Analysis is available for review in the public docket. This unit will summarize the economic impacts of compliance with the provisions of the proposed rule, as presented in the Regulatory Impact Analysis. EPA welcomes comments regarding the economic impacts of this proposed rule.

1. Notification

This rule proposes that storers, transporters, and disposers handling PCBs at concentrations at or above 50 ppm must notify EPA of their PCB activities. EPA estimates that 5,651 facilities will be required to notify the Agency at a cost to industry of $290,000.

2. Manifesting

In development of the proposed manifest requirements, EPA consulted with States which regulate PCB disposal and with the operators of TSCA approved disposal facilities. EPA found that each of the approved disposal facilities required a manifest to accompany any shipment of regulated PCB waste, regardless of PCB concentration. These disposal firms require manifests for the PCB waste they accept as a means of preserving records of firms potentially responsible for contributing toward any remedial actions which might arise at the disposal site.

Also, among the 18 states that currently require a manifest to accompany PCB wastes, all but one

require a manifest for wastes containing PCBs at the 50 to 500 ppm level. Because current practice appears to be consistent with the proposed 50 ppm trigger for manifesting, there would not appear to be a significant incremental burden to industry associated with the proposed option.

3. Submission of Annual Reports

EPA currently requires that annual reports be maintained by generators, storers, and disposal firms handling PCB wastes. This proposal requires commercial storers (as defined under section 761.3) and disposers handling PCBs at concentrations at or above 50 ppm to submit these annual reports to the Agency. The number of firms expected to comply with this provision of the proposed rule is 130. The incremental costs of submitting these reports to the Agency is estimated to be minimal.

4. Storage Approvals

EPA is also proposing that all commercial storers of PCB wastes obtain EPA approval. To obtain approval, commercial storage firms must, among other things, develop closure plans for their facilities and meet financial assurance requirements.

EPA estimates that the cost to industry for the development and submission of the closure plan and cost of closure will be $35,000 for a facility that is not permitted under RCRA and $25,000 for a facility with a RCRA permit.

EPA estimates that the costs for financial assurance to be about $270,000 per typical facility. A typical facility was assumed to have a laboratory, a truck facility, a storage building, and two storage tanks.

5. Total Economic Impacts

EPA esimates that the total costs to industry associated with this proposed rule would be between $23.28 million and $23.37 million, of which, $22.85 million represents the total cost to industry of complying with the proposed approval requirements for commercial storers of PCB wastes. EPA also estimates that the total costs to the U.S. Government would be between $0.85 million and $1.37 million.

V. Hearing Procedures

If persons request time for oral comment, EPA will hold informal hearings in Washington, DC. Any informal hearing will be conducted in accordance with EPA's "Procedures for Conducting Rulemaking Under section 6 of the Toxic Substances Control Act" (40 CFR Part 750). Persons or organizations desiring to participate in the informal hearing must file a written request to participate. The written request to participate must be sent to the TSCA Assistance Office at the address listed under **"FOR FURTHER INFORMATION CONTACT."** The written request to participate must include: (1) A brief statement of the interest of the person or organization in the proceeding; (2) a brief outline of the points to be addressed; (3) an estimate of the time required; and (4) if the request comes from an organization, a nonbinding list of the persons to take part in the presentation. Organizations are requested to bring with them, to the extent possible, employees with individual expertise in and responsibility for each of the areas to be addressed. Organizations which do not file main comments in the rulemaking will not be allowed to participate at the hearing, unless the Record and Hearing Clerk grants a waiver of this requirement in writing.

The date for the hearing and the date for the receipt of the written request to participate in the hearing are set forth in the **"DATES"** section of the preamble to this document.

VI. Official Rulemaking Record

In accordance with the requirements of section 19(a)(3) of TSCA, EPA is issuing the following list of documents, which constitutes the record of this proposed rulemaking. This record includes basic information considered by the Agency in developing this proposal, including appropriate **Federal Register** notices, reports prepared by the General Accounting Office (GAO), testimony from Congressional committee hearings, communications before proposal, and economic analyses of the proposal and other regulatory options. A supplementary list or lists may be published any time on or before the date the final rule is issued.

A full list of these materials is available for inspection and copying in the TSCA Public Docket Office. However, any Confidential Business Information (CBI) that is a part of the record for this rulemaking is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection.

A. Previous Rulemaking Records

(1) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Disposal and Marking Rule," Docket No. OPTS-68005, 43 FR 7150, February 17, 1978.

(2) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions Rule," 44 FR 31514, May 31, 1979.

(3) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Equipment," Docket No. OPTS-62015, 47 FR 37342, August 25, 1982.

(4) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Exclusions, Exemptions, and Use Authorizations," Docket No. OPTS-62032A, 49 FR 28172, July 10, 1984.

(5) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Transformers," Docket No. OPTS-62035D, 50 FR 29170, July 17, 1985.

B. Federal Register Notices

(1) 43 FR 7150, February 17, 1978, USEPA, "Polychlorinated Biphenyls (PCBs); Disposal and Marking."

(2) 43 FR 31514, May 31, 1979, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions."

(3) 47 FR 37342, August 25, 1982, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Equipment."

(4) 49 FR 28172, July 10, 1984, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Exclusions, Exemptions, and Use Authorizations."

(5) 50 FR 19170, July 17, 1985, USEPA, "Polychlorinated Biphenyls in Electrical Transformers; Final Rule."

(6) 52 FR 10688, April 2, 1987, USEPA, "Polychlorinated Biphenyls Spill Cleanup Policy."

(7) 43 FR 29908, July 11, 1978, "Preliminary Notification of Hazardous Waste Activities; Proposed Procedures."

(8) 43 FR 58946, December 18, 1978, USEPA, "Hazardous Waste; Proposed Guidelines and Regulations and Proposal on Identification and Listing."

(9) 45 FR 12722, February 26, 1980, USEPA, "Hazardous Waste Management: Overview and Definitions; Generator Regulations; Transporter Regulations."

(10) 45 FR 33140, May 19, 1980, USEPA, "Standards Applicable to Generators of Hazardous Waste."

(11) 45 FR 33150, May 19, 1980, USEPA, "Standards Applicable to Transporters of Hazardous Waste."

(12) 45 FR 33154, May 19, 1980, USEPA, "Standards and Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities."

(13) 45 FR 33260, May 19, 1980, USEPA, "Proposal to Modify 40 CFR Part 265—Subpart H—Financial Requirements."

(14) 46 FR 2802, January 12, 1981, USEPA, "Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Consolidated Permit Regulations."

(15) 47 FR 15032, April 7, 1982, USEPA, "Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Financial Requirements."

(16) 49 FR 10490, March 20, 1984, USEPA, "Hazardous Waste Management System: General; Standards for Generators of Hazardous Waste; State Hazardous Waste Program Requirements."

(17) 51 FR 16422, May 2, 1986, USEPA, "Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Closure/Post-Closure and Financial Responsibility Requirements."

C. Support Documents

(1) USEPA, OPTS, ETD, Regulatory Impact Analysis of Proposed Options For Notification and Manifesting of PCB–Containing Wastes, Final Report, ICF, Inc., February 22, 1988.

(2) USEPA, OPTS, ETD, Regulatory Flexibility Analysis in Support of the Proposed PCB Notification and Manifest Rule, June 22, 1988.

(3) USGAO, February 22, 1985, Report to the Subcommittee on Investigations and Oversight, House Committee on Public Works and Transportation, "Illegal Disposal of Hazardous Waste: Difficult to Detect or Deter."

(4) USGAO, May 20, 1987, Report to the Chairman, Subcommittee on Environment, Energy, and Natural Resources, House Committee on Government Operations, "Toxic Substances: Abandonment of PCBs Demonstrates Need for Program Improvements."

(5) USGAO, February 26, 1988, Report to the Chairman, Subcommittee on Environment, Energy, and Natural Resources, House Committee on Government Operations, "PCB Enforcement in Kansas City Region Substantiates Need for Further Program Improvements."

(6) USEPA, Region VII, Testimony of Morris Kay, Regional Administrator, before the Subcommittee on Environment, Energy, and Natural Resources, House Committee on Government Operations, August 13, 1986.

(7) USEPA, OPTS, Testimony of Dr. John A. Moore, Assistant Administrator for Pesticides and Toxic Substances, before the Subcommittee on Environment, Energy, and Natural Resources, House Committee on Government Operations, April 6, 1987.

(8) U.S. Congress, House of Representatives, 100th Congress, 1st Session; HR 3070: "The PCB Regulatory Improvements Act of 1987."

(9) USGAO, Testimony of Mr. Hugh Wessinger, Senior Associate Director, before the Subcommittee on Transportation, Tourism, and Hazardous Materials, House Committee on Energy and Commerce, December 9, 1987.

(10) USEPA, OPTS, Testimony of Dr. John A. Moore, Assistant Administrator for Pesticides and Toxic Substances, before the Subcommittee on Transportation, Tourism, and Hazardous Materials, House Committee on Energy and Commerce, December 9, 1987.

(11) Ohio EPA, Testimony of G. Richard Carter, before the Subcommittee on Transportation, Tourism, and Hazardous Materials, House Committee on Energy and Commerce, December 9, 1987.

(12) Edison Electric Institute, Testimony of Thomas E. Siedhoff, before the Subcommittee on Transportation, Tourism, and Hazardous Materials, House Committee on Energy and Commerce, December 9, 1987.

(13) Chemical Manufacturers Association and the National Electrical Manufacturers Association, Joint Statement, before the Subcommittee on Transportation, Tourism, and Hazardous Materials, House Committee on Energy and Commerce, December 9, 1987.

(14) Hazardous Waste Treatment Council, Testimony of Robert A. Mitchell, before the Subcommittee on Transportation, Tourism, and Hazardous Materials, House Committee on Energy and Commerce, December 9, 1987.

(15) Natural Resources Defense Council, Testimony of Jacqueline M. Warren, before the Subcommittee on Transportation, Tourism, and Hazardous Materials, House Committee on Energy and Commerce, December 9, 1987.

(16) Testimony of Francis Brillhart, Mayor of Holden, Missouri, before the Subcommittee on Transportation, Tourism, and Hazardous Materials, House Committee on Energy and Commerce, December 9, 1987.

(17) USEPA, OPTS, EED, Final Report on National Evaluation Plan; PCB Disposal Program Evaluations.

(18) PCB Consensus Group, Letter to Charles L. Elkins, Director, OTS, USEPA, August 14, 1987.

(19) PCB Consensus Group, Letter to Lee M. Thomas, Administrator, USEPA, June 12, 1987.

(20) Chemical Manufacturers Association, Letter to Marcia E. Williams, Director, OSW, USEPA, from representatives of the Chemical Manufacturers Association, the Utility Solid Waste Activities Group, the National Electric Manufacturers Association, the Hazardous Waste Treatment Council, Westinghouse Electric Corp., PPM, Inc., ENSCO, Inc., and the American Paper Institute, April 28, 1987.

(21) Environmental Defense Fund and the Natural Resources Defense Council, Letter to Marcia E. Williams, Director, OSW, USEPA, April 24, 1987.

(22) PCB Consensus Group submission: "Attachment II; Draft Regulatory Language to Amend the TSCA PCB Disposal Rules," August 14, 1987.

(23) ICF Inc., Memo to Ed Coe, ETD, OPTS, USEPA, "Methodology for Determining the Number of Hours for a PCB Offsite Commercial Storage Facility to Prepare a Closure Plan and Financial Assurance Estimate", February 25, 1988.

(24) USEPA, OSW, States Which Currently Regulate PCBs Under RCRA, undated.

(25) USEPA, EED and EDT, Memo to Rulemaking Record, "Estimate of Costs to Government Associated with Approving Commercial Storers of PCB Waste," August 18, 1988.

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this proposed rule is not a major rule as the term is defined in section 1(b) of the Executive Order.

EPA has concluded that the proposed rule is not "major" under the criteria of section 1(b) because the annual effect of the rule on the economy will be less than $100 million; it will not cause a major increase in costs or prices for any section of the economy or for any geographic region; and it will not result in any significant adverse effects on competition or on the ability of the United States enterprises to compete with foreign enterprises in domestic or foreign markets.

This proposed rule may in fact result in substantial economic benefits in the long run. The purpose of the rule is to ensure proper disposal of PCB wastes. There have been historical cases of improper storage or disposal of PCB wastes which have resulted in the creation of Superfund sites. Because the cleanup of these sites is often extremely expensive, this rule has the potential to benefit the economy as well as the environment.

This proposed rule was submitted to the Office of Management and Budget (OMB) prior to publication as required by the Executive Order.

B. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (the Act) (15 U.S.C. 8091 et seq. Pub. L. 96–534, September 19, 1980), requires EPA to prepare and make available for comment a regulatory flexibility analysis in connection with rulemaking. The initial regulatory flexibility analysis must describe the impact of the proposed rule on small business entities. If, however, a regulation will not have a significant impact on a substantial number of small entities, no such analysis is required.

EPA lacks information about the universe of PCB generators, storers, transporters, and disposers. This lack of information is a major reason for issuing the proposed rule. Because EPA lacks such knowledge, it could not determine whether a regulatory flexibility analysis was necessary. EPA performed a regulatory flexibility analysis and used the information which is currently available.

EPA does not have sufficient information to identify all the small businesses which would be affected by the rule. Because Congress is currently considering a bill that would impose requirements similar to those in the regulation, EPA analyzed, to the extent

possible, the effects of this proposal and the effects of the proposed bill.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 et seq. authorizes the Director of OMB to review certain information collection requests by Federal agencies. EPA has determined that the recordkeeping and reporting requirements of this proposed rule constitute a "collection of information" as defined at 44 U.S.C. 3502(4).

The information collection requirements of this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1446) and a copy may be obtained from David DiFiore, Information Policy Branch (PM-223), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. A copy may also be obtained by calling (202) 382-2744.

The public reporting burden for this collection of information is estimated to average 1.5 hours per response for the notification requirements, 3 hours per response for the Exception and Discrepancy Reporting requirements, and 325 to 460 hours per response for the financial assurance and closure requirements. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing and reviewing the collection of information.

Comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to the Chief, Information Policy Branch (PM-223), Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460. These comments should also be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ATTENTION: Desk Officer for EPA. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous materials, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: September 13, 1988.

Lee M. Thomas,

Administrator.

Therefore, it is proposed that 40 CFR Part 761 be amended as follows:

1. The authority citation for Part 761 is revised to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

2. In § 761.3 by adding and alphabetically inserting definitions for "certification," "commercial storer of PCB waste," "designated facility," disposer of PCB waste," "EPA identification number," "generator of PCB waste," "manifest," "off-site," "PCB waste," "transfer facility," and "transporter of PCB waste" to read as follows:

§ 761.3 Definitions

* * * * *

"Certification" means a written statement regarding a specific fact or representation that contains the following language:

Under the civil and criminal penalties of law for the making or submission of false or fraudulent statements or representations (18 U.S.C. 1001), I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete.

* * * * *

"Commercial storer of PCB waste" means the owner or operator of a facility which is subject to the PCB storage facility standards of § 761.65(b), and which engages in storage activities involving PCB wastes generated or owned by others. The receipt of a fee or other compensation for storage services is not necessary to qualify as a commercial storer of PCB waste; it is sufficient under this definition that the facility stores PCB wastes generated or owned by others.

* * * * *

"Designated facility" means the off-site disposer or commercial storer of PCB waste designated on the manifest as the facility that will receive a manifested shipment of PCB waste.

* * * * *

"Disposer of PCB waste" means any person who owns or operates a facility approved by EPA for the disposal of PCB wastes which are regulated for disposal under the requirements of Subpart D of this part.

* * * * *

"EPA identification number" means the number assigned to a facility by EPA upon notification under § 761.205.

* * * * *

"Generator of PCB waste" means any person whose act or process produces PCBs that are regulated for disposal under Subpart D of this part, or whose act first causes a PCB material to become subject to Subpart D disposal requirements. Unless another provision of this part specifically requires a site-specific meaning, "generator of PCB waste" includes all of the sites of PCB waste generation owned or operated by the person who generates PCB waste.

* * * * *

"Manifest" means the shipping document EPA form 8700-22 and any continuation sheet attached to EPA form 8700-2, originated and signed by the generator of PCB waste in accordance with the instructions included with the form and Subpart K of this Part.

* * * * *

"Off-site," means, when used to refer to an activity involving the handling of PCB waste, an activity conducted at a site other than the site where the PCB waste was generated.

* * * * *

"PCB waste" means those PCBs and PCB Items that are subject to the disposal requirements of Subpart D of this part.

* * * * *

"Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of PCB waste are held during the normal course of transportation. Transport vehicles are not transfer facilities under this definition, unless they are used for the storage of PCB wastes, rather than for actual transport activities. Storage areas for PCB wastes at transfer facilities are subject to the storage facility standards of § 761.65, but they are exempt from the approval requirements of § 761.65(d), unless they store the same PCB wastes for more than 10 consecutive days.

* * * * *

"Transporter of PCB waste" means, for the purposes of Subpart J of this part, any person engaged in the off-site transportation of regulated PCB waste by air, rail, highway, or water.

* * * * *

3. In § 761.65 by adding paragraphs (d), (e), (f), (g), and (h) to read as follows:

§ 761.65 Storage for disposal.

* * * * *

(d) *Approval of commercial storers of PCB wastes.* (1) All commercial storers of PCB waste, as defined in § 761.3, shall have interim approval to operate commercial facilities for the storage of PCB wastes until [insert date 180 days after effective date of the final rule]. Commercial storers of PCB waste are prohibited from storing any PCB wastes at their facilities after [insert date 180 days after effective date of the final rule] unless they have submitted by [insert date 180 days after effective date of the final rule] a complete application for a final storage approval under paragraph (d)(2) of this section. The period of interim approval shall be extended to include the period during which EPA considers an applcation submitted in accordance with this paragraph.

(2) The Regional Administrator for the region in which the storage facility is located shall grant a written, final approval to engage in the commercial storage of PCB wastes upon a determination by the Regional Administrator that:

(i) The principals and key employees responsible for the establishment or operation of the commercial storage facility are qualified to engage in the business of commercial storage of PCB wastes.

(ii) The facility possesses the capacity to handle the quantities of PCB wastes which the owner or operator of the facility has estimated will be the maximum quantities of PCB waste that will be handled at any one time at the facility.

(iii) The owner or operator of the facility has certified compliance with the storage facility standards in paragraph (b) of this section.

(iv) The owner or operator has developed a written closure plan for the facility that is deemed acceptable by the Regional Administrator under the closure plan standards of paragraph (e) of this section.

(v) The owner or operator has included in the application for final approval a demonstration of financial responsibility for closure that meets the financial responsibility standards of paragraph (g) of this section.

(3) *Application.* Applicants for final storage approvals shall submit a written application that includes any relevant information bearing upon the qualifications of the facility's principals and key employees to engage in the business of commercial storage of PCB wastes. This information shall include, but is not limited to:

(i) The identification of the principals or key employees who are or will be responsible for the operation of the facility.

(ii) Information concerning the principals' or key employees' technical qualifications and experience in handling PCB wastes or other wastes.

(iii) Information concerning any past State and Federal environmental violations involving the same business or another business with which the principals or key employees were affiliated.

(iv) A list of all companies currently owned or operated in the past by the principals or key employees.

(v) The owner's or operator's estimate of maximum PCB waste quantities to be handled at the facility.

(vi) A written statement certifying compliance with paragraph (b) of this section and containing a certification as defined in § 761.3.

(vii) A written closure plan for the facility, as described in paragraph (e) of this section.

(viii) The current closure cost estimate for the facility, as described in paragraph (f) of this section.

(ix) A demonstration of financial responsibility to close the facility, as described in paragraph (g) of this section.

(4) The written approval issued by the Regional Administrator shall include:

(i) The determination required under paragraph (d)(2) of this section, including a statement of the basis for the determination.

(ii) A condition incorporating the closure plan submitted by the facility owner or operator and approved by the Regional Administrator.

(iii) A condition imposing a maximum rated PCB storage capacity which the facility shall not exceed during its PCB waste storage operations. The maximum rated storage capacity imposed under this condition shall not be greater than the estimated maximum inventory of PCB wastes included in the owner's or operator's application for a final approval.

(iv) Such other conditions as deemed necessary by the Regional Administrator to ensure that the operations of the PCB storage facility will not pose an unreasonable risk of injury to health or the environment.

(5) Storage areas at transfer facilities are exempt from the requirement to obtain final approvals under this paragraph, unless the same PCB wastes are stored at these facilities for greater than 10 consecutive days.

(e) *Closure.* (1) A commercial storer of PCB waste, as defined in § 761.3, must have a written closure plan that identifies the steps that the owner or operator of the facility must take to close its PCB waste storage facility in a manner that eliminates the potential for post-closure releases of PCBs to the environment which may present an unreasonable risk. An acceptable closure plan must include, at a minimum.

(i) A description of how the PCB storage areas of the facility will be closed in a manner that eliminates the potential for post-closure releases of PCBs to the environment.

(ii) An identification of the maximum extent of storage operations that will remain unclosed during the active life of the facility, including an identification of the extent of PCB storage operations at the facility relative to other wastes that will be handled at the facility.

(iii) An estimate of the maximum inventory of PCB wastes that will ever be handled at one time at the facility over its active life, and a detailed description of the methods or arrangements to be used during closure for removing, transporting, storing, or disposing of the facility's inventory of PCB wastes, including an identification of any off-site facilities that will be used.

(iv) A detailed description of the steps needed to remove or decontaminate PCB waste residues and contaminated containment system components, equipment, structures, and soils during closure in accordance with the PCB Spills Cleanup Policy in Subpart G of this Part, including a description of the methods for sampling and testing of surrounding soils, and the criteria for determining the extent of removal or decontamination.

(v) A detailed description of other activities necessary during the closure period to ensure that any post-closure releases of PCBs to the environment will not present unreasonable risks. This includes activities such as groundwater monitoring, run-on and run-off control, and facility security.

(vi) A schedule for closure of each area of the facility where PCB wastes are stored or handled, including the total time required to close each area of PCB waste storage or handling, and the time required for any intervening closure activities.

(vii) An estimate of the expected year of closure of the PCB waste storage areas.

(2) A written closure plan found to be acceptable by the Regional Administrator under this section shall become a condition of any approval granted under paragraph (d) of this section.

(3) The commercial storer of PCB waste shall submit a written request to

the Regional Administrator for a modification to its storage approval to amend its closure plan, whenever:

(i) Changes in ownership, operating plans, or facility design affect the existing closure plan.

(ii) There is a change in the expected date of closure, if applicable.

(iii) In conducting closure activities, unexpected events require a modification of the approved closure plan.

(4) The Regional Administrator may request modifications to the existing closure plan under the conditions described in paragraph (e)(3) of this section.

(5) Commercial storers of PCB waste shall comply with the following closure schedule:

(i) The commercial storer shall notify the Regional Administrator in writing at least 60 days prior to the date on which final closure of its PBC storage facility is expected to begin.

(ii) The date when a commercial storer of PCB waste "expects to begin closure" shall be no later than 30 days after the date on which the storage facility received its final quantities of PCB waste. For good cause shown, the Regional Administrator may extend the date for commencement of closure for an additional 30-day period.

(iii) Within 90 days after receiving the final quantity of PCB waste for storage, a commercial storer of PCB waste shall cause all PCB wastes in storage at the facility to be removed from the facility in accordance with the approved closure plan. For good cause shown, the Regional Administrator may approve a reasonable extension to the period for removal of the PBC waste.

(iv) A commercial storer of PCB waste shall complete closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of PCB wastes for storage at the facility. For good cause shown, the Regional Administrator may approve a reasonable extension to the closure period.

(6) During the closure period, all contaminated equipment, structures, and soils shall be disposed of in accordance with the disposal requirements of Subpart D of this part, or, if applicable, decontaminated in accordance with the PCB Spills Cleanup Policy at Subpart G of this part. When PCB wastes are removed from the facility during closure, the owner or operator becomes a generator of PCB waste subject to the generator requirements of Subpart J of this part.

(7) Within 60 days of completion of closure of each facility for the storage of PCB wastes, the commercial storer of PCB wastes shall submit to the Regional Administrator, by registered mail, a ceritification, as defined in § 761.3, that the PCB storage facility has been closed in accordance with the approved closure plan. The certification shall be signed by the owner or operator and by an independent registered professional engineer.

(f) *Closure cost estimate.* (1) A commercial storer of PCB wastes shall have a detailed estimate, in current dollars, of the cost of closing its facility in accordance with its approved closure plan. The closure cost estimate shall be in writing, and certified to by the person preparing it, using the certification defined in § 761.3, and shall comply with the following criteria:

(i) The closure cost estimate shall equal the cost of final closure at the point in the PCB storage facility's active life when the extent and manner of PCB storage operations would make closure the most expensive, as indicated by its closure plan.

(ii) The closure cost estimate shall be based on the costs to the owner or operator of hiring a third party to close the facility, and the third party shall not be either a corporate parent or subsidiary of the owner or operator.

(iii) The owner or operator shall include in the estimate the current market costs for off-site commercial disposal of its maximum estimated inventory of PCB wastes, except that on-site disposal costs may be used if on-site disposal capacity will exist at the facility at all times over the life of the PCB storage facility.

(iv) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of wastes, facility structures or equipment, land, or other assets associated with the facility at the time of closure.

(v) The closure cost estimate may not incorporate a zero cost for PCB wastes that might have economic value.

(2) During the active life of the PCB storage facility, the commercial storer of PCB waste shall adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instruments used to demonstrate financial responsibility for closure, except that owners or operators who use the financial test or corporate guarantee shall adjust their closure cost estimates for inflation within 30 days after the close of the storer's fiscal year. The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its *Survey of Current Business*. The Implicit Price Deflator for Gross National Product is included in a monthly publication titled *Economic Indicators*, which is available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The inflation factor used in the latter method is the result of dividing the latest published annual Deflator by the Deflator for the previous year. The adjustment to the closure cost estimate is then made by multiplying the most recent closure cost estimate by the latest inflation factor.

(3) Where the Regional Administrator approves a modification to the facility's closure plan, and that modification increases the cost of closure, the owner or operator shall revise the closure cost estimate no later than 30 days after the modification is approved. Any such revision shall also be adjusted for inflation in accordance with paragraph (f)(2) of this section.

(4) The owner or operator of the facility shall keep at the facility during its operating life the most recent closure cost estimate, including any adjustments resulting from inflation or from modifications to the closure plan.

(g) *Financial assurance for closure.* A commercial storer of PCB waste shall establish financial assurance for closure of each PCB storage facility that it owns or operates. In establishing financial assurance for closure, the commercial storer of PCB waste may choose from the following financial assurance mechanisms:

(1) The "closure trust fund," as specified in § 264.143(a) of this chapter, except for paragraph (a)(3) of § 264.143. For purposes of this paragraph, the following provisions also apply:

(i) Payments into the trust fund shall be made annually by the owner or operator over the remaining operating life of the facility as estimated in the closure plan, or over 3 years, whichever period is shorter; this period is hereafter referred to as the "pay-in period."

(ii) For a new facility, the first payment into the closure trust fund shall be made before the initial receipt of PCB waste for commercial storage. A receipt from the trustee shall be submitted by the owner or operator to the Regional Administrator before this initial delivery of PCB waste. The first payment shall be at least equal to the current closure cost estimate, except as provided in paragraph (g)(7) of this section for multiple mechanisms, divided by the number of years in the pay-in period. Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment.

The amount of each subsequent payment shall be determined by subtracting the current value of the trust fund from the current closure cost estimate, and dividing this difference by the number of years remaining in the pay-in period.

(iii) If an owner or operator of a facility existing on the effective date of this paragraph establishes a trust fund to meet the financial assurance requirements of this paragraph, and the value of the trust fund is less than the current closure cost estimate when a final approval is granted for the facility, the amount of the current closure cost estimate still to be paid into the trust fund shall be paid in over the pay-in period as defined in paragraph (g)(1)(i) of this section. Payments shall continue to be made no later than 30 days after each anniversary date of the first payment made into the trust fund. The amount of each payment shall be determined by subtracting the current value of the trust fund from the current closure cost estimate, and dividing this difference by the number of years remaining in the pay-in period.

(iv) The submission of a trust agreement with the wording specified in § 264.151(a)(1) of this chapter, including any reference to hazardous waste management facilities, shall be deemed to be in compliance with the requirement to submit a trust agreement under this subpart.

(2) The "surety bond guaranteeing payment into a closure trust fund," as specified in § 264.143(b) of this chapter, including the use of the surety bond instrument specified at § 264.151(b) of this chapter and the standby trust specified at § 264.143(b)(3) of this chapter. The use of the surety bonds, surety bond instruments, and standby trust agreements specified in §§ 264.143(b) and 264.151(b) of this chapter shall be deemed to be in compliance with this Subpart.

(3)(i) The "surety bond guaranteeing performance of closure," as specified at § 264.143(c) of this chapter, except for paragraph (c)(5) of § 264.143. The submission and use of the surety bond instrument specified at § 264.151(c) of this chapter and the standby trust specified at § 264.143(c)(3) of this chapter shall be deemed to be in compliance with the requirements under this Subpart relating to the use of surety bonds and standby trust funds.

(ii) For the purposes of this paragraph, and under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination pursuant to section 16 of TSCA that the owner or operator has failed to perform final closure in accordance with the closure plan and other approval or regulatory requirement when required to do so.

(4)(i) The "closure letter of credit" specified in § 264.143(d) of this chapter, except for paragraph (d)(8) of § 264.143. The submission and use of the letter of credit instrument specified at § 264.151(d) of this chapter and the standby trust specified in § 264.143(d)(3) of this chapter shall be deemed to be in compliance with the requirements of this Subpart relating to the use of letters of credit and standby trust funds.

(ii) For the purposes of this paragraph, the Regional Administrator may draw on the letter of credit following a final administrative determination pursuant to section 16 of TSCA that the owner or operator has failed to perform final closure in accordance with the closure plan and other approval or regulatory requirement when required to do so.

(5) "Closure insurance," as specified in § 264.143(e) of this chapter, utilizing the certificate of insurance for closure specified at § 264.151(e) of this chapter. The use of closure insurance as specified in § 264.143(e) of this chapter and the submission and use of the certificate of insurance specified in § 264.151(e) of this chapter shall be deemed to be in compliance with the requirements of this Subpart relating to the use of closure insurance.

(6) The "financial test and corporate guarantee for closure," as described in § 264.143(f) of this chapter, including a letter signed by the owner's or operator's chief financial officer as specified at § 264.151(f) of this chapter and, if applicable, the written corporate guarantee specified at § 264.151(h) of this chapter. The use of the financial test and corporate guarantee specified in § 264.143(f) of this chapter, the submission and use of the letter specified in § 264.151(f) of this chapter, and the submission and use of the written corporate guarantee specified at § 264.151(h) of this chapter shall be deemed to be in compliance with the requirements of this Subpart relating to the use of financial tests and corporate guarantees.

(7) The use of multiple financial mechanisms, as specified in § 264.143(g) of this chapter.

(h) *Release of owner or operator.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been in accordance with the approved closure plan. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

Subpart J—[Amended]

4. By revising the heading for Subpart J to read: "Subpart J—General Records and Reports."

5. By revising paragraphs (a) and (b) of § 761.180 to read as follows:

§ 761.180 Records and monitoring.

* * * * *

(a) *PCBs and PCB Items in service or projected for disposal.* Beginning July 2, 1978, each owner or operator of a facility, other than a commercial storer of PCB waste, using or storing at one time at least 45 kilograms (99.4 pounds) of the PCBs contained in PCB Container(s) or one or more PCB Transformers, or 50 or more PCB Large High or Low Voltage Capacitors shall develop and maintain written records on the disposition of the PCBs and PCB Items. These records shall form the basis for a distinct, written annual document prepared for each facility by July 1 covering the previous calendar (January to December) year. The records and documents shall be maintained for at least 5 years after the facility ceases using or storing PCBs and PCB Items in the prescribed quantities. The following information for each facility shall be included in the written annual document:

(1) The name, address, and EPA identification number of the facility covered by the annual document, and the calendar year covered by the document.

(2) For each PCB or PCB Item identified as removed from service:

(i) The identity of the PCB or PCB Item including:

(A) The serial number or other means of identifying specifically each PCB Article, PCB Container, PCB Article Container, or other PCB Item.

(B) A description of the contents of each PCB Container and PCB Article Container, and the total weight in kilograms of any PCBs and PCB Items in each PCB Container and PCB Article Container.

(ii) The date removed from service, the date placed into storage for disposal, the date placed into transport for off-site

storage or diposal, and, if available from a Certificate of Disposal, the date of disposal.

(iii) The name, address, and EPA identification number of the transporter which transported PCB waste off-site for storage or disposal, and the name, address, and EPA identification number of the disposal or commercial storer of PCB waste to which the PCB waste was transported.

(3) Total quantities of PCBs and PCB Items remaining in service at the end of the calendar year.

(4) Total quantities of PCBs or PCB Items removed from service, placed into storage for disposal, and placed into transpart for off-site storage or disposal during the calendar year.

(5) In recording total quantities of PCBs and PCB Items in paragraphs (a)(3) and (4) of this section, the quantities shall be recorded using the following breakdown:

(i) Total weight in kilograms of any PCBs or PCB Items in PCB Containers and PCB Article Containers, including the identification of container contents such as liquids or capacitors.

(ii) Total number of PCB Transformers and total weight in kilograms of any PCBs contained in the transformers.

(iii) Total number of PCB Large High or Low Voltage Capacitors.

(b) *Disposers and commercial storers of PCB waste.* Each owner or operator of a facility (including high efficiency boiler operations) used for the commercial storage or disposal of PCBs and PCB Items shall by July 1, 1979 and each July 1 thereafter prepare and maintain a written annual document that includes the information required by paragraphs (b)(1) through (4) of this section for PCBs and PCB items that were handled as PCB waste at the facility during the previous calendar (January to December) year. The annual document shall be retained at each facility for at least 5 years after the facility is no longer used for the storage or disposal of PCBs and PCB Items except that in the case of chemical waste landfills, the annual document shall be maintained at least 20 years after the chemical waste landfill is no longer used for the disposal of PCBs and PCB Items. The documents shall be available at the facility for inspection by authorized representatives of the Agency. If the facility will cease commercial PCB storage or disposal operations, the owner or operator of such facility shall provide at least 60 days advance written notice to the Regional Administrator for the region in which the facility is located of the date the facility intends to begin closure. The notice shall also specify where the annual documents that are required to be maintained by this paragraph are located. Each annual document shall contain the information described in paragraphs (b)(1) through (4) of this section.

(1) The EPA identification number, name, owner, and address of the storage or disposal facility, and the calendar year covered by the document.

(2) For each PCB or PCB Item received by the facility for storage or disposal:

(i) The identity of the PCB or PCB Item received, including:

(A) The serial number or other means of identifying specifically each PCB Article, PCB Container, or other PCB Item.

(B) A description of the contents of each PCB Container, and the weight in kilograms of any PCBs and PCB Items in each PCB Container.

(ii) The name, EPA identification number (if any), and address of the owner or operator of the facility from which each PCB or PCB Item was received.

(iii) The date received, the date of removal from service, the date disposed of at the facility, or, if applicable, the date transported off-site to another disposal or storage facility.

(iv) The name, address, and EPA identification number of any transporter who transported PCB waste off-site to another disposal or storage facility, and the name, address, and EPA identification number of the disposal or storage facility to which the PCB or PCB Item was transported.

(3) A summary of the total quantities of PCBs and PCB Items handled at the facility during the previous calendar year, including totals for each of the following categories:

(i) PCBs or PCB Items received during the year.

(ii) PCBs or PCB Items transferred to other facilities during the calendar year.

(iii) PCBs or PCB Items retained at the facility at the end of the year.

(4) When summarizing the total quantities of PCBs and PCB Items for purposes of paragraph (b)(3) of this section, the total quantities shall be recorded using the following breakdown:

(i) Total weight in kilograms of PCBs in containers and PCB Items in containers.

(ii) Total weight in kilograms of PCBs in PCB Articles.

(iii) Total number of PCB Transformers and other PCB Articles, PCB Articles not in PCB Containers, and PCB Equipment not in PCB Containers.

(5)(i) The owner or operator of a PCB disposal or commercial storage facility shall submit a copy of the annual document required under paragraph (b) of this section to the Regional Administrator by July 15 of each year, beginning with the first July 15 that occurs after [insert effective date of final rule].

(ii) An owner or operator of a PCB commercial storage or disposal facility may assert a business confidentiality claim covering parts of the annual document. In such cases, the owner or operator shall follow the procedures for asserting business confidentiality claims described in § 704.7 of this chapter, including the requirement of § 704.7(c) that persons asserting a claim of business confidentiality submit a second copy of the annual document that is complete except that the data claimed to be confidential has been deleted.

(iii) The requirement to submit annual documents to the Regional Administrator continues until the submission of the annual document for the calendar year during which the facility ceases PCB storage or disposal operations. Storage operations have not ceased until all PCB wastes, including any PCB wastes generated during closure, have been removed from the facility.

(6) Whenever a commercial storer of PCB waste accepts PCBs or PCB Items at its storage facility, and transfers the PCB wastes off-site to another facility for storage or disposal, the commercial storer of PCB waste shall:

(i) Initiate a manifest under Subpart K of this Part for the transfer of PCBs or PCB Items to the next storage or disposal facility, and include on the manifest or continuation sheet, the date(s) of removal from service for each PCB or PCB Item.

(ii) Include in its annual document (§ 761.180(b)) records for each PCB or PCB Item transferred from the facility during the calendar year, the date of removal from service, as indicated on the manifest or continuation sheet that accompanied the PCB waste to the storage facility.

(iii) Include in its annual document (§ 761.180(b)) records for each PCB or PCB Item transferred to a disposal facility during the calendar year, the confirmed date of disposal, as indicated by a Certificate of Disposal.

6. By adding a Subpart K to read as follows:

Subpart K—PCB Waste Disposal Records and Reports

Sec.

Subpart K—PCB Waste Disposal Records and Reports

§ 761.202 EPA identification numbers.

(a) *General.* Any generator, commercial storer, transporter, or disposer of PCB waste who is required to have an EPA identification number under this Subpart, but has not received one, may obtain one by applying to the Agency using the notification procedures and form described in § 761.205.

(b) *Prohibitions.* (1)(i) A generator of PCB waste shall not process, store, dispose of, transport, or offer for transportation PCB waste without having received an EPA identification number from the Agency. Generators of PCB waste who are exempted from notification under § 761.205(c)(1) shall be regarded as having received from the Agency the EPA identification number "40 CFR PART 761."

(ii) A generator of PCB waste shall not offer the PCB waste to transporters, disposers or commercial storers of PCB waste who have not received an EPA identification number.

(2)(i) A transporter of PCB waste shall not transport PCB waste without having received an EPA identification number from the Agency.

(ii) A transporter of PCB waste shall not deliver PCB waste to transporters, disposers, or commercial storers of PCB waste that have not received an EPA identification number.

(3) A commercial storer of PCB waste shall not accept any PCB waste for storage without having received an EPA identification number from the Agency.

(4) A disposer of PCB waste shall not accept any PCB waste for disposal without having received an EPA identification number from the Agency.

(c) *PCB waste handled prior to effective date of this Subpart.* Generators (other than generators exempt from notification under § 761.205(c)(1)), commercial storers, transporters, and disposers of PCB waste who are required to have EPA identification numbers under this Subpart, and who were engaged in PCB waste handling activities on or prior to [insert effective date of the final rule], are not subject to the prohibitions of paragraph (b) of this section if they have applied for an EPA identification number in accordance with the applicable § 761.205 notification procedures. Such persons shall use the EPA identification number "40 CFR Part 761," or a number assigned to the persons by the Agency or a state under RCRA, until the Agency issues them a specific identification number under § 761.205(a), (b), or (c).

(d) *PCB waste first handled after effective date of this Subpart.* Generators (other than generators exempt from notification under § 761.205(c)(1)), commercial storers, transporters, and disposers of PCB waste who are required to have EPA identification numbers under this Subpart, and who first engage in PCB waste activities after [insert effective date of the final rule], are subject to the prohibitions in paragraph (b) of this section until they receive their EPA identification numbers.

§ 761.205 Notification of PCB waste activity.

(a)(1) All commercial storers, transporters, and disposers of PCB waste who were engatged in PCB waste handling activities on or prior to [insert effective date of the final rule] must notify the Agency of their PCB waste activities by filing EPA Form 7710–53, set out at paragraph (a)(3) of this section, with the Agency by no later than [insert effective date of the final rule]. Upon receiving the notification form, the Agency will assign an EPA identification number to each entity that notifies.

(2) All generators (other than generators exempt from notification under § 761.205(c)(1)), commercial storers, transporters, and disposers of PCB waste who first engage in PCB waste handling activities after [insert effective date of the final rule], must notify the Agency of their PCB waste activities by filing EPA Form 7710–53 with the Agency prior to engaging in PCB waste handling activities.

(3) Any person required to notify EPA under this section shall file with the Administrator the following form, denoted as EPA Form 7710–53.

Note: Form 7710–53 is included for the purpose of notice and comment, but it will not physically appear in the final rule. An availability statement for the form and the descriptive information included in paragraph (a)(4) of this proposed rule will appear in place of the full-text copy of the form and instructions.

BILLING CODE 6560–50–M

EPA

United States Environmental Protection Agency
Washington, DC 20460

Notification of PCB Activity

Form Approved
OMB No xxxx-xxxx
Approval expires xx-xx-xx

No information on this form may be claimed as TSCA CBI.

Return To:

Chemical Regulation Branch
Office of Toxic Substances TS-798
U.S. Environmental Protection Agency
401 M St., SW
Washington, DC 20460

For Official Use Only

TSCA PCB ID Number

I. Name of Facility

II. EPA Identification Number *(if already assigned under RCRA)*

III. Facility Mailing Address *(Street or PO Box, City, State, & ZIP Code)*

IV. Location of Facility *(No. & Street, City, State, & ZIP Code)*

DRAFT

V. Installation Contact *(Name and Title)*

Telephone Number *(Area Code and Number)*

VI. Type of PCB Activity *(Mark 'X' in appropriate box. See Instructions.)*

- ☐ A. Generator with onsite storage facility
- ☐ B. Storer *(Commercial)*
- ☐ C. Transporter
- ☐ D. Permitted Disposer

VII. Certification

Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (18 U.S.C. 1001 and 15 U.S.C. 2615), I certify that the information contained in this document is true, accurate, and complete. As to the identified section(s) of this document for which I cannot personally verify truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that their information is true, accurate, and complete.

Signature	Name and Official Title *(Type or print)*	Date Signed

EPA Form 7710-53 (6-88)

Item-by-Item Instructions for Completing EPA Form 7710-53

Return completed form to:

Chemical Regulation Branch
Office of Toxic Substances
TS-798
U.S. Environmental Protection Agency
401 M St., SW
Washington, DC 20460

No information on the form may be claimed confidential.

Type or print in black ink all items, except Item VII, "Certification." If you must use additional sheets, indicate clearly the number of the item on the form to which the information on the separate sheet applies.

Item I — Name of facility: Enter name of the facility.

Item II — EPA identification number *(if already assigned under RCRA):* Enter the identification number the facility was assigned under the RCRA hazardous waste notification regulations. If no identification number has been assigned, leave this space blank.

Items III and IV — Facility mailing address and location: Complete Items III and IV. Please note that the address you give in Item IV, "Location of Facility," must be a physical address, not a post office box or route number. If the mailing address and physical location are the same, you may enter "Same" in Item IV. If the facility is a mobile incinerator, you may enter "mobile" in Item IV, and provide the mailing address for the installation contact in Item III.

Item V — Installation contact: Enter the name, title, and business telephone number of the person who should be contacted regarding information submitted on this form.

Item VI — Type of PCB activity: Mark the appropriate box(es) to show which PCB activities are taking place at this facility.

A. Generator with onsite storage facility: You are a generator with an onsite storage facility under this notification requirement if you are a user, owner, or processor of PCBs or PCB items and you maintain your own storage facilities subject to CFR 761.65(b) for PCBs. If you are a generator with an onsite storage facility, mark an "X" in this box.

B. Commercial storer: You are a commercial storer if you own or operate a storage facility which is subject to the storage facility standards of 40 CFR 761.65(b), and which engages in offsite storage activities involving the PCB wastes owned by others. Most commercial storers of PCB waste perform waste storage services in exchange for a fee or other compensation, but the receipt of compensation is not necessary for your storage facility to qualify as a commercial storer of PCB wastes under this notification requirement. It is sufficient that your facility stores PCB wastes owned by others. If you are a commercial storer, mark an "X" in this box.

C. Transporter: If you move PCBs by air, rail, highway, or water, then mark an "X" in this box.

D. Permitted disposer: If you currently hold a valid EPA permit to dispose of PCBs in concentrations exceeding 50 ppm in a landfill, through alternative technology or incineration, mark an "X" in this box.

Item VII — Certification: This certification must be signed by the owner, operator, or an authorized representative of the facility. An "authorized representative" is a person responsible for the overall operation of the facility (i.e., a plant manager or superintendent, or a person of equal responsibility). All notifications must include this certification to be complete.

BURDEN BOX

The information collection requirements of this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request document has been prepared by EPA (ICR No. 1446) and a copy may be obtained from David DiFiore, Information Policy Branch (PM-223), Environmental Protection Agency, 401 M St., SW., Washington, DC. 20460. A copy may also be obtained by calling (202) 382-2744.

The public reporting burden for this collection of information is estimated to average 1.5 hours per response for the notification requirements, 3 hours per response for the Exception and Discrepancy Reporting requirements, and 325 to 460 hours per response for the financial assurance and closure requirements. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing and reviewing the collection of information.

Comments regarding the burden estimate or any other aspect of this collection of information should be submitted to the Chief, Information Policy Branch (PM-223), Environmental Protection Agency, 401 M St., SW., Washington, DC. 20460. These comments should also be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503, marked ATTENTION: Desk Officer for EPA. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

BILLING CODE 6560-50-C

(4) The following information shall be provided to EPA on Form 7710–53:

(i) The name of the facility.

(ii) EPA indentification number, if any, previously issued to the facility.

(iii) The facility's mailing address.

(iv) Ownership information about the facility.

(v) The location of the facility.

(vi) The facility's installation contract.

(vii) The type of PCB waste activity engaged in at the facility.

EPA has determined that the above information is not entitled to be treated as confidential business information. This information will be disclosed to the public without further notice to the submitter unless the submitter provides a written justification (submitted with the notification form) which demonstrates extraordinary reasons why the information should be entitled to confidential treatment.

(b) Generators (other than those generators exempt from notification under § 761.205(c)(1)), commercial storers, transporters, and disposers of PCB waste who have previously notified the Agency or a State of hazardous waste activities under RCRA shall notify EPA of their PCB waste activities under this part by filing EPA Form 7710–53 with the Agency by no later than [insert date 60 days after effective date of the final rule]. The notification shall include the EPA indentification number previously issued by the Agency or the State, and upon receiving the notification, the Agency will acknowledge the use of the previously issued indentification number for PCB waste activities.

(c)(1) Generators of PCB waste need not notify the Agency and receive unique EPA indentification numbers under this section, unless their PCB waste activities are described in paragraph (c)(2) of this section. Generators exempted from notifying under this paragraph shall use the generic indentification number "40 CFR PART 761" on the manifests, records, and reports which they shall prepare under this Subpart, unless they elect to use a unique EPA indentification number previously assigned to them under RCRA by the Agency or a State.

(2) Generators of PCB waste who use, own, service, or process PCBs or PCB Items shall notify the Agency of their PCB waste activities only if they own or operate PCB storage facilities subject to § 761.65(b) storage requirements. Such generators shall notify EPA in the following manner:

(i) Generators currently storing PCB wastes subject to § 761.65(b) storage requirements shall notify EPA by filing EPA Form 7710–53 with the Agency by no later than [insert date 60 days after the effective date of the final rule].

(ii) Generators who desire to commence storage of PCB waste after the effective date of this Subpart shall notify the Agency and receive an EPA indentification number before they may commence storage of PCBs at their new § 761.65(b) facilities.

(iii) A separate notification shall be submitted for each PCB storage facility owned or operated by generators of PCB waste. Upon receiving these notifications, the Agency will assign generators unique EPA identification numbers for each storage facility notifying under this section.

(d) Persons required to notify under this section shall file EPA Form 7710–53 with the Agency by mailing the form to the following address: Chief, Chemical Regulations Branch (TS–798), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

(e) The requirements under this section to notify the Agency and obtain EPA indentification numbers shall in no case excuse compliance by any person with the 1-year limit on storage prior to disposal under § 761.65(a).

§ 761.207 The manifest—general requirements.

(a) A Generator who relinquishes control over PCB wastes by transporting, or offering for transport, PCB wastes for commercial off-site storage of off-site disposal shall prepare a manifest on EPA Form 8700–22, and if necessary, a continuation sheet. The Agency does not maintain supplies of printed copies of Form 8700–22 for public use, although printed copies of the manifest may be available from State offices. Camera-ready copies of the form are available for printing purposes from State offices, and from the EPA Regional Offices and EPA Headquarters.

(b) A generator shall designate on the manifest one off-site storage or disposal facility approved under this part for the storage or disposal of the PCBs described on the manifest.

(c) If the transporter is unable to deliver the PCB waste to the designated disposer or commerical storer, the transporter must contact the generator for instructions. The generator shall either designate another approved disposer or commercial storer, or instruct the transporter to return the PCB waste.

(d)(1) The manifest which accompanies the PCB waste shall consist of at least the number of copies which will provide the generator, the initial transporter, each subsequent transporter, and the owner or operator of the designated storage or disposal facility with one legible copy each for their records and another legible copy to be returned by the designated facility to the generator.

(2) The generator shall prepare one additional legible copy of the manifest, to be used as an advance notice from the generator to the facility designated for delivery of the shipment of PCB waste, as required under § 761.208(a)(2)(i).

(e) The requirements of this section do not apply to PCB wastes with PCB concentrations below 50 ppm, unless the PCB concentration below 50 ppm was the result of an act of dilution prohibited under § 761.1(b), or the result of cleanup of a spill involving material with a PCB concentration greater than 50 ppm.

§ 761.208 Use of the manifest.

(a)(1) The generator of PCB waste shall:

(i) Sign the manifest certification by hand.

(ii) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest.

(iii) Retain one copy among its records in accordance with § 761.209(a).

(iv) Give to the transporter the remaining copies of the manifest that will accompany the shipment of PCB waste.

(2) Immediately after delivering the PCB waste and manifest to the initial transporter, the generator shall send to the designated storage or disposal facility by Registered Mail, Return Receipt Requested, the advance copy of the manifest described in § 761.207(e)(2).

(3) For bulk shipments of PCB waste within the United States solely by water, the generator shall send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated storage or disposal facility. Copies of the manifest are not required for each transporter.

(4) For rail shipments of PCB waste within the United States which originate at the site of generation, the generator shall send at least three copies of the manifest dated and signed in accordance with this section to:

(i) The next non-rail transporter, if any.

(ii) The designated storage or disposal facility if transported solely by rail.

(b)(1) A transporter shall not accept PCB waste from a generator unless it is accompanied by a manifest signed by the generator in accordance with paragraph (a)(1) of this section, except

that a manifest is not required if one of the following conditions exists:

(i) The shipment of PCB waste consists solely of wastes with PCB concentrations below 50 ppm, which concentrations were not the result of prohibited dilution, or the result of the cleanup of a spill involving materials with PCB concentrations greater than 50 ppm.

(ii) The PCB waste is accepted by the transporter for transport only to storage facility owned or operated by the generator of the PCB waste.

(2) Before transporting the PCB waste, the transporter shall sign and date the manifest acknowledging acceptance of the PCB waste from the generator. The transporter shall return a signed copy to the generator before leaving the generator's property.

(3) The transporter shall ensure that the manifest accompanies the PCB waste.

(4) A transporter who delivers PCB waste to another transporter, or to the designated commercial storer or disposer of PCB waste, shall:

(i) Obtain the date of delivery and handwritten signature of the subsequent transporter of PCB waste, or of the owner or operator of the designated storage or disposal facility on the manifest.

(ii) Retain one copy of the manifest in accordance with § 761.209(b).

(iii) Give the remaining copies of the manifest to the accepting transporter of PCB waste, or to the designated storage or disposal facility.

(5) The requirements of paragraphs (b)(3), (4), and (6) of this section shall not apply to water (bulk shipment) transporters if:

(i) The PCB waste is delivered by water (bulk shipment) to the designated storage or disposal facility.

(ii) A shipping paper containing all the information required on the manifest (excluding EPA identification number, generator certification, and signatures) accompanies the PCB waste.

(iii) The delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated storage or disposal facility on either the manifest or the shipping paper.

(iv) The person delivering the PCB waste to the initial water (bulk shipment) transporter obtains the date of delivery and signature of the water (bulk shipment) transporter on the manifest and forwards it to the designated facility.

(v) A copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with § 761.209(b).

(6) For shipments involving rail transportation, the requirements of paragraph (b)(3), (4), and (5) of this section shall not apply. Instead, the requirements described at § 263.20(f) of this title for the rail transportation of hazardous waste apply to such shipments. The rail transporter shall retain one copy of the manifest or rail shipping paper in accordance with § 761.209(b).

(7) The transporter shall deliver the entire quantity of PCB waste which he has accepted from a generator or transporter to either of the following designations:

(i) The designated storage or disposal facility listed on the manifest.

(ii) The next designated transporter of PCB waste.

(8) If the PCB waste cannot be delivered in accordance with paragraph (b)(7) of this section, the transporter shall contact the generator for further directions and shall revise the manifest and/or return the waste according to the generator's instructions.

(9) No provision of this section shall be construed to affect or limit the applicability of any requirement applicable to transporters of PCB waste under regulations issued by the Department of Transportation (DOT) and set forth at 49 CFR 171 *et seq.*

(c)(1) If a commercial storage or disposal facility receives an off-site shipment of PCB waste accompanied by a manifest, the owner or operator, or his agent, shall:

(i) Sign and date each copy of the manifest to certify that the PCB waste covered by the manifest was received.

(ii) Note any significant discrepancies in the manifest (as defined in § 761.210(a)(1)) on each copy of the manifest.

(iii) Immediately give the transporter at least one copy of the signed manifest.

(iv) Within 30 days after the delivery, send a copy of the manifest to the generator.

(v) Retain a copy of each manifest among the facility's records in accordance with § 761.209(d).

(2) If a commercial storage or disposal facility receives, from a rail or water (bulk shipment) transporter, PCB waste accompanied by a shipping paper containing all the information required on the manifest except the EPA identification numbers, generator's certification, and signatures, the owner or operator, or his agent, shall:

(i) Sign and date each copy of the manifest or shipping paper, if applicable, to certify that the PCB waste covered by the manifest or shipping paper was received.

(ii) Note any significant discrepancies in the manifest or shipping paper, if applicable, on each copy of the manifest or shipping paper.

(iii) Immediately give the rail or water transporter at least one copy of the manifest or shipping paper, if applicable.

(iv) Within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator shall send a copy of the shipping paper signed and dated to the generator.

(v) Retain at the storage or disposal facility a copy of the manifest and shipping paper, if signed in lieu of the manifest, in accordance with § 761.209(d).

(3) Whenever an off-site shipment of PCB waste is initiated from a storage or disposal facility, the owner or operator of the storage or disposal facility shall comply with the manifest requirements that apply to generators of PCB waste.

§ 761.209 Retention of manifest records.

(a) A generator shall keep a copy of each manifest signed in accordance with § 761.208(a)(1) until the generator receives a signed copy from the designated storage or disposal facility which received the waste. The copy signed by the commercial storer or disposer shall be retained for at least 3 years from the date the waste was accepted by the initial transporter. A generator subject to § 761.180 annual document requirements shall retain copies of each manifest for the same records retention period required under § 761.180 for the annual document records.

(b)(1) A transporter of PCB waste shall keep a copy of the manifest signed by the generator, transporter, and the next designated transporter, if applicable, or the owner or operator of the designated storage or disposal facility. This copy shall be retained for a period of at least 3 years from the date the PCB waste was accepted by the initial transporter.

(2) For shipments of PCB waste delivered to the designated storage or disposal facility by water (bulk shipment), each water (bulk shipment) transporter shall retain a copy of the shipping paper described in § 761.208(b)(5)(ii) for a period of at least 3 years from the date the PCB waste was accepted by the initial transporter.

(3) For shipments of PCB waste by rail within the United States:

(i) The initial rail transporter shall keep a copy of the manifest and the shipping paper required to accompany

the PCB waste for a period of at least 3 years from the date the PCB waste was accepted by the initial transporter.

(ii) The final rail transporter shall keep a copy of the signed manifest, or the required shipping paper if signed by the designated facility in lieu of the manifest, for a period of at least 3 years from the date the PCB waste was accepted by the initial transporter.

(c) The owner or operator of a PCB storage or disposal facility that receives off-site shipments of PCB waste shall retain at the facility a copy of each manifest or shipping paper that the owner or operator signs in accordance with § 761.208(c)(1) or § 761.208(c)(2) for the same retention period required under § 761.180(b) for the annual document records.

(d) The periods of retention referred to in this section shall be extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Agency.

§ 761.210 Manifest discrepancies.

(a) Manifest discrepancies are differences between the quantity or type of PCB waste designated on the manifest or shipping paper, and the quantity of type of PCB waste a designated facility actually receives.

(1) Significant discrepancies in quantity are:

(i) For bulk waste, variations greater than 10 percent in weight.

(ii) For batch waste, any variation in piece count, such as a discrepancy of one drum or other PCB Container in a truckload.

(2) Significant discrepancies in type of PCB waste are obvious differences which may be discovered by inspection or waste analysis, such as the substitution of solids for liquids, or the substitution of high concentration PCBs (above 500 ppm) with lower concentration materials.

(b) Upon discovering a significant discrepancy, the owner or operator of the designated storage or disposal facility shall attempt to reconcile the discrepancy with the waste generator or transporter. If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator shall immediately submit to the Regional Administrator for the Region in which the designated facility is located a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

§ 761.211 Unmanifested waste report.

(a) If a PCB storage or disposal facility receives any shipment of PCB waste from an off-site source without an accompanying manifest or shipping paper (where required in lieu of a manifest), and any part of the shipment consists of PCBs at concentrations of 50 ppm or greater, then the owner or operator of the storage or disposal facility shall prepare and submit a single copy of a report to the Regional Administrator for the Region in which the disposal facility is located within 15 calendar days after receiving the waste. The report may be submitted on EPA Form 8700–13B, or by a written letter designated "Unmanifested Waste Report." The report shall include the following information:

(1) The EPA identification number, name, and address of the storage or disposal facility.

(2) The date the storage or disposal facility received the unmanifested PCB waste.

(3) The EPA identification number, name, and address of the generator and transporter, if available.

(4) A description of the type and quantity of the unmanifested PCB waste received at the facility.

(5) The disposition made of the unmanifested waste by the storage or disposal facility.

(6) A brief explanation of why the waste was unmanifested, if known.

(b) [Reserved]

§ 761.215 Exception reporting by generators of PCB waste.

(a) A generator of PCB waste who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated PCB storage or disposal facility within 35 days of the date the waste was accepted by the initial transporter shall contact the transporter and/or the owner or operator of the designated facility to determine the status of the PCB waste.

(b) A generator of PCB waste shall submit an Exception Report to the Regional Administrator for the Region in which the generator is located if the generator has not received a copy of the manifest with the handwritten signature to the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report shall include:

(1) A legible copy of the mainfest for which the generator does not have confirmation of delivery.

(2) A cover letter signed by the generator or an authorized representative explaining the efforts taken to locate the PCB waste and the results of those efforts.

(c)(1) A disposer of PCB waste shall submit a One-year Exception Report to the Regional Administrator for the Region in which the disposal facility is located whenever the following occurs:

(i) The disposal facility receives PCBs or PCB Items on a date more than 9 months from the date the PCBs or PCB Items were removed from services, as indicated on the manifest or continuation sheet; and

(ii) Because of contractual commitments or other factors affecting the facility's disposal capacity, the disposer of PCB waste cannot dispose of the affected PCBs or PCB Items within 1 year of the date of removal from service.

(2) A generator or commercial storer of PCB waste who manifests PCBs or PCB Items to a disposer of PCB waste shall submit a One-year Exception Report to the Regional Administrator for the Region in which the generator or commercial storer is located whenever the following occurs:

(i) The generator or commercial storer transferred the PCBs or PCB Items to the disposer of PCB waste on a date less than 9 months from the date of removal from service of the affected PCBs or PCB Items, as indicated on the manifest or continuation sheet; and

(ii) The generator or commercial storer either has not received within 13 months from the date of removal from service a Certificate of Disposal confirming the disposal of the affected PCBs or PCB Items, or, the generator receives a Certificate of Disposal confirming disposal of the affected PCBs or PCB Items on a date more than 1 year after the date of removal from service.

(3) The One-year Exception Report shall include:

(i) A legible copy of any manifest, Certificate of Disposal, or other written communication relevant to the transfer and disposal of the affected PCBs or PCB Items.

(ii) A cover letter signed by the submitter or an authorized representative explaining:

(A) The date(s) when the PCBs or PCB Items were removed from service.

(B) The date(s) when the PCBs or PCB Items were received by the submitter of the report, if applicable.

(C) The date(s) when the affected PCBs or PCB Items were transferred to a designated disposal facility.

(D) The identify of the transporters, commercial storers, or disposers known to be involved with the transaction.

(E) The reason, if known, for the delay in bringing about the disposal of the affected PCBs or PCB Items within 1 year from the date of removal from service.

§ 761.218 Certificate of Disposal.

(a) For each shipment of PCB waste that is delivered to a PCB disposal facility accompanied by a manifest, the owner or operator of the disposal facility shall prepare a Certificate of Disposal, which shall include:

(1) The identity of the PCB wastes affected by the Certificate, either by specific types and quantities, or by reference to the manifest document number for the shipment.

(2) The identity of the disposal facility, by name, address, and EPA identification number.

(3) A statement certifying the fact of disposal of the identified wastes, including the date(s) of disposal, and identifying the disposal process used.

(4) A certification as defined in § 761.3.

(b) The Certificate of Disposal shall be sent to the generator identified on the manifest which accompanied the shipment of the PCB wastes within 30 days of the date that disposal of the PCB wastes identified on the manifest was completed.

(c) The disposal facility shall keep a copy of each Certificate of Disposal among the records that it retains under § 761.180(b), for the same retention period that applies to its annual document records.

(d)(1) Generators of PCB wastes shall keep a copy of each Certificate of Disposal that they receive from disposers of PCB wastes among the records that they retain under § 761.180(a), for the same retention period that applies to their annual document records.

(2) Commercial storers of PCB wastes shall keep a copy of each Certificate of Disposal that they receive from disposers of PCB wastes among the records that they retain under § 761.180(b), for the same retention period that applies to their annual document records.

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Part VI

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Parts 2560 and 2570

Final Regulations Relating to Civil Penalties and Establishing Procedures for the Assessment of Civil Sanctions Under ERISA Section 502(i)

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2560

Final Regulation Relating to Civil Penalties Under ERISA Section 502(i)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Final regulation.

SUMMARY: This document contains a final regulation that defines the terms "amount involved" and "correction" under section 502(i) of the Employee Retirement Income Security Act of 1974 (ERISA, or the Act). Section 502(i) of ERISA authorizes the Secretary of Labor to assess civil penalties against parties in interest who engage in prohibited transactions with certain employee benefit plans. This section generally applies to prohibited transactions involving welfare plans and nonqualified pension plans and provides for the imposition of an initial penalty of up to five percent of the "amount involved" in the underlying prohibited transaction. Section 502(i) specifies that if the prohibited transaction is not "corrected" within 90 days, the penalty may be up to 100 percent of the "amount involved." The Department of Labor (the Department) has determined that the interests of participants and beneficiaries of employee benefit plans would be advanced by the exercise of the Department's authority to assess such sanctions under ERISA section 502(i). The final regulation clarifies the manner in which the Department will assess sanctions under ERISA section 502(i) and will enable the Department to carry out its authority under that section. A separate document which contains final regulations establishing procedures for the assessment of civil penalties under ERISA section 502(i) is also being published today.

EFFECTIVE DATE: October 26, 1988.

FOR FURTHER INFORMATION CONTACT: Susan E. Rees, Plan Benefits Security Division, Office of the Solicitor, (202) 523–9141, U.S. Department of Labor, Washington, DC 20210, or Debra L. Silver, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, (202) 523–8671.

SUPPLEMENTARY INFORMATION: Section 406 of ERISA prohibits certain transactions between an employee benefit plan and a "party in interest" (as defined in section 3(14) of ERISA) with respect to the plan. In section 502(i), Congress granted the Secretary of Labor the authority to assess civil penalties against parties in interest who engage in prohibited transactions with plans that are not subject to the excise tax imposed by section 4975 of the Internal Revenue Code (the Code). These plans include welfare plans and pension plans which are not "qualified" plans under the Code. Section 502(i) provides that the amount of the civil penalty may not exceed 5 percent of the "amount involved" in the transaction except that if the transaction is not "corrected" within 90 days after notice from the Secretary, such penalty may be in an amount not more than 100 percent of the "amount involved." Under section 502(i), the term "amount involved" has the same meaning given it in the prohibited transaction excise tax provisions of the Code. Moreover, section 502(i) directs the Secretary of Labor to issue regulations relating to the term "corrected" which are consistent with the definition of that term in the prohibited transaction excise tax provisions of the Code. On August 27, 1986, the Department published a notice in the **Federal Register** (51 FR 30501) containing proposed regulations that would provide: (1) A definition of the "amount involved" in a prohibited transaction to which the civil penalty in ERISA section 502(i) may be applied, (2) a description of the form and scope of the "correction" of a prohibited transaction which is required to avoid liability for the 100 percent penalty, (3) a description of the "correction period" for purposes of section 502(i), and (4) an illustration of the computation of the civil penalty under section 502(i).

The proposed regulation provided that the initial civil penalty under section 502(i) shall be 5 percent of the "amount involved" (and that the "second-tier" penalty discussed above shall be 100 percent of the "amount involved"). However, the proposed regulation also made it clear that the decision of an administrative law judge may incorporate a voluntary settlement by the parties for an amount less than 5 percent (or 100 percent).[1]

The Department has never assessed the civil sanctions under section 502(i) of ERISA because until now it has not issued the interpretative regulations contemplated by that section nor implemented procedures for an administrative hearing which would take into account the special features and purposes of those sanctions. In the Department's view, the section 502(i) sanction is a valuable additional enforcement tool which is necessary for the effective implementation of its ERISA enforcement program. In this respect, the Department has, in recent years, devoted more of its enforcement resources to violations involving welfare plans, and the Department anticipates that the availability of the section 502(i) sanction will assist it in resolving these enforcement matters. Thus, the Department publishes this final regulation, and, separately, final procedural regulations relating to proceedings to enforce the ERISA section 502(i) sanction.

The notice of proposed rulemaking gave interested parties an opportunity to comment on the proposal. In response, the Department received four letters of comment on the Department's proposed interpretations and procedures relating to 502(i) sanctions. The discussion below summarizes the proposed regulation and the issues raised by the comments and explains the Department's reasons for adopting the provisions of the final regulation.

Amount Involved

The Department received only one comment, and that favorable, on the Department's proposal to adopt the definition of the term "amount involved" under the Internal Revenue Code (and regulations) for the purpose of computing the civil penalty under section 502(i) of ERISA. Thus, in light of the Congressional mandate that "amount involved" be defined under section 502(i) or ERISA as it is defined under Code section 4975(f)(4) (and the adoption of temporary regulations applying the standards developed under section 4941 of the Code for purposes of making determinations of the "amount involved" under section 4975), the Department adopts the definition of the term "amount involved" under 26 CFR 53.4941(e)–1(b) for the purpose of computing the civil penalty under section 502(i) of ERISA.

Correction

The Department also received no critical comments on its proposal to adopt the Internal Revenue Code definition of this term. As with the term "amount involved," section 502(i) of ERISA states that the regulations for determining "correction" under that section shall be consistent with the standards of "correction" under Code section 4975(f)(5). Therefore, the Department adopts the standards of "correction" set out in 26 CFR 53.4941(e)–1(c), which construe that term for purposes of section 4975 of the Code,

[1] As provided in § 2570.6(d) of this chapter, the administrative law judge is required to incorporate the terms and conditions of any settlement agreed to by the settling parties into his decision.

for use in ERISA section 502(i) proceedings.

The Operation of the Correction Period

Section 502(i) of ERISA allows a party in interest to "correct" a prohibited transaction within 90 days after notice from the Secretary of Labor and thereby avoid the 100 percent second-tier penalty. The Department received no opposition to its proposal that, as a general matter, the "correction period" will begin on the date of the prohibited transaction and end 90 days after final agency action has been taken in a particular case, or a final order has been entered in a judicial review of the final agency action. The final regulation is therefore published as it was proposed. It contains cross references to limitations periods provided by the 502(i) procedural regulations and gives examples of application of this subsection. An additional example has been added to § 2560.502(i)–1(d)(3) to clarify the application of the limitation periods with regard to a final order issued by the Secretary of Labor. Section 2560.502(i)–1(d)(2) has also been clarified to indicate explicitly that the extension of the correction period is provided only in those cases where the period has not already expired—*i.e.*, when a party seeks judicial review within 90 days of any final agency order.

The Computation of the Sanction

The proposed regulation also illustrated the method of computing the civil penalty under section 502(i) of ERISA. Many prohibited transactions between a plan and a party in interest, such as a sale or exchange of property, involve a single prohibited act. In such cases, the computation of the amount of the civil penalty is simply five percent of the "amount involved" in the transaction. However, other prohibited transactions, such as loans or leases, are continuing in nature. In these cases, the Department proposed a regulation which provides that the sanction under section 502(i) of ERISA is separately imposed for each year during which the transaction is not corrected. Thus, as proposed, a continuing prohibited transaction would be treated as giving rise to a separate event subject to the sanction for each year (as measured from the anniversary date of the transaction) in which the transaction occurs. In the preamble to the proposed regulation, the Department indicated that this "pyramiding" approach was based on the legislative history of ERISA, which suggests that the sanction under section 502(i) of ERISA should operate in a manner similar to the prohibited transaction excise tax under section 4975 of the Code.

Two commentators objected to the Department's proposed method of computation, both arguing that multi-year leases and loans should be treated as a one time transaction for purposes of assessing a 502(i) penalty. One commentator found no basis in either section 4975 of the Code or in the applicable IRS regulations for treating continuing transaction as separate events on an annual basis, and stated that the proposed method of computation was "especially onerous" where a long-term lease or loan is not renegotiated annually. The second commentator argued that the Department's proposal to impose a separate penalty for each year in which a continuing transaction occurs is inconsistent with the plain language of ERISA section 502(i), and the Congress' failure to refer to an annual sanction in section 502(i) as it did under the analogous sections of the Code suggests that Congress did not intend for section 502(i) of ERISA to operate in the same manner as the Code provisions. Further, the commentator stated that there was no indication in the legislative history of section 502(i) of Congressional support of the Department's approach.

After careful consideration, the Department has decided to retain the method of computation on an annual basis as proposed. The Department believes that this approach is necessary to implement the intent of Congress to have the ERISA section 502(i) sanction operate in a manner similar to the parallel excise tax provisions of the Code.

Although prior to 1987 section 502(i) of ERISA did not expressly refer to an annual sanction for prohibited transactions which are continuing in nature, Congress had expressed the intent that the sanction under section 502(i) of ERISA would operate in a manner similar to the excise tax under section 4975 of the Code. Further, Congress derived the prohibited transaction provisions of ERISA from the private foundation excise tax language under section 4941 of the Code,[2] and the method of computing the tax under the private foundation excise tax regulations was well-established at the time that Congress passed ERISA.[3] In addition, in 1986 Congress expressly authorized the Department to assess civil penalties on an annual basis with respect to prohibited transactions by parties in interest to the federal Thrift Savings Fund [4] and indicated that the Secretary of Labor's responsibility to enforce fiduciary responsibilities is similar under FERSA and ERISA.[5] Moreover, on December 22, 1987, Congress amended section 502(i) of ERISA to clarify that civil penalties under that provision (as under § 4975 of the Code) were to be assessed on an annual basis for prohibited transactions that were continuing in nature. See Subtitle D of the Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100–203, 101 Stat. 1330–373, Part II (The Pension Protection Act of 1987), Subpart D, Section 9344.

Based on the foregoing, the Department believes that there is no indication that Congress intended to single out plans covered by 502(i) of ERISA for a different and lesser penalty. Rather, Congress has expressed its intent that each of these prohibited transaction penalty provisions serve the same function—to deter prohibited transactions. In the Department's view, the pyramiding approach adopted by the IRS in 1973 best effectuates that goal.[6]

Thus, the Department has concluded that it is consistent with Congressional intent to compute the two civil penalties under section 502(i) of ERISA in accordance with the method of computation use in the Internal Revenue Code and regulations. Therefore, on this point, the final ERISA section 502(i) regulation is published as proposed.

The proposed regulation contained two examples of how to compute the civil penalty. One example described a sale of property (involving a single prohibited act) and the other described a prohibited transaction which is continuing in nature, thereby illustrating the pyramiding approach. This latter computation was taken from the private foundation excise tax regulations at 26 CFR 53.4941(e)–(1)(e)(1)(ii), Example 2, and involves a multi-year lease. The Department received one letter of comment suggesting that an additional example should be provided involving the computation of sanctions for the prohibited lending of money. After consideration, the Department decided that the examples given in the proposed

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[2] H.R. Rep. 1280, 93rd Cong., 2d Sess. 321 (1974).

[3] Regulations under section 4941 of the Code were adopted on April 17, 1973 (38 FR 9493).

[4] Section 8477(e)(1)(B) of the Federal Employees' Retirement System Act of 1986, 5 U.S.C. 8477(e)(1)(B).

[5] Conf. Rep. 99–606, 99th Cong., 2nd Sess. 138 (1986).

[6] See note 3, *supra*. In this regard, the Department notes that section 505 of ERISA contains a broad grant of rulemaking authority. By cross-referencing the parallel Code provisions when enacting ERISA section 502(i), Congress indicated that the Department, in implementing an effective civil penalty program under that broad grant of authority, should look to the Code for guidance.

regulation are sufficient to illustrate the general principles involved in computing the sanction, and the Department is therefore publishing the final regulation as proposed in this regard. As a general matter, the Department notes its intention to follow the published opinions of the IRS with respect to prohibited transaction excise taxes in computing civil sanctions under 502(i) of ERISA.

Regulatory Flexibility Act

The Department has determined that this regulatory action will not have any significant impact on a substantial number of small entities, and contains no reporting and disclosure requirements. The primary purpose of the regulation is to deter individuals who manage welfare plan assets from engaging in prohibited transactions, e.g., from using such assets for their own benefit. To that extent, the regulation will enable the Department to assess civil penalties on those individuals who are found to be violating the ERISA prohibited transaction provisions. Based on enforcement experience and information filed by welfare plans on annual financial reports (Form 5500's), the Department estimates that it will identify approximately 100 cases each year which will result in penalties. Some, and perhaps many, of the penalties will involve parties in interest with respect to small plans; however, given the selective nature of the burden imposed by this regulation, the Department believes that the regulation will not have a significant impact on small employee benefit plans. In addition, the regulation will not substantially affect small entities which provide services to such plans or small entities in which such plans invest.

Executive Order 12291

The Department has determined that this final regulation does not constitute a "major rule" as that term is used in Executive Order 12291 because the action does not result in: An annual effect on the economy of $100 million; a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The final regulation defining terms which relate to the assessment of civil sanctions under ERISA section 502(i) does not contain any new information collection requirements and does not modify any existing requirements. Thus, it is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h).

Statutory Authority

The regulation is adopted pursuant to the authority contained in sections 502 and 505 of ERISA (Pub. L. 93–406, 88 Stat. 892, 894; 29 U.S.C. 1132, 1135) and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

List of Subjects in 29 CFR Part 2560

Claims, Employee benefit plans, Employee Retirement Income Security Act, Law enforcement, Pensions.

For the reasons set out in the preamble, Subchapter G of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

1. The authority citation for Part 2560 is revised to read as set forth below:

Authority: Section 502, 505 of ERISA, 29 U.S.C. 1132, 1135, and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987). § 2560.502–1 also issued under Section 502(b)(2), 29 U.S.C. 1132(b)(2); § 2560.502i–1 also issued under Section 502(i), 29 U.S.C. 1132(i); § 2560.503–1 also issued under Section 503, 29 U.S.C. 1133.

2. By adding a new § 2560.502i–1 in the appropriate place to read as follows:

§ 2560.502i–1 Civil Penalties Under Section 502(i).

(a) *In general.* Section 502(i) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) permits the Secretary of Labor to assess a civil penalty against a party in interest who engages in a prohibited transaction with respect to an employee benefit plan other than a plan described in section 4975(e)(1) of the Internal Revenue Code (the Code). The initial penalty under section 502(i) is five percent of the total "amount involved" in the prohibited transaction (unless a lesser amount is otherwise agreed to by the parties). However, if the prohibited transaction is not corrected during the "correction period," the civil penalty shall be 100 percent of the "amount involved" (unless a lesser amount is otherwise agreed to by the parties). Paragraph (b) of this section defines the term "amount involved," paragraph (c) defines the term "correction," and paragraph (d) defines the term "correction period." Paragraph (e) illustrates the computation of the civil penalty under section 502(i). Paragraph (f) is a cross reference to the Department's procedural rules for section 502(i) proceedings.

(b) *Amount involved.* Section 502(i) of ERISA states that the term "amount involved" in that section shall be defined as it is defined under section 4975(f)(4) of the Code. As provided in 26 CFR 141.4975.13, 26 CFR 53.4941(e)–1(b) is controlling with respect to the interpretation of the term "amount involved" under section 4975 of the Code. Accordingly, the Department of Labor will apply the principles set out at 26 CFR 53.4941(e)–1(b) in determining the "amount involved' in a transaction subject to the civil penalty provided by section 502(i) of the Act and this section.

(c) *Correction.* Section 502(i) of ERISA states that the term "correction" shall be defined in a manner that is consistent with the definition of that term under section 4975(f)(5) of the Code. As provided in 26 CFR 141.4975–13, 26 CFR 53.4941(e)–1(c) is controlling with respect to the interpretation of the term "correction" for purposes of section 4975 of the Code. Accordingly, the Department of Labor will apply the principles set out in 26 CFR 53.4941(e)–(1)(c) in interpreting the term "correction" under section 502(i) of the Act and this section.

(d) *Correction Period.* (1) In general, the "correction period" begins on the date the prohibited transaction occurs and ends 90 days after a final agency order with respect to such transaction.

(2) When a party in interest seeks judicial review within 90 days of a final agency order in an ERISA section 502(i) proceeding, the correction period will end 90 days after the entry of a final order in the judicial action.

(3) The following examples illustrate the operation of this paragraph:

(i) A party in interest receives notice of the Department's intent to impose the section 502(i) penalty and does not invoke the ERISA section 502(i) prohibited transaction penalty proceedings described in § 2570.1 of this chapter within 30 days of such notice. As provided in § 2570.5 of this chapter, the notice of the intent to impose a penalty becomes a final order after 30 days. Thus, the "correction period" ends 90 days after the expiration of the 30 day period.

(ii) A party in interest contests a proposed section 502(i) penalty, but does not appeal an adverse decision of the administrative law judge in the proceeding. As provided in § 2570.10(a) of this chapter, the decision of the administrative law judge becomes a final order of the Department unless the decision is appealed within 20 days after the date of such order. Thus, the correction period ends

90 days after the expiration of such 20 day period.

(iii) The Secretary of Labor issues to a party in interest a decision upholding an administrative law judge's adverse decision. As provided in § 2570.12(b) of this chapter, the decision of the Secretary becomes a final order of the Department immediately. Thus, the correction period will end 90 days after the issuance of the Secretary's order unless the party in interest judicially contests the order within that 90 day period. If the party in interest so contests the order, the correction period will end 90 days after the entry of a final order in the judicial action.

(e) *Computation of the Section 502(i) penalty.* (1) In general, the civil penalty under section 502(i) is determined by applying the applicable percentage (five percent or one hundred percent) to the aggregate amount involved in the transaction. However, a continuing prohibited transaction, such as a lease or a loan, is treated as giving rise to a separate event subject to the sanction for each year (as measured from the anniversary date of the transaction) in which the transaction occurs.

(2) The following examples illustrate the computation of the section 502(i) penalty:

(i) An employee benefit plan purchases property from a party in interest at a price of $10,000. The fair market value of the property is $5,000. The "amount involved" in that transaction, as determined under 26 CFR 53.4941(e)–1(b), is $10,000 (the greater of the amount paid by the plan or the fair market value of the property). The initial five percent penalty under section 502(i) is $500 (five percent of $10,000).

(ii) An employee benefit plan executes a four year lease with a party in interest at an annual rental of $10,000 (which is the fair rental value of the property). The amount involved in each year of that transaction, as determined under 26 CFR 53.4941(e)–1(b), is $10,000. The amount of the initial sanction under ERISA section 502(i) would be a total of $5,000: $2,000 ($10,000 x 5% x 4 with respect to the rentals paid in the first year of the lease); $1,500 ($10,000 x 5% x 3 with respect to the second year); $1,000 ($10,000 x 5% x 2 with respect to the third year); $500 ($10,000 x 5% x 1 with respect to the fourth year).

(f) *Cross Reference.* See §§ 2570.1–2570.12 of this chapter for procedural rules relating to section 502(i) penalty proceedings.

Signed at Washington, DC this 20th day of September, 1988.

David M. Walker,

Assistant Secretary of Labor, Pension and Welfare Benefits Administration.

[FR Doc. 88–21790 Filed 9–23–88; 8:45 am]

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29 CFR Part 2570

Final Regulation Establishing Procedures for the Assessment of Civil Sanctions Under ERISA Section 502(i)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Final regulation.

SUMMARY: This document contains a final regulation that sets forth the procedures for the assessment of civil sanctions under section 502(i) of the Employee Retirement Income Security Act of 1974 (ERISA, or the Act). Section 502(i) of ERISA authorizes the Secretary of Labor to assess civil penalties against parties in interest who engage in prohibited transactions with certain employee benefit plans. This section generally applies to prohibited transactions involving welfare plans and nonqualified pension plans, and provides for the assessment of penalties equal to specificed percentages of the amount involved in the underlying prohibited transaction. This regulation establishes the procedural framework for such civil penalties. A separate document containing regulations which define the terms "amount involved" and "correction" under ERISA section 502(i) is also being published today.

EFFECTIVE DATE: October 26, 1988.

FOR FURTHER INFORMATION CONTACT: Susan E. Rees, Plan Benefits Security Division, Office of the Solicitor, (202) 523–9141, U.S. Department of Labor, Washington, DC 20210, or Debra L. Silver, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, (202) 523–8671.

SUPPLEMENTARY INFORMATION: Section 406 of ERISA prohibits certain transactions between an employee benefit plan and a "party in interest" (as defined in section 3(14) of ERISA). In section 502(i) of ERISA, Congress granted the Secretary of Labor the authority to assess civil penalties against parties in interest with respect to prohibited transactions with welfare plans and pension plans which are not "qualified" plans under the Internal Revenue Code.[1] That section of the Act provides that the amount of such penalty may not exceed 5 percent of the amount involved in the transaction except that if the transaction is not corrected within 90 days after notice from the Secretary, such penalty may be in an amount not more than 100 percent of the amount involved. These final procedural rules provide for an administrative proceeding with respect to the assessment of the ERISA section 502(i) sanction. A separate final regulation dealing with the definition of the terms "amount involved" and "correction" is also being published today. As discussed in the supplementary information accompanying that publication, the Department of Labor (the Department) believes that adoption of these regulations is necessary for the effective implementation of its ERISA enforcement program.

On August 27, 1986, the Department published a notice in the **Federal Register** containing proposed regulations to establish procedures for: (1) Notification to a party in interest that the Department intends to assess the penalty provided by section 502(i), (2) requesting a hearing with respect to the matter before an administrative law judge, and (3) an appeal of an administrative law judge's decision to the Secretary or his delegate.

The Department has published rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges at 29 CFR Part 18, 48 FR 32538 (1983). The proposed regulation presented for comment several modifications to the rules set forth in 29 CFR Part 18. The proposed modifications were designed to maintain the maximum degree of uniformity with the rules set forth in 29 CFR Part 18, consistent with the special characteristics of proceedings under ERISA section 502(i). The final rules published herein relate specifically to proceedings under ERISA section 502(i) and are controlling to the extent they are inconsistent with any portion of 29 CFR Part 18.

The following discussion summarizes the specific proposed modifications to the rules in 29 CFR Part 18 and the major issues raised by the commentators, and explains the Department's reasons for adopting the final regulations published with this notice.

General

The Applicability of these rules under ERISA section 502(i) is set forth at the outset of the procedural regulations (§ 2570.1). The definitional section (§ 2570.2) incorporates the basic

[1] The excise tax provisions of sections 4941 and 4975 of the Internal Revenue Code impose similar penalties against disqualified persons who engage in prohibited transactions with, respectively, private foundations and tax qualified benefit plans. A parallel provision of the Federal Employee Retirement System Act of 1986 assesses a similar penalty with respect to prohibited transactions involving the Federal Thrift Savings Fund. *See* 5 U.S.C. 8477(e)(1)(B).

adjudicatory principles set forth at 29 CFR Part 18, but includes terms and concepts of specific relevance to proceedings under ERISA section 502(i). In this respect it differs from its more general counterpart at § 18.2 of this title. In particular, § 2570.2(q) states that the term "Secretary" means the Secretary of Labor and includes various individuals to whom the Secretary may delegate authority. This definition is not intended to suggest any limitation on the authority which the Secretary has delegated to the Assistant Secretary for Pension and Welfare Benefits. By Order 1–87, 52 FR 13139 (April 21, 1987), the Secretary has delegated most of his authority under ERISA, including authority to make final decisions to assess the penalty provided under section 502(i), to the Assistant Secretary for Pension and Welfare Benefits. Thus, the Department contemplates that the duties assigned to the Secretary under the procedural regulation will in fact be discharged by the Assistant Secretary for Pension and Welfare Benefits.

The Department received no comments on this section and it will therefore be published as proposed, except that, in response to a comment, as explained below, a new subsection was added to define the term "answer."

Proceedings Before Administrative Law Judges

The rules in 29 CFR Part 18 concerning the computation of time, pleadings, prehearing conferences and statements, and settlements are adopted in these procedures for adjudications under ERISA section 502(i). The Department proposed to republish § 18.3 as § 2570.3 in order to identify how the Department should be served in a 502(i) proceeding, but made no substantive modifications in the section. One commentator expressed concern that, under the proposal, a section 502(i) proceeding could transpire and a default be entered without actual notice to the party in interest and with no further recourse provided. Thus, that commentator suggested an amendment to § 2570.3(d)(2) to provide that service of notice by certified mail in 502(i) proceedings is complete only upon receipt by the addressee, and that a return receipt from the addressee for a copy of a notice sent by certified mail should be prima facie evidence of the addressee's receipt of the notice.

After careful consideration, the Department found no compelling reason to depart from the service rule applicable to all department proceedings, and therefore decided to publish § 2570.3(d) as proposed. The Department believes that the adoption of such a "return receipt" service rule would not only be inconsistent with the Department's objective of providing expedited section 502(i) proceedings but such a rule would also enable an elusive party in interest to hamper the Department's efforts to initiate proceedings. However, the Dpartment has modified § 2570.5 by adding a provision which permits the administrative law judge to decline to enter a default judgment where there is proof of defective notice.

The proposed procedural regulation at § 2570.3(e) specifically stated that there would be no formal requirements for pleadings in section 502(i) proceedings. Thus, the proposed regulation did not set forth specific requirements regarding the contents of either the notice issued by the Department initiating a section 502(i) proceeding or the contents of the answer which must be filed with respect to the notice in order to avoid a default judgment under proposed § 2570.5.

The Department received one comment letter regarding this aspect of the proposed regulation. The commentator suggested that the Department revise proposed § 2570.5 to describe explicitly the information that the respondent must include in the answer to the notice initiating a section 502(i) proceeding. Further, the commentator stated that the Department should describe in more detail the information that the section 502(i) notice must contain.

After consideration, the Department has decided to provide additional guidance to addressees as to how to respond to a 502(i) notice, similar to that provided by § 18.5(d) for all other Department proceedings. The Department found, however, that there was no reason to elaborate on the general procedural definition of the document which initiates the proceeding, whether it is called "notice" or "complaint." *Compare* 29 CFR 18.2(d) *and* 29 CFR 2570.2(c) (as proposed). Accordingly, § 2570.3 will be published in final as proposed, but the final regulation at 29 CFR 2570.2(c) now provides that the definition of "answer" as set out in 29 CFR 18.5(d)(2) applies to responses in prohibited transaction penalty proceedings.

A section on the consequences of default (§ 2570.5) has been included in these rules to indicate that unless the respondent invokes the adjudicatory procedures under ERISA section 502(i) within 30 days after it is informed of the intention of the Department to assess a civil sanction under ERISA section 502(i), the assessment of that penalty will become final. Although the Department received no comments specifically referring to this proposal, the Department has decided, as discussed above, to add a provision to § 2570.5(a) which will permit the administrative law judge to set aside a default where there is proof of defective notice.

Proposed § 2570.6, respecting consent orders and settlements, specified time periods within which parties must: (1) Request the deferral of a hearing to permit the negotiation of a settlement; (2) submit a proposed consent agreement; or (3) file objections to proposed settlement agreements. The section also proposed that the administrative law judge's decision shall include the terms and conditions of any consent order or settlement which has been agreed to by the parties and proposed that the decision of the administrative law judge which incorporates such consent order shall become final agency action within the meaning of 5 U.S.C. 704.

The Department received one comment on this section which suggested (1) that the time limitations for settlement purposes in proposed § 2570.6 (a) and (c) should be eliminated in favor of committing the issue to the discretion of the presiding administrative law judge, and (2) that the administrative law judge should also have the authority to grant extensions of time for a party to object to a proposed settlement greater than the 15 day limit proposed in § 2570.6(e).

The Department recognizes that the proposed time limitations place a certain degree of constraint on all parties to a 502(i) proceeding. However, after careful review, the Department has decided to maintain the section as proposed because the time limits are reasonable and in keeping with the goal of the Department to conduct section 502(i) proceedings on an expedited basis.

Section 2570.7 proposed that discovery may be ordered by the administrative law judge only upon a showing of good cause by the party seeking discovery. This differs from the more expansive standard for discovery contained in 29 CFR 18.14. Proposed § 2570.7 stated that in cases in which discovery is ordered by the administrative law judge, the order shall expressly limit the scope and terms of discovery to that for which good cause has been shown.

The Department received two comments on this section. One commentator supported the limitation on discovery so that 502(i) proceedings would not become "fishing expeditions" but would be limited to determining the

single issue of whether a civil penalty should be assessed for a specific prohibited transaction.

Another commentator objected strongly to the proposed regulation's departure from the more expansive discovery standard set forth in 29 CFR 18.14. This commentator stated that the departure was "unwarranted and an infringement on due process," and that the proposed regulation's approach to discovery would put the parties to the proceeding "on an unequal footing, with the Department having the clear advantage." Further, the commentator suggested that by limiting discovery, the Department was attempting to "stack the deck" in its own favor by rejecting a "discovery practice that is an important and useful element of the federal judicial system."

After careful consideration, the Department has decided to reformulate § 2570.7 to provide a less stringent standard for discovery in section 502(i) proceedings than that proposed, but one which is still consistent with the Department's overall objective of establishing a streamlined procedure. The final regulation continues to require that a party seeking discovery must obtain an order of the administrative law judge and that the order expressly limit the scope and terms of discovery to that for which "good cause" has been shown. The standard of "good cause," however, is not defined as requiring a showing that the discovery requested relates to a genuine issue as to a material fact that is relevant to the proceeding. Finally, consistent with § 18.14, the standard proposed in § 2570.7(a) remains applicable to discovery requests for materials prepared in anticipation of or for the hearing by another party's representative.

The section on expedited proceedings (§ 2570.9) proposed that the scheduling and disposition of all section 502(i) cases shall be on an expedited basis. Under the counterpart section of Part 18 of the title, § 18.42, expedited treatment of a case generally occurs only at the request of a party and at the discretion of the administrative law judge. As with the Department's proposed regulation on discovery in section 502(i) proceedings, two commentators did not agree on this section. One commentator supported the proposed requirement that section 502(i) proceedings be heard on an expedited basis, stating that where transactions are ongoing, it is in everyone's best interest to resolve the matter quickly. The other commentator felt that there was no apparent justification for the proposal and that it would create an advantage for the Department. That commentator also suggested that if § 2570.9 was retained, it ought to specify how the procedures are to be expedited.

Upon further reflection, the Department has determined that the existing procedures in 29 CFR Part 18 provide for sufficiently timely processing and thus it is not necessary to mandate that every section 502(i) proceeding be heard on an expedited basis. Therefore, the proposed section 2570.9 has been deleted, and the procedures embodied in 29 CFR 18.42 will govern requests by any party for expedited treatment in a section 502(i) proceeding. As a general matter, however, the Department anticipates requesting expedited treatment under such procedures in section 502(i) proceedings. Because of the deletion, proposed §§ 2570.10–2510.12 have been renumbered accordingly.

Appeals

The proposed sections on appeals (§§ 2570.10–2570.12) provided a twenty day period in which any party to a section 502(i) proceeding may seek review of an administrative law judge decision by the Secretary or his delegate. The Secretary has delegated his authority with respect to these appellate procedures to the Assistant Secretary for Pension and Welfare Benefits. The proposed regulations provided for a review of the administrative record made before the administrative law judge, supplemented by briefs. Under proposed § 2570.12(b), the Secretary or his delegate, may affirm, modify, or set aside, in whole or in part, the decision on appeal.

The Department received one comment letter regarding appeals. The commentator argued that the delegation of the Secretary's authority over appeals to the Assistant Secretary would make the appeals procedures a "meaningless waste of time" and queried whether, in the final analysis, a respondent could expect the Assistant Secretary, whose staff issues a section 502(i) notice and conducts the investigation leading to the proceeding, to overrule the decision of an administrative law judge imposing the penalty.

In response, the Department notes that under the APA, an agency may exercise adjudicatory authority and supervise enforcement activity so long as those persons involved in the prosecutorial function and those persons involved in the adjudicatory function report to the agency head by a separate chain of authority. The Secretary has established the Pension and Welfare Benefits Administration (PWBA) within the Department for the purpose of carrying out most of the Secretary's responsibilities under ERISA, and has designated the Assistant Secretary as agency head for purposes of ERISA enforcement. *See* Secretary's Order 1–87, 52 FR 1319 (April 21, 1987). Thus, the Assistant Secretary may lawfully oversee the prosecution of 502(i) assessments and review the administrative law judge decisions so long as the two functions are separately maintained within the PWBA. Therefore, the Department sees no legal impediment to the appeal process as drafted. The Department also believes that all parties will benefit from having appeals heard by an official with expertise in ERISA matters. The Department has therefore decided to publish in final, as proposed, the provision which provides for an appeal to the Secretary or his designee.

The Department received one final comment which argued that the regulations should be amended to provide that section 502(i) proceedings be stayed in the event a related case is filed in district court prior to the issuance of a notice commencing a section 502(i) administrative proceeding or in the event a related case is filed after a section 502(i) administrative proceeding has been commenced.

In response, the Department has decided that because the statute does not tie the two types of actions together, it is not appropriate to do so by regulation. Specifically, because commencement of one action does not toll the statute of limitations with respect to the other, the statute clearly contemplates that a section 502(i) administrative proceeding can proceed concurrently with a civil action brought under section 502(i) of ERISA. The Department sees no reason to alter the dual system provided by the statute.

Regulatory Flexibiity Act

The Regulatory Flexibility Act imposes certain requirements with respect to rules which would have a significant impact on a substantial number of small entities. A "rule" under the Regulatory Flexibilty Act is one for which a general notice of proposed rulemaking is required under section 553(b) of the Administrative Procedure Act. Under section 553(b) of the Administrative Procedure Act a general notice of proposed rulemaking is not required for rules of agency organization, procedure or practice. Thus, such rules are excluded from the definition of "rule" under the Regulatory Flexibility Act. Since this procedural regulation is a rule of agency procedure or practice it is thus not subject to the

requirements of the Regulatory Flexibility Act.

Executive Order 12291

The Department has determined that this regulatory action would not consititute a "major rule" as that term is used in Executive Order 12291 because the action does not result in: An annual effect on the economy of $100 million; a major increase in costs of prices for consumers, individual industries, government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Paperwork Reduction Act

The Paperwork Reduction Act mandates that agencies provide data with respect to information collection requirements which may be imposed by certain regulatory action. Section 3518(c)(1)(B) of the Paperwork Reduction Act provides that the requirements of that Act do not apply to administrative actions involving specific individuals or entities. The Department has determined that the administrative adjudications which would be conducted pursuant to the procedures contained in this regulation fall within the scope of this exemption from the Paperwork Reduction Act.

Statutory Authority

The regulation is adopted pursuant to the authority contained in section 502 and 505 of ERISA (Pub. L. 93–406, 88 Stat. 892, 894; 29 U.S.C. 1132, 1135), and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

List of Subjects in 29 CFR Part 2570

Administrative practice and procedure, Employee benefit plans, Employee Retirement Income Security Act, Party in interest, Law enforcement, Pensions, Pension and Welfare Benefits Administration, Prohibited transactions.

Final Regulation

For the reasons set out in the preamble, Subchapter G of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as set forth below:

PART 2570—PROCEDURAL REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

By adding in the appropriate place the following new part:

Subpart A—Procedures For The Assessment of Civil Sanctions Under ERISA Section 502(i)

Sec.

Authority: Section 502(i) and 505 of ERISA, 29 U.S.C. 1132(i) 1135, and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

Subpart A—Procedures for the Assessment of Civil Sanctions Under ERISA Section 502(i)

§ 2570.1 Scope of rules.

The rules of practice set forth in this part are applicable to "prohibited transaction penalty proceedings" (as defined in § 2570.2(o) of this part) under section 502(i) of the Employee Retirement Income Security Act of 1974. The rules of procedure for administrative hearings published by the Department's Office of Administrative Law Judges at Part 18 of this Title will apply to matters arising under ERISA section 502(i) except as modified by this section. These proceedings shall be conducted as expeditiously as possible, and the parties shall make every effort to avoid delay at each stage of the proceedings.

§ 2570.2 Definitions.

For prohibited transaction penalty proceedings, this section shall apply in lieu of the definitions in § 18.2 of this title:

(a) "Adjudicatory proceeding" means a judicial-type proceeding leading to the formulation of a final order;

(b) "Administrative law judge" means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) "Answer" is defined for these proceedings as set forth in § 18.5(d)(2) of this title;

(d) "Commencement of proceeding" is the filing of an answer by the respondent;

(e) "Consent agreement" means any written document containing a specified proposed remedy or other relief acceptable to the Department and consenting parties;

(f) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended;

(g) "Final order" means the final decision or action of the Department of Labor concerning the assessment of a civil sanction under ERISA section 502(i) against a particular party. Such final order may result from a decision of an administrative law judge or the Secretary, or the failure of a party to invoke the procedures for hearings or appeals under this title. Such a final order shall constitute final agency action within the meaning of 5 U.S.C. 704;

(h) "Hearing" means that part of a proceeding which involves the submission of evidence, either by oral presentation or written submission, to the administrative law judge;

(i) "Notice" means any document, however designated, issued by the Department of Labor which initiates an adjudicatory proceeding under ERISA section 502(i);

(j) "Order" means the whole or any part of a final procedural or substantive disposition of a matter under ERISA section 502(i);

(k) "Party" includes a person or agency named or admitted as a party to a proceeding;

(l) "Person" includes an individual, partnership, corporation, employee benefit plan, association, exchange or other entity or organization;

(m) "Petition" means a written request, made by a person or party, for some affirmative action;

(n) "Pleading" means the notice, the answer to the notice, any supplement or amendment thereto, and any reply that may be permitted to any answer, supplement or amendment;

(o) "Prohibited transaction penalty proceeding" means a proceeding relating to the assessment of the civil penalty provided for in section 502(i) of ERISA;

(p) "Respondent" means the party against whom the Department is seeking to assess a civil sanction under ERISA section 502(i);

(q) "Secretary" means the Secretary of Labor and includes, pursuant to any delegation of authority by the Secretary, any assistant secretary (including the Assistant Secretary for Pension and Welfare Benefits), administrator, commissioner, appellate body, board, or other official;

(r) "Solicitor" means the Solicitor of Labor or his or her delegate.

§ 2570.3 Service: Copies of documents and pleadings.

For prohibited transaction penalty proceedings, this section shall apply in lieu of § 18.3 of this title.

(a) *General.* Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges, Suite 600, 1111 Twentieth Street NW., Washington, DC 20036, or to the OALJ Regional Office to which the proceeding may have been transferred for hearing. Each document filed shall be clear and legible.

(b) *By parties.* All motions, petitions, pleadings, briefs or other documents shall be filed with the Office of Administrative Law Judges with a copy including any attachments to all other parties of record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The Department shall be served by delivery to the Associate Solicitor, Plan Benefits Security Division, ERISA Section 502(i) Proceeding, P.O. Box 1914, Washington, DC 20013. The person serving the document shall certify to the manner and date of service.

(c) *By the Office of Administrative Law Judges.* Service of orders, decisions and all other documents, except notices, shall be made by regular mail to the last known address.

(d) *Service of notices.* (1) Service of notices shall be made either:

(i) By delivering a copy to the individual, any partner, any officer of a corporation, or any attorney of record;

(ii) By leaving a copy at the principal office, place of business, or residence of such individual, partner, officer or attorney; or

(iii) By mailing a copy to the last known address of such individual, partner, officer or attorney.

(2) If service is accomplished by certified mail, service is complete upon mailing. If done by regular mail, service is complete upon receipt by the addressee.

(e) *Form of pleadings.* (1) Every pleading shall contain information indicating the name of the Pension and Welfare Benefits Administration (PWBA) as the agency under which the proceeding is instituted, the title of the proceeding, the docket number (if any) assigned by the Office of Administrative Law Judges and a designation of the type of pleading or paper (e.g., notice, motion to dismiss, etc.). The pleading or paper shall be signed and shall contain the address and telephone number of the party or person representing the party. Although there are no formal specifications for documents, they should be typewritten when possible on standard size 8½ x 11 inch paper.

(2) Illegible documents, whether handwritten, typewritten, photocopied, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process provided all copies are clear and legible.

§ 2570.4 Parties.

For prohibited transaction penalty proceedings, this section shall apply in lieu of § 18.10 of this title.

(a) The term "party" wherever used in these rules shall include any natural person, corporation, employee benefit plan, association, firm, partnership, trustee, receiver, agency, public or private organization, or government agency. A party against whom a civil sanction is sought shall be designated as "respondent." The Department shall be designated as the "complainant."

(b) other persons or organizations shall be permitted to participate as parties only if the administrative law judge finds that the final decision could directly and adversely affect them or the class they represent, that they may contribute materially to the disposition of the proceedings and their interest is not adequately represented by existing parties, and that in the discretion of the administrative law judge the participation of such persons or organizations would be appropriate.

(c) A person or organization not named as a respondent wishing to participate as a party under this section shall submit a petition to the administrative law judge within fifteen (15) days after the person or organization has knowledge of or should have known about the proceeding. The petition shall be filed with the administrative law judge and served on each person or organization who has been made a party at the time of filing. Such petition shall concisely state:

(1) Petitioner's interest in the proceeding;

(2) How his or her participation as a party will contribute materially to the disposition of the proceeding;

(3) Who will appear for petitioner;

(4) The issues on which petitioner wishes to participate; and

(5) Whether petitioner intends to present witnesses.

(d) Objections to the petition may be filed by a party within fifteen (15) days of the filing of the petition. If objections to the petition are filed, the administrative law judge shall then determine whether petitioners have the requisite interest to be a party in the proceedings, as defined in paragraph (b) of this section, and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the administrative law judge may request all such petititioners to designate a single representative, or he or she may recognize one or more of such petitioners. The administrative law judge shall give each such petitioner as well as the parties, written notice of the decision on his or her petition. For each petition granted, the administrative law judge shall provide a brief statement of the basis of the decision. If the petition is denied, he or she shall briefly state the grounds for denial and shall then treat the petition as a request for participation as amicus curiae.

§ 2570.5 Consequences of default.

For prohibited transaction penalty proceedings, this section shall apply in lieu of § 18.5(b) of this title. Failure of the respondent to file an answer within the 30 day time period provided in § 18.5 of this title shall be deemed to constitute a waiver of his right to appear and contest the allegations of the notice, and such failure shall be deemed to be an admission of the facts as alleged in the notice for purposes of the prohibited transaction penalty proceeding. Such notice shall then become the final order of the Secretary, except that the administrative law judge may set aside a default entered under this provision where there is proof of defective notice.

§ 2570.6 Consent order or settlement.

For prohibited transaction penalty proceedings, the following shall apply in lieu of § 18.9 of this title.

(a) *General.* At any time after the commencement of a proceeding, but at least five (5) days prior to the date set for hearing, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be in the discretion of the administrative law judge, after consideration of such factors as the nature of the proceeding, the requirements of the public interest, the representations of the parties and the probability of reaching an agreement which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an

order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice and the agreement;

(3) A waiver of any further procedural steps before the administrative law judge;

(4) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and

(5) That the order and decision of the administrative law judge shall be final agency action.

(c) *Submission.* On or before the expiration of the time granted for negotiations, but, in any case, at least five (5) days prior to the date set for hearing, the parties or their authorized representative or their counsel may:

(1) Submit the proposed agreement containing consent findings and an order to the administrative law judge; or

(2) Notify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action subject to compliance with the terms of the settlement; or

(3) Inform the administrative law judge that agreement cannot be reached.

(d) *Disposition.* In the event a settlement agreement containing consent findings and an order is submitted within the time allowed therefor, the administrative law judge shall issue a decision incorporating such findings and agreement within thirty (30) days of his receipt of such document. The decision of the administrative law judge shall incorporate all of the findings, terms, and conditions of the settlement agreement and consent order of the parties. Such decision shall become final agency action within the meaning of 5 U.S.C. 704.

(e) *Settlement without consent of all parties.* In cases in which some, but not all, of the parties to a proceeding submit a consent agreement to the administrative law judge, the following procedure shall apply:

(1) If all of the parties have not consented to the proposed settlement submitted to the administrative law judge, then such non-consenting parties must receive notice, and a copy, of the proposed settlement at the time it is submitted to the administrative law judge;

(2) Any non-consenting party shall have fifteen (15) days to file any objections to the proposed settlement with the administrative law judge and all other parties;

(3) If any party submits an objection to the proposed settlement, the administrative law judge shall decide within thirty (30) days after receipt of such objections whether he shall sign or reject the proposed settlement. Where the record lacks substantial evidence upon which to base a decision or there is a genuine issue of material fact, then the administrative law judge may establish procedures for the purpose of receiving additional evidence upon which a decision on the contested issues may reasonably be based;

(4) If there are no objections to the proposed settlement, or if the administrative law judge decides to sign the proposed settlement after reviewing any such objections, the administrative law judge shall incorporate the consent agreement into a decision meeting the requirements of paragraph (d) of this section.

§ 2570.7 Scope of discovery

For prohibited transaction penalty proceedings, this section shall apply in lieu of § 18.14 of this title.

(a) A party may file a motion to conduct discovery with the administrative law judge. The motion for discovery shall be granted by the administrative law judge only upon a showing of good cause. In order to establish "good cause" for the purposes of this section, a party must show that the discovery requested relates to a genuine issue as to a material fact that is relevant to the proceeding. The order of the administrative law judge shall expressly limit the scope and terms of discovery to that for which "good cause" has been shown, as provided in this paragraph.

(b) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his or her attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials or information in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials or information by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

§ 2570.8 Summary decision.

For prohibited transaction penalty proceedings, this section shall apply in lieu of § 18.41 of this title.

(a) *No genuine issue of material fact.* (1) Where no genuine issue of a material fact is found to have been raised, the administrative law judge may issue a decision which, in the absence of an appeal pursuant to §§ 2570.10–2570.12 of this part, shall become a final order.

(2) A decision made under this paragraph shall include a statement of:

(i) Findings of fact and conclusions of law, and the reasons therefor, on all issues presented; and

(ii) Any terms and conditions of the rule or order.

(3) A copy of any decision under this paragraph shall be served on each party.

(b) *Hearings on issue of fact.* Where a genuine question of material fact is raised, the administrative law judge shall, and in any other case may, set the case for an evidentiary hearing.

§ 2570.9 Decision of the administrative law judge.

For prohibited transaction penalty proceedings, this section shall apply in lieu of § 18.57 of this title

(a) *Proposed findings of fact, conclusions, and order.* Within twenty (20) days of the filing of the transcript of the testimony or such additional time as the administrative law judge may allow, each party pay file with the administrative law judge, subject to the judge's discretion, proposed findings of fact, conclusions of law, and order together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the administrative law judge.* Within a reasonable time after the time allowed for the filing of the proposed findings of fact, conclusions of law, and order, or within thirty (30) days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the administrative law judge shall make his or her decision. The decision of the administrative law judge shall include findings of fact and conclusions of law with reasons therefor upon each material issue of fact of law presented on the record. The decision of the administrative law judge shall be based upon the whole record. In a contested case in which the Department and the Respondent have presented their positions to the administrative law judge pursuant to the procedures for

prohibited transaction penalty proceedings as set forth in this part, the penalty (if any) which may be included in the decision of the administrative law judge shall be limited to the sanction expressly provided for in section 502(i) of ERISA. It shall be supported by reliable and probative evidence. The decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704 unless an appeal is made pursuant to the procedures set forth in §§ 3570.10–2570.12.

§ 2570.10 Review by the Secretary.

(a) The Secretary may review a decision of an administrative law judge. Such a review may occur only when a party files a notice of appeal from a decision of an administrative law judge within twenty (20) days of the issuance of such decision. In all other cases, the decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704.

(b) A notice of appeal to the Secretary shall state with specificity the issue(s) in the decision of the administrative law judge on which the party is seeking review. Such notice of appeal must be served on all parties of record.

(c) Upon receipt of a notice of appeal, the Secretary shall request the Chief Administrative Law Judge to submit to him a copy of the entire record before the administrative law judge.

§ 2570.11 Scope of review.

The review of the Secretary shall not be a *de novo* proceeding but rather a review of the record established before the administrative law judge. There shall be no opportunity for oral argument.

§ 2570.12 Procedures for review by the Secretary.

(a) Upon receipt of a notice of appeal, the Secretary shall establish a briefing schedule which shall be served on all parties of record. Upon motion of one or more of the parties, the Secretary may, in his discretion, permit the submission of reply briefs.

(b) The Secretary shall issue a decision as promptly as possible after receipt of the briefs of the parties. The Secretary may affirm, modify, or set aside, in whole or in part, the decision on appeal and shall issue a statement of reasons and bases for the action(s) taken. Such decision by the Secretary shall be final agency action within the meaning of 5 U.S.C. 704.

Signed at Washington, DC, this 20th day of September, 1988.

David M. Walker,

Assistant Secretary of Labor, Pension and Welfare Benefits Administration.

[FR Doc. 88–21791 Filed 9–23–88; 8:45 am]

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federal register

Monday
September 26, 1988

Part VII

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2589

Proposed Regulation Related to Civil Penalties; Notice of Proposed Rulemaking

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2589

Proposed Regulation Relating to Civil Penalties

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation that sets forth the manner in which the Department of Labor (the Department) intends to assess civil penalties under section 8477 of the Federal Employees' Retirement System Act of 1986 (FERSA or the Act). Section 8477(e)(1)(B) of FERSA authorizes the Secretary of Labor to assess civil penalties against parties in interest who engage in prohibited transactions with the Thrift Savings Fund established under FERSA, and authorizes the Secretary to prescribe regulations to carry out the Department's FERSA civil penalty functions. The proposed regulation would adopt the definitions of terms and procedures established for assessment of civil penalties under section 502(i) of the Employee Retirement Income Security Act of 1974, published today, elsewhere in this **Federal Register**.

DATES: Written comments concerning the proposed regulation must be received by November 25, 1988.

If adopted, the regulation would be effective for purposes of conducting penalty proceedings under section 8477 at any time on or after 30 days from the date of its publication as a final regulation.

ADDRESS: The Department invites interested persons to submit written comments on the proposed regulation (preferably three copies) which should be submitted to: Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N–5671, U.S. Department of Labor, Washington, DC 20210; Attention: "Proposed FERSA Civil Penalty Regulation." All submissions will be open to public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Susan E. Rees, Plan Benefits Security Division, Office of the Solicitor, (202) 523–9141, U.S. Department of Labor, Washington, DC 20210 or Debra L. Silver, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Introduction

In 1986 Congress passed the Federal Employees' Retirement System Act (FERSA), as amended, 5 U.S.C. 8401 *et seq.*, [1] which established a retirement system for most civilian federal employees hired after December, 1983, and which provided for participation by certain other federal employees. Section 8437 of FERSA established a Thrift Savings Fund (the Fund) which consists of all employee and government contributions into the system, increased by the total net earnings of the Fund as reduced by the total net losses of the Fund, and reduced by the total amount of payments made from the Fund. Section 8477(c) of FERSA prohibits certain transactions between the Fund and a "party in interest" (as defined in section 8477(a)(4) of the Act) with respect to the Fund. In section 8477(e)(1)(B), Congress granted the Secretary of Labor the authority to assess civil penalties against parties in interest who engage in prohibited transactions with the Fund. Section 8477(e)(1)(B) provides in part that the amount of the penalty "shall be equal to 5 percent of the amount involved in each transaction * * * for each year or part thereof during which the prohibited transaction continues, except that if the transaction is not corrected * * * within 90 days after the date the Secretary of Labor transmits notice to the party in interest (or such longer period as the Secretary of Labor may permit) * * * such penalty may be in an amount not more than 100 percent of the amount involved."

The Department also has the authority, under section 502(i) of the Employee Retirement Income Security Act of 1974 (ERISA), to assess a similar civil penalty against parties in interest with respect to prohibited transactions involving ERISA-covered welfare plans and pension plans which are not "qualified" plans under the Internal Revenue Code. Section 502(i) of ERISA, like section 8477(e)(1)(B) of FERSA, adopts the meaning given the terms "amount involved" and "correction" in the prohibited transaction excise tax provisions of the Internal Revenue Code (the Code). The Department has issued today, elsewhere in the **Federal Register**, interpretative regulations under 502(i) of ERISA (29 CFR 2560.502i–1) which adopt the definitions of terms under the Code, and procedural regulations to be followed when a party contests the Department's assessment of a penalty under section 502(i) of ERISA. See 29 CFR 2570.1–.12. These regulations adopt the Department of Labor's general rules for administrative hearings (29 CFR Part 18), modified to accommodate the special characteristics of prohibited transaction penalty proceedings.

The Department believes that Congress intended that the prohibited transaction penalty provisions of FERSA and ERISA would be enforced in a similar manner (and would have a similar deterrent effect) and would be interpreted consistently with the parallel provisions of the Code. The Department therefore proposes to adopt, with one exception explained below, the ERISA section 502(i) interpretations and procedural regulations set forth at 29 CFR Part 2560 and Part 2570 for purposes of prohibited transaction penalty proceedings under FERSA section 8477(e)(1)(B).

Assessment of Penalty

Section 8477 differs from the ERISA civil penalty provision in one major respect. Section 8477(e)(1)(B) provides that "the penalty assessed shall be equal to 5 percent of the amount involved." Thus, unlike under section 502(i) of ERISA, the Department has no discretion under section 8477 of FERSA to assess an initial penalty of less than 5 percent. Proposed § 2589.1 has been drafted to reflect this difference. As the proposed provision shows, however, section 8477(e)(1)(B), like section 502(i) of ERISA, permits the Department to assess a "second-tier" penalty of "not more than 100% of the amount involved." The Department contemplates exercising this grant of discretion to assess penalties of less than the full amount at the second level, when appropriate.

"Amount Involved" and "Correction"

In section 8477(e)(1)(B) of FERSA, as with section 502(i) of ERISA, Congress expressly indicated that the terms "amount involved" and "correction" should be defined as those terms are defined in section 4975(f) (4) and (5) of the Internal Revenue Code. Section 4975

[1] Sections 8401 through 8479 of Title 5, United States Code (U.S.C.), were enacted by Congress at section 101(a) of FERSA. The Act itself provides no independent numbering system for these provisions, but directly assigns the chapter and section numbers under which those provisions are to be codified in Title 5 of the United States Code. For purposes of clarity and convenience, therefore, this preamble references the provisions of FERSA by using the U.S.C. section numbers which Congress assigned to them in the Act. Thus, for example, the following reference to "section 8437 of FERSA" is to Title 5 U.S.C. 8437.

imposes a tax on prohibited transactions between disqualified persons and tax-qualified benefit plans. As explained more fully in the preamble to 29 CFR Part 2560, published today elsewhere in this **Federal Register**, the definitions under section 4975(f) (4) and (5) of the Code are virtually identical to those of section 4941 of the Code. Section 4941 imposes a tax on prohibited transactions between disqualified persons and private foundations and provides for a two-tier penalty similar to that imposed by section 4975 of the Code and section 502(i) of ERISA. Temporary Treasury regulations, which are published at 26 CFR 141.4975–13, state that the applicable regulations under section 4941 of the Code will control in construing certain terms, including "amount involved" and "correction" for purposes of section 4975 of the Code.[2]

In light of the Congressional mandate that "amount involved" and "correction" be defined under section 8477 of FERSA as defined under Code section 4975 (and pursuant to the adoption of the section 4975 definitions for purposes of prohibited transaction penalty proceedings under ERISA section 502(i)), the Department proposes to adopt the definitions of those terms as set forth in the 502(i) regulations at 29 CFR 2560.502i–1 (b) and (c).

The Operation of the Correction Period

Section 8477 of FERSA, like section 502(i) of ERISA, allows a party in interest to "correct" a prohibited transaction within 90 days after notice from the Secretary of Labor and thereby avoid the 100 percent second-tier penalty. The Department proposes to adopt, for purposes of section 8477 of FERSA, the regulation at 29 CFR 2560.502i–1(d) which provides that, as a general matter, the "correction period" will begin on the date of the prohibited transaction and end 90 days after final agency action has been taken in a particular case, or a final order has been entered in a judicial review of the final agency action.

The Computation of the Sanction

The Department proposes to adopt the method of computing the civil penalty under section 502(i) of ERISA for the same purpose under 8477(e)(1)(B) of FERSA. As with the ERISA civil penalty provision, the Department has concluded that it would be consistent with Congressional intent to compute the FERSA civil penalty in accordance with the method used in the excise tax regulations under the Internal Revenue Code. The ERISA section 502(i) method of computation was drafted directly from the parallel Code regulations and therefore can appropriately be adopted for FERSA section 8477 proceedings.

Procedures for the Assessment of Civil Penalties Under FERSA Section 8477(e)(1)(B)

Section 8477(e)(1)(B) of FERSA grants the Secretary of Labor the authority to assess the FERSA prohibited transaction civil penalties, and under section 8477(f), the Secretary may prescribe regulations to implement civil penalty procedures. The Department believes that it is appropriate for the Department to administer the civil penalty provisions under its authority consistently, to the greatest degree possible. After careful review, the Department has decided that the procedural regulations at 29 CFR Part 2570, which provide for assessment of ERISA section 502(i) civil penalties, are equally appropriate for civil penalty proceedings under FERSA section 8477(e)(1)(B). The Department therefore proposes to adopt 29 CFR Part 2570 as the rules of procedure applicable to prohibited transaction penalty proceedings under FERSA section 8477(e)(1)(B).

The proposed regulation would adopt procedures for (1) notification to a party in interest that the Department intends to assess a penalty pursuant to section 8477(e)(1)(B), (2) requesting a hearing with respect to the matter before an administrative law judge and (3) an appeal of an administrative law judge decision to the Secretary or his delegate. In this regard, the Secretary has established the Pension and Welfare Benefits Administration (PWBA) within the Department, which has been delegated the responsibility for carrying out most of the Secretary's responsibilities under FERSA. *See* Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

The Department has published rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges at 29 CFR Part 18, 48 FR 32538 (1983). As explained in 29 CFR 18.1, those provisions generally govern administrative hearings before administrative law judges assigned to the Department and are intended to provide maximum uniformity in the conduct of administrative hearings. The 502(i) procedural regulations, which the Department proposes to adopt for purposes of FERSA section 8477 prohibited transaction penalty proceedings, incorporate many of the 29 CFR Part 18 provisions, *see* 29 CFR 2570.1, modified in a number of respects to reflect the special characteristics of civil penalty assessment proceedings under 502(i) of ERISA, as set forth in 29 CFR 2570.2–.12. The Department believes that these modifications are equally appropriate for penalty proceedings under FERSA section 8477(e)(1)(B)

The Department therefore proposes to adopt Part 2570 in its entirety for purposes of prohibited transaction penalty proceedings under FERSA.

Regulatory Flexibility Act

The Regulatory Flexibility Act imposes certain requirements with respect to proposed rules which would have significant impact on a substantial number of small entities. A "rule" under the Regulatory Flexibility Act is one for which a general notice of proposed rulemaking is required under section 553(b) of the Administrative Procedure Act. Under section 553(b) of the Administrative Procedure Act a general notice of proposed rulemaking is not required for rules of agency organization, procedure or practice. Thus, such rules are excluded from the definition of "rule" under the Regulatory Flexibility Act. Since the proposed procedural regulation (29 CFR 2589.1(b)) is a rule of agency procedure or practice it is thus not subject to the requirements of the Regulatory Flexibility Act.

The Department has also determined that the proposed interpretative regulation at 29 CFR 2589.1(a) will not have any significant impact on a substantial number of small entities, and contains no reporting and disclosure requirements. The primary purpose of the proposed regulation is to deter individuals who manage the Thrift Savings Fund from engaging in prohibited transactions, e.g., from using such assets for their own benefit. To that extent, the regulation will enable the Department to assess civil penalties on those individuals who are found to be violating the FERSA prohibited transaction provisions.

Based on anticipated enforcement experience under section 502(i) of ERISA, and taking into account both the difference in nature of the Thrift Savings Fund under FERSA as compared to private sector plans subject to section 502(i) of ERISA as well as the fact that this is a new program, the Department estimates that it will identify a very limited number of cases in any year which will result in penalties, and that in some years there will be no cases

[2] Regulations under section 4941 of the Code are found at 26 CFR 53.4941. These regulations were adopted on April 17, 1973 (38 FR 9493), and were adopted under section 4975 of the Code on August 6, 1975 (41 FR 32890).

which result in such penalties. Given the selective nature of the burden imposed by this regulation, the Department believes that the regulation will not have a significant impact on small entities which provide services to the Thrift Savings Fund or small entities in which the Thrift Savings Fund invests.

Executive Order 12291

The Department has determined that this proposed regulation does not constitute a "major rule" as that term is used in Executive Order 12291 because the action does not result in: an annual effect on the economy of $100 million; a major increase in cost or prices for consumers, individual industries, government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The Paperwork Reduction Act mandates that agencies provide data with respect to information collection requirements which may be imposed by certain regulatory action. The proposed regulation defining terms which relate to the assessment of civil sanctions under FERSA section 8477 (e)(1)(B) does not contain any new information collection requirements and does not modify any existing requirements. Thus, it is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h). In addition, section 3508(c)(1)(B) of the Paperwork Reduction Act provides that the requirements of the Act do not apply to administrative actions involving specific individuals or entities. Thus, the Department has determined that the administrative adjudications which would be conducted pursuant to the procedures contained in this regulation fall within the scope of this exemption from the Paperwork Reduction Act.

Statutory Authority

The proposed regulation would be adopted pursuant to the authority contained in sections 8477(e)(1) (B) and (f) of FERSA (Sec. 101, Pub. L. No. 99-335, 100 Stat. 584, 586, 5 U.S.C. 8477(e)(1) (B) and (f)), and Secretary's Order 1-87, 52 FR 13139 (April 21, 1987).

List of Subjects in 29 CFR Part 2589

Administrative practices and procedures, Claims, Employee benefit plans, Federal Employee Retirement System, Law enforcement, Party in interest, Pensions, Pension and Welfare Benefits Administration, Prohibited transactions.

Proposed Regulation

In view of the foregoing, Chapter XXV of Title 29 is proposed to be amended as set forth below:

By adding in the appropriate place the following new Subchapter K, consisting of Part 2589:

SUBCHAPTER K—ADMINISTRATION AND ENFORCEMENT UNDER THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1986

PART 2589—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT.

Sec.

Authority: Section 8477 (e)(1)(B) and (f) of FERSA, 5 U.S.C. 8477 (e)(1)(B) and (f), and Secretary's Order 1-87, 52 FR 13139 (April 21, 1987).

§ 2589.1 Civil Penalties under Section 8477(e)(1)(B) of FERSA.

(a) Section 8477(e)(1)(B) of FERSA, 5 U.S.C. 8477(e)(1)(B), permits the Secretary of Labor to assess a civil penalty against a party in interest who engages in a prohibited transaction with respect to the Thrift Savings Fund. The initial penalty under section 8477(e)(1)(B) is five percent of the "amount involved" in each such transaction for each year or part thereof during which the prohibited transaction continues. However, if the prohibited transaction is not corrected during the "correction period," the civil penalty may be in an amount not more than 100% of the "amount involved." The Department of Labor will apply the definitions set out in §§ 2560.502i-1 (b)-(e) of this Chapter of Title 29 (civil penalties under section 502(i) of ERISA) in determining the "amount involved," "correction," "correction period," and for computation of the section 8477(e)(1)(B) penalty.

(b) The rules of practice set forth in §§ 2570.1-.12 of Part 2570, Subchapter A of this Chapter of Title 29 (procedures for the assessment of civil sanctions under ERISA section 502(i)) are applicable to prohibited transaction penalty proceedings under FERSA section 8477(e)(1)(B).

Signed at Washington, DC this 20th day of September, 1988.

David M. Walker,

Assistant Secretary of Labor, Pension and Welfare Benefits Administration.

[FR Doc. 88-21792 Filed 9-23-88; 8:45 am]

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federal register

Monday
September 26, 1988

Part VIII

Department of Housing and Urban Development

Community Development Work Study Program; Revised Notice of Fund Availability and Submission of Proposed Information Collection to OMB; Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-88-1827; FR-2510]

Community Development Work Study Program; Revised Notice of Fund Availability

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Amended notice of fund availability (NOFA).

SUMMARY: Section 501(b)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988), amended section 107 of the Housing and Community Development Act of 1974 to authorize the Community Development Work Study Program (CDWSP). On August 17, 1988 (53 FR 31226), HUD published a notice announcing the requirements that will govern the use of $3 million for CDWSP from amounts that were appropriated in the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1988 (section 101(f), Pub. L. 100–202, approved December 22, 1987). This notice amends the August 17, 1988 NOFA by providing that: (1) CDWSP grant funds will be available for the Fall, 1988 semester as well as for the 1989 Spring semester; (2) application packages are currently available for completion by prospective applicants; and (3) completed applications must be postmarked, or hand delivered and received by HUD, no later than [insert 30 days following publication].

DATES: This notice is effective September 26, 1988.

FOR FURTHER INFORMATION CONTACT: James H. Turk, Technical Assistance Division, Office of Program Policy Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–6092. This is not a toll-free number. Application packages (requests for grant application) are currently available at the following address: Department of Housing and Urban Development, Office of Procurement and Contracts, Program Support Division, 451 Seventh Street, SW., Room 5252, Washington, DC 20410.

SUPPLENMENTARY INFORMATION: The information collection requirements contained in the CDWSP notice published on August 17, 1988 (53 FR 31224) have been submitted to the Office of Mangement and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2535–0084.

Section 501(b)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988), amended section 107 of the Housing and Community Development Act of 1974 to authorize the Community Development Work Study Program (CDWSP). On August 17, 1988, HUD published a notice announcing the requirements that will govern the use of $3 million for CDWSP from amounts that were appropriated in the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1988 (section 101(f), Pub. L. 100–202, approved December 22, 1987).

The August 17, 1988 Notice stated that HUD had developed an application package (request for grant application) describing the information that applicants for CDWSP assistance must submit and announce the deadline for the submission of applications. The notice stated that the application packages would be available after October 1, 1988.

HUD has been able to make the application packages available earlier than the date set in the NOFA. The application package is now available and the deadline for applications has been set at October 26, 1988. In order to comply with this deadline, applications must be hand delivered and received, or postmarked, no later than the October 26, 1988, deadline. Applications will be provided upon the written request of any party made to: Department of Housing and Urban Development, Office of Procurement and Contracts, Program Support Division, 451 Seventh Street SW., Room 5252, Washington, DC 20410.

The August 17, 1988 NOFA stated that HUD was making funds available to recipients at the earliest possible date (*i.e.*, the second semester of the 1988–89 school year) and that applicants could apply for programs that begin either in the Spring 1989 or Fall 1989 semester. Because of the early availability of the application package, HUD now believes that it is possible to fund programs that begin in the Fall 1988 and Spring 1989 semesters. Work Study programs that commence in the Fall 1989 semester will be funded under next year's NOFA to the extent that funds are available.

Applicants awarded a CDWSP grant for the Fall 1988 semester will be notified of their selection as soon as practicable, and will be reimbursed for the tuition and other eligible expenses of students that have been selected by the grantee to participate in the program.

Authority: Sec. 107(c) Housing and Community Development Act of 1974 (42 U.S.C. 5307); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Date: September 15, 1988.

Jack R. Stokvis,

Assistant Secretary for Community Planning and Development.

[FR Doc. 88–21933 Filed 9–23–88; 8:45 am]

BILLING CODE 4210–29–M

Office of Administration

[Docket No. N-88-1858]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is also requested that OMB complete its review within seven days.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information

submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: September 13, 1988.

David S. Cristy,

Deputy Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Community Development Work Study Program (FR–2510)

Office: Community Planning and Development

Description of the Need for the Information and its Proposed Use: Provide grants to institutions of higher education either directly or through areawide planning organizations or States for the purposes of providing assistance to economically disadvantaged and minority students who participate in community development work study programs and are enrolled in full-time graduate or undergraduate programs in community and economic development, community planning and community management.

Form Number: None

Respondents: State or Areawide Planning Organization and Non-Profit Institutions

Frequency of Submission: Quarterly/Semester and Yearly (Annual Report)

Reporting Burden:

	Number of respondents	X	Frequency of responses	X	Hours per response	=	Burden hours
Application	100		Annual		20		2,000
Quarterly/semester	30		3		4		360
Final report	30		1		8		240
Recordkeeping	30						120

Total Estimated Burden Hours: 2,720

Status: New

Contact: James Turk, HUD, (202) 755–6092; John Allison, OMB, (202) 395–6880

Date: September 13, 1988.

Supporting Statement Community Development Work Study

1. *Need.* The Department of Housing and Urban Development (HUD) is expecting to fund approximately 60 grantees (including Institutions of Higher Education, Areawide Planning Organization, States) which translate into approximately 200 economically disadvantaged and minority students resulting from the publication of the proposed Notice of Fund Availability (NOFA) for the Community Development Work Study Program (CDWSP) published elsewhere in today's Federal Register.

The CDWSP requires that HUD track and monitor the progress of each individual student who participates in the program. In order for HUD to monitor the program effectively and track the progress of these students, each of the grantees funded under the program will be required to report specific information to HUD. (Attachment).

Purpose of Information. The collection of this data will provide the necessary information for the Government Technical Representative (GTR) to minority the project. It is the only way to know the number of economically disadvantaged and monitory students that HUD funds by gender and race, the amount of funds each received by category, the number that graduated, the number working in community development funded agencies after graduation, the types of degrees that each received and when they received them, a report on how they are progressing on their internship assignment and degree, and reimbursement of funds owed to HUD.

During HUD Congressional Budget Reviews, Congress consistently requests backup information on the CDWSP. In order to accommodate these requests, it is necessary to have this information available. Also the collection of the information will enable HUD to respond to the Freedom of Information requests which the agency receives periodically. Additionally, this information is used by HUD in assessing the effectiveness of the program.

If HUD were unable to collect this information, the agency would not be able to respond fully to Congressional requests or Freedom of Information requests. Neither would we be able to determine whether the purpose of the program is being met.

3. *Improved Information Technology.* None

4. *Duplication.* This program does not duplicate any existing government program.

5. *Use of Similar Information.* None Available

6. *Small Business Impact.* Does not involve Small Businesses

7. *Frequency.* The participants funded under this program attend colleges and universities that either operate on a quarter/or semester basis. Since we need the information after each quarter/semester to monitor the progress of the students, collecting the information on a less frequent basis would not be satisfactory or beneficial to the program.

8. *Consistency with 5 CFR 13206.* Not inconsistent.

9. *Consultation.* None

10. *Assurance of Confidentiality.* None provided

11. *Additional Justification.* Not applicable

12. *Costs:*

a. Federal Government Computation 300 staff hrs X 10 hr =	$6,000
b. Respondents: 2,720 hrs X 12 hr	32,640
Total	38,640

Includes 120 hours for recordkeeping information.

13. *Burden on Collection of Information.*

	Respondents	Frequency	Burden hrs.	Totals
Application	100	Annual	20	2,000
Quarterly/semester report	30	[1] 3	4	360
Final Report	30	1	8	240
Total burden				2,600

[1] Split between quarters and semesters.

14. *Reasons for Changes in Burden.* None

15. *Collection of Information.* Not applicable

Attachment—Application Instructions

Applications must be prepared and submitted in accordance with the

instructions outlined below and in the cover letter to this solicitation.

1. *Application Contents.*

Applications shall consist of the following:

A. Transmittal Letter
B. Standard Form 424 and Application for Federal Assistance
C. Abstract
D. Table of Contents
E. Proposal Narrative Statement
F. Sample copy of student binding agreement
G. Financial Statements/Audits
H. Management/Workplan Guidelines (Attached)

2. *Application Instructions.*

A. *Transmittal Letter*—Prepare a brief letter transmitting the application package with an original and five copies identifying the name, telephone number, and mailing address of the Program Director of this project who may be contacted by HUD, if necessary, during the evaluation process to discuss the application. The transmittal letter should be signed by the Chief Executive Officer of the applicant organization.

B. *SF–424*—Complete this standard form. This is a cover sheet for applications when applying for Federal Assistance. A copy of this form is included in the attached Application for Federal Assistance.

C. *Abstract*—Prepare a one-page abstract of the project summarizing the proposal and its cost. Included in the summary should be the course numbers of the credit hours in the related fields of community and economic development, etc. with a brief description of the course and its relationship to the community development program. These courses should be referenced by highlighting the course name and number in the school's attached curriculum bulletin.

The grantee should also describe their policy and procedures for collecting funds from students who drop out of the program.

D. *Table of Contents*—Prepare a table of contents listing by page number the major sections, subsections and appendices of the application.

E. *Proposal Narrative*—Prepare a narrative statement of the proposal, addressing the topics and issues in the Factors for Award (Attachment B) and the statement of work (Attachment A) and following the format outlined below.

1. Responsibilities and Roles of Program Participants:

a. Applicants (Institution of higher education including academic area or Metropolitan Planning Organizations or States);

b. Work Placement Agencies; and

c. Students.

2. Work Study Program Coordinating Committee (MPO's or States only);

3. Recruitment process;

4. Student selection process including information for determining financial need;

5. Program evaluation process;

6. Length of program (9 or 12 months);

7. Academic area and number of students by area;

8. Process and procedure for the collection of student debts for those students who drop out of the program (i.e., tuition, books, travel); and

9. Schedule of student intern work (placement assignments, e.g., during school year or over a summer).

[FR Doc. 88–21932 Filed 9–23–88; 8:45 am]
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federal register

Monday
September 26, 1988

Part IX

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 813, 905, 913 and 942

Indian Housing Act Amendments; Interim Rule

24 CFR Part 905

Self-Help Development in the Mutual Help Homeownership Opportunity Program; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 813, 905, 913 and 942

[Docket No. R-88-1412; FR-2538]

Indian Housing Act Amendments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: Together with an interim rule published elsewhere in today's issue of the **Federal Register**, this rule implements the changes made in the United States Housing Act of 1937 by the Indian Housing Act of 1988 ("1988 Act"), Pub. L. 100–358, approved June 29, 1988. Those changes include creation of a separate title of the 1937 Act for Indian housing, changes to definitions, requirements for property standards, and restrictions related to admission in the Mutual Help homeownership program. This rule also authorizes execution of an Annual Contributions Contract between an Indian housing authority and HUD before a project has received final HUD approval ("development program" approval), to provide a financing mechanism for a project's preliminary costs now that the program has been converted from a loan program to a grant program, as authorized by section 112 of the Housing and Community Development Act of 1987, Pub. L. 100–242 (February 5, 1988), and as provided for in recent Appropriations Acts.

A rulemaking proceeding is already underway to separate the regulations dealing with the Indian housing program from the regulations dealing with public housing generally and to consolidate the provisions applicable to Indian housing into a single part—Part 905. However, since that rule has not yet culminated in a final rule, this rule amends the currently effective rules governing the Indian housing program—Parts 905, 913, and 942. This rule also amends Part 813, which governs the Section 8 programs, since one of the changes in definitions made by the 1988 Act affects programs operated under the 1937 Act by Indian housing authorities (IHAs) and some IHAs administer Section 8 Housing Assistance Payment programs.

DATES: *Comment Due Date:* November 25, 1988.

Effective Date: September 26, 1988.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Patricia Arnaudo, Deputy Director, Office of Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–5000, telephone (202) 755–1015. A telecommunications device for hearing or speech-impaired persons is available at (202) 472–6725. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in §§ 905.213, 905.302, 905.406, and 905.408 of this rule were submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and were assigned OMB control numbers 2577–0101, 2577–0003, and 2577–0030. The annual public reporting burden for each response under each of these information collections is estimated to be 7.3 hours, 6.7 hours, and 8 hours, respectively, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information collections contained in §§ 905.417 and 905.422 have been submitted to OMB for review. The OMB control number for these provisions, when assigned, will be announced by separate notice in the **Federal Register**. Until that time, no person may be subjected to a penalty for failure to comply with the information collection requirements in §§ 905.417 and 905.422. Information on the estimated public reporting burden for these collections is provided under the preamble heading Findings and Certifications. Send comments regarding burden estimates or any other aspect of these sets of collections of information, including suggestions for reducing the burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for HUD. At the end of the public comment period, the Department may amend the information collection requirements set out in this rule to reflect public comments received concerning information collections, or in response to OMB requirements.

Summary of Indian Housing Act of 1988

The 1988 Act does several types of things. First, it creates a new title II of the 1937 Act establishing a separate program of assisted housing for Indians and Alaska natives. It generally incorporates into the revamped authority the provisions of title I (the remainder of the 1937 Act) as of the date of enactment of the 1988 Act, and provides that future amendments to title I will not apply to Indian housing, "unless the provision explicitly provides for such applicability."

Second, the 1988 Act makes section 227 of the Housing and Urban-Rural Recovery Act of 1983, concerning pet ownership in projects for the elderly and handicapped, inapplicable to lower income housing developed by Indian housing authorities. Third, the 1988 Act specifically adopts in the statute some of HUD's regulatory provisions and makes a few minor modifications in them in the process. Fourth, it establishes a new initiative: a Self-Help program to be modeled after Farmers Home Administration's program and implemented as part of the existing HUD Mutual Help Homeownership Opportunity program.

The proposed consolidated Indian housing rule was published on June 29, 1988, requesting public comments by September 27, 1988 (53 FR 24554). That rulemaking will proceed to a final rule, implementing Congressional intent that a separate program for Indian housing be created, governed by regulations promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 553(b) through (e)) and in consultation with Indian housing authorities, and henceforward reflecting only changes in the 1937 Act that are specifically made applicable to Indian housing.

This rule implements the exclusion of Indian housing from the programs covered by Part 942, which provides that no owner or manager of federally assisted housing for the elderly or handicapped may prohibit or prevent a tenant from owning or having common household pets living in the tenant's unit or from discriminating against any person with respect to admission or continued occupancy on the basis of the person's ownership or possession of pets. This rule makes no change to section 227's applicability to conventional public housing under title I of the 1937 Act, or to any of the other

programs to which section 227 applies. This rule also implements the numerous elements of the 1988 Act that amend the 1937 Act to adopt existing HUD policy, with minor modifications.

The vast majority of regulations changes occasioned by the 1988 Act either endorse existing HUD policies currently found in HUD field directives or in contract provisions, such as the requirement for property standards adopted locally and the requirement for periodic IHA inspections of Mutual Help homes; or constitute minor changes to existing regulatory provisions, such as the revision to the definition of an Indian Housing Authority to specifically include regional housing authorities in the State of Alaska, or the addition of an income deduction for excessive travel expense related to employment or education. The primary purpose of this rule is to revise current regulations to include these items.

There are two changes included in this rule that significantly differ from current program operations. One is the provision that the Mutual Help Homeownership Opportunity program operated on Indian reservations and in Indian areas serve primarily Indian families. The second change is an indirect result of the 1988 Act's treatment of families whose incomes are above the income limits for lower income families. (The addition in this rule of regulatory authority for execution of an ACC before approval of a development program does not constitute a significant difference from the practice that has evolved, out of necessity, of waiving the current regulatory prohibition against execution of an ACC at this stage for all IHAs that have sought it.)

Implementation of the new Self-Help component of the Mutual Help Homeownership Opportunities program, which is required to be established by the 1988 Act, is being done separately since it is easily separable and it involves a new initiative.

Section 201 of the 1937 Act

Paragraphs (a) and (b) of section 201, added by section 2 of the 1988 Act, establish a separate program to provide lower income housing on Indian reservations and other Indian areas under a new title II of the 1937 Act and provide that, in the future, the Indian housing program will be unaffected by changes to title I of the 1937 Act unless those changes are stated by Congress to be applicable to Indian housing. These provisions are being carried out by implementation of the various other provisions of the 1988 Act, by the development of the Consolidated Indian Housing rule, referenced above, and by the limitation of future title I-based changes to that consolidated rule to those identified as intended to be applicable to Indian housing.

Section 201(c) merely exempts Indian housing from coverage by section 227 of the 1983 Act, the statutory provision concerning pet ownership in assisted housing for the elderly or handicapped. As such, the Department views it as a "self-executing" provision that became effective upon enactment of the Indian Housing Act of 1988 on June 29, 1988. Part 942, therefore, imposes no restriction upon Indian Housing Authority (IHA) discretion to regulate or not regulate the ownership and keeping of pets in their developments. This discretion may, however, be limited by other laws that are not affected by the Indian Housing Act of 1988 or today's rulemaking, such as any applicable requirements for animals that assist handicapped persons.

The proposed consolidated Indian housing rule contained in provisions that would have applied pet restrictions similar to those of Part 942 to Indian housing (§ 905.301(d)). Enactment of section 201(c) of the 1937 Act moots these provisions, and they will not appear in the final in that rulemaking.

Section 202 of the 1937 Act

a. Establishment of Mutual Help Program; HUD Financial Assistance

Section 202 of the 1937 Act, as amended by section 2 of the Indian Housing Act of 1988, provides the statutory foundation for the Mutual Help Homeownership Opportunities program, which has been in existence for many years. Paragraphs (a) and (b) of that section make no change in the nature of the program, and therefore require no change in the regulations that already embody their provisions.

b. Eligible Projects

Paragraph (c) addresses building types, forms of ownership, and property standards. The description of building types specifically authorizes single-family dwellings in the form of row houses, so this rule amends § 905.103(b) to specifically mention that type of single-family dwelling. The discussion of forms of ownership gives the Secretary the discretion to facilitate cooperative ownership for any Mutual Help project for which the IHA has requested that form of ownership. Since the Secretary does not believe that this form of ownership is particularly appropriate for Mutual Help projects, no amendment to the regulations is being made at this time in response to this statutory provision.

The statutory language on property standards simply requires that they be established by regulation, that they provide flexibility to use different designs and materials, and that they include cost-effective energy conservation performance standards. The House Committee Report states that the Committee assumes that HUD's "current practice [of] utilizing model building codes, or a State, local or tribal building code, will be continued." H. Rep. 604, 100th Cong., 2d Sess. at 8. The report also praises HUD's abolishment of minimum property standards, stating that IHAs have been able to develop units using traditional designs and materials that were not possible when HUD had prescribed Minimum Property Standards. Consequently, this rule revises § 905.212, dealing with the design of the homes, to require that each IHA coordinate with the tribe, or local government, if appropriate, to assure adoption of a building code applicable to the homes built with HUD assistance that permits flexibility of design and cost-effective energy conservation performance.

c. Eligible Families

Paragraph (d) describes what families are eligible for participation in the Mutual Help program on Indian reservations and other Indian areas. It emphasizes participation by lower income Indian families. Non-lower income families also may participate "if the Indian housing authority demonstrates to the satisfaction of [HUD] that there is a need for housing for such families that cannot reasonably be met without such assistance." A numerical limit on the over-income families that can be housed is stated in the statute. Non-Indian families also may participate "if the Indian housing authority determines that the presence of the family on the Indian reservation or other Indian area is essential to the well-being of Indian families and the need for housing for the family cannot reasonably be met without such assistance."

The topic of income limits is addressed in the current § 905.302. Generally, the highest income that a lower income family may have is 80 percent of the median income for the area, adjusted for family size. However, § 905.302(a)(2) states that an IHA may request that HUD increase the income limits for determining who is a "lower income family" where family incomes are unusually high and where decent housing is not available even for

families of higher income, thereby transforming families who would otherwise be classified as over-income into "lower income families." This regulatory provision is based on section 3(b)(2) of the 1937 Act, which permits the Secretary to establish income limits for lower income families higher or lower than 80 percent of the median income if the Secretary finds that such a variation is necessary "because of prevailing levels of construction costs or unusually high or low family incomes."

The 1988 Act provides a method of allowing over-income families to participate in the MH program without affecting the level of the income limits. It provides that, in an area where housing for a higher income family is unavailable, such a family may be admitted to the program if the project's limit on the number of units for such families is not exceeded. The statutory restriction on the number of non-lower income families is the greater of ten percent of the units in the project, or five units.

The Department has used the authority in section 3(b)(2) of the 1937 Act and in § 905.302(a)(2) to permit IHAs to serve families whose incomes were above the standard income limits for the area by raising the income limits, primarily because of the unavailability of other housing resources to serve them. However, the need to raise income limits in Indian areas to serve higher income families has decreased over the past few years. On August 1, 1986, a final rule implementing a program of FHA mortgage insurance on Indian lands became effective (51 FR 21866, amending 24 CFR Parts 200, 203, etc.). This program can provide an alternative financing source where lenders are willing to participate. Section 103 of the Housing and Community Development Act of 1987 made inapplicable to lower income housing administered by IHAs the requirement imposed by statute in 1981 that most families admitted be not only lower income but very low income. In addition, concern has increased about the unintended effect on Farmers Home Administration and Treasury tax-exempt programs of the higher income limits that have been used for Indian housing in some areas. And now Congress has provided another way to permit this program to serve families whose incomes are above the standard income limits in areas where "there is a need for housing for such families that cannot reasonably be met without such assistance."

Therefore, the Department intends to rely on the exception process added by this rule to § 905.406 on selection of homebuyers in the Mutual Help program to implement the 1988 Act's provision for permitting families of higher income to participate in Indian housing. Section 905.302 is also being revised to more closely track the language of section 3(b)(2) of the 1937 Act on which it is based, removing the reference to the relative unavailability of other housing even for families of relatively high income. Only in extremely unusual cases, where an IHA has exceeded the unit limit for non-lower income families in its Mutual Help program or where it has only rental program units, will HUD consider an IHA's request under the revised § 905.302 to raise the income limits for the area.

The Department has considered the validity of the admissions restriction in favor of Indian families and continues to have several legal concerns. During consideration of H.R. 3927, HUD observed that section 202(a) raised significant Constitutional civil rights concerns, since the bill appeared to target assistance to members of a particular racial group. The Department of Justice took a similar position before signature of the bill. In addition, IHAs are generally subject to either tribal or State laws, which may conflict with the admissions restriction in the Act. Since it is recognized that a majority of residents who receive assistance under this program are Indians, few issues involving the admissions restriction favoring Indians are anticipated. Of course, it is expected that IHAs will evaluate the applicable laws in implementing any admissions restriction. If a non-Indian believes that the restrictions as applied to him or her violate some legal principle, he or she should be referred to HUD for review of the issues raised in that case.

The admissions restriction is added in this rule to § 905.406(a). Since the 1988 Act requires that admission of non-Indian families be restricted to those determined by the IHA to be essential to the well-being of Indian families (and only where other housing resources are not available), the rule requires that the IHA include in its admissions regulations the criteria it will use for determining who is "essential to the well-being of Indian families."

In addition, HUD has determined that actions taken by IHAs to implement the admissions preference do not constitute a violation of either Title VI or Title VIII of the Civil Rights Acts of 1964 and 1968, respectively. The section dealing with the applicability of Titles VI and VIII to Indian housing (§ 905.105(b)) is amended accordingly.

d. Mutual Help and Occupancy Agreement

Section 202(e) of the 1937 Act, as amended, establishes the essential elements of the mutual help and occupancy agreement to be executed by an IHA and a homebuyer. It covers the topics of the Mutual Help contribution, the monthly payment, the administration charge, responsibility for maintenance and utilities, and the type of opportunity to be afforded for home purchase.

The provision concerning the MH contribution is different from the previous statutory foundation for the program, in that it expressly authorizes a contribution in the form of cash. (Section 203 of the Housing and Community Development Act of 1974, 42 U.S.C. 1437f note, authorized the use of special schedules of required payments for participants in mutual help housing projects who contribute *labor, land, or materials* for development.) HUD regulations for the program do already include cash as an approved form of contribution. Section 202(e) differs from current regulatory provisions in that it prescribes a minimum contribution of $1,500 for *each* family, instead of a minimum *average* contribution of $1,500, and it permits a tribe to make any form of contribution other than labor, instead of permitting a tribe only to contribute land. This rule revises § 905.408 to make these changes.

The provision concerning the monthly payment is virtually the same as the content of § 905.416. The reference in section 202(e)(2)(B) to the applicability of section 203 of the Housing and Community Development Act of 1974 to monthly payments in this program has no real impact, since it merely authorizes the special schedules for mutual help that have long been the practice and have been embodied in regulation in language that is nearly identical to the language of section 202(e)(2)(A). Consequently, no change is needed.

The description of the administration charge in section 202(e)(2)(A) refers to an amount budgeted by the IHA to reflect the costs for "the dwelling of the family." Therefore, this rule amends § 905.419 to permit an IHA to tailor the administrative costs to reflect differences in expenses attributable to different unit sizes or types. As a result, the administration charge for MH homebuyers occupying units of different sizes in the same project could be different. However, since allocating costs in this manner could be administratively burdensome and not

cost-beneficial, it is permitted, but not required.

The provision dealing with maintenance and utilities responsibilities makes it clear that the MH homebuyer must assume them, but that the IHA must monitor performance. Section 202(e)(3) requires each IHA to have in effect HUD-approved procedures to ensure "the timely periodic maintenance of the dwelling by the family." Section 905.418 of the current rule requires homebuyers to provide maintenance and to pay for their own utilities. It also provides that if the IHA determines that homebuyer maintenance has been inadequate, it can arrange to have necessary work done and charge the cost to the hombuyer's account. Section 905.306 of the current rule requires the IHA to adopt procedures for IHA inspections of homes (and common property, if any), but does not require IHA inspections on any particular schedule. This rule revises § 905.417, which deals with inspections of the home during warranty and at termination of the agreement, to cover periodic inspections as well. It adds a new paragraph (c), requiring the IHA to perform an inspection of the inside and outside of the home at least annually (as currently required by the ACC) and to furnish the homebuyer with an inspection report, in furtherance of enforcement of the requirement that the hombuyer furnish all necessary maintenance of the home.

The home purchase opportunities provision of the 1988 Act requires the IHA to allow a homebuyer to purchase the dwelling unit outright, under a mortgage or loan agreement or under a lease-purchase agreement, with financing either from the IHA or a private party, when the IHA determines in accordance with HUD requirements that the homebuyer is able to meet the obligations of homeownership.

Current regulations already provide for purchase by the homebuyer under a lease-purchase agreement (the Mutual Help and Occupancy agreement) at a purchase price established in a schedule when the agreement is signed to permit acquisition of title by payment of the purchase price and settlement costs. Current regulations (§ 905.423) also provide standards for determining when a family is able to meet homeownership obligation. Section 905.423 lists as prerequisites the ability to pay one-time closing costs, and ongoing costs for debt service, insurance coverage, taxes and special assessments, a mortgage servicing charge, maintenance expenses and utilities.

The changes needed on this issue are clarification that (1) in addition to the two methods specified for covering the purchase price (use of the amounts accrued in homebuyer accounts or IHA financing), the alternative of financing from another qualified entity is possible; (2) the IHA is not required to offer IHA financing; and (3) the IHA's notification to a family of its determination of eligibility to purchase should trigger efforts by the family to obtain private financing. Of course, if the family is unable to obtain financing at this point, despite its apparent qualification, the IHA will not apply the sanction that would be applicable if the homebuyer declined to purchase the home when IHA or private financing was available (discontinuation of amortization of the purchase price under the purchase price schedule).

The Department believes that current provisions satisfy section 202(e)(4)'s requirement for standards of determining eligibility of a homebuyer to complete purchase of the home and for the use of such financing options as a lease-purchase agreement. The Mutual Help and Occupancy Agreement currently used in the program is a lease-purchase agreeement, under which a family leases a unit until such time as its balance in an equity account equals the amount indicated on the purchase price schedule as the current purchase price (through the amortization reflecting the HUD subsidy), or the time that the homebuyer arranges to pay the purchase price through the use of IHA or private financing. However, this rule does revise § 905.422(a) specifically to authorize purchase with financing from an outside source under the various options enumerated in the statute.

e. Self-Help Mutual Help Program

The Self-Help component of the Mutual Help program established in paragraph (f) is the subject of another rulemaking, as described above.

Section 203

a. Maximum Development Cost

Although the system of prototype development costs was statutorily repealed several years ago, current regulations still embody that system of limiting development costs. Paragraph (a) of section 203 requires HUD to establish a maximum contribution for development of a lower income housing project, taking into consideration such factors as "(1) the logistical problems associated with projects of remote location, low density, or scattered sites; and (2) the availability of skilled labor and acceptable materials." These two statutorily required factors are derived from current HUD practice. To implement the statutory directive, this rule revises § 905.213 in its entirety to establish by regulation the Total Development Cost Standard, which has been in use by HUD since the repeal of prototype costs.

b. Interdepartmental Agreement on Indian Housing

The 1988 Act requires HUD to take action necessary to obtain the timely provision of any roads, water and sewage facilities access, and electrical and fuel distribution systems needed for completion of Indian housing projects. HUD officials participate in regular meetings with officials of the other parties to the Interdepartmental Agreement to assure adequate delivery of these services. No rule is necessary to implement this provision.

c. Accessibility to Physically Handicapped

Paragraph (c) directs the Secretary to require each IHA to give proper consideration to the needs of physically handicapped persons for ready access to lower income housing assisted under title II. To implement this directive, this rule revises § 905.212, the provision concerning the design of dwelling units, to cross reference 24 CFR Part 8, the rule requiring accessibility of HUD-assisted housing to physically handicapped persons.

Sections 204 and 205

a. Annual Report

Section 204 requires the Secretary to report to Congress on implementation of various statutory initiatives related to Indians. That section will be implemented when the Secretary submits his next annual report to Congress.

b. Regulations

1. Justification for This Interim Rule

Section 6 of the 1988 Act states that the Indian housing program shall be administered only in accordance with its provisions effective at the earlier of the effective date of regulations or at the end of "the ninety day period beginning on the date of the enactment of [the] Act", which is September 26, 1988. The Department prefers to implement the 1988 Act by issuance of a rule rather than by issuing some other directive to IHAs by September 26, 1988.

Section 205(a) of the 1937 Act, as amended, requires the Secretary to issue regulations to carry out the Indian housing program in accordance with the Administrative Procedure Act ("the APA"), 5 U.S.C. 553(b) through (e).

Those subsections generally require (1) publication in the FEDERAL REGISTER of notice of a proposed rule, including a statement of its legal authority and the substance of the rule or a description of the subjects and issues involved (or actual notice to the affected public); (2) opportunity for interested persons to participate by providing comments or testimony; (3) a statement in the final rule of the basis for the rule and its purpose; (4) publication of the final rule at least 30 days before its effective date; and (5) the right of interested persons to petition an agency for the issuance or revision of a rule. The APA does recognize exceptions to the requirements for publication of notice of a proposed rule and publication of a rule for effect at least 30 days in advance: a finding by the agency of good cause, stated in the rule. Subsection (b) elaborates on the meaning of good cause: When solicitation of prior public comment is "impracticable, unnecessary, or contrary to the public interest." All of these requirements are found also in HUD's rule on rulemaking, 24 CFR Part 10.

Section 205(b) of the 1937 Act, as amended, imposes an additional procedural requirement. It requires consultation with Indian housing authorities in the development of proposed regulations implementing the Indian housing program. Section 205(c) directs the Secretary to issue regulations implementing the Indian Housing Act of 1988 "to become effective before the expiration of the 90-day period beginning on the date of [its] enactment."

In accordance with the APA and HUD's rule on rulemaking, the Secretary finds that there is good cause for omitting advance solicitation of public comment and publication of the rule because it is unnecessary and impracticable. It is unnecessary because most of the changes being made in existing rules are relatively minor. The more substantive changes are made directly from the statute, with minimal embellishment. For example, the regulatory language concerning the Mutual Help program's admissions restrictions applied to non-Indians is virtually verbatim from the statute, without any exercise of discretion. The restrictions on admission to the Mutual Help program of families whose incomes exceed the limits for lower income families also are being implemented nearly verbatim from the statute, with an additional revision to a related provision that had been used to serve the same purpose. The latter revision is needed to make the related provision track the language of its statutory authority, to assure that it will not be used to circumvent the new restrictions on admission of over-income families. In addition, the statutory deadline for making these changes effective makes the process of publishing a proposed rule and considering public comments before issuing a rule—and waiting for 30 days thereafter to make it effective, impracticable.

The Department also finds that the requirement of section 7(o)(3) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o)(3), that would delay the effectiveness of a final rule until 30 continuous days of a session of Congress is in conflict with the directives to the Department contained in section 205 of the 1937 Act (as added by section 2 of the 1988 Act) and in section 6 of the 1988 Act, described above. Compliance with section 7(o) in this case would delay effectiveness of the rule until sometime in March 1989, or would have required its publication by August 10, 1988—merely 42 days after enactment of the 1988 Act. Consequently, the Department concludes that the 1988 Act supersedes the Department of HUD Act with respect to the time that this rule can be made effective.

Although this rule is not a proposed rule, the Department has consulted with representatives of Indian housing authorities during its development, consistent with the requirements of section 205(b). The Department consulted with the Executive Board of the National American Indian Housing Council (representing IHAs) and with a representative of the Housing Assistance Council (an organization that works with rural housing groups) at a meeting in late July concerning the changes required by the 1988 Act. This rule was also discussed with the Secretary's Indian and Alaska Native Committee (representing IHAs, tribes and national Indian organizations) at its meeting in late August. This interim rule reflects the suggestions made by the participants.

There is one element of this interim rule that was not the subject of those discussions—the change in § 905.302 to de-emphasize use of increasing income limits as a method of serving over-income families. Since IHAs may have views on that change, the Department has decided to invite public comment on the rule, while nonetheless making it effective by the statutory deadline.

2. Rulemaking for Indian Housing Programs, Generally

Since the APA is virtually adopted for HUD rulemaking in 24 CFR Part 10, section 205(a) does not require any change with respect to rulemaking for Indian housing programs. However, in developing proposed rules dealing with Indian housing, the Secretary will observe the requirement of section 205(b) for consultation.

Definitions

Section 4 of the 1988 Act revises a few of the definitions in section 3 of the 1937 Act, but most of the changes are minor clarifications. The main exception is that the definition of adjusted income is revised to include an additional deduction for families assisted by IHAs: As an alternative to the child care deduction, a deduction for excessive travel expenses is allowed for employment or education related travel, not to exceed $25 per week. Each IHA should include in its admissions regulations the standard it uses for determining what travel expenses are "excessive" and therefore qualify for this deduction.

The changes in definitions are reflected in revisions to the definitions found in § 913.102, applicable to public and Indian housing programs. They are also found in § 813.102, applicable to the Section 8 Housing Assistance Payments programs, since some IHAs operate Section 8 programs.

Earlier ACC execution

Although not mandated by the 1988 Act, this rule makes a change urgently needed by IHAs: recognition of the conversion of Indian housing from a loan program to a grant program and the associated change in timing of execution of an Annual Contributions Contract.

Historically, the Indian housing program has used the preliminary loan process (as discussed in 24 CFR 905.209) to obtain funds to pay the costs of preliminary surveys and planning (including the costs of appraisals). In fiscal year 1987, the Department converted from a loans and annual contribution method to a grant method of funding development/modernization activity in the lower income public housing program. The Department's desire to eliminate loans from the new grant method has led to the need for a new method of funding preliminary costs.

The method that has been used, by waiver of certain regulatory restrictions, is to execute an ACC for planning, under which grant funds can be made available to an IHA to cover preliminary costs. The current restrictions against this procedure are the requirement of § 905.210 that an ACC not be executed until HUD has approved the

development program adopted by the for a project and the requirement of § 905.217(b) that HUD not execute an ACC before final site approval. Preparation of a development program and completion of the site selection process require the use of preliminary planning funds.

The Department has been inundated with requests from IHAs for waivers of these restrictions and earlier execution of the ACC. Since the Department wants to administer the program by regulation rather than by this exception process, and since this issue is of immediate importance to all IHAs, the Department is including in this interim rule the regulation changes necessary to recognize "front end" ACCs as the established procedure. (See revisions to §§ 905.209, 905.210, and 905.217.)

Findings and Certifications

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implements section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Federalism Impact

Executive Order 12612, *Federalism*, issued by the President on October 26, 1987, does not apply to this rule, since Indian tribes do not fall within the order's coverage.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule involves a program of Federal financial assistance to lower income families through housing programs administered by Indian housing authorities. The changes made in this rule to that program's definitions, property standards for new construction, and restrictions related to admission do not have a significant impact on families.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854), under Executive Order 12291 and the Regulatory Flexibility Act.

Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department is required to consider whether a rule has a significant economic impact on a substantial number of small entities, and if so, whether the method of implementing the objective avoids imposing a disproportionate impact on them. The undersigned certifies that this rule will not have a significant economic impact on a substantial number of small Indian housing authorities.

Paperwork Reduction Act

The following chart illustrates the public reporting burden of the two information collections in this rule that have not yet received OMB approval and been assigned OMB control numbers:

Requirement	Respondents	Responses per respondent	Hours per response	Total hours
Mutual help and occupancy agreement § 905.422	1,200	1	0.3	360
Inspections	65,000	1	3.0	195,000
Total burden hours				195,360

List of Subjects

24 CFR Part 813

Low and moderate income housing.

24 CFR Part 905

Grant programs: housing and community development; Grant programs: Indians; Low and moderate income housing; Public housing; Homeownership.

24 CFR Part 913

Public housing.

24 CFR Part 942

Public housing; Aged; Handicapped; Pets.

Accordingly, the Department amends 24 CFR Parts 813, 905, 913, and 942 as follows:

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

1. The authority citation for Part 813 continues to read as follows:

Authority: Secs. 3, 5(b), 8, 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 813.102, paragraph (e) of the definition of Adjusted Income and the definition of Public Housing Agency are revised and definitions of Indian, Indian Housing Authority, Indian tribe, and State are added, to read as follows:

§ 813.102 Definitions.

Adjusted Income. * * *

(e)(1) Child care expenses; or (2) in the case of families assisted by Indian housing authorities, the greater of (i) child care expenses, or (ii) excessive travel expenses, not to exceed $25 per family per week, for employment or education related travel.

* * * * *

Indian. Any person recognized as being an Indian or Alaska Native by an Indian tribe, the Federal Government, or any State.

Indian Housing Authority. An entity that is authorized to engage in or assist in the development or operation of lower income housing for Indians that is established either (a) by exercise of the power of self-government of an Indian

tribe independent of State law; or (b) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

Indian tribe. Any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

* * * * *

Public Housing Agency. Any State, county, municipality, or other governmental entity or public body, or agency or instrumentality thereof, that is authorized to engage in or assist in the development or operation of lower income housing. The term includes any Indian housing authority. As used in this Part where appropriate, PHA shall include an Agency as defined in 24 CFR Part 883.

* * * * *

State. Any of the several States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, the Trust Territory of the Pacific Islands, and Indian tribes.

* * * * *

PART 905—INDIAN HOUSING

3. The authority citation for Part 905 is revised to read as follows:

Authority: Secs. 201, 202, 203, 205, United States Housing Act of 1937, as added by the Indian Housing Act of 1988 (Pub. L. 100-358); secs. 3, 4, 5, 6, 9, 11, 12, 16, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437b, 1437c, 1437d, 1437g, 1437i, 1437j, 1437n); sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. In § 905.101, paragraph (a) is revised to read as follows:

§ 905.101 Applicability and scope.

(a) *General.* (1) Under title II of the U.S. Housing Act of 1937, as amended by the Indian Housing Act of 1988 (42 U.S.C. 1437a, *et seq.*), the U.S. Department of Housing and Urban Development provides financial and technical assistance to Indian housing authorities for the development and operation of lower income housing projects in Indian areas.

(2) If assistance under this part is not available to a lower income family because the family desires housing in an area within which no Indian housing authority is authorized to provide housing, or if for any other reason a family desires housing assistance other than under this part, a family may seek housing assistance under other HUD programs. (See 24 CFR Part 203, and Chapter VIII as well as the remainder of Chapter IX of this title.)

* * * * *

5. In § 905.102, the definitions of Indian, Indian area, Indian Housing Authority and Tribe are revised, and a new definition of State is added in appropriate alphabetical order, to read as follows:

§ 905.102 Definitions.

* * * * *

Indian. Any person recognized as being an Indian or Alaska Native by a tribe, the Federal Government, or any State.

Indian area. The area within which an Indian housing authority is authorized to provide lower income housing.

Indian Housing Authority. Any entity that is authorized to engage in or assist in the development or operation of lower income housing for Indians that is established either by exercise of the power of self-government of a tribe independent of State law; or by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

* * * * *

State. Any of the several States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, the Trust Territory of the Pacific Islands, and Indian tribes.

* * * * *

Tribe. Any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

* * * * *

6. In § 905.103, paragraph (b) is revised to read as follows:

§ 905.103 Types of lower income housing projects.

* * * * *

(b) *Mutual Help Homeownership Opportunity.*

(1) *General.* This program (see Subpart D) is available only for use by IHAs eligible for assistance under this part. Under this program, a Homebuyer enters into an MHO Agreement under which the Homebuyer agrees to contribute land, labor, cash, materials, or equipment, or a combination of these, for development of the project; make monthly payments based on income; and provide all maintenance of the home. In return, the initial purchase price of the home is reduced each month in accordance with a predetermined purchase price schedule, and the Homebuyer is given the right to buy the home by payment of the remaining balance of the purchase price at the time of the purchase. The credit for the Homebuyer's contribution is available for maintenance of the home, and any balance is applied against the purchase price of the home.

(2) *Project types.* Single family dwellings are eligible for assistance under this program, including, but not limited to, single-family detached dwellings and row houses.

* * * * *

7. In § 905.105, a new sentence is added at the end of paragraph (b), to read as follows:

§ 905.105 Applicability of civil rights statutes.

* * * * *

(b) *Nonapplicability of Title VI and Title VIII.* * * * However, without regard to any determination as to the applicability of Title VI and Title VIII to a particular IHA, actions taken by an IHA to implement the statutory admission restriction in favor of Indian families in the MH program, as set forth in § 905.406(a), shall not be considered a violation of any provision of either Title VI or Title VIII.

8. Section 905.209 is revised to read as follows:

§ 905.209 ACC for planning.

(a) If an application is approved and a program reservation issued, HUD and the IHA may execute an ACC to cover the costs of preliminary surveys and other HUD-approved planning activities with respect to the number of units covered by the program reservation. The amount of the ACC will not exceed three percent of the total development cost of the project, except as provided in paragraph (b) of this section.

(b) HUD may execute an ACC for amounts in excess of three percent or for purposes other than for planning activities if the IHA demonstrates to the satisfaction of HUD that: (1) Because of unusual circumstances it is essential that development costs in such amounts or for such purposes be incurred before execution of an ACC for construction and operation; (2) the project will successfully proceed to execution of an ACC for construction and operation; and (3) the governing body of the locality has agreed to provide the local cooperation by the Act.

(c) Funds for planning shall in no event be provided or used for purposes, or in amounts, that would not be approvable for inclusion in a development cost budget.

(d) The IHA shall submit for HUD approval together with the request for an ACC for planning a proposed preliminary budget. ACC funds for

planning shall not be approved or expended except in accordance with a HUD-approved preliminary budget.

(e) Use of development or operating funds of other projects under ACC to cover costs for a project that is still in the planning stages, and for which a development program has not been adopted or an ACC for construction and operation has not been executed, is strictly prohibited, except for limited use of reserves (as prescribed by HUD).

9. Section 905.210 is revised to read as follows:

§ 905.210 ACC for construction and operation.

An ACC for construction and operation of a project shall not be executed until the sites have received final HUD approval and the IHA has adopted, and HUD has approved, the development program for the project.

10. In § 905.212, paragraph (a) is revised to read as follows:

§ 905.212 Design.

(a) *Applicable building code.*

(1) *General.* For purposes of housing assisted under this Chapter IX, the IHA must use the applicable tribal or other local building code; or if there is none, it must use a model building code, or a State or other locality's building code. The IHA must coordinate with the tribe, or local government, if appropriate, to assure adoption of a code that satisfies the standards specified in paragraph (a)(2) of this section.

(2) *Required standards.* The code used must provide sufficient flexibility to permit the use of different designs and materials; must include cost-effective energy conservation performance standards designed to ensure the lowest total construction and operating costs; and must give proper consideration to the needs of physically handicapped persons for ready access to, and use of, housing assisted under this chapter. (See 24 CFR Part 8.)

* * * * *

11. Section 905.213 is revised in its entirety, to read as follows:

§ 905.213 Total Development Cost Standard.

(a) *Establishment of Separate Indian Cost Areas.* Because trade conditions and economic influences cause construction costs in an Indian area to be significantly different from such costs in non-Indian areas, HUD shall establish separate Indian cost areas. The factors considered in establishing these separate areas include the following:

(1) The logistical problems associated with projects of remote location, low density, or scattered sites;

(2) The availability of skilled labor and acceptable materials;

(3) Local customs;

(4) Abnormal climatic conditions;

(5) Provisions for the use of wood or coal as an alternative heat source; and

(6) The availability of the legal protection normally available for enforcement of claims by contractors, laborers and material suppliers with respect to Indian areas.

(b) *Total Development Cost Standard.* The total development cost standards for each cost area will be issued by HUD on a regular basis. They will reflect the total development cost for various unit sizes, housing types, and market areas (*i.e.*, areas within which trade conditions and economic influences tend to make development costs substantially the same). The standards will be based on actual Indian housing project data as well as cost data provided by commercially available cost and valuation services specified by HUD. When the standards are issued for an area, HUD will describe the methodology used to compute them and information about documentation to be submitted by an IHA in support of any request for a revision to the standards.

(c) *Revision of Total Development Cost Standard.* HUD will examine total development cost standards at least annually and determine if adjustments are needed to reflect current cost levels. If an IHA finds for a particular area that no design can be built within the existing cost standard, it may request that HUD revise the cost standard or to establish a separate market area for its jurisdiction. The request shall be accompanied by evidence to support an increase in the standard. HUD will agree to revise the standard only if it determines that the evidence submitted shows that higher cost standards are reasonable and necessary to develop a project that is durable, safe and secure, and which provides for economical maintenance, healthy family life, good design and energy conservation.

(d) *Approval of Total Development Cost for a project.* (1) The total development cost is the amount approved by HUD for development of a particular project. The TDC will not exceed the total development cost standard, discussed in paragraph (b) of this section, unless HUD approves a higher amount as reasonable and necessary to the development of a project that provides durability, safety, security, economical maintenance, healthy family life, good design and energy conservation. For example, higher costs may be justified on the basis of special circumstances relating to security in high crime areas, unusual environmental or site considerations or remoteness.

(2) In approving the total development cost, HUD will approve a reasonable amount for preliminary planning, but the amount may not exceed three percent of the total development cost, except as provided in § 905.209(b).

(3) The IHA shall complete development of each project at the lowest possible cost, and in no event may the cost of the project exceed the approved TDC. However, funds for off-site water and sewer facilities are not included in the TDC and are not subject to the total development cost standard limitation.

(Approved by the Office of Management and Budget under control number 2577–0101.)

§ 905.217 [Amended]

12. In §905.217, the first sentence of paragraph (b)(1) is amended by adding the words "for construction and operation" after the word "ACC".

13. In § 905.302, paragraph (a)(2) is revised a new paragraph (a)(3) is added, and an OMB control number is added at the end of the section to read as follows:

§ 905.302 Admission policies.

(a) *Income limits.* * * *

(2) In extremely unusual circumstances, the IHA may request that HUD increase or decrease income limits for lower income families or for very low income families in the Indian area because of unusually high or low family incomes.

(3) For additional limitations applicable to the Mutual Help Homeownership Opportunities program, see § 905.406.

* * * * *

(Approved by the Office of Management and Budget under control number 2577–0003.)

14. In § 905.406, paragraph (a) is revised and an OMB control number is added at the end of the section to read as follows:

§ 905.406 Selection of MH Homebuyers.

(a) *Admission policies.* (1) In adopting admission regulations in accordance with § 905.302, an IHA must provide for assistance in the MH program to lower income Indian families on Indian reservations and other Indian areas.

(i) An IHA also may provide for admission to the MH program operated on an Indian reservation or in an Indian area of applicants whose family income exceeds the levels established for lower income families, if the IHA demonstrates to HUD's satisfaction that there is a need for housing for such

families that cannot reasonably be met without such assistance.

(ii) An IHA also may provide for admission to the MH program operated on an Indian reservation or in an Indian area of a non-Indian applicant, if the IHA determines that the presence of the family on the Indian reservation or other Indian area is essential to the well-being of Indian families and the need for housing for the family cannot reasonably be met without assistance under this program. The criteria used to determine whether a family's presence is essential will be specified in the IHA's admission regulations.

(2) *Limitation on number of units.* The number of dwelling units in any project assisted under the MH program that may be occupied by or reserved for families on Indian reservations and other Indian areas whose incomes exceed the levels established for lower income families (admitted under paragraph (a) (1)(i) of this section may not exceed whichever of the following is higher:

(i) Ten percent of the dwelling units in the project; or

(ii) Five dwelling units.

* * * * *

(Approved by the Office of Management and Budget under control number 2577–0003.)

15. In § 905.408, paragraphs (a), (b), (c)(1), and (d)(1) are revised and an OMB control number is added at the end of the section to read as follows:

§ 905.408 MH contribution.

(a) *Form of contribution.* MH Contributions toward the development cost of a project may be in the form of land, labor, cash, or materials or equipment. Contributions other than labor may be made by a tribe on behalf of a family. The IHA may determine that the MH contributions to a project shall consist either wholly of any of these forms of contributions, or of any combination of these forms. The amount of each form of MH contribution shall be specified in the development program and in the development cost budget for the project. Where a tribal contribution is involved, the tribe shall adopt a tribal resolution stating its commitment to the IHA to make the contribution on behalf of homebuyers, and a copy of this resolution shall be submitted to HUD with the development program.

(b) *Amount of MH contribution.* The minimum MH contribution of each family shall be $1,500.

(c) *Credit for MH land contribution.*

(1) *Credit for contributed homesite.* The amount to be credited as an MH contribution for a contributed homesite whether contributed by a homebuyer or by the tribe will be the market value, to be determined by an appraisal conducted in accordance with § 905.219, but shall not in any event be more than $1,500 per contributed homesite.

* * * * *

(d) *Non-land contributions.* (1) If a homebuyer's land contribution credit, determined in accordance with paragraph (c) of this section, is less than the required minimum MH contribution, the difference shall be provided by non-land contribution.

* * * * *

(e) * * *

(Approved by the Office of Management and Budget under control number 2577–0030.)

16. In § 905.417, the section heading is revised, paragraphs (c), (d), and (e) are redesignated paragraphs (d), (e), and (f), and a new paragraph (c) is added, to read as follows:

§ 905.417 Inspections.

* * * * *

(c) *Annual inspections.* To ensure the timely periodic maintenance of the dwelling by the family, as required by § 905.418, the IHA shall conduct a complete interior and exterior examination of each home at least once a year, and shall furnish a copy of the inspection report to the homebuyer. (See § 905.306(d).)

* * * * *

17. In § 905.419, paragraphs (a) and (b) are revised to read as follows:

§ 905.419 Administration charge and operating expense.

(a) *Administration charge.* The term "administration charge" means the amount budgeted by the IHA for monthly operating expenses on a dwelling unit, excluding any operating cost for which operating subsidy is provided in accordance with § 905.311(b).

(b) *Components of operating expense.* The term "operating expense" means the amount budgeted for the following operating expense categories, and any other operating expense categories included in the IHA's HUD-approved operating budget for a fiscal year or other budget period, and may reflect differences in expenses attributable to different sizes or types of units:

(1) *Administration expenses.* Administrative salaries, payroll taxes, etc.; travel, postage, telephone and telegraph, office supplies; space, maintenance and utilities; general liability insurance or risk protection costs; accounting services; legal expenses; and indepentent audits approved by HUD (the costs of which are reimbursed by HUD).

(2) *General expenses.* The cost of premiums for fire and related insurance, payments in lieu of taxes, if any, and other similar expenses.

* * * * *

18. In § 905.422, paragraphs (a) and (e)(1) are revised to read as follows:

§ 905.422 Purchse of home.

(a) *General.* The IHA provides the family an opportunity to purchase the dwelling under the Mutual Help and Occupancy Agreement (a lease-purchase contract), under which the purchase price declines over the period of occupancy. Other methods of acquiring ownership are for the family to obtain financing to cover the purchase price from the IHA or an outside source, using such methods as a mortgage (e.g., see 24 CFR 203.43h), a loan agreement or a lease-purchase agreement. If the homebuyer is able to obtain financing from an outside source, the IHA will agree to release the homebuyer from the MHO agreement and terminate the homebuyer's participation in this program if the homebuyer has satisfied current obligations under the MHO agreement. For acquisition under the MHO agreement, see paragraph (d) of this section. For acquisition under other methods, see paragraph (e) of this section and § 905.423.

* * * * *

(e) *Notice of eligibility for financing.* (1) At the time of each examination or reexamination of the family's earnings and other income, the IHA shall determine, among other things, whether the homebuyer is eligible for IHA homeownership financing under § 905.423(a). If the IHA determines that the homebuyer is eligible, it shall send the homebuyer written notification that shall state

(i) That the homebuyer appears eligible to purchase the unit with IHA homeownership financing (if offered) or private financing; and

(ii) That if financing is available but the homebuyer chooses not to purchase the home at that time, his or her status will be as provided in § 905.422(e)(2), the text of which, appropriately modified, shall be set forth in the letter of notification.

* * * * *

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING AND INDIAN HOUSING PROGRAMS

19. The authority citation for Part 913 continues to read as follows:

Authority: Secs. 3, 6, 16, United States Housing Act of 1937 (42 U.S.C. 14371, 1437d, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

20. In § 913.102, paragraph (e) of the definition of Adjusted Income and the definitions of Indian Housing Authority and Public Housing Agency are revised, and definitions of Indian, Indian tribe, and State are added, to read as follows:

§ 913.102 Definitions.

Adjusted Income. * * *

(e) (1) Child care expenses; or (2) in the case of families assisted by Indian housing authorities, the greater of (i) child care expenses, or (ii) excessive travel expenses, not to exceed $25 per family per week, for employment or education related travel.

* * * * *

Indian. Any person recognized as being an Indian or Alaska Native by an Indian tribe, the Federal Government, or any State.

Indian Housing Authority. An entity that is authorized to engage in or assist in the development or operation of lower income housing for Indians that is established either (a) by exercise of the power of self-government of an Indian tribe independent of State law; or (b) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

Indian tribe. Any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

* * * * *

Public Housing Agency. Any State, county, municipality, or other governmental entity or public body, or agency or instrumentality thereof, that is authorized to engage in or assist in the development or operation of lower income housing. The term includes any Indian housing authority.

* * * * *

State. Any of the several States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, the Trust Territory of the Pacific Islands, and Indian tribes.

* * * * *

PART 942—PET OWNERSHIP IN PUBLIC HOUSING FOR THE ELDERLY OR HANDICAPPED

21. The authority citation for Part 942 is revised to read as follows:

Authority: Sec. 227(b), Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701n–1); sec. 7 (d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

22. In § 942.1, paragraph (a) is revised to read as follows:

§ 942.1 Purpose.

(a) This part implements section 227 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701n–1) as it pertains to the public housing programs administered by the Assistant Secretary for Public and Indian Housing under title I of the United States Housing Act of 1937 (42 U.S.C. 1437, *et seq.*). It does not apply to Indian housing administered under title II of that Act. Part 243 of title 24 of the Code of Federal Regulations implements section 227 as it pertains to the programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner.

* * * * *

23. In § 942.3, paragraph (b) is removed, paragraphs (c) and (d) are redesignated as paragraphs (b) and (c), respectively, and they are revised to read as follows:

§ 942.3 Definitions.

* * * * *

(b) *Project for the elderly or handicapped* means any project assisted under title I of the United States Housing Act of 1937 (other than under section 8 or 17 of the Act), including any building within a mixed-use project, that was designated for occupancy by the elderly or handicapped at its inception or, although not so designated, for which the PHA gives preference in tenant selection (with HUD approval) for all units in the project (or for a building within a mixed-use project) to elderly or handicapped families. For purposes of this part, this term does not include projects assisted under the Low-Rent Housing Homeownership Opportunity program (Turnkey III; 24 CFR Part 904) or under title II of the United States Housing Act of 1937 (Indian housing; 24 CFR Part 905).

(c) *Public Housing Agency* means any State, county, municipality, or other governmental entity or public body, or agency or instrumentality thereof, that is authorized to engage in or assist in the development or operation of lower income housing. As used in this part, the term does not include any Indian housing authority.

Dated: September 14, 1988.

James E. Baugh,

General Deputy, Assistant Secretary for Public and Indian Housing.

[FR Doc. 88–21969 Filed 9–23–88; 8:45 am]

BILLING CODE 4210–33–M

24 CFR Part 905

[Docket No. R–88–1421; FR–2544]

Self-Help Development in the Mutual Help Homeownership Opportunity Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: This rule implements section 202(f) of the United States Housing Act of 1937 ("the 1937 Act"), which was added by the Indian Housing Act of 1988 ("the 1988 Act"), Pub. L. 100–358, approved June 29, 1988. Section 202(f) directs the Secretary of HUD to establish a self-help component to the Mutual Help Homeownership Opportunity program (currently operated under 24 CFR Part 905, Subpart D) to allow lower income Indian families to contribute the major portion of labor necessary to build their homes in a cooperative effort supervised by someone with technical expertise in construction to reduce the overall development costs and the eventual price for the homebuyers. The 1988 Act made other minor changes in the Indian housing program, which are being implemented by a separate interim rule published elsewhere in today's issue of the **Federal Register.**

DATES: *Effective Date:* September 26, 1988.

COMMENT DUE DATE: November 25, 1988.

ADDRESS: Comments on the rule should be submitted to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for examination by interested persons in the Office of the Rules Docket Clerk at the address listed above.

FOR FURTHER INFORMATION CONTACT: Patricia Arnaudo, Deputy Director, Office of Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 755–1015. A telecommunications device for hearing and speech-impaired persons is available at (202) 472–6725. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collections contained in §§ 905.515 (application) and 905.525

(development program) have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The estimated burden on the public of these provisions is an average time per response of 30 hours for the application and 75 hours for the development program, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the estimated burden or any other aspect of the information collections contained in this rule, including suggestions for reducing the burden, should be submitted both to the HUD Rules Docket Clerk (identifying this docket number and title), at the above address, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for HUD. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. At the end of the public comment period, the Department may amend the information collection requirements set out in this rule to reflect public comments received concerning information collections, or in response to OMB requirements.

Background

Section 202(f) of the 1937 Act, as added by the Indian Housing Act of 1988, requires HUD to establish a program to permit participants in its Mutual Help program to substantially construct their own homes, working together in groups. The statute requires that the purpose be designed similar to the Mutual Self Help program operated by Farmers Home Administration (FmHA) with respect to the labor contribution provided by the participating families and with respect to technical and supervisory assistance.

The House Report published concerning the 1988 Act indicates that Congress intended HUD to use the FmHA guidelines, where appropriate, publishing them in regulations after consultation with Indian Housing Authorities (IHAs). (H. Rep. No. 604, 100th Cong., 2d Sess. 10) The statute itself contains a requirement in section 205 of the 1937 Act, as amended, that HUD consult with IHAs in the development of "proposed regulations." Despite the fact that this rule is being published as an interim rule, for effect by September 26, 1988 as required by section 205, the Department has consulted with IHA representatives in its development.

The Department has consulted with representatives of FmHA, as well as with the Executive Board of the National American Indian Housing Council (representing IHAs), including a representative of the Housing Assistance Council (an orgainization that works with rural housing groups), and with the Secretary's Indian and Alaska Native Committee (representing IHAs, tribes and national Indian organizations). This rule creating a new self-help component to the Mutual Help Homeownership Opportunity program reflects suggestions made by the various individuals who participated in this consultation process.

The FmHA Self-Help program is built on what is basically a low interest loan program to individual families purchasing new homes, and adds technical assistance provided by non-profit recipients of FmHA technical assistance grants. (In fact, the FmHA Mutual Self-Help program is available on Indian reservations and in Indian areas, and it remains a development option for IHAs.) HUD's existing Mutual Help Homeownership Opportunity program, by contrast, is a program for the construction and subsidized sale of a number of single family dwellings, which is administered by IHAs, under a lease-purchase agreement with the families called a Mutual Help and Occupancy (MHO) agreement. It already requires a Mutual Help contribution of land, labor, materials or equipment, or cash, worth at least $1,500. In accordance with the new statute, an additional, substantial contribution of labor is to be provided by the families—under the supervision of, and with training and assistance provided by, the IHA or its contractors.

FmHA requires a labor contribution that has been measured in hours of labor or in completion of various tasks. As a result of our consultation with that agency, we understand that responsible officials plan to issue new regulations in the next few months that will embody the task approach because they believe it to be more effective. Therefore, this rule adopts the task approach, requiring the IHA to identify the tasks to be performed by the families and the tasks to be performed by skilled labor under contract. Examples of the various tasks to be considered are given in the rule and suggestions made about which ones are usually appropriate for the families.

The labor furnished by the families is a contribution toward equity in their homes. Since it is a statutorily authorized contribution, the provisions of the Davis-Bacon Act that otherwise apply to programs developed under the 1937 Act, do not apply to this labor contribution. In furnishing this labor contribution, the families are working for themselves. The IHA is not their employer. The family's labor contribution is not refundable under any circumstances.

Much of the assistance provided by a technical assistance grantee under the FmHA program in selecting and organizing the families, selecting sites and plans for the units, providing secretarial and bookkeeping services, and providing general guidance on how to comply with program requirements, can be provided by IHAs as part of their ordinary project development activities. Other functions performed by a technical assistance grantee in the FmHA program, such as construction training and supervision, may be ones that IHA staff can perform, but they need to be contracted out. In any event, the typical construciton supervision staff envisioned in this program is one construction supervisor for each group of six to ten self-help families. Each construction supervisor must be available when families can work on their houses. Expenses for each self-help project are to be maintained separately, on a development program for that project.

In the Mutual Help Self-Help program, the IHA puts together the application for funding to be submitted to HUD, just as it does for a regular Mutual Help project. Most of the provisions of the Development subpart for Indian housing (the 200 series of Part 905) apply to this new Self-Help program, as do most of the provisions of the Mutual Help subpart (the 400 series of Part 905). Therefore, there is both an application stage (outlining who will participate and establishing the IHA's ability to administer such a program), described in § 905.515, and a development program stage (involving the more detailed description of how development will proceed), described in § 905.525.

There is no Mutual Help Construction Contract in the Self-Help program. Instead, the IHA performs the function of the construction contractor, either directly or by its own contractor, and there is a new contract between the participating families and the IHA during the construction phase—the Self-Help agreement. The Mutual Help and Occupancy agreement is still used, once the construction phase is completed.

And of course, the relationship between the IHA and HUD is still governed by an Annual Contributions Contract (ACC). (This rule refers to a system of two ACCs, one of which is executed at an early stage in development. That change from current regulations is found in the other rule published today to implement the Indian Housing Act of 1988, which applies not only to Mutual Help project development but to Indian housing development, generally.)

It is evident that Congress believed that one of the advantages of this self-help approach would be lower development cost. It cited the FmHA experience as saying typically $5,000 to $6,000 per home, permitting scarce Federal funding to serve more lower income families. (H. Rep. at 11) HUD is hopeful that this type of savings can be realized in its Mutual Help Self Help program. However, under the HUD program, the cost of the construction supervision and technical assistance will be absorbed by the development funds available for the units instead of being a separate budget item as it is in the FmHA program. Therefore, reduced costs will be realized only to the extent that the savings provided by substituting a family's own labor for the cost of skilled labor offsets the cost of the construction supervision and technical assistance.

An incentive for families to participate in this program is the possibility that cost savings can be realized through self help labor. The estimated total development cost approved by HUD when it approves the project's development program will reflect any anticipated savings from the use of the self-help construction method, after taking into account the cost of construction supervision (see § 905.525(b)). Any such savings will be passed on to the home buyers automatically in a lower purchase price (as calculated under § 905.422) and a correspondingly shorter acquisition period.

In selecting families to participate in the Self-Help program, an IHA may use its standard waiting list or it may create a separate one for families that are interested in constructing their own homes. If it plans to use a separate waiting list, this fact should be spelled out in its admissions regulations. To avoid problems with assigning the unit of a terminated family to another participant, an IHA may want to allow only IHA or tribal land to be used for the program rather that permitting the use of individual allotted or fee ownership land.

This rule provides that the IHA must provide a letter of credit equal to ten percent of the estimated Total Development Cost. This letter of credit (or its equivalent) must be obtained by commitment of tribal or other non-HUD resources. This assurance is similar to that required when an IHA uses the force account method of development or to the letter of credit or bond that is required of a construction contractor under the contractor method of development. Its purpose is to assure completion of a project in which the Department has a long-term investment.

Justification for Interim Rule

Section 6 of the 1988 Act states that the Indian housing program shall be administered only in accordance with its provisions effective at the earlier of the effective date of regulations or at the end of "the ninety day period beginning on the date of the enactment of [the] Act", which is September 26, 1988. The Department prefers to implement the 1988 Act by issuance of a rule rather than by issuing some other directive to IHAs by September 26, 1988, particularly in the case of a new initiative such as the Self Help program.

Section 205(a) of the 1937 Act, as amended by the Indian Housing Act of 1988, requires the Secretary to issue regulations to carry out the Indian housing program in accordance with the Administrative Procedure Act ("the APA"), 5 U.S.C. 553 (b) through (e). Those subsections generally require (1) publication in the **Federal Register** of notice of a proposed rule, including a statement of its legal authority and the substance of the rule or a description of the subjects and issues involved (or actual notice to the affected public); (2) opportunity for interested persons to participate; (3) a statement in the final rule of the basis for the rule and its purposes; (4) publication of the final rule at least 30 days before its effective date; and (5) the right of interested persons to petition an agency for the issuance or revision of a rule. The APA does recognize exceptions to the requirements for publication of notice of a proposed rule and publication of a rule for effect at least 30 days in advance: a finding by the agency of good cause, stated in the rule. The good cause requirement is satisfied when solicitation of prior public comment (or prior publication) is "impracticable, unnecessary, or contrary to the public interest". All of these principles are found also in HUD's rule on rulemaking, 24 CFR Part 10.

Section 205(b) of the 1937 Act, as amended by the 1988 Act, imposes an additional procedural requirement. It requires consultation with Indian housing authorities in the development of proposed regulations implementing the Indian housing program. Section 205(c) directs the Secretary to issue regulations implementing the Indian Housing Act of 1988 "to become effective before the expiration of the 90-day period beginning on the date of [its] enactment.

In accordance with the APA and HUD's rule on rulemaking, the Secretary finds that there is good cause for omitting advance solicitation of public comment and advance publication of this rule because it is impracticable. The statutory deadline for implementing this new self-help program within the established program of Mutual Help Homeownership Opportunity administered by IHAs within 90 days after the 1988 Act's enactment, makes the process of developing the program, publishing a proposed rule, considering public comments before issuing a final rule, and waiting for 30 days thereafter to make it effective, an impossible task. Despite this omission of general notice to the public, however, the Department has consulted with the affected members of the public (and satisifed section 205(b)'s consultation requirement) by meeting with representatives of Indian Housing Authorities, who operate the Mutual Help program, and with representatives of tribes and national Indian organization, as described above.

Another statutory provision that governs HUD's rulemaking activities is section 7(o) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o), which requires that "no rule * * * may become effective until the first period of 30 calendar days of continuous session of Congress * * * after the day [the rule] is published as final." The Department observes this statutory requirement except where, as here, another act of Congress conflicts with its directive. In this case, considering the projected schedule for the current session of Congress, this rule would have to have been published by August 10, 1988, a date only 42 days after the date of enactment of the 1988 Act, to satisfy both section 7(o)(3)'s requirement for a Congressional review period of 30 session days before effectiveness and section 205(c)'s requirement for an effective rule within 90 days. The Department concludes that Congress could not have expected that this rule, providing for a major new initiative, could be developed and published in time to satisfy the Congressional review period of 30 session days as well as the 90 day requirement. Consequently, the Department is satisfying the 90 day

requirement for an effective rule, which it believes to take precedence.

Recognizing, however, that establishment of a new program within an existing one is a sufficiently broad undertaking that it could benefit from public comment, the Department invites public comment on this rule and will reconsider its provisions based on comments received and publish a final rule. Nonetheless, in the meantime, IHAs may rely on this rule as the basis for initiating action to develop a Mutual Help Self-Help program, using Fiscal Year 1989 funds.

Findings and Certifications

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410–0500.

Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 millon or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Federalism Impact

Executive Order 12612, *Federalism*, issued by the President on October 26, 1987, does not apply to this rule, since Indian tribes do not fall within the order's coverage.

Impact on the Family

In accordance with Executive Order 12606, *The Family*, issued by the President on September 2, 1987, the Department has examined the impact of the rule and determined that it does not have a potentially significant impact on family formation, maintenance, or well-being, since it merely provides another method for developing Mutual Help homes for eligible families.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854), under Executive Order 12291 and the Regulatory Flexibility Act.

Impact on Small Entities

The undersigned hereby certifies under the Regulatory Flexibility Act (5 U.S.C 605(b)) that this rule will not have a significant economic impact on a substantial number of small Indian housing authorities. The rule simply offers another option to the methods available to IHAs to develop Mutual Help housing, allowing flexibility to design and propose a self-help plan for cooperative development by a few families under the supervision and technical assistance of a competent construction supervisor.

List of Subjects in 24 CFR Part 905

Grant Programs—housing and community development, Grant programs—Indians, Indians, Low and moderate income housing, Public housing, Homeownership.

Accordingly, the Department amends 24 CFR Part 905 as follows:

PART 905—INDIAN HOUSING

1. The authority citation for Part 905 is revised to read as follows:

Authority: Secs. 201, 202, 203, 205, United States Housing Act of 1937, as added by the Indian Housing Act of 1988 (Pub. L. 100–358, 42 U.S.C. 1437aa, 1437bb, 1437cc, 1437ee); secs. 3, 4, 5, 6, 9, 11, 12, 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437b, 1437c, 1437d, 1437g, 1437i, 1437j, 1437n); sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. A new Subpart E is added, to read as follows:

SUBPART E—SELF-HELP HOUSING PROGRAM

Sec.

Subpart E—Self-Help Housing Program

§ 905.501 Purpose and applicability.

(a) The purpose of the Self-Help program is to provide an alternate method of developing dwelling units under the Mutual Help Homeownership Opportunity program that will be less costly than other methods of development, will engender community pride and cooperation, and will provide training in construction skills that will have lasting value to participants. This method of development permits small groups of families (six to ten), with technical assistance and supervision and materials provided by the Indian housing authority, to build a substantial portion of the homes for all the families in the group, to be augmented by skilled labor obtained under contract. The participants are individuals and/or families who qualify under § 905.406 for participation in the Mutual Help Homeownership Opportunity program who have the ability to furnish their share of the required labor and who agree to participate in the cooperative effort to build homes for all members of the group.

(b) Any IHA eligible for development funds may submit an application for a Self-Help Mutual Help Homeownership Opportunity project. With the exception of §§ 905.403 and 905.410–905.413, the Self-Help program is to be operated in accordance with Subparts B and D, using the procedures specified in those Subparts, as supplemented by the additional requirements of this subpart.

§ 905.505 Basic policies.

(a) *Groups of families.* The project is to be organized so that a small number of families (i.e., six to ten) will build a substantial portion of their homes and will contract for other skilled labor and supplies. Once an IHA has experience with this method of development, it is encouraged to have several groups of families participating in its Self-Help program for more cost-effective use of the construction supervisors, although each family will work only on the homes of its group. In consultation with the group of families, the IHA will decide how the families will share labor, how records will be kept of time worked, and how labor will be exchanged on a basis fair to all participating families.

(b) *IHA role*—(1) *Capacity.* The IHA must have the capacity to provide for the financial, legal, administrative, and technical responsibilities of the program.

(i) The IHA is required to provide assurance that the project will be completed in the form of a letter of

credit or its equivalent in an amount equal to ten percent of the estimated Total Development Cost Standard.

(ii) The IHA can manage the project itself to the extent it has staff with the necessary background and proven ability to perform responsibly in the field of mutual self-help and in construction; or it may contract with an organization that has this type of experience and ability for a fee that fits within the Total Development Cost Standard.

(2) *Responsibilities.* In addition to the responsibilities that an IHA has under the Mutual Help Homeownership Opportunity program under Subpart D of this part (including counseling concerning homeownership responsibilities), the IHA is responsible for the following tasks:

(i) Selecting participating families from its waiting list;

(ii) Organizing and counseling the families concerning their responsibilities under the Self-Help agreement;

(iii) Preparing the application and development program for the project;

(iv) Contracting for skilled labor;

(v) Procuring materials and supplies;

(vi) Providing training in construction before and during construction activity, supervising construction on a daily basis, and providing any technical assistance needed during the construction period;

(vii) Inspecting the construction weekly; and

(viii) Terminating any family found to be in default on its obligations, in consultation with the families in the group, and replacing that family with another eligible family.

(c) *Participating families.* (1) Each family must show the desire to work with other families in building their own homes and must have the time to contribute the labor necessary to perform a substantial number of the tasks required in the construction of the homes.

(2) Each family must sign a Self-Help agreement with the IHA, as described in § 905.510, before submission of the IHA's submission of a development program for the project.

(d) *Construction tasks.* The IHA's allocation of construction tasks between those that can be done by families as opposed to skilled labor will depend on the skills and experience of the families, as well as the training that can be provided, and any applicable ordinances about the type of work that must be done by certified persons. Examples of the construction tasks that can be allocated are the following:

(1) *Usually suitable for participating families:*

(i) Wall framing and sheathing;

(ii) Roofing;

(iii) Insulation;

(iv) Interior carpentry, trim, doors;

(v) Installation of cabinets and counter tops;

(vi) Interior painting;

(vii) Exterior painting;

(viii) Installation of electrical fixtures;

(ix) Installation of finish hardware;

(x) Installation of gutters and downspouts; and

(xi) Landscaping.

(2) *Usually suitable for skilled labor:*

(i) Excavation, grading, and paving;

(ii) Installation of footing, foundation, columns;

(iii) Pouring floor slab or framing;

(iv) Installation of subflooring;

(v) Roof and ceiling framing, sheathing;

(vi) Installation of siding, exterior trim, porches;

(vii) Installation of windows and exterior doors;

(viii) Roughing in plumbing;

(ix) Sewage disposal;

(x) Installation of electrical system;

(xi) Dry wall or plaster work;

(xii) Basement or porch floor, steps;

(xiii) Installation of heating system;

(xiv) Flooring; and

(xv) Completion of plumbing (fixtures).

(e) *Contractual framework.* A Self-Help Mutual Help Homeownership Opportunity project involves three basic contracts in a form approved by HUD: a Self-Help agreement executed by the participating families and the IHA before construction begins, an ACC for a Mutual Help project (in two phases) executed by HUD and the IHA after approval of the SH project application and after HUD approval of the development program, and a Mutual Help and Occupancy agreement executed by the participating families and the IHA after construction completion. In addition, there may be organizational documents for the organization created by the participating families.

(f) *Funding.* The funding for technical training and supervision of participating families will be provided through development funds, and the cost will be included in the Total Development Cost of the project. The cost of construction supervision and technical assistance shall generally be no more than 15 percent, but may not exceed 20 percent of the TDC of these self-help homes.

(g) *Applicability of Indian preference.* In the selection of contractors to perform construction supervision, skilled labor, or other work under this program, the provisions concerning preference for Indians apply. (§§ 905.106 and 905.204). In the selection of participating families, the provisions of § 905.406(a) apply.

(h) *Building code.* The building code adopted by the IHA in accordance with § 905.212 will apply to the homes constructed under this program.

§ 905.510 Self-Help agreement.

(a) *Timing.* The obligations under the Self-Help agreement, executed by the IHA and the families in a group selected by the IHA to participate in a Self-Help program, will be contingent upon approval of the development program by HUD. Each family will be obligated to be available to commence work at a time that fits the IHA's schedule for completion of prior tasks by skilled labor, but generally within 120 days of approval of the IHA's Self-Help project development program by HUD and to complete the work within a period not to exceed two years.

(b) *Pre-construction period.* The Self-Help agreement will provide that, before construction begins, the participating families will be required to organize themselves, with the assistance of the IHA, and to participate in construction skills training.

(c) *Labor contribution.* (1) The Self-Help agreement will specify the construction tasks to be performed by the participating families as their labor contribution and the construction tasks to be performed under contract by skilled laborers. The number of tasks to be performed by the participating families must constitute the vast majority of the tasks. Generally, the construction will be done in stages, with each stage of construction finished with respect to all the homes in the project before moving to the next stage.

(2) The labor performed is not subject to the labor standards specified in section 12 of the United States Housing Act of 1937, 42 U.S.C. 1437j.

(3) The Self-Help agreement will specify the circumstances under which it may be terminated.

(d) *Insurance requirements.* The families are working for themselves, and not the IHA, during the performance of their labor contribution. The Self-Help agreement will provide that the families waive any liability claim against the IHA for any injury that might occur during the development of the project. It is in the best interests of participating families to have their own insurance coverage to cover the possibility of injury. If the IHA is able to obtain insurance coverage at reasonable cost on behalf of the families, at their request, to cover this risk, it is encouraged to do so.

(e) *Standard provisions.* The Self-Help agreement will include provisions prohibiting kickbacks and conflict of interest.

(f) *Completion.* The Self-Help agreement will provide that upon successful completion of the family's obligations under it, the family and the IHA will execute a Mutual Help and Occupancy agreement in accordance with Subpart D of this part.

§ 905.515 Application.

In addition to complying with the requirements of § 905.404, the IHA's application for approval of a Self-Help project must contain the following:

(a) *Need for Self-Help housing.* Evidence of the need for Self-Help housing, including:

(1) The names, addresses, number of persons in the household, and annual incomes of the families selected to participate.

(2) The Self-Help agreement.

(3) Certification by the IHA that the participating families are believed to have the time and ability to fulfill their obligations under the Self-Help agreement.

(4) In addition, such information as the incomes and sizes of other interested families who appear to be eligible should be submitted.

(b) *Ability of IHA to administer.* (1) Evidence of the IHA's ability to administer a Selp-Help program should identify the staff members who will supervise construction and provide technical assistance, and describe their experience. If the IHA plans to contract with an outside entity, it must follow the requirements of § 905.204 with respect to Indian preference. Regardless of the identity of the firm selected to perform this function (whether it is a Farmers Home Administration technical assistance firm or another source), the IHA should identify the firm and briefly describe its experience.

(2) Evidence of capacity, as described in § 905.505.

(c) *Sites and plans.* The sites (unless waived by the HUD Field Office), which must be either contiguous or in very close proximity, and pre-approved plans and specifications, with only minor modifications.

(d) *Authorizing resolution.* A certified copy of the resolution adopted by the IHA's Board of Commissioners authorizing the appropriate officers to submit this application to HUD for participation in the Self-Help program.

§ 905.520 HUD review of application.

(a) *Completeness.* HUD will review each application for a Self-Help Mutual Help project in accordance with §§ 905.206 and 905.207. It also will determine whether the application is complete, in accordance with § 905.515. If the application does not satisfy all the requirements of § 905.515, it will be returned to the IHA with suggestions for correcting the deficiencies.

(b) *Program reservation.* When an application is complete, there is sufficient funding available, and the requirements of §§ 905.206 and 905.207 have been satisfied, HUD will issue a program reservation, in accordance with § 905.206, and execute an ACC for planning, in accordance with § 905.209. Approval of the development program will proceed in accordance with § 905.525.

§ 905.525 Development program.

In addition to complying with the requirements of § 905.208 and of § 905.404(j), the IHA's development program, submitted to HUD, must include the following:

(a) *IHA coordination plan.* The plan for organizing and implementing the development, including elements comparable to those covered in the standard Mutual Help construction contract, and the method of coordinating work of participating families and skilled contractors.

(b) *Difference in cost.* A description of how the development cost differs from the cost for a project constructed under a construction contract. This difference should reflect the labor contribution, after considering the construction supervision cost.

(c) *Special provisions for acquisition with rehabilitation projects.* A description of the repair or rehabilitation work needed on each home to be acquired. The work needed on all the homes should be reasonably comparable in the amount of labor exchange that is required. The estimated number of hours of labor and a description of the work to be done must be provided.

(d) *Certification of participation.* Certification by the IHA that the participating families have signed the Self-Help agreement and remain able to fulfill their obligations under the Self-Help agreement.

(e) *Changes since application stage.* Statement of any changes in the data submitted in the application.

§ 905.530 HUD review of development program.

HUD will review the development program submitted by an IHA in accordance with Subpart B of this part, paying particular attention to the additional components required under § 905.525. An ACC for construction and operation of a project will be executed after HUD has approved the development program for the project.

§ 905.535 HUD monitoring.

HUD will contact the IHA on a regular basis to determine whether any problems are developing that require additional technical assistance or consideration of the existence of default by a family or failure of the project.

§ 905.540 Default and termination.

(a) *Participating family default.* (1) *Termination.* If the IHA determines that a participating family is failing to provide its labor contribution, as required in accordance with its Self-Help agreement, it should counsel the family about its obligations and encourage fulfillment of its responsibilities. If the failure of the family is jeopardizing the progress of the project, the IHA should declare the family in default and terminate its participation in the project. (See Part 966 for applicable grievance procedure.)

(2) *Completion of unit.* Upon termination of the participation of one family, the IHA should move expeditiously to select an alternate family to take over the responsibilities of the terminated family. If another qualified family cannot be found to assume the responsibilities of the terminated family, the unit may be converted to some other development option (e.g., force account, conventional bid, etc.) under the Mututal Help Homeownership Opportunity program. Of course, the IHA must notify HUD of such difficulties in connection with HUD's monitoring responsibilities.

(b) *Group default.* If the IHA determines that an entire group is unable to continue its work to completion of construction, the IHA should first counsel the group about its obligations and encourage fulfillment of its responsibilities. If counseling is unsuccessful in bringing about satisfactory progress toward completion, the IHA should declare the families in default and convert the project to a regular Mutual Help Homeownership Opportunity project. The IHA's plan for completing the project must be submitted to HUD for approval.

Dated: September 15, 1988.

James E. Baugh,

General Deputy, Assistant Secretary for Public and Indian Housing.

[FR Doc. 88-21970 Filed 9-23-88; 8:45 am]

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Monday
September 26, 1988

Part X

Department of the Treasury

Fiscal Service

31 CFR Part 321 et al.

U.S. Savings Bonds and Notes; Final Rules and Notice

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 321

[Department of the Treasury Circular No. 750, Fourth Revision]

Payments by Banks and Other Financial Institutions of United States Savings Bonds and United States Savings Notes; Freedom Shares

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: Department of the Treasury Circular No. 750, as revised (31 CFR Part 321), contains the regulations governing financial institutions qualified to redeem United States Savings Bonds and United States Savings Notes (Freedom Shares). The Fourth Revision of the Circular provides authority for financial institutions to transmit and receive settlement for redeemed securities through, a new procedure, the EZ CLEAR system in the same manner as commercial checks, as well as to redeem securities upon the request of a surviving beneficiary. The revisions are necessary to permit paying agents greater flexibility in the redemption and processing of savings bonds and notes.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Dean A. Adams, Assistant Chief Counsel, Bureau of the Public Debt, Savings Bond Operations Office, Parkersburg, WV, 26106–1328, (304) 420–6505.

SUPPLEMENTARY INFORMATION: The Third Revision of this Circular implemented changes brought about by the introduction of Series EE and HH savings bonds in January 1980, by extending the payment authority of paying agents to include eligible Series EE bonds, as well as Series A–E bonds and saving notes. Additionally, paying agents were authorized to redeem eligible securities in exchange for Series HH bonds.

The Fourth Revision adds new provisions that will enable paying agents to transmit and receive settlement for redeemed securities through a new procedure, named the EZ CLEAR System, under which paid bonds and notes will be processed in the same manner as checks. Where it is used, the securities will be sent by agents to the Check Department of the Federal Reserve Bank, Branch, or Regional Check Processing Center, for their own account, or through designated correspondent institutions.

Service fees for redeemed securities presented through EZ CLEAR, in separately sorted cash letters, will be paid monthly by the Automated Clearing House method (ACH) to the institution presenting the securities to a Federal Reserve Bank. Agents may also continue to submit redeemed securities to the Fiscal Agency Department of a Federal Reserve Bank and receive service fees quarterly by check or ACH.

The EZ CLEAR System has been the subject of an extended pilot program, the success of which has resulted in its adoption nationwide. The pilot program has been continuing, and the Fourth Revision, upon adoption, will immediately apply to that program, as well as to paying agents that will thereafter utilize the system.

The Fourth Revision, in addition, authorizes paying agents to redeem eligible savings bonds and notes for cash or in exchange for Series HH bonds at the request of a surviving beneficiary, upon submission of the owner's death certificate. The Fourth Revision also includes the requirement that paying agents report interest paid as part of the redemption value of securities, which was enacted by the Tax Equity and Fiscal Responsibility Act of 1982 and the Interest and Dividend Tax Compliance Act of 1983. Further, the revision will now specify the collection of amounts owed Treasury by paying agents, resulting from erroneous payments, will be made in accordance with the Federal Claims Collection Standards (4 CFR Parts 101–105).

All paying agents currently qualified are automatically requalified to redeem securities in accordance with the provisions of the Fourth Revision.

Apart from the changes already mentioned, the Fourth Revision of Circular No. 750 does not differ substantially from the Third Revision. Where appropriate, there has been rewording for clarity and consistency. Differences between the two revisions are discussed below.

Subpart A—General Information

The definitions in § 321.1 have been expanded.

Subpart B—Procedures for Qualification

Section 321.2 has been modified to stipulate that a paying agent that desires to transmit and receive settlement for redeemed securities through EZ CLEAR must either MICR-encode data on the securities and receive fee payments by ACH, or it must arrange to obtain these services from another financial institution.

Subpart C—Scope of Authority

Sections 321.7 and 321.8 have been modified to authorize an agent to redeem securities, for cash or in exchange for Series HH bonds, at the request of a surviving beneficiary upon presentation of the owner's death certificate. Provisions concerning the requirement to report, for Federal income tax purposes, interest included in the redemption value of securities redeemed for cash and on redemption-exchange have also been included in §§ 321.7 and 321.8. The limitation excluding payments to beneficiaries has been removed from Section 321.9. Information about annotating evidence presented by beneficiaries has been added to § 321.11. Section 321.11 has also been amended to stipulate that although an agent is not required to complete the certification to the requests for payment on securities it redeems, it will, nevertheless, be deemed to certify that the transaction was conducted, in accordance with the provisions of Circular No. 750, by transmitting the securities for settlement to a Federal Reserve Bank.

Subpart D—Payment and Transmittal of Securities

Section 321.14 has been modified to accommodate the EZ CLEAR system for transmittal and settlement of redeemed securities.

Subpart E—Losses Resulting from Erroneous Payments

Section 321.17 has been modified to accommodate changes in the procedures for investigating erroneous payments. Section 321.18 has been modified to reflect that reimbursement from a paying agent for a loss resulting from an erroneous payment will be sought in accordance with the Federal Claims Collection Standards (4 CFR Parts 101–105).

Subpart F—Forwarding Items

No substantive changes have been made.

Subpart G—Miscellaneous Provisions

Section 321.23 has been modified to reflect the fact that fees for redeemed securities transmitted via EZ CLEAR, in separately sorted cash letters, will be paid via ACH. No fees will be paid for redeemed securities submitted via EZ CLEAR in mixed cash letters. Section 321.24 has been revised to reflect current handling of claims on account of lost redeemed securities.

Appendix

The Appendix has been modified to accommodate payments to surviving beneficiaries, tax reporting requirements, and guidelines for the transmittal of redeemed securities via EZ CLEAR and to streamline the existing provisions by eliminating unnecessary instructions.

Procedural Requirements

This rule is not considered a "major rule" for purposes of Executive Order 12291. A regulatory impact analysis, therefore, is not required.

The notice and comment provisions of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

Because this regulation is being issued, without prior notice and public comment, the collections of information contained in this regulation have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1535–0087.

Comments concerning the collections of information and the accuracy of estimated average annual burden, and suggestions for reducing burden should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for Bureau of the Public Debt, with copies to Rita DeNagy, Management Analyst, Bureau of the Public Debt, Washington, DC 20239–0001.

The collections of information in this regulation are in 31 CFR 321.7(c) and 321.11(b), and in the appendix, items 7(b), 14(a), 17(a), 18, 19, and 23(e). This information is required by the Bureau of the Public Debt pursuant to regulations promulgated under the authority of 31 U.S.C. 3105 and 3126. These regulations govern the manner in which qualified banks and financial institutions may redeem eligible savings bonds and savings notes, and transmit and receive settlement for redeemed securities through EZ CLEAR, under which paid securities will be processed through the Federal Reserve Bank Check Collection System, or through the Fiscal Agency Department of a Federal Reserve Bank. This information will be used to ensure regulatory compliance and for audit purposes. The likely respondents and recordkeepers are business or other for-profit institutions and non-profit institutions.

Estimated total annual reporting and recordkeeping burden: 74,226 hours.

Estimated average annual burden hours per respondent and recordkeeper: 1.53 hours.

Estimated number of respondents and recordkeepers: 48,517.

Estimated annual frequency of responses: 1,278 per respondent.

List of Subjects in 31 CFR Part 321

Banks and banking, Federal Reserve System, Government Securities.

Dated: September 22, 1988.

Gerald Murphy,

Fiscal Assistant Secretary.

In 32 CFR Chapter II, Part 321, Department of the Treasury Circular No. 750, Third Revision, dated July 1, 1980, is hereby revised and reissued as Department of the Treasury Circular No. 750, Fourth Revision, to read as follows:

PART 321—PAYMENTS BY BANKS AND OTHER FINANCIAL INSTITUTIONS OF UNITED STATES SAVINGS BONDS AND UNITED STATES SAVINGS NOTES (FREEDOM SHARES)

Subpart A—General Information

Sec.

Subpart B—Procedures for Qualification

Subpart C—Scope of Authority

Subpart D—Payment and Transmittal of Securities

Subpart E—Losses Resulting From Erroneous Payments

Subpart F—Forwarding Items

Subpart G—Miscellaneous Provisions

Appendix to Department of the Treasury Circular No. 750, Fourth Revision

Authority: 31 U.S.C. 3105, 3126.

Subpart A—General Information

§ 321.0 Purpose.

These regulations govern the manner in which financial institutions may qualify and act as paying agents for the redemption of:

(a) United States Savings Bonds of Series A, B, C, D, E, and EE, and United States Savings Notes (Freedom Shares), presented for cash payment, and (b) eligible Series E and EE savings bonds and savings notes presented for redemption in exchange for Series HH savings bonds under the provisions of Department of the Treasury Circular, Public Debt Series No. 2–80 (31 CFR Part 352).

§ 321.1 Definitions.

(a) "ACH payment" or "ACH" means an Automated Clearing House method of transferring funds under the provisions of 31 CFR Part 210.

(b) "Beneficiary" means an individual whose name is inscribed on a security as the person to whom it is payable in his or her right upon the prior death of the other individual designated thereon as owner, shown commonly in the form: "A P.O.D. [payable on death to] B."

(c) "Cash payment" means payment in currency, by check or by credit to a checking, savings or share account.

(d) "EZ CLEAR" refers to the system by which financial institutions present redeemed securities to a Federal Reserve Bank through the commercial check collection system in the same manner as other cash items.

(e) "Federal Reserve Bank" or "Bank" refers to the Federal Reserve Bank of the District (1) in which the paying agent or applicant-organization is located, or (2) to which the agent is instructed to transmit redeemed securities and securities forwarded for payment, and includes parent Banks, Branches, and Regional Check Processing Centers, as appropriate.

(f) "Fiscal agency system" refers to the system by which paying agents transmit redeemed securities to the Fiscal Agency Department of the Federal Reserve Bank and receive settlement thereof.

(g) "Mixed cash letter" refers to a bundle containng nonsegregated redeemed securities, cash items, and other items submitted to a Federal Reserve Bank via the commercial check collection system.

(h) "Paying agent(s)' or "agent(s)" means: (1) a financial institution that is qualified under the provisions of this Part as originally issued, or any subsequent revision, to make payment of securities, and includes branches located within the United States, its territories and possessions, and the Commonwealth of Puerto Rico; and (2) any banking facilities of such institutions established at military installations overseas, provided the offering of such redemption services has been authorized by the Department of the Treasury.

(i) "Presenter" means the individual requesting the redemption or redemption-exchange of securities.

(j) "Presenting institution" means the organization from which the Federal Reserve Bank receives redeemed securities to be processed via EZ CLEAR. If a paying agent submits separately sorted or mixed cash letters directly to the Bank using its own ABA code, it is the Presenting institution. If a correspondent financial institution submits cash letters on behalf of another institution using the correspondent's ABA code, the correspondent is the presenting instititution.

(k) "Redemption" and "payment" are used interchangeably for payment of a security in accordance with the terms of its offering and governing regulations, including redemption-exhange.

(l) "Redemption-exchange" means the authorized redemption of eligible securities for the purpose of applying the proceeds in payment for other securities offered in exchange by the Treasury.

(m) "Registrant" means a person whose name is inscribed on a security as owner, coowner, or beneficiary.

(n) "Security" or "securities" means a United States Savings Bond of Series A, B, C, D, E, or EE and/or a United States Savings Note (Freedom Share).

(o) "Separately sorted cash letter" refers to a bundle of redeemed securities that have been segregated from all other items prior to transmittal to a Federal Reseve Bank via EZ CLEAR.

Subpart B—Procedures for Qualification

§ 321.2 Eligible organizations.

(a) Organizations eligible to apply for qualification and to serve as paying agents are commercial banks, trust companies, savings banks, savings and loan associations, building and loan associations (including cooperative banks), credit unions, cash depositories, industrial banks, or similar financial institutions which:

(1) Are incorporated under Federal law or the laws of a State, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; (2) in the usual course of business accept, subject to withdrawal, funds for desposit or the purchase of shares; (3) are under the supervision of the banking department or equivalent authority of the jurisdiction in which they are incorporated; and (4) maintain regular offices for the transaction of business.

(b) An organization that desires to transmit and obtain settlement for securities via EZ CLEAR must either MICR-encode data on securities accepted for payment and receive payment of fees by ACH or must arrange to obtain these services from another financial institution.

§ 321.3 Procedure for qualifying and serving as paying agent.

(a) *Execution of application-agreement.* An eligible organization wishing to act as a paying agent shall obtain from, execute and file with, a Federal Reserve Bank an application-agreement form. The terms of each application-agreement shall include the provisions prescribed by section 202 of Executive Order 11246, entitled "Equal Employment Opportunity" (3 CFR Subchapter B, 42 U.S.C. 2000e note). For the purpose of these regulations, eligible institutions in Puerto Rico and the Virgin Islands shall make application to the Federal Reserve Bank of New York, and eligible institutions in Guam shall make application to the Federal Reserve Bank of San Francisco.

(b) *Qualification.* Each Federal Reserve Bank, as fiscal agent of the United States, is authorized to qualify any eligible organization, located in its district, which possesses adequate authority under its charter to act as paying agent. Upon approval of an application-agreement, the Bank will issue a certificate of qualification to the organization. Such a certificate automatically qualifies the branches of the organization to redeem securities as provided in this Part.

(c) *Announcement of authority.* Upon receipt of a certificate of qualification from a Federal Reserve Bank, a financial institution may announce or advertise its authority to redeem eligible securities for cash and to process exchanges for Series HH bonds.

(d) *Adverse action.* An organization will be notified by the Federal Reserve Bank in writing if its application-agreement to act as paying agent is not approved.

§ 321.4 Paying agents previously qualified.

Institutions qualified as paying agents under previous revisions of this Part are authorized to continue to act in that capacity without requalification. By so acting, they shall be subject to the terms and conditions of their previously executed application-agreements and these regulations in the same manner and to the same extent as though they had requalified hereunder.

§ 321.5 Termination of qualification.

(a) *By the Treasury.* The Secretary of the Treasury, or a designee, may authorize a Federal Reserve Bank to terminate the qualification of any paying agent at any time, following prior written notice of such action to the agent.

(b) *At request of paying agent.* A Federal Reserve Bank will terminate the qualification of a paying agent upon its written request, provided the agent renders a final accounting for all redeemed securities and is found to have fully complied with the terms of its agreement and the applicable regulations and instructions.

(c) *Reservation.* Termination of the qualification as paying agent of any institution shall not prejudice the right of the Treasury to recover the amounts of any erroneous payment(s) made by the institution.

Subpart C—Scope of Authority

§ 321.6 General.

Securities are issued only in registered form, are not transferable, may not be hypothecated or used as collateral for a loan, and, except as otherwise specifically provided in the governing regulations and this Part, are payable to the owner or coowner named on the security. The regulations governing Series EE and HH bonds are contained in Department of the Treasury Circular, Public Debt Series No. 3–80, current revision (31 CFR Part 353); those governing all other series of sercurities are contained in Department of the Treasury Circular No. 530, current revision (31 CFR Part 315).

§ 321.7 Authorized cash payments.

(a) *General.* Subject to the terms and conditions appearing on the securities, the governing regulations, and the provisions of this Part, and any instructions issued in connection therewith, an agent may make payment of savings bonds of Series A, B, C, D, E, and EE, and savings notes, presented for cash redemption. Except as provided in

paragraph (b) through (d) of this section, the securities must be presented by an individual whose name is inscribed on the securities as owner or coowner, and who is known to the agent, or who can establish his or her identity in accordance with Treasury instructions and guidelines. (See §321.11(b)).

(b) *Change of name by marriage.* If the name of the presenter has been changed by marriage from that shown on the security, and the agent knows or establishes that the presenter and the person whose name appears on the security are one and the same individual, the agent may pay the security in accordance with paragraph (a) of this section. The signature to the request for payment should show both names, *e.g.*, "Mary J. Smith, changed by marriage from Mary T. Jones."

(c) *Parent of a minor.* Payment of a security bearing the name of a minor child, who is not of sufficient competency and understanding to sign the request for payment and comprehend the nature of the act, may be made to either parent with whom the minor resides or to whom custody has been granted, provided the form of registration does not indicate that a guardian or similar representative of the estate of the minor has been appointed or is otherwise legally qualified. Payment under this subsection may not be made to any person other than a parent. The parent requesting payment must sign the request for payment in the form, *e.g.*, "John A. Jones, on behalf of John C. Jones." The following endorsement must be typed or imprinted on the back of the security:

"I certify that I am the (father or mother) of John C. Jones and the person (with whom he resides) (to whom custody has been granted). He is —— years of age and is not of sufficient competency and understanding to sign the request."

(d) *Payment to beneficiary.* An agent may redeem a security registered "A P.O.D. [payable on death to] B" for cash at the request of the surviving beneficiary following the owner's death. A copy of the owner's death certificate, certified under seal of the State or local registrar, must be furnished to support the request for payment.

(e) *Interest reporting.* A paying agent is required to report interest in the amount of $10 or more, paid as part of the redemption value of securities, to the payee and to the Internal Revenue Service, in accordance with 26 CFR 1.6049–4.

§ 321.8 Redemption-exchange of Series E and EE savings bonds and savings notes.

(a) *General.* Subject to the provisions of Circular No. 2–80 (31 CFR Part 352), the governing regulations, and the provisions of this Part and its Appendix, an agent may make payment of eligible securities presented for redemption in exchange for Series HH bonds. Securities eligible for exchange are:

(1) Series EE bonds presented no earlier than six months from their issue dates; and

(2) Series E bonds and savings notes presented no later than one year from the month in which they reached final maturity. The total redemption value of the securities presented for exchange must be at least $500.

(b) *Requirements for redemption-exchange.* An agent shall not accept and redeem eligible securities on exchange unless:

(1) The securities are accompanied by a completed exchange subscription signed by the presenter;

(2) The presenter is the owner, surviving coowner or beneficiary, or principal coowner (as defined in § 352.7(e)(2) of Circular No. 2–80) of the securities presented for exchange and is to be named as owner or first-named coowner on the Series HH bonds; and

(3) The request for payment on each security is signed by the presenter. If the name of the presenter has been changed by marriage, or if the presenter is named as beneficiary on the securities, the agent may process the transaction in accordance with the provisions of § 321.7 (b) or (d) of this Part. If the agent is authorized and elects to use the special endorsement procedure set out in Department of the Treasury Circular No. 888, current revision (31 CFR Part 330), the requests for payment do not need to be signed; however, this special endorsement may not be used in lieu of the presenter's signature on the exchange subscription.

(c) *Interest reporting.* To the extent that it represents interest of $10 or more, a paying agent is required to report cash, refunded in an exchange transaction, to the presenter and to the Internal Revenue Service under the provisions of 26 CFR 1.6049–4.

(d) *Completion of transaction.* An agent shall separately transmit for settlement securities redeemed on exchange to a Federal Reserve Bank at the same time the exchange subscription and any additional cash needed to complete the transaction are forwarded to the Fiscal Agency Department of a Federal Reserve Bank.

§ 321.9 Specific limitations on payment authority.

An agent is not authorized to redeem a security for cash or on redemption-exchange:

(a) If it is a Series EE bond presented for payment prior to six months from its issue date.

(b) If it is a savings bond of Series F, G, H, J, K, or HH.

(c) If the presenter is acting under a power of attorney.

(d) If the agent does not know or cannot establish the identity of the presenter as a person entitled to request payment as provided in § 321.7.

(e) If the presenter does not sign his or her name in ink as it is inscribed on the security, and show a home or business address. (See, also, § 321.7 (b) and (c).)

(f) If the presenter's social security number is not shown in the inscription, and he or she refuses to furnish the number.

(g) If the security bears a material irregularity, such as an illegible, incomplete or unauthorized inscription, issue date, or issuing agent's validating data, or if any essential part of the security appears to have been altered or is mutilated or defaced in such a manner as to create doubt or arouse suspicion.

(h) If the security is registered in the name of a corporation, association, partnership, or other organization, or a guardian, administrator, trustee, or other fiduciary.

(i) If Treasury regulations require the submission of documentary evidence to support the redemption, as in the case of deceased registrants (except as provided in § 321.7(d) of this Part), incompetents, minors under legal guardianship, or the change of a registrant's name other than by marriage.

(j) If the presenter is a minor who, in the opinion of the agent, is not of sufficient competency and understanding to sign the request for payment and comprehend the nature of the act.

(k) If it is known to the agent that the presenter has been legally declared incompetent to manage his or her affairs.

(l) If partial redemption is requested.

§ 321.10 Responsibilities of paying agents.

(a) *Payment of securities.* A paying agent is required to redeem eligible securities during its regular business hours for any presenter, whether or not a customer, who can establish his or her identity as the owner or coowner named on the securities, in accordance with the provisions of this Part, and the Appendix thereto, and the Treasury

Identification Guide for Cashing United States Savings Bonds. An agent is encouraged, but is not required, to redeem eligible securities during its regular business hours for a surviving beneficiary who can provide acceptable evidence of the owner's death and establish his or her identity.

(b) *Restrictions.* A paying agent shall not advance money, make loans on, or discount the redemption value of securities, nor in any manner assist others to do so. An agent shall not pay a presenter the current value of a security and then defer presentation to the Treasury for the purpose of obtaining for its own profit an increased value.

Subpart D—Payment and Transmittal of Securities

§ 321.11 Payment.

(a) *Examination.* Before making a payment of a security, a paying agent shall examine the security to determine that it is eligible for redemption and is one the agent is authorized to pay under the provisions of this Part.

(b) *Identification and evidence of entitlement.* The agent shall determine that the presenter of the security is entitled to request payment, as provided in § 321.7 of this Part. Unless the presenter is a person whose identity is well-known to the agent or is an established customer, he or she should be asked to furnish satisfactory identification in accordance with the Treasury instructions and guidelines. At the time of payment, the agent should make a notation on the back of the security, or in its own records, specifying precisely what was relied on to establish the presenter's identity.

(c) *Evidence—Payment to a beneficiary.* The agent shall determine that the presenter of the security as beneficiary is entitled to request payment, as provided in § 321.7(d). In addition to establishing the presenter's identification, as required by paragraph (b) of this section, the agent shall require presentation of the owner's death certificate in accordance with this Part and the Appendix.

(d) *Execution of request.* (1) The agent shall require (i) that the request for payment on the back of each security be signed by the presenter in the presence of one of its officers or authorized employees, and (ii) that the presenter's address be furnished.

(2) If the agent is qualified under Circular No. 888, current revision, and elects to use the special endorsement procedure, the request for payment need not be signed. If the request has already been signed when the security is presented, it should be signed again.

(e) *Certification of request.* An agent is not required to complete the certification to the requests for payment on securities it redeems. An agent that transmits redeemed securities for settlement to a Federal Reserve Bank shall be understood by such submission to have represented and certified that the identity of the presenter, and his or her entitlement to request payment, have been established in accordance with this Part and the Appendix.

§ 321.12 Redemption value of securities.

The redemption value of each security is determined by the terms of its offering and the length of time it has been outstanding. The Bureau of the Public Debt issues tables of redemption values for Series A–E bonds, eligible Series EE bonds, and savings notes that should be used in redeeming securities.

§ 321.13 Cancellation of redeemed securities.

An agent shall cancel each redeemed security by imprinting the word "PAID" on its face and entering the amount and date of the actual payment and the agent's name, location, and four-digit code number assigned by the Federal Reserve Bank. The recordation of this data shall constitute a certification by the agent that the security was redeemed in accordance with the provisions of this Part, that the presenter's identity and entitlement to request payment were duly established, and that the proceeds were paid to the presenter or remitted to a Federal Reserve Bank in payment for Series HH bonds.

§ 321.14 Transmittal to and settlement by Federal Reserve Bank.

A paying agent shall forward securities, redeemed for cash and on redemption-exchange with the appropriate covering transmittal document, to the Federal Reserve Bank in accordance with the Bank's instructions. Upon receipt of the securities, the Bank will make immediate settlement with the presenting institution for the total amount paid, as reflected on the transmittal document. Settlement shall be subject to adjustment if discrepancies are subsequently discovered. The Bank will forward redeemed security data to the Bureau of the Public Debt for audit.

Subpart E—Losses Resulting from Erroneous Payments

§ 321.15 Liability for losses.

Under the governing statute, as amended (31 U.S.C. 3126(a)), an agent cannot be relieved of liability for a loss resulting from an erroneous payment unless the Secretary of the Treasury can make a determination that the loss resulted from no fault or negligence on the agent's part.

§ 321.16 Report of erroneous payment.

If an agent discovers an erroneous payment of securities, it should immediately advise the Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328, (304) 420–6402. If the circumstances of the payment warrant such action, the agent should also notify the nearest office of the United States Secret Service.

§ 321.17 Investigation of potential loss.

(a) *Notice to an agent.* When it determines that a loss has occurred, because of the erroneous payment of securities, the Bureau of the Public Debt will notify the agent in writing and identify the securities.

(b) *Investigative procedure.* The Bureau of the Public Debt may request the United States Secret Service to investigate potential losses. Upon request, the agent shall make available to the Bureau of the Public Debt, or its investigative agent, all records and information pertaining to the transaction in question, including the disposition of the redemption proceeds. If the proceeds were deposited in an account maintained by the agent, the information made available shall include the ultimate disposition of the redemption proceeds from the account.

§ 321.18 Determination of loss.

Upon completion of the investigation, and after consideration of the results, the Bureau of the Public Debt shall advise the agent through which the payment occurred:

(a) That no final loss to the United States has occurred, and, accordingly, that the agent is relieved from liability for the payment, or that no claim for reimbursement shall be made unless and until a loss has been sustained; or

(b) That while a final loss to the United States has occurred, the agent is not required to make reimbursement therefor, as the Secretary of the Treasury, or his designee, has determined that such loss resulted from no fault or negligence on the part of such agent; or

(c) That a final loss to the United States has occurred, and that, the Secretary of the Treasury, or his designee, has been unable to make an affirmative finding that such loss resulted from no fault or negligence on the part of such agent, reimbursement must be made promptly, except where

credit for the payment had not previously been extended.

§ 321.19 Certification of signatures.

The regulations in this subpart shall, to the extent appropriate, apply to losses resulting from payments made in reliance on certifications of signatures by an officer or designated employee of any financial institution authorized to certify requests for payment.

§ 321.20 Applicability of provisions.

The provisions of this subpart shall apply to securities redeemed by any Federal Reserve Bank, as fiscal agent, or any Treasury office authorized to redeem securities, as well as to paying agents.

§ 321.21 Replacement and recovery of losses.

If a final loss has resulted from the redemption of a security, and no reimbursement has been or will be made, the loss shall be subject to replacement out of the fund established by the Government Losses in Shipment Act, as amended.

Subpart F—Forwarding Items

§ 321.22 Forwarding securities not payable by an agent.

Any securities an agent is not authorized to pay under the provisions of this Part should be forwarded for redemption to the Fiscal Agency Department of a Federal Reserve Bank. The requests for payment on the securities should be properly certified. Any documentary evidence required to support the redemption should accompany the securities. If the securities are presented for redemption-exchange, they must also be accompanied by a completed and signed exchange subscription and any additional cash needed to complete the transaction. Unpaid securities so forwarded must not be commingled with redeemed securities transmitted for settlement.

Subpart G—Miscellaneous Provisions

§ 321.23 Paying agent fees and charges.

(a) *Fees.* Fees shall be paid as outlined in this section. A schedule setting out the fees, and the basis on which they are computed and paid, is separately published in the Federal Register. Current information is available from a Federal Reserve Bank.

(1) *Securities transmitted via fiscal agency system.* An agent will receive a fee for each security redeemed during a calendar quarter and transmitted to the Fiscal Agency Department of a Federal Reserve Bank. Payment will be made to the agent by check or ACH.

(2) *Securities transmitted via EZ CLEAR.* A fee will be paid for each security redeemed during a calendar month and transmitted via EZ CLEAR to a Federal Reserve Bank in separately sorted cash letters. Payment will be made to the presenting institution by ACH. No fees will be paid for redeemed securities received by a Bank in mixed cash letters.

(b) *Charges to presenters.* A paying agent shall not make any charge whatever to persons entitle to request payment of securities, for redeeming them under the provisions of this Part.

§ 321.24 Claims on account of lost securities.

If a security redeemed by an agent is lost, stolen or destroyed while in its custody or in transit prior to settlement, the agent's claim for reimbursement of the missing security's redemption value on the original payment date will be considered, provided the security can be identified by serial number.

§ 321.25 Role of Federal Reserve Banks.

The Federal Reserve Banks, as fiscal agents of the United States, shall perform such services in connection with this Part as may be requested by the Secretary of the Treasury, or his designee. The Banks are authorized and directed to perform such duties, including the issuance of instructions and forms, as may be necessary to fulfill the purposes and requirements of these regulations.

§ 321.26 Preservation of rights.

Nothing contained in this Part shall limit or restrict any existing rights which holders of securities may have acquired under the offering circulars and the applicable regulations.

§ 321.27 Supplements, amendments, or revisions.

The Secretary of the Treasury may, at any time or from time to time, revise, supplement, amend or withdraw, in whole or in part, the provisions of this Part.

Appendix to Department of the Treasury Circular No. 750, Fourth Revision

Fiscal Service, Bureau of the Public Debt

Subpart A—General Information

1. *Purpose.* This Appendix is issued for the guidance of banks and other financial institutions qualified as paying agents of United States Savings Bonds and United States Savings Notes (Freedom Shares) under the provisions of 31 CFR Part 321 [Department of the Treasury Circular No. 750, Fourth Revision]. Its purpose is to provide information to supplement the regulations contained in the Part and specific instructions for processing redemption and redemption-exchange transactions. The information and instructions are indexed to the sections and subsections of Part 321 which they explain or expand.

2. *Other pertinent publications.* In addition to Part 321, agents should be familiar with the provisions of the following publications:

(a) *Offering circulars.* Department of the Treasury Circulars, Public Debt Series Nos. 1–80 (Series EE bonds), 2–80 (Series HH bonds), and 3–67 (savings notes), and Department of the Treasury Ciruclar No. 653 (Series E bonds).

(b) *Regulations.* Department of the Treasury Circular, Public Debt Series No. 3–80 (Series EE and HH bonds); Department of the Treasury Circulars Nos. 530 (all other series of securities) and 888 (special endorsements); Federal Tax Regulations (26 CFR 1.6049); Federal Claims Collection Standards (4 CFR Parts 101–105); Regulation J, Collection of Checks and Other Items and Wire Transfers of Funds (12 CFR Part 210); and operating circulars issued by Federal Reserve Banks relating to the collection of cash items and Federal payments by ACH.

Subpart B—Procedures for Qualification

3. *Qualification of branches.* [Sec. 321.3(b)] Qualification of an institution as a paying agent automatically qualifies only its domestic branches. A foreign branch of a qualified paying agent may redeem securities provided settlement is made through a qualified facility located in the Unied States.

4. *Paying agent code numbers.* [Secs. 321.3(b) and 321.13] The Federal Reserve Bank will assign a four-digit code number to each agent it qualifies. A separate number will be assigned to each branch authorized to remit redeemed securities directly to the Bank for its own account. At the paying agent's request, only one four-digit code number will be assigned for use by all of its branches. This four-digit number is used to identify the paying agent in the audit of redeemed securities transmitted through the fiscal agency system, in the adjustment of discrepancies, and in the computation and payment of fees for such securities. For redeemed securities transmitted via EZ CLEAR, the presenting institution's ABA number will be used in the adjustment of discrepancies and in the computation and payment of fees for securities transmitted in separately sorted cash letters.

5. *Requalification.* [Sec. 321.3(b)] If there has been a change in the corporate name of an agent, whether through merger, consolidation, sale of assets, or in any other manner, the agent may be asked by the Federl Reserve Bank to requalify to reflect the change. Ordinarily, requalification is not required unless (a) the change results in a corporation that, under State law, cannot retain the rights of the corporation that ceased to exist, or (b) in the case of a purchase of assets and assumption of liability, the purchaser corporation is not a qualified paying agent.

6. *Announcement of authority.* [Sec. 321.3(c)] On and after the effective date of its qualification, a paying agent may

appropriately announce or advertise its authority to redeem eligible securities for cash and in exchange for Series HH bonds. Such statements and notices should not, directly or indirectly, encourage the encashment of the securities. Two examples of acceptable statements for use in advertisements or displays are:

(a) "We are an authorized agent for payment of U.S. Savings Bonds and U.S. Savings Notes (Freedom Shares)."

(b) "This (bank/savings and loan association/credit union, etc.) is authorized to pay U.S. Savings Bonds and U.S. Savings Notes (Freedom Shares) and process eligible Series E and EE bonds and savings notes in exchange for Series HH bonds."

Subpart C—Scope of Authority

7. *Authorized cash payments.* [Sec. 321.7]

(a) *General.* [Sec. 321.7(a)] The general authority of paying agents to redeem securities for cash extends to Series A, B, C, D, E, and EE bonds and savings notes presented by the owner, coowner, surviving beneficiary, or parent on behalf of a minor. The presenter must sign the requests for payment and establish his or her identity and, in the case of a beneficiary or parent, entitlement to request payment.

(b) *Securities submitted by mail.* [Sec. 321.7(a)] An agent may accept eligible securities submitted, for redemption by mail, from known customers. The agent should be satisfied that the customer is entitled to request payment and that he or she has signed the requests for payment. The agent should obtain written instructions to credit the redemption proceeds to the customer's account or to make some other disposition. For its protection, the agent should retain such instructions for as long as ten years in the event the transaction is later questioned.

(c) *Interest reporting.* [Sec. 321.7(e)] Pursuant to 26 CFR 1.6049–4, an agent is required to report interest income in the amount of $10 or more paid as part of the redemption value of securities. Reports to payees should be made on Form 1099–INT or an IRS-approved substitute; reports to the Internal Revenue Service should be made in accordance with that agency's instructions. A separate report may be made for each transaction in which interest in the amount of $10 or more is paid, or all interest payments, made during a calendar year, may be aggregated and reported annually should the total amount be $10 or more.

8. *Redemption-exchange of Series E and EE savings bonds and savings notes.* [Sec. 321.8]

(a) *General.* [Sec. 321.8 (a) and (b)] The general authority of paying agents to redeem securities in exchange for Series HH bonds extends only to eligible Series E and EE savings bonds and savings notes presented with a completed Form PD 3253, "Exchange Subscription for United States Savings Bonds of Series HH." Securities eligible for exchange are: (1) Series EE bonds presented no earlier than six months from their issue dates; and (2) Series E bonds and savings notes presented no later than one year from the month in which they reached final maturity. The current redemption value of securities presented in one transaction must be at least $500. The presenter must establish his or her identity and entitlement to request the exchange and sign the exchange subcription and the requests for payment on the securities.

(b) *Securities in the name of a minor.* [Sec. 321.8(b)] If an exchange subscription is submitted on behalf of a minor who is too young to comprehend the nature of the transaction, the form must be completed to request that the Series HH bonds be registered either in the minor's name alone or in exactly the same form as the securities presented for exchange. Agents are instructed to discourage exchange transactions involving minors who are too young to conduct them on their own.

(c) *Interest reporting.* [Sec. 321.8(c)] Pursuant to 26 CFR 1.6049–4, an agent is required to report interest income in the amount of $10 or more included in any cash refunded in a redemption-exchange transaction. Reports to payees should be made on Form 1099–INT or an IRS-approved substitute; reports to the Internal Revenue Service should be made in accordance with that agency's instructions. A separate report may be made for each redemption-exchange transaction in which interest in the amount of $10 or more is refunded, or all interest paid in both cash transactions and redemption-exchanges during a calendar year may be aggregated and reported annually should the total amount be $10 or more.

9. *Specific limitations on payment authority.* [Sec. 321.9]

(a) *Allowable exceptions.* [Sec. 321.9] Securities which an agent may not redeem because of the limitations in § 321.9 should be forwarded to the Fiscal Agency Department of a Federal Reserve Bank for handling. However, if an agent is willing to assume full responsibility, it may make payment of an eligible security which bears a minor irregularity, such as a misspelled name, a transposition of letters, etc., because of its knowledge of the facts, or because it wishes to rely on the integrity of the presenter.

(b) *Taxpayer identifying number of presenter.* [Sec. 321.9(f)] An agent shall refuse payment of any security if the social security number of the presenter does not appear in the inscription and he or she is unwilling to furnish the number. A parent who requests payment on behalf of a minor in accordance with § 321.7(c) of this Part must provide the minor's social security number.

(c) *Payments to minors.* [Sec. 321.9(j)] A minor may not request payment of securities if he or she is not of sufficient competency and understanding to comprehend the nature of the act. Because of individual differences in comprehension, the Treasury has not established any rule as to the exact age at which a minor should be able to redeem securities. An agent may interview a minor to ascertain his or her ability to understand the transaction.

10. *Responsibilities of paying agents.* [Sec. 321.10]

(a) *Requirements for redeeming securities.* [Sec. 321.10(a)] A paying agent shall redeem eligible securities during its regular business hours for a presenter who establishes his or her identity as the owner or coowner of the securities, in accordance with this Part. While a paying agent is not required to redeem securities in exchange for Series HH bonds for any presenter, or for cash upon the request of a surviving beneficiary, it is encouraged to do so, provided the presenter can establish his or her identity and provide acceptable proof of the owner's death, in accordance with this Circular. An agent is not required to redeem securities during Saturday and evening hours if it is open during such periods primarily as a service for its depositors.

(b) *Restrictions.* [Sec. 321.10(b)] Violation of the regulatory prohibitions on making charges for redeeming securities; on advancing money on, making loans on, or discounting the redemption value of securities; and on deferring presentation of redeemed securities to obtain a larger credit, will be cause for disqualification and recovery of the redemption proceeds and profits realized therefrom.

Subpart D—Payment and Transmittal of Securities

11. *Identification of presenter.* [Sec. 321.11(b)]

(a) *Identification guide.* [Sec. 321.11(b)] The Treasury Department has issued an identification guide, Form PD 3900, to assist paying agents in redeeming securities. Careful compliance with the instructions contained therein will enable agents to accommodate reasonable redemption requests and protect themselves from losses. Reliance on newly opened customer accounts as identification, or paying more than $1,000 in a single transaction based on documentary evidence alone, should be particularly avoided.

(b) *Record of identification practice and evidence presented.* [Sec. 321.11 (b) and (c)] At the time of payment, the agent should make a notation on the back of the security or in its own records specifying precisely what was relied on to establish the presenter's identity. The identification should be adequate to identify the payee under the circumstances of the transaction. If an agent redeems a security upon the request of a surviving beneficiary, it is recommended that, for the agent's protection, a notation be made of the evidence presented to establish the payee's entitlement; this might include the document or case number on the owner's death certificate, the date of death, and the name and location of the issuing authority. The notations should be sufficient to permit an evaluation of the evidence of identity and entitlement at a later date. Otherwise, the agent runs the risk that no evidence can be developed to show that it acted without fault or negligence; in which case it could not be relieved of liability should a loss occur.

12. *Request for payment.* [Sec. 321.11(d)]

(a) *Signature.* [Sec. 321.11(d)] Except where an agent qualified under Part 330 (Circular No. 888) elects to use the special endorsement procedure, each security redeemed by the agent must bear the signature of the presenter. The name must be signed exactly as it is inscribed on the security, unless the provisions of Part 330 and this Appendix provide for an exception, such as in cases involving a change of name by

marriage or a request by a parent on behalf of a minor. An agent may incur a liability if the request for payment is not properly signed.

(b) *Address.* [Sec. 321.11(d)] The presenter must enter a current home or business address in the space provided on the back of the security. If a single transaction includes a group of securities, the address must be shown on at least one security of each of the following types: (1) Paper securities issued prior to October 1957; (2) punch card or machine readable paper securities issued prior to January 1989; and (3) machine readable paper securities issued subsequent to December 1988.

13. *Redemption value of securities.* [Sec. 321.12]

(a) *Redemption value tables.* [Sec. 321.12] The Bureau of the Public Debt distributes tables of redemption values for:

(1) Series E bonds, (2) Series EE bonds, and (3) savings notes. Additional tables may be requested from the Federal Reserve Bank. The public may purchase redemption tables from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

(b) *Use of tables.* [Sec. 321.12] A separate monthly table is provided for each of the three types of securities (E bonds, EE bonds, and notes). Care should be exercised to use the correct table for the security presented and for the month in which it is redeemed. Incorrect payments can lead to costly and time-consuming adjustments for the agent, Department of the Treasury, and the Federal Reserve Bank.

(c) *Cash redemption.* [Sec. 321.12] The correct redemption value of securities redeemed by an agent should be paid to the presenter in currency or, upon request, by check payable to the presenter or by credit to his or her account.

(d) *Redemption-exchange.* [Sec. 321.12] The redemption values of securities presented for exchange for Series HH bonds shall be those payable in the month the agent accepts a correctly completed and signed exchange subscription, Form PD 3253. The total redemption value of securities presented for exchange in any one transaction must be at least $500. If the redemption value is $500 or an even multiple thereof, Series HH bonds must be requested in that exact amount. If the redemption value exceeds $500, but is not an even multiple of that amount, the presenter may (1) add cash to increase the amount of the subscription to the next higher $500 multiple, or (2) reduce the amount of the subscription to the next lower $500 multiple. The maximum amount which may be added to or refunded in an exchange transaction is $499.99. For example, if the total redemption value of the securities is $4,253.33, the presenter may request no less than $4,000 and no more than $4,500 in Series HH bonds. In the first instance, the agent will pay the presenter $253.33; in the second, it will collect $246.67 when it accepts the exchange subscription.

14. *Cancellation of redeemed securities.* [Sec. 321.13]

(a) *Paying agent stamp.* [Sec. 321.13] Each redeemed security must be cancelled by the imprint of a payment stamp. The stamp may not exceed 1⅛ inches in any dimension and must include the following information in the arrangement shown:

Paid $——— (for recording amount paid).
Name, location, and four-digit paying agent code number assigned by the Federal Reserve Bank (subject to abbreviation and arrangement by the Bank).
Date ——— (for recording actual date of payment).
By ——— (for use by agent in recording initials, or signature, codes, symbols, etc., of the officer or employee who approved or made the payment).

(b) *Procurement of stamps.* [Sec. 321.12] A paying agent may requisition stamps from the Fiscal Agency Department of a Federal Reserve Bank or purchase its own stamps. Stamps not provided by the Federal Reserve Bank must conform exactly in size and design to that prescribed or approved by the Bank. To insure legible impressions, stamps should be replaced when worn.

(c) *Imprinting payment stamp and recording payment date.* [Sec. 321.13] After determining that a security is eligible for payment, the agent should carefully imprint the payment stamp on its face in the open space immediately to the left of, and as close as possible to, the issue date and issuing agent validating data. It is important not to overprint any data on the security, particularly the serial number, since the security will subsequently be microfilmed. No other stamps shall be placed on the face of the security. Care should be taken to record legibly the correct amount, the exact date of redemption, and the signature, initials, or other identification of the agent's employee who approved or made the payment. A dark-colored ink must be used, and care should be taken not to smear the stamp impression or the writing.

(d) *Redemption-exchange.* [Sec. 321.13] Securities presented for redemption-exchange shall be stamped "PAID" in the same manner as securities redeemed for cash, but only when all elements of the transaction have been completed, including receipt of any additional cash. The exact date of redemption shall also be recorded on the exchange subscription to enable the Federal Reserve Bank to establish the proper issue date for the Series HH bonds. An officer or other authorized employee of the agent shall also sign the exchange subscription, in his or her official capacity, and furnish other requested information that identifies the paying agent.

(e) *MICR-encoding of payment information.* [Sec. 321.13] An agent that transmits and obtains settlement for redeemed securities via EZ CLEAR shall MICR-encode the redemption value in the "Amount" field on the face of each security or arrange to have this service performed by another financial institution. If the agent transmits securities in mixed cash letters, it must also MICR-encode the routing/transit number assigned to the Bureau of Public Debt's savings bonds activity in the "R/T" field on the face of all pre-October 1957 paper securities and those punch card securities on which it does not already appear. The Bureau's routing/transit number is 000090007. An agent must not MICR-encode data in the "On-Us" field for any reason. Care should be taken in repairing MICR-encoded items so as not to obliterate any data in surrounding MICR fields or elsewhere on the face of the security.

15. *Transmittal of securities to Federal Reserve Bank.* [Sec. 321.14] An agent may transmit and receive settlement for redeemed securities (a) through the Fiscal Agency Department of a Federal Reserve Bank or Branch or (b) via EZ CLEAR to the Check Department of a Federal Reserve Bank, Branch or Regional Check Processing Center. Securities to be processed via EZ CLEAR may be transmitted in separately sorted or mixed cash letters to a Federal Reserve Bank either directly or via a parent office or correspondent institution. An agent shall transmit redeemed securities under cover of the appropriate transmittal document. Securities redeemd in exchange for Series HH bonds must be transmitted for settlement at the same time that the exchange subscription is separately forwarded to the Bank's Fiscal Agency Department.

16. *Transmittal of securities to Federal Reserve Bank via fiscal agency system.* [Sec. 321.14]

(a) *Form to be used.* [Sec. 321.14] A standard transmittal letter, Form PD 2639, must be used to submit redeemed securities to the Fiscal Agency Department of a Federal Reserve Bank. The Bank will supply the forms to each agent authorized to remit directly for its own account. The forms will be preprinted to show the agent's name, location and four-digit code number, and, if so prearranged, the name and address of a correspondent member bank through which settlement is to be made. To insure proper settlement and correct fee payments, it is essential that each agent use only the forms that contain its name and agent code.

(b) *Batching redeemed securities.* [Sec. 321.14] A separate Form PD 2639 must be prepared to cover each of the following:

(1) Any combination of Series A, B, C, and D bonds and Series E bonds issued prior to October 1957 on paper stock redeemed in the same month for cash;

(2) Any combination of Series E and EE bonds and savings notes issued on punch card or machine readable paper stock redeemed in the same month for cash;

(3) Series E bonds issued prior to October 1957 on paper stock redeemed in the same month in exchange for Series HH bonds; and

(4) Any combination of Series E and EE bonds and savings notes issued on punch card or machine readable paper stock redeemed in the same month in exchange for Series HH bonds. Even if pre-October 1957 bonds issued on paper stock and punch card/machine readable paper bonds are received together in a single redemption or redemption-exchange transaction, they must be batched separately. Failure to separate and batch the securities in the above manner or to properly identify the transaction as a "Redemption" or "Exchange" on Form PD 2639 may result in an incorrect calculation of fees due the agent.

(c) *Transmittal of securities.* [Sec. 321.14] Each Form PD 2639 shall be completed and transmitted with the related securities to the

Fiscal Agency Department of a Federal Reserve Bank in accordance with the Bank's instructions.

(d) *Timing of transmittals.* [Sec. 321.14] Redeemed securities and related Forms PD 2639 may be sent to the Federal Reserve Bank each day or less frequently. However, all redeemed securities on hand on the last business day of a month must be forwarded no later than the next business day. Securities redeemed in different months should never be combined in the same batch.

(e) *Settlement for and audit of paid securities.* [Sec. 321.14]

(1) *Settlement.* [Sec. 321.14] The Federal Reserve Bank will make immediate settlement for the total redemption value of the redeemed securities in each batch, as recorded on Form PD 2639. The batch will then be sent to the Bureau of the Public Debt for audit. Settlement may be made by check or by credit to the reserve or clearing account of the agent or a designated correspondent financial institution. The amount will be subject to adjustment if discrepancies are discovered after settlement has been made with the agent.

(2) *Audit and adjustment.* [Sec. 321.14] The Bureau of the Public Debt will audit all redeemed securities and related Forms PD 2639 as promptly as possible. It will, in due course, notify each agent, through the Federal Reserve Bank, of any adjustments required. The Bank will adjust any amounts previously credited to the agent. If an agent discovers an error before the audit is completed, it should notify the Bank immediately.

17. *Transmittal of securities to Federal Reserve Bank via EZ CLEAR.* [Sec. 321.14]

(a) *Form to be used.* [Sec. 321.14] The presenting institution shall transmit all redeemed securities to the Check Department of a Federal Reserve Bank or Branch or Regional Check Processing Center in accordance with the Bank's instructions. Except as otherwise provided in the Bank's instructions and operating circulars, cash letters may be comprised of one or more bundles of separately sorted redeemed securities (separately sorted cash letter) or one or more bundles of mixed items (mixed cash letter). The cash letter shall show the name, address, and ABA number of the presenting institution, the date of presentation, the total number of pieces transmitted, the value of each of the bundles in the cash letter, and the total value of the cash letter.

(b) *Composition of cash letters.* [Sec. 321.14] Series A, B, C, D, E, and EE bonds and savings notes redeemed for cash or on exchange may be commingled in (1) mixed cash letters containing commercial checks and other items or (2) separately sorted cash letters containing only redeemed securities. Each cash letter shall also contain a listing prepared in accordance with the Federal Reserve Bank's instructions.

(c) *Transmittal of securities.* [Sec. 321.14] Cash letters containing redeemed securities shall be transmitted to a Federal Reserve Bank in accordance with the Bank's circulars and instructions.

(d) *Timing of transmittals.* [Sec. 321.14] Cash letters containing redeemed securities should be transmitted according to the same schedule used for other commercial check collection system items.

(e) *Settlement for the audit of paid securities.*

(1) *Settlement.* [Sec. 321.14] The Federal Reserve Bank will make immediate settlement for the total value of redeemed securities as shown on each cash letter. Settlement will be made by a credit to the reserve or clearing account of the agent or designated correspondent institution. Data concerning redeemed security transmittals will be sent to the Bureau of the Public Debt for audit. The amount will be subject to adjustment if discrepancies are discovered after settlement has been made.

(2) *Audit and adjustment.* [Sec. 321.14] The Bureau of the Public Debt will audit all redemption data received from the Federal Reserve Bank as promptly as possible. Each presenting institution will, in due course, be notified by the Bank of any adjustments required. The Bank will adjust any amounts previously credited to the agent or designated correspondent institution. If a presenting institution discovers an error before the audit is completed, it should notify the Bank immediately.

18. *Record of securities paid.* [Secs. 321.14 and 321.24] A record of the serial number of an amount paid for each security must be retained by the agent so that settlement can be made if the security is lost in transit. For that purpose, agents are authorized to microfilm the face and back of each security they redeem. Such film records shall be kept confidential and prints therefrom may be made only with the permission of the Bureau of the Public Debt or a Federal Reserve Bank.

Subpart E—Losses Resulting from Erroneous Payments

19. *Report of erroneous payment.* [Sec. 321.16] Any erroneous payment that comes to the attention of an agent should be reported immediately to the Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328. The nearest office of the Secret Service should also be notified if the agent believes that a security presented for redemption may be counterfeit or stolen, or if the circumstances of the presentation are suspicious in any other respect.

20. *Notice to agent.* [Sec 321.17(a)] The paying agent will be notified if an erroneous payment has occurred. The notice will generally be in writing from the Bureau of the Public Debt. If an investigation is to be made, the notice will enable the agent to notify its bonding company, assemble pertinent information concerning the transaction for presentation during the investigation, and take any other action it deems appropriate to protect its interest.

21. *Determination of liability.* [Sec 321.18] Upon completion of the investigation, the Bureau of the Public Debt will examine the information it has developed for the purpose of determining whether or not an agent may be relieved of liability for any loss that may have resulted. If it cannot be relieved of liability, the agent will be asked to reimburse the Treasury promptly. Any amount not paid within 30 days will be subject to the assessment of late charges and other administrative actions under the provisions of the Federal Claims Collection Standards (4 CFR Parts 101–105). Reconsideration of a determination of liability will be made in any case where an agent so requests and presents additional evidence and information regarding the transaction.

22. *Relief for lack of timely notice.* [Sec 321.18] A paying agent will be relieved of liability to the United States for any loss resulting from the erroneous payment of securities where the Secretary of the Treasury, or his designee, determines that written notice of either liability or potential liability has not been given to the agent within ten years of the date of the erroneous payment.

Subpart F—Forwarding Items

23. *Securities forwarded to Federal Reserve Bank for payment.* [Sec 321.22]

(a) *General.* [Sec 321.22] Securities presented for cash payment or redemption-exchange, that an agent is not authorized to redeem, shall be forwarded to the Fiscal Agency Department of a Federal Reserve Bank, with all required supporting documentation and any necessary payment instructions.

(b) *Signature to and certification of request for payment.* [Sec 321.22] An agent qualified under Part 330 (Circular No. 888) may elect to specially endorse securities for presenters in lieu of requiring completion of the requests for payment. Unless this procedure is used, the presenter must sign the request on each security and the signature must be certified. Before completing the certification, the agent should establish the identity of the presenter. The Treasury's identification guidelines should be followed in view of the potential liability that attaches to such certification.

(c) *Address and Taxpayer identifying number.* [Sec 321.22] In every case, a current address shall be furnished. The presenter's taxpayer identifying number (social security number or employer identification number) shall be provided if it is not included in the inscription.

(d) *Redemption-exchange.* [Sec 321.22] For redemption-exchange transactions submitted as forwarding items, the issue date of the Series HH bonds will be the first day of the month in which a correctly completed and signed exchange subscription and full payment are received by the Federal Reserve Bank.

(e) *Partial redemption.* [Sec 321.9(1) and 321.22] partial redemption of a security other than a $25 Series E bond or savings note, a $50 Series EE bond, or a $500 Series H or HH bond may be made by a Federal Reserve Bank. The amount paid must be equal to the redemption value of one or more authorized denominations on the date of the transaction. If a security is received by an agent for partial redemption, the words "to the extent of $ (face amount) and reissue of the remainder" should be added to the first sentence of the request for payment. The request should then be completed in the regular manner and the signature of the presenter certified. The security shall be forwarded to the Fiscal Agency Department of a Federal Reserve Bank.

Subpart G—Miscellaneous Provisions

24. *Fees and charges.* [Sec 321.23] Service fees are not intended to compensate paying agents for the reporting of interest paid as part of the redemption value of securities as required by Federal Tax Regulations (26 CFR 1.0649–4).

(a) *Fiscal agency system transmittals.* [Sec 321.23] Fee will be paid by Treasury for securities an agent redeems for cash or on exchange during each calender quarter. Such fees will be paid to the agent by check or ACH. Inquiries should be directed to the Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328.

(b) *EZ CLEAR transmittals.* [Sec 321.23] Fees will be paid by the Federal Reserve Bank to the presenting institution for securities redeemed during each calendar month that are submitted in separately sorted cash letters; such fee payments will be made only by ACH. No fees will be paid for securities received by the Bank in mixed cash letters. The Bank will charge the presenting institution for processing redeemed securities received in mixed cash letters. Inquiries regarding separately sorted cash letters should be directed to the Pittsburgh Branch, Federal Reserve Bank of Cleveland, P.O. Box 867, Pittsburgh, Pennsylvania 15230–0867. Inquiries regarding mixed cash letters should be directed to the Federal Reserve Bank or Branch or Regional Check Processing Center where the cash letters were directed.

25. *Claims on account of lost securities.* [Sec 321.24] If a security redeemed by an agent is lost, stolen, or destroyed while in the custody of the agent, or in transit prior to settlement or audit, relief will be considered, provided the security can be identified by serial number. (See paragraph 18 of this Appendix regarding the maintenance of records of redeemed securities). Claims for securities submitted through the fiscal agency system should be submitted to the Fiscal Agency Department of a Federal Reserve Bank on Form PD 2517 with a photocopy of the security, if available. The agent will be advised when the claim has been adjudicated. If a redeemed security presented via EZ CLEAR is lost prior to settlement, the presenting institution should resubmit a photocopy of the security to obtain settlement in accordance with the Bank's instructions.

26. *Additional information.* [Sec 321.25] Requests for additional advice, clarification of the payment regulations or this Appendix, and other matters relating to the actions of a financial institution as paying agent should generally be made to the Federal Reserve Bank.

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BILLING CODE 4810–10–M

31 CFR Part 330

[Department of the Treasury Circular No. 888, Fifth Revision]

Regulations Governing Payment Under Special Endorsement of United States Savings Bonds and United States Savings Notes (Freedom Shares)

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: Department of the Treasury Circular No. 888 (31 CFR Part 330) contains the regulations governing the payment of United States Savings Bonds and United States Savings Notes (Freedom Shares) under special endorsement. Currently, paying agents may not redeem savings bonds and notes by special endorsement for surviving beneficiaries. The Fifth Revision of this Circular is necessary to provide additional authority to qualified paying agents to redeem savings bonds and notes for surviving beneficiaries, thereby streamlining the process.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Dean A. Adams, Assistant Chief Counsel, Bureau of the Public Debt, Savings Bond Operations Office, Parkersburg, WV 26106–1328, (304) 420–6505.

SUPPLEMENTARY INFORMATION: Department of the Treasury Circular No. 888, Fourth Revision, authorized qualified agents to use a special endorsement, in lieu of obtaining the owner's signature to the request for payment, for certain series of savings bonds and for savings notes. The special endorsement authority applies to savings bonds of Series A, B, C, D, E, and EE, as well as notes. Qualified agents are also authorized to redeem for cash, or in exchange for Series HH bonds, certain classes of specially endorsed securities.

The Fifth Revision of this Circular expands the authority of qualified agents to use the special endorsement procedures, including the redemption of bonds and/or notes presented by a surviving beneficiary. Circular No. 750 and its Appendix (31 CFR Part 321) are also being revised to include this authority.

Specially endorsed securities that a qualified agent may redeem for cash, or in exchange for Series HH bonds, are restricted to those securities an agent is otherwise authorized to redeem under the provisions of Department of the Treasury Circular No. 750, Fourth Revision. These include (1) Series A, B, C, D, E, and EE savings bonds, and notes, presented for cash redemption by an individual named as owner or co-owner, or as beneficiary who has survived the death of the owner, and (2) eligible Series E and EE bonds and savings notes presented for redemption-exchange by an individual who is the owner, co-owner, or surviving beneficiary.

All agents currently qualified to exercise the special endorsement authority are automatically requalified under the provisions of the Fifth Revision.

Apart from the changes cited, the Fifth Revision does not differ substantially from the Fourth Revision. Differences between the two revisions appear in §§ 330.1, 330.3, 330.5, and 330.6, which have been revised to include appropriate references to the authority to pay bonds for surviving beneficiaries. Also, §§ 330.7 and 330.8 have been revised to clarify transmittal instructions.

Procedural Requirements

This rule is not considered a "major rule" for purposes of Executive Order 12291. A regulatory impact analysis, therefore, is not required.

The notice and comment provisions of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

This regulation has been determined by the Office of Management and Budget not to have information collection requirements requiring approval pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501).

List of Subjects in 31 CFR Part 330

Banks and banking, Federal Reserve System, Government securities.

Dated: September 22, 1988.

Gerald Murphy,

Fiscal Assistant Secretary.

In 31 CFR Chapter II, Part 330, Department of the Treasury Circular No. 888, Fourth Revision, dated July 1, 1980, is hereby revised and reissued as Department of the Treasury Circular No. 888, Fifth Revision, as follows:

PART 330—REGULATIONS GOVERNING PAYMENT UNDER SPECIAL ENDORSEMENT OF UNITED STATES SAVINGS BONDS AND UNITED STATES SAVINGS NOTES (FREEDOM SHARES)

Sec.

Sec.

Authority: 31 U.S.C. 3105 and 3126.

§ 330.0 Purpose.

The regulations in this Part establish a procedure under which qualified paying agents may specially endorse United States Savings Bonds of certain series and United States Savings Notes (Freedom Shares), and either redeem the securities so endorsed, or forward them to a Federal Reserve Bank for redemption, with or without the owner's signature to the requests for payment.

§ 330.1 Definition of terms.

As used in this Part:

(a) "Federal Reserve Bank" or "Bank" refers to the Federal Reserve Bank of the district in which a paying agent is located, and includes the branch(es) of the Bank, where appropriate.

(b) "Owner(s)" means the person(s) named as registered owner or coowners on a bond or note, or as the designated beneficiary who has succeeded to ownership of the bond or note upon the death of the owner. For the purposes of special endorsement, but not payment, by a qualified agent, the term may also include fiduciaries, corporations, partnerships, associations, and other entities named on a security, where such registration is authorized.

(c) "Paying agent(s)" or "agent(s)" refers to an eligible financial institution qualified under the provisions of this Part to specially endorse securities and qualified, under the provisions of Department of the Treasury Circular No. 750, current revision (31 CFR Part 321), to redeem eligible savings bonds and notes. The term includes the branches of a qualified agent that redeem bonds and notes and account directly to a Federal Reserve Bank.

(d) "Redemption" and "payment" are used interchangeably for payment of a bond or note in accordance with the terms of its offering and the regulations governing it, and include "redemption-exchange".

(e) "Redemption-exchange" means any authorized redemption of eligible securities for the purpose of applying the proceeds in payment for other securities offered in exchange by the Treasury.

(f) "Savings bond(s)" or "bond(s)" means a United States Savings Bond of Series A, B, C, D, E, or EE.

(g) "Savings notes(s)" or "notes(s)" means a United States Savings Note (Freedom Share).

(h) "Security" or "securities" means a savings bond or note, as defined in paragraphs (f) and (g) of this section.

(i) "Special endorsement" means a procedure under which a security is redeemed by an agent, qualified under the provisions of this Part, for cash or on redemption-exchange (or forwarded for redemption to a Federal Reserve Bank, where appropriate), utilizing a special stamp placed on the security in lieu of a request for payment signed by the owner.

§ 330.2 Qualification for use of special endorsement.

(a) *Application for authority.* Any financial institution qualified as a paying agent of savings bonds and notes under the provisions of Department of the Treasury Circular No. 750, current revision, may establish its eligibility to employ the special endorsement procedure by executing and submitting the appropriate application-agreement form to the Federal Reserve Bank. In executing the form, the agent certifies that, by duly executed resolution of its governing board or committee, it has been authorized to apply for the privilege of paying and processing securities in accordance with the provisions and conditions of this Part (Circular No. 888, including all supplements, amendments, and revisions, and any related instructions). If the application is approved, the Federal Reserve Bank will issue a certificate of qualification.

(b) *Agents previously qualified.* Paying agents qualified under previous revisions of this Part are authorized to continue to act without requalification. They shall, however, be subject to the terms and conditions of the previously executed application and these regulations in the same manner and to the same extent as though they had requalified hereunder.

(c) *Termination of qualification.* The Secretary of the Treasury reserves the right to withdraw the special endorsement authority from any paying agent at any time. Such authority will also be terminated at any time at the request of the paying agent. In either event, formal notice of the termination shall be given to the agent in writing by the Federal Reserve Bank.

§ 330.3 Special endorsement of securities.

(a) *Form of endorsement.* Each security processed under the provisions of this Part shall bear the following endorsement:

> Request by owner and validity of transaction guaranteed in accordance with T.D. Circular No. 888, as revised. (Name, location, and paying agent code number assigned by Federal Reserve Bank.)

This endorsement must be legibly impressed in black or other dark-colored ink on the back of the security in the space provided for the owner to request payment.

(b) *Endorsement stamps.* Endorsement stamps may be obtained from the Federal Reserve Bank or, with its approval, purchased by the agent. Requests for stamps to be furnished or approved by the Bank must be made in writing by an officer of the paying agent. Stamps procured by an agent may not exceed a space bounded by 1¾ inches vertically and 3 inches horizontally. They must follow exactly the wording prescribed. They may also include space for the transaction date and the initials or signature of the officer or employee authorized to approve the transaction.

(c) *Securities registered in coownership or beneficiary form.* In the case of securities registered in coownership or beneficiary form, the agent shall indicate which person, whose name is inscribed thereon, requested payment or exchange by encircling in black or other dark-colored ink the name of that person (or both coowners, if the request is joint) in the inscription on the face of the securities.

(d) *Restrictions.* Under no circumstances shall the special endorsement procedure be used to give effect to a transfer, hypothecation or pledge of a security, or to permit payment to any person other than the owner, coowner, or, where appropriate, beneficiary. Violation of these provisions will be cause for withdrawal of an agent's authority to process securities under the special endorsement procedure, and may involve additional penalties if the circumstances warrant such action.

§ 330.4 Guaranty given to the United States.

By the act of paying or presenting to a Federal Reserve Bank, for payment or exchange, a security on which it has affixed the special endorsement, a payment agent shall be deemed to have:

(a) Unconditionally guaranteed to the United States the validity of the transaction, including the identification of the owner and the disposition of the proceeds or the new bonds, as the case

may be, in accordance with the presenter's instruction;

(b) Assumed complete and unconditional liability to the United States for any loss which may be incurred by the United States as a result of the transaction; and

(c) Unconditionally agreed to make prompt reimbursement for the amount of any loss, upon request of the Department of the Treasury.

§ 330.5 Evidence of owner's or beneficiary's authorization to affix special endorsement.

(a) *Form of authorization.* The Treasury does not prescribe the form or type of instructions an agent must obtain from each owner, coowner or beneficiary in order to use the special endorsement procedure. In the case of a redemption-exchange, the owner, coowner or beneficiary authorized to request the exhange (as specified in Circular No. 750, §321.8(b)), must sign the exchange subscription even though the securities are specially endorsed.

(b) *Securities in coownership or beneficiary form.* Securities registered in coownership or beneficiary form should be accepted for special endorsement only for immediate payment or exchange. Acceptance of bonds and notes for processing at some future date should be avoided as authority to utilize such endorsement generally expires upon the death of the owner or coowner on whose behalf securities were to be paid. Requests for payment of securities present by the surviving beneficiary must be supported by a certificate of death for the owner named thereon, as required by Circular No. 750, Part 321 and the Appendix to that part.

(c) *Record of authorization.* Agents should maintain such records as may be necessary to establish the receipt of, and compliance with, instructions supporting the special endorsement. If the agent elects to make notations on the backs of the securities to serve as a record, the Bureau of the Public Debt will undertake to produce, on request, photocopies of such securities at any time up to ten years after the redemption date. However, the Bureau does not not assume responsibility for the adequacy of such notations, for the legibility of any photocopy, or for failure to produce a photocopy from its records.

§ 330.6 Securities eligible for special endorsement.

(a) *General authority.* A qualified agent is authorized to affix the special endorsement to:

(1) Savings bonds of Series A, B, C, D, E, and EE and savings notes to be redeemed for cash, and (2) eligible savings bonds of Series E and EE and savings notes to be redeemed in exchange for Series HH bonds under the provisions of Circular No. 2–80 (31 CFR Part 352).

(b) *Securities which may not be specially endorsed.* The special endorsement procedure may not be used in any case in which payment or exchange:

(1) Is requested by a parent on behalf of a minor child named on the security, or (2) requires documentary evidence, under regulations contained in Circulars Nos. 530 and 3–80 (31 CFR Parts 315 and 353, respectively), except as indicated in § 330.5.

(c) *Securities owned by nonresident aliens.* As securities owned by a nonresident alien individual, or a nonresident foreign corporation, partnership, or association, may be subject to the nonresident alien withholding tax, bonds and notes held or received by an agent for the account of such owners must be forwarded to the Federal Reserve Bank for redemption, even though the agent may specially endorse the securities.

§ 330.7 Payment or redemption-exchange by agent.

Specifically endorsed securities may be paid in cash or redeemed in exchange for Series HH bonds pursuant to the authority and subject, in all other respects, to the provisions of Circular No. 750, current revision, its Appendix, and any other instructions issued under its authority. Each specially endorsed bond or note paid by an agent must have the agent's payment stamp imprinted on its face and show the date and amount paid. Securities so paid should be combined with other securities paid under that Circular and forwarded to the Federal Reserve Bank for settlement. Securities redeemed on exchange must be submitted to the Federal Reserve Bank separately from, but at the same time as, an exchange subscription and any remittance covering the issue price of the Series HH bonds.

§ 330.8 Payment or redemption-exchange by Federal Reserve Bank.

Specially endorsed securities which an agent is not authorized to redeem for cash or on exchange should be forwarded to the Fiscal Agency Department of the Federal Reserve Bank. The transmittals must be accompanied by appropriate instructions governing the transaction and the disposition of the redemption checks or new bonds, as the case may be. The securities must be kept separate from others the agent has paid and must be submitted in accordance with instructions, issued by the Bank.

§ 330.9 Fiscal agents.

The Federal Reserve Banks, as fiscal agents of the United States, are authorized to perform such services as may be requested by the Secretary of the Treasury, or his designee, in connection with this part.

§ 330.10 Modifications of other circulars.

The provisions of this part shall be considered as amending and supplementing: Department of the Treasury Circulars Nos. 530, 653, and 750 (31 CFR Parts 315, 316, and 321, respectively), and Department of the Treasury Circulars, Public Debt Series Nos. 1–80, 2–80, 3–80, and 3–67 (31 CFR Parts 351, 352, 353, and 342, respectively), and any revisions thereof, and those Circulars are hereby modified to the extent necessary to accord with the provisions of this part.

§ 330.11 Supplements, amendments, or revisions.

The Secretary of the Treasury may, at any time, or from time to time, revise, supplement, amend or withdraw, in whole or in part, the provisions of this part.

[FR Doc. 88–21985 Filed 9–22–88; 12:43 pm]
BILLING CODE 4810–10–M

31 CFR Parts 316, 342, and 351

[Department of the Treasury Circulars No. 653, Tenth Revision; Public Debt Series No. 3–67, Second Revision; and No. 1–80, Second Revision]

U.S. Savings Bonds and Notes; Tables Reflecting Investment Yields and Maturity Periods

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice providing update of tables showing the redemption values and investment yields of United States Savings Bonds/Notes.

SUMMARY: This notice updates the tables set forth in the offering circulars for Series E/EE savings bonds and savings notes. The tables reflect the redemption values and investment yields for accrual dates occurring April 1, 1988 through October 1, 1988, for Series E/EE savings bonds and savings notes.

EFFECTIVE DATE: September 26, 1988.

FOR FURTHER INFORMATION CONTACT: Jacqueline L. Jackson, Attorney Adviser, Office of the Chief Counsel, Bureau of the Public Debt, Washington, DC 20239–0001, (202) 376–4320.

SUPPLEMENTARY INFORMATION: This notice updates the tables showing the redemption values and investment yields of Series E/EE savings bonds and savings notes. Department of the Treasury Circular No. 653 (Series E), Public Debt Series No. 1–80 (Series EE) and Public Debt Series No. 3–67 (Savings Notes) are hereby supplemented by the addition of tables showing the redemption values and investment yields for accrual dates occurring November 1, 1988, through April 1, 1989. The tables reflect the market-based variable yields described in the offering circulars at 31 CFR 316.8(b)(2)(C)(iii) for Series E savings bonds, 31 CFR 351.2(f)(2) for Series EE savings bonds, and 31 CFR 342.2a(b)(2) for savings notes. Further, the values shown apply only where the securities are actually paid. They do not become the basis for future accruals.

List of Subjects in 31 CFR Parts 317 and 321

Banks and banking, Federal Reserve System, Government securities.

Dated: September 22, 1988.

Gerald Murphy,

Fiscal Assistant Secretary.

Accordingly, pursuant to the authority of Department of the Treasury Circular No. 653, Tenth Revision (31 CFR Part 316), Public Debt Series No. 3–67, Second Revision (31 CFR Part 342), and No. 1–80, Second Revision (31 CFR Part 351), the following updated tables are provided:

BILLING CODE 4810-10-M

U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING NOV 1, 1988 THRU APR 1, 1989

ISSUE PRICE	$7.50	$18.75	$37.50	$75.00	$150.00	$375.00	$750.00
DENOMINATION	10.00	25.00	50.00	100.00	200.00	500.00	1000.00

ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)							ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
11/48 THRU 11/48	11/1/88	53.80	134.51	269.02	538.04	1076.08	2690.20	5380.40	8.50%	8.50%	8.50%
12/48 THRU 4/49	12/1/88	54.68	136.69	273.38	546.76	1093.52	2733.80	5467.60	8.50%	8.50%	8.50%
5/49 THRU 5/49	11/1/88	52.96	132.39	264.78	529.56	1059.12	2647.80	5295.60	8.50%	8.50%	8.50%
6/49 THRU 10/49	12/1/88	55.19	137.97	275.94	551.88	1103.76	2759.40	5518.80	8.50%	8.50%	8.50%
11/49 THRU 11/49	11/1/88	53.45	133.63	267.26	534.52	1069.04	2672.60	5345.20	8.50%	8.50%	8.50%
12/49 THRU 4/50	12/1/88	54.13	135.33	270.66	541.32	1082.64	2706.60	5413.20	8.50%	8.50%	8.50%
5/50 THRU 5/50	11/1/88	52.42	131.06	262.12	524.24	1048.48	2621.20	5242.40	8.50%	8.50%	8.50%

(1) ACCRUAL DATE SHOWN IS FOR BONDS OF THE FIRST ISSUE DATE LISTED -- ADD ONE MONTH FOR EACH SUCCESSIVE MONTH OF ISSUE.

(2) ACTUAL INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.

(3) MARKET BASED VARIABLE INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.

(4) GUARANTEED MINIMUM YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.

NOTE: ADDITIONAL INVESTMENT INFORMATION IS OBTAINABLE FROM FEDERAL RESERVE BANKS AND THE BUREAU OF THE PUBLIC DEBT, SAVINGS BOND OPERATIONS OFFICE, 200 THIRD ST., PARKERSBURG, WV 26102-1328.

U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING NOV 1, 1988 THRU APR 1, 1989

ISSUE PRICE	$18.75	$37.50	$75.00	$150.00	$375.00	$750.00
DENOMINATION	25.00	50.00	100.00	200.00	500.00	1000.00

ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)						ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
6/50 THRU 10/50	12/1/88	132.85	265.70	531.40	1062.80	2657.00	5314.00	8.50%	8.50%	8.50%
11/50 THRU 11/50	11/1/88	128.68	257.36	514.72	1029.44	2573.60	5147.20	8.50%	8.50%	8.50%
12/50 THRU 12/50	12/1/88	130.60	261.20	522.40	1044.80	2612.00	5224.00	8.50%	8.50%	8.50%
1/51 THRU 4/51	1/1/89	130.60	261.20	522.40	1044.80	2612.00	5224.00	8.50%	8.50%	8.50%
5/51 THRU 5/51	11/1/88	126.49	252.98	505.96	1011.92	2529.80	5059.60	8.50%	8.50%	8.50%
6/51 THRU 6/51	12/1/88	128.37	256.74	513.48	1026.96	2567.40	5134.80	8.50%	8.50%	8.50%
7/51 THRU 10/51	1/1/89	128.37	256.74	513.48	1026.96	2567.40	5134.80	8.50%	8.50%	8.50%
11/51 THRU 11/51	11/1/88	124.31	248.62	497.24	994.48	2486.20	4972.40	8.50%	8.50%	8.50%
12/51 THRU 12/51	12/1/88	126.11	252.22	504.44	1008.88	2522.20	5044.40	8.50%	8.50%	8.50%
1/52 THRU 4/52	1/1/89	126.11	252.22	504.44	1008.88	2522.20	5044.40	8.50%	8.50%	8.50%

(1) ACCRUAL DATE SHOWN IS FOR BONDS OF THE FIRST ISSUE DATE LISTED -- ADD ONE MONTH FOR EACH SUCCESSIVE MONTH OF ISSUE.
(2) ACTUAL INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.
(3) MARKET BASED VARIABLE INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.
(4) GUARANTEED MINIMUM YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.
NOTE: ADDITIONAL INVESTMENT INFORMATION IS OBTAINABLE FROM FEDERAL RESERVE BANKS AND THE BUREAU OF THE PUBLIC DEBT, SAVINGS BOND OPERATIONS OFFICE, 200 THIRD ST., PARKERSBURG, WV 26102-1328.

U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING NOV 1, 1988 THRU APR 1, 1989

ISSUE PRICE	$18.75	$37.50	$75.00	$150.00	$375.00	$750.00	$7500.
DENOMINATION	25.00	50.00	100.00	200.00	500.00	1000.00	10000.

ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)							ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
5/52 THRU 5/52	1/1/89	125.63	251.26	502.52	1005.04	2512.60	5025.20	50252.	8.50%	8.50%	8.50%
6/52 THRU 8/52	2/1/89	125.92	251.84	503.68	1007.36	2518.40	5036.80	50368.	8.50%	8.50%	8.50%
9/52 THRU 9/52	11/1/88	121.96	243.92	487.84	975.68	2439.20	4878.40	48784.	8.50%	8.50%	8.50%
10/52 THRU 10/52	12/1/88	123.48	246.96	493.92	987.84	2469.60	4939.20	49392.	8.50%	8.50%	8.50%
11/52 THRU 11/52	1/1/89	123.48	246.96	493.92	987.84	2469.60	4939.20	49392.	8.50%	8.50%	8.50%
12/52 THRU 2/53	2/1/89	123.81	247.62	495.24	990.48	2476.20	4952.40	49524.	8.50%	8.50%	8.50%
3/53 THRU 3/53	11/1/88	119.90	239.80	479.60	959.20	2398.00	4796.00	47960.	8.50%	8.50%	7.50%
4/53 THRU 4/53	12/1/88	121.38	242.76	485.52	971.04	2427.60	4855.20	48552.	8.50%	8.50%	7.50%
5/53 THRU 5/53	1/1/89	121.38	242.76	485.52	971.04	2427.60	4855.20	48552.	8.50%	8.50%	7.50%
6/53 THRU 8/53	2/1/89	121.68	243.36	486.72	973.44	2433.60	4867.20	48672.	8.50%	8.50%	7.50%
9/53 THRU 9/53	11/1/88	117.84	235.68	471.36	942.72	2356.80	4713.60	47136.	8.50%	8.50%	7.59%
10/53 THRU 10/53	12/1/88	119.34	238.68	477.36	954.72	2386.80	4773.60	47736.	8.50%	8.50%	7.58%
11/53 THRU 11/53	1/1/89	119.34	238.68	477.36	954.72	2386.80	4773.60	47736.	8.50%	8.50%	7.58%
12/53 THRU 2/54	2/1/89	119.65	239.30	478.60	957.20	2393.00	4786.00	47860.	8.50%	8.50%	7.58%
3/54 THRU 3/54	11/1/88	115.89	231.78	463.56	927.12	2317.80	4635.60	46356.	8.50%	8.50%	7.66%
4/54 THRU 4/54	12/1/88	117.36	234.72	469.44	938.88	2347.20	4694.40	46944.	8.50%	8.50%	7.67%
5/54 THRU 5/54	1/1/89	117.36	234.72	469.44	938.88	2347.20	4694.40	46944.	8.50%	8.50%	7.67%
6/54 THRU 8/54	2/1/89	117.67	235.34	470.68	941.36	2353.40	4706.80	47068.	8.50%	8.50%	7.67%
9/54 THRU 9/54	11/1/88	113.96	227.92	455.84	911.68	2279.20	4558.40	45584.	8.50%	8.50%	7.75%
10/54 THRU 10/54	12/1/88	115.48	230.96	461.92	923.84	2309.60	4619.20	46192.	8.50%	8.50%	7.75%
11/54 THRU 11/54	1/1/89	115.48	230.96	461.92	923.84	2309.60	4619.20	46192.	8.50%	8.50%	7.75%
12/54 THRU 2/55	2/1/89	115.76	231.52	463.04	926.08	2315.20	4630.40	46304.	8.50%	8.50%	7.75%
3/55 THRU 3/55	11/1/88	112.09	224.18	448.36	896.72	2241.80	4483.60	44836.	8.50%	8.50%	7.84%
4/55 THRU 4/55	12/1/88	113.55	227.10	454.20	908.40	2271.00	4542.00	45420.	8.50%	8.50%	7.83%
5/55 THRU 5/55	1/1/89	113.55	227.10	454.20	908.40	2271.00	4542.00	45420.	8.50%	8.50%	7.83%
6/55 THRU 8/55	2/1/89	113.85	227.70	455.40	910.80	2277.00	4554.00	45540.	8.50%	8.50%	7.83%
9/55 THRU 9/55	11/1/88	110.27	220.54	441.08	882.16	2205.40	4410.80	44108.	8.50%	8.50%	7.92%
10/55 THRU 10/55	12/1/88	111.76	223.52	447.04	894.08	2235.20	4470.40	44704.	8.50%	8.50%	7.92%
11/55 THRU 11/55	1/1/89	111.76	223.52	447.04	894.08	2235.20	4470.40	44704.	8.50%	8.50%	7.92%
12/55 THRU 2/56	2/1/89	112.04	224.08	448.16	896.32	2240.80	4481.60	44816.	8.50%	8.50%	7.92%
3/56 THRU 3/56	11/1/88	108.51	217.02	434.04	868.08	2170.20	4340.40	43404.	8.50%	8.50%	8.00%
4/56 THRU 4/56	12/1/88	111.56	223.12	446.24	892.48	2231.20	4462.40	44624.	8.50%	8.50%	8.00%
5/56 THRU 5/56	1/1/89	111.56	223.12	446.24	892.48	2231.20	4462.40	44624.	8.50%	8.50%	8.00%
6/56 THRU 8/56	2/1/89	111.81	223.62	447.24	894.48	2236.20	4472.40	44724.	8.50%	8.50%	8.00%
9/56 THRU 9/56	11/1/88	108.28	216.56	433.12	866.24	2165.60	4331.20	43312.	8.50%	8.50%	8.08%
10/56 THRU 10/56	12/1/88	109.53	219.06	438.12	876.24	2190.60	4381.20	43812.	8.50%	8.50%	8.09%
11/56 THRU 11/56	1/1/89	109.53	219.06	438.12	876.24	2190.60	4381.20	43812.	8.50%	8.50%	8.09%
12/56 THRU 1/57	2/1/89	110.17	220.34	440.68	881.36	2203.40	4406.80	44068.	8.50%	8.50%	8.08%
2/57 THRU 5/57	1/1/89	111.67	223.34	446.68	893.36	2233.40	4466.80	44668.	8.50%	8.50%	8.00%

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NOTE: ADDITIONAL INVESTMENT INFORMATION IS OBTAINABLE FROM FEDERAL RESERVE BANKS AND THE BUREAU OF THE PUBLIC DEBT, SAVINGS BOND OPERATIONS OFFICE, 200 THIRD ST., PARKERSBURG, WV 26102-1328.

U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING NOV 1, 1988 THRU APR 1, 1989

ISSUE PRICE	$18.75	$37.50	$75.00	$150.00	$375.00	$750.00	$7500.			
DENOMINATION	25.00	50.00	100.00	200.00	500.00	1000.00	10000.			
ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)							ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
6/57 THRU 6/57	11/1/88	108.63	217.26	434.52	869.04	2172.60	4345.20	43452.	8.50%	8.50%	8.08%
7/57 THRU 7/57	12/1/88	109.88	219.76	439.52	879.04	2197.60	4395.20	43952.	8.50%	8.50%	8.08%
8/57 THRU 11/57	1/1/89	109.88	219.76	439.52	879.04	2197.60	4395.20	43952.	8.50%	8.50%	8.08%
12/57 THRU 12/57	11/1/88	106.88	213.76	427.52	855.04	2137.60	4275.20	42752.	8.50%	8.50%	7.66%
1/58 THRU 1/58	12/1/88	108.15	216.30	432.60	865.20	2163.00	4326.00	43260.	8.50%	8.50%	7.66%
2/58 THRU 5/58	1/1/89	108.15	216.30	432.60	865.20	2163.00	4326.00	43260.	8.50%	8.50%	7.66%
6/58 THRU 6/58	11/1/88	105.18	210.36	420.72	841.44	2103.60	4207.20	42072.	8.50%	8.50%	7.87%
7/58 THRU 7/58	12/1/88	106.40	212.80	425.60	851.20	2128.00	4256.00	42560.	8.50%	8.50%	7.88%
8/58 THRU 11/58	1/1/89	106.40	212.80	425.60	851.20	2128.00	4256.00	42560.	8.50%	8.50%	7.88%
12/58 THRU 12/58	11/1/88	103.50	207.00	414.00	828.00	2070.00	4140.00	41400.	8.50%	8.50%	8.08%
1/59 THRU 1/59	12/1/88	104.74	209.48	418.96	837.92	2094.80	4189.60	41896.	8.50%	8.50%	8.08%
2/59 THRU 5/59	1/1/89	104.74	209.48	418.96	837.92	2094.80	4189.60	41896.	8.50%	8.50%	8.08%
6/59 THRU 7/59	3/1/89	104.44	208.88	417.76	835.52	2088.80	4177.60	41776.	8.50%	8.50%	7.66%
8/59 THRU 8/59	11/1/88	101.14	202.28	404.56	809.12	2022.80	4045.60	40456.	8.50%	8.50%	7.87%
9/59 THRU 9/59	12/1/88	102.28	204.56	409.12	818.24	2045.60	4091.20	40912.	8.50%	8.50%	7.87%
10/59 THRU 11/59	1/1/89	102.28	204.56	409.12	818.24	2045.60	4091.20	40912.	8.50%	8.50%	7.87%
12/59 THRU 1/60	3/1/89	102.50	205.00	410.00	820.00	2050.00	4100.00	41000.	8.50%	8.50%	7.88%
2/60 THRU 2/60	11/1/88	99.28	198.56	397.12	794.24	1985.60	3971.20	39712.	8.50%	8.50%	8.08%
3/60 THRU 3/60	12/1/88	100.42	200.84	401.68	803.36	2008.40	4016.80	40168.	8.50%	8.50%	8.08%
4/60 THRU 5/60	1/1/89	100.42	200.84	401.68	803.36	2008.40	4016.80	40168.	8.50%	8.50%	8.08%
6/60 THRU 7/60	3/1/89	100.58	201.16	402.32	804.64	2011.60	4023.20	40232.	8.50%	8.50%	8.08%
8/60 THRU 8/60	11/1/88	97.44	194.88	389.76	779.52	1948.80	3897.60	38976.	8.50%	8.50%	8.29%
9/60 THRU 9/60	12/1/88	98.56	197.12	394.24	788.48	1971.20	3942.40	39424.	8.50%	8.50%	8.29%
10/60 THRU 11/60	1/1/89	98.56	197.12	394.24	788.48	1971.20	3942.40	39424.	8.50%	8.50%	8.29%
12/60 THRU 1/61	3/1/89	98.74	197.48	394.96	789.92	1974.80	3949.60	39496.	8.50%	8.50%	8.29%
2/61 THRU 2/61	11/1/88	95.63	191.26	382.52	765.04	1912.60	3825.20	38252.	8.50%	8.50%	8.50%
3/61 THRU 3/61	12/1/88	96.73	193.46	386.92	773.84	1934.60	3869.20	38692.	8.50%	8.50%	8.50%
4/61 THRU 5/61	1/1/89	96.73	193.46	386.92	773.84	1934.60	3869.20	38692.	8.50%	8.50%	8.50%
6/61 THRU 7/61	3/1/89	97.01	194.02	388.04	776.08	1940.20	3880.40	38804.	8.50%	8.50%	8.50%
8/61 THRU 8/61	11/1/88	93.98	187.96	375.92	751.84	1879.60	3759.20	37592.	8.50%	8.50%	8.50%
9/61 THRU 9/61	12/1/88	95.01	190.02	380.04	760.08	1900.20	3800.40	38004.	8.50%	8.50%	8.50%
10/61 THRU 11/61	1/1/89	95.01	190.02	380.04	760.08	1900.20	3800.40	38004.	8.50%	8.50%	8.50%
12/61 THRU 1/62	3/1/89	95.28	190.56	381.12	762.24	1905.60	3811.20	38112.	8.50%	8.50%	8.50%
2/62 THRU 2/62	11/1/88	92.29	184.58	369.16	738.32	1845.80	3691.60	36916.	8.50%	8.50%	8.50%
3/62 THRU 3/62	12/1/88	92.94	185.88	371.76	743.52	1858.80	3717.60	37176.	8.50%	8.50%	8.50%
4/62 THRU 5/62	1/1/89	92.94	185.88	371.76	743.52	1858.80	3717.60	37176.	8.50%	8.50%	8.50%
6/62 THRU 7/62	3/1/89	93.18	186.36	372.72	745.44	1863.60	3727.20	37272.	8.50%	8.50%	8.50%
8/62 THRU 8/62	11/1/88	90.23	180.46	360.92	721.84	1804.60	3609.20	36092.	8.50%	8.50%	8.50%
9/62 THRU 9/62	12/1/88	90.88	181.76	363.52	727.04	1817.60	3635.20	36352.	8.50%	8.50%	8.50%

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U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING NOV 1, 1988 THRU APR 1, 1989

ISSUE PRICE	$18.75	$37.50	$75.00	$150.00	$375.00	$750.00	$7500.
DENOMINATION	25.00	50.00	100.00	200.00	500.00	1000.00	10000.

ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)							ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
10/62 THRU 11/62	1/1/89	90.88	181.76	363.52	727.04	1817.60	3635.20	36352.	8.50%	8.50%	8.50%
12/62 THRU 1/63	3/1/89	91.26	182.52	365.04	730.08	1825.20	3650.40	36504.	8.50%	8.50%	8.50%
2/63 THRU 2/63	11/1/88	88.39	176.78	353.56	707.12	1767.80	3535.60	35356.	8.50%	8.50%	8.50%
3/63 THRU 3/63	12/1/88	88.80	177.60	355.20	710.40	1776.00	3552.00	35520.	8.50%	8.50%	8.50%
4/63 THRU 5/63	1/1/89	88.80	177.60	355.20	710.40	1776.00	3552.00	35520.	8.50%	8.50%	8.50%
6/63 THRU 7/63	3/1/89	89.46	178.92	357.84	715.68	1789.20	3578.40	35784.	8.50%	8.50%	8.50%
8/63 THRU 8/63	11/1/88	86.65	173.30	346.60	693.20	1733.00	3466.00	34660.	8.50%	8.50%	8.50%
9/63 THRU 9/63	12/1/88	87.07	174.14	348.28	696.56	1741.40	3482.80	34828.	8.50%	8.50%	8.50%
10/63 THRU 11/63	1/1/89	87.07	174.14	348.28	696.56	1741.40	3482.80	34828.	8.50%	8.50%	8.50%

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U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING NOV 1, 1988 THRU APR 1, 1989

ISSUE PRICE	$18.75	$37.50	$56.25	$ 75.00	$150.00	$375.00	$ 750.00	$ 7500.	
DENOMINATION	25.00	50.00	75.00	100.00	200.00	500.00	1000.00	10000.	

ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)								ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
12/63 THRU 1/64	3/1/89	87.62	175.24	262.86	350.48	700.96	1752.40	3504.80	35048.	8.50%	8.50%	8.50%
2/64 THRU 2/64	11/1/88	84.85	169.70	254.55	339.40	678.80	1697.00	3394.00	33940.	8.50%	8.50%	8.50%
3/64 THRU 3/64	12/1/88	85.26	170.52	255.78	341.04	682.08	1705.20	3410.40	34104.	8.50%	8.50%	8.50%
4/64 THRU 5/64	1/1/89	85.26	170.52	255.78	341.04	682.08	1705.20	3410.40	34104.	8.50%	8.50%	8.50%
6/64 THRU 7/64	3/1/89	85.82	171.64	257.46	343.28	686.56	1716.40	3432.80	34328.	8.50%	8.50%	8.50%
8/64 THRU 8/64	11/1/88	83.12	166.24	249.36	332.48	664.96	1662.40	3324.80	33248.	8.50%	8.50%	8.50%
9/64 THRU 9/64	12/1/88	83.53	167.06	250.59	334.12	668.24	1670.60	3341.20	33412.	8.50%	8.50%	8.50%
10/64 THRU 11/64	1/1/89	83.53	167.06	250.59	334.12	668.24	1670.60	3341.20	33412.	8.50%	8.50%	8.50%
12/64 THRU 1/65	3/1/89	84.06	168.12	252.18	336.24	672.48	1681.20	3362.40	33624.	8.50%	8.50%	8.50%
2/65 THRU 2/65	11/1/88	81.40	162.80	244.20	325.60	651.20	1628.00	3256.00	32560.	8.50%	8.50%	7.50%
3/65 THRU 3/65	12/1/88	81.80	163.60	245.40	327.20	654.40	1636.00	3272.00	32720.	8.50%	8.50%	7.50%
4/65 THRU 5/65	1/1/89	81.80	163.60	245.40	327.20	654.40	1636.00	3272.00	32720.	8.50%	8.50%	7.50%
6/65 THRU 7/65	3/1/89	82.24	164.48	246.72	328.96	657.92	1644.80	3289.60	32896.	8.50%	8.50%	7.50%
8/65 THRU 8/65	11/1/88	79.66	159.32	238.98	318.64	637.28	1593.20	3186.40	31864.	8.50%	8.50%	7.58%
9/65 THRU 9/65	12/1/88	80.07	160.14	240.21	320.28	640.56	1601.40	3202.80	32028.	8.50%	8.50%	7.58%
10/65 THRU 11/65	1/1/89	80.07	160.14	240.21	320.28	640.56	1601.40	3202.80	32028.	8.50%	8.50%	7.58%
12/65 THRU 12/65	12/1/88	80.32	160.64	240.96	321.28	642.56	1606.40	3212.80	32128.	8.50%	8.50%	7.50%
1/66 THRU 4/66	1/1/89	80.32	160.64	240.96	321.28	642.56	1606.40	3212.80	32128.	8.50%	8.50%	7.50%
5/66 THRU 5/66	11/1/88	77.79	155.58	233.37	311.16	622.32	1555.80	3111.60	31116.	8.50%	8.50%	7.58%
6/66 THRU 6/66	12/1/88	78.59	157.18	235.77	314.36	628.72	1571.80	3143.60	31436.	8.50%	8.50%	7.58%
7/66 THRU 10/66	1/1/89	78.59	157.18	235.77	314.36	628.72	1571.80	3143.60	31436.	8.50%	8.50%	7.58%
11/66 THRU 11/66	11/1/88	76.11	152.22	228.33	304.44	608.88	1522.20	3044.40	30444.	8.50%	8.50%	7.67%
12/66 THRU 12/66	12/1/88	76.95	153.90	230.85	307.80	615.60	1539.00	3078.00	30780.	8.50%	8.50%	7.67%
1/67 THRU 4/67	1/1/89	76.95	153.90	230.85	307.80	615.60	1539.00	3078.00	30780.	8.50%	8.50%	7.67%
5/67 THRU 5/67	11/1/88	74.51	149.02	223.53	298.04	596.08	1490.20	2980.40	29804.	8.50%	8.50%	7.75%
6/67 THRU 6/67	12/1/88	75.36	150.72	226.08	301.44	602.88	1507.20	3014.40	30144.	8.50%	8.50%	7.75%
7/67 THRU 10/67	1/1/89	75.36	150.72	226.08	301.44	602.88	1507.20	3014.40	30144.	8.50%	8.50%	7.75%
11/67 THRU 11/67	11/1/88	73.00	146.00	219.00	292.00	584.00	1460.00	2920.00	29200.	8.50%	8.50%	7.83%
12/67 THRU 12/67	12/1/88	73.87	147.74	221.61	295.48	590.96	1477.40	2954.80	29548.	8.50%	8.50%	7.83%
1/68 THRU 4/68	1/1/89	73.87	147.74	221.61	295.48	590.96	1477.40	2954.80	29548.	8.50%	8.50%	7.83%
5/68 THRU 5/68	11/1/88	71.55	143.10	214.65	286.20	572.40	1431.00	2862.00	28620.	8.50%	8.50%	7.92%
6/68 THRU 6/68	12/1/88	72.41	144.82	217.23	289.64	579.28	1448.20	2896.40	28964.	8.50%	8.50%	7.92%
7/68 THRU 10/68	1/1/89	72.41	144.82	217.23	289.64	579.28	1448.20	2896.40	28964.	8.50%	8.50%	7.92%
11/68 THRU 11/68	11/1/88	70.12	140.24	210.36	280.48	560.96	1402.40	2804.80	28048.	8.50%	8.50%	8.00%
12/68 THRU 12/68	12/1/88	71.09	142.18	213.27	284.36	568.72	1421.80	2843.60	28436.	8.50%	8.50%	8.00%
1/69 THRU 4/69	1/1/89	71.09	142.18	213.27	284.36	568.72	1421.80	2843.60	28436.	8.50%	8.50%	8.00%
5/69 THRU 5/69	11/1/88	68.85	137.70	206.55	275.40	550.80	1377.00	2754.00	27540.	8.50%	8.50%	8.08%
6/69 THRU 6/69	4/1/89	71.68	143.36	215.04	286.72	573.44	1433.60	2867.20	28672.	8.50%	8.50%	7.83%
7/69 THRU 7/69	11/1/88	69.41	138.82	208.23	277.64	555.28	1388.20	2776.40	27764.	8.50%	8.50%	7.92%

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U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING NOV 1, 1988 THRU APR 1, 1989

ISSUE PRICE	$18.75	$37.50	$56.25	$ 75.00	$150.00	$375.00	$ 750.00	$ 7500.
DENOMINATION	25.00	50.00	75.00	100.00	200.00	500.00	1000.00	10000.

ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)								ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
8/69 THRU 8/69	12/1/88	69.59	139.18	208.77	278.36	556.72	1391.80	2783.60	27836.	8.50%	8.50%	7.92%
9/69 THRU 11/69	1/1/89	69.59	139.18	208.77	278.36	556.72	1391.80	2783.60	27836.	8.50%	8.50%	7.92%
12/69 THRU 12/69	4/1/89	69.95	139.90	209.85	279.80	559.60	1399.00	2798.00	27980.	8.50%	8.50%	7.91%
1/70 THRU 1/70	11/1/88	67.76	135.52	203.28	271.04	542.08	1355.20	2710.40	27104.	8.50%	8.50%	7.99%
2/70 THRU 2/70	12/1/88	67.91	135.82	203.73	271.64	543.28	1358.20	2716.40	27164.	8.50%	8.50%	8.00%
3/70 THRU 5/70	1/1/89	67.91	135.82	203.73	271.64	543.28	1358.20	2716.40	27164.	8.50%	8.50%	8.00%
6/70 THRU 6/70	4/1/89	68.22	136.44	204.66	272.88	545.76	1364.40	2728.80	27288.	8.50%	8.50%	8.00%
7/70 THRU 7/70	11/1/88	66.08	132.16	198.24	264.32	528.64	1321.60	2643.20	26432.	8.50%	8.50%	8.09%
8/70 THRU 8/70	12/1/88	66.26	132.52	198.78	265.04	530.08	1325.20	2650.40	26504.	8.50%	8.50%	8.08%
9/70 THRU 11/70	1/1/89	66.26	132.52	198.78	265.04	530.08	1325.20	2650.40	26504.	8.50%	8.50%	8.08%
12/70 THRU 12/70	4/1/89	66.39	132.78	199.17	265.56	531.12	1327.80	2655.60	26556.	8.50%	8.50%	8.08%
1/71 THRU 1/71	11/1/88	64.31	128.62	192.93	257.24	514.48	1286.20	2572.40	25724.	8.50%	8.50%	7.66%
2/71 THRU 2/71	12/1/88	64.46	128.92	193.38	257.84	515.68	1289.20	2578.40	25784.	8.50%	8.50%	7.66%
3/71 THRU 5/71	1/1/89	64.46	128.92	193.38	257.84	515.68	1289.20	2578.40	25784.	8.50%	8.50%	7.66%
6/71 THRU 6/71	4/1/89	64.64	129.28	193.92	258.56	517.12	1292.80	2585.60	25856.	8.50%	8.50%	7.66%
7/71 THRU 7/71	11/1/88	62.60	125.20	187.80	250.40	500.80	1252.00	2504.00	25040.	8.50%	8.50%	7.88%
8/71 THRU 8/71	12/1/88	62.75	125.50	188.25	251.00	502.00	1255.00	2510.00	25100.	8.50%	8.50%	7.87%
9/71 THRU 11/71	1/1/89	62.75	125.50	188.25	251.00	502.00	1255.00	2510.00	25100.	8.50%	8.50%	7.87%
12/71 THRU 12/71	4/1/89	62.90	125.80	188.70	251.60	503.20	1258.00	2516.00	25160.	8.50%	8.50%	7.87%
1/72 THRU 1/72	11/1/88	60.92	121.84	182.76	243.68	487.36	1218.40	2436.80	24368.	8.50%	8.50%	8.08%
2/72 THRU 2/72	12/1/88	61.07	122.14	183.21	244.28	488.56	1221.40	2442.80	24428.	8.50%	8.50%	8.08%
3/72 THRU 5/72	1/1/89	61.07	122.14	183.21	244.28	488.56	1221.40	2442.80	24428.	8.50%	8.50%	8.08%
6/72 THRU 6/72	4/1/89	61.23	122.46	183.69	244.92	489.84	1224.60	2449.20	24492.	8.50%	8.50%	8.08%
7/72 THRU 7/72	11/1/88	59.32	118.64	177.96	237.28	474.56	1186.40	2372.80	23728.	8.50%	8.50%	8.29%
8/72 THRU 8/72	12/1/88	59.45	118.90	178.35	237.80	475.60	1189.00	2378.00	23780.	8.50%	8.50%	8.29%
9/72 THRU 11/72	1/1/89	59.45	118.90	178.35	237.80	475.60	1189.00	2378.00	23780.	8.50%	8.50%	8.29%
12/72 THRU 12/72	4/1/89	59.57	119.14	178.71	238.28	476.56	1191.40	2382.80	23828.	8.50%	8.50%	8.29%
1/73 THRU 1/73	11/1/88	57.69	115.38	173.07	230.76	461.52	1153.80	2307.60	23076.	8.50%	8.50%	8.50%
2/73 THRU 2/73	12/1/88	57.84	115.68	173.52	231.36	462.72	1156.80	2313.60	23136.	8.50%	8.50%	8.50%
3/73 THRU 5/73	1/1/89	57.84	115.68	173.52	231.36	462.72	1156.80	2313.60	23136.	8.50%	8.50%	8.50%
6/73 THRU 6/73	4/1/89	57.97	115.94	173.91	231.88	463.76	1159.40	2318.80	23188.	8.50%	8.50%	8.50%
7/73 THRU 7/73	11/1/88	56.15	112.30	168.45	224.60	449.20	1123.00	2246.00	22460.	8.50%	8.50%	8.50%
8/73 THRU 8/73	12/1/88	56.29	112.58	168.87	225.16	450.32	1125.80	2251.60	22516.	8.51%	8.50%	8.51%
9/73 THRU 11/73	1/1/89	56.29	112.58	168.87	225.16	450.32	1125.80	2251.60	22516.	8.51%	8.50%	8.51%
12/73 THRU 12/73	12/1/88	55.35	110.70	166.05	221.40	442.80	1107.00	2214.00	22140.	8.50%	8.50%	8.50%
1/74 THRU 4/74	1/1/89	55.35	110.70	166.05	221.40	442.80	1107.00	2214.00	22140.	8.50%	8.50%	8.50%
5/74 THRU 5/74	11/1/88	53.61	107.22	160.83	214.44	428.88	1072.20	2144.40	21444.	8.50%	8.50%	8.50%
6/74 THRU 6/74	12/1/88	53.74	107.48	161.22	214.96	429.92	1074.80	2149.60	21496.	8.50%	8.50%	8.50%
7/74 THRU 10/74	1/1/89	53.74	107.48	161.22	214.96	429.92	1074.80	2149.60	21496.	8.50%	8.50%	8.50%

(1) ACCRUAL DATE SHOWN IS FOR BONDS OF THE FIRST ISSUE DATE LISTED -- ADD ONE MONTH FOR EACH SUCCESSIVE MONTH OF ISSUE.

(2) ACTUAL INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.

(3) MARKET BASED VARIABLE INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.

(4) GUARANTEED MINIMUM YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.

NOTE: ADDITIONAL INVESTMENT INFORMATION IS OBTAINABLE FROM FEDERAL RESERVE BANKS AND THE BUREAU OF THE PUBLIC DEBT, SAVINGS BOND OPERATIONS OFFICE, 200 THIRD ST., PARKERSBURG, WV 26102-1328.

U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING NOV 1, 1988 THRU APR 1, 1989

ISSUE PRICE	$18.75	$37.50	$56.25	$ 75.00	$150.00	$375.00	$ 750.00	$ 7500.
DENOMINATION	25.00	50.00	75.00	100.00	200.00	500.00	1000.00	10000.

ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)								ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
11/74 THRU 11/74	11/1/88	52.04	104.08	156.12	208.16	416.32	1040.80	2081.60	20816.	8.50%	8.50%	8.50%
12/74 THRU 12/74	12/1/88	52.16	104.32	156.48	208.64	417.28	1043.20	2086.40	20864.	8.50%	8.50%	8.50%
1/75 THRU 4/75	1/1/89	52.16	104.32	156.48	208.64	417.28	1043.20	2086.40	20864.	8.50%	8.50%	8.50%
5/75 THRU 5/75	11/1/88	50.53	101.06	151.59	202.12	404.24	1010.60	2021.20	20212.	8.50%	8.50%	8.50%
6/75 THRU 6/75	12/1/88	50.64	101.28	151.92	202.56	405.12	1012.80	2025.60	20256.	8.50%	8.50%	8.50%
7/75 THRU 10/75	1/1/89	50.64	101.28	151.92	202.56	405.12	1012.80	2025.60	20256.	8.50%	8.50%	8.50%
11/75 THRU 11/75	11/1/88	49.06	98.12	147.18	196.24	392.48	981.20	1962.40	19624.	8.50%	8.50%	8.49%
12/75 THRU 12/75	12/1/88	49.16	98.32	147.48	196.64	393.28	983.20	1966.40	19664.	8.50%	8.50%	8.50%
1/76 THRU 4/76	1/1/89	49.16	98.32	147.48	196.64	393.28	983.20	1966.40	19664.	8.50%	8.50%	8.50%
5/76 THRU 5/76	11/1/88	47.61	95.22	142.83	190.44	380.88	952.20	1904.40	19044.	8.50%	8.50%	8.50%
6/76 THRU 6/76	12/1/88	47.72	95.44	143.16	190.88	381.76	954.40	1908.80	19088.	8.51%	8.50%	8.51%
7/76 THRU 10/76	1/1/89	47.72	95.44	143.16	190.88	381.76	954.40	1908.80	19088.	8.51%	8.50%	8.51%
11/76 THRU 11/76	11/1/88	46.21	92.42	138.63	184.84	369.68	924.20	1848.40	18484.	8.50%	8.50%	8.50%
12/76 THRU 12/76	12/1/88	46.34	92.68	139.02	185.36	370.72	926.80	1853.60	18536.	8.50%	8.50%	8.50%
1/77 THRU 4/77	1/1/89	46.34	92.68	139.02	185.36	370.72	926.80	1853.60	18536.	8.50%	8.50%	8.50%
5/77 THRU 5/77	11/1/88	44.87	89.74	134.61	179.48	358.96	897.40	1794.80	17948.	8.50%	8.50%	8.50%
6/77 THRU 6/77	12/1/88	44.99	89.98	134.97	179.96	359.92	899.80	1799.60	17996.	8.50%	8.50%	8.50%
7/77 THRU 10/77	1/1/89	44.99	89.98	134.97	179.96	359.92	899.80	1799.60	17996.	8.50%	8.50%	8.50%
11/77 THRU 11/77	11/1/88	43.55	87.10	130.65	174.20	348.40	871.00	1742.00	17420.	8.50%	8.50%	7.50%
12/77 THRU 12/77	12/1/88	43.67	87.34	131.01	174.68	349.36	873.40	1746.80	17468.	8.50%	8.50%	7.50%
1/78 THRU 4/78	1/1/89	43.67	87.34	131.01	174.68	349.36	873.40	1746.80	17468.	8.50%	8.50%	7.50%
5/78 THRU 5/78	11/1/88	40.34	80.68	121.02	161.36	322.72	806.80	1613.60	16136.	8.50%	8.50%	8.40%
6/78 THRU 6/78	12/1/88	40.34	80.68	121.02	161.36	322.72	806.80	1613.60	16136.	8.50%	8.50%	8.44%
7/78 THRU 10/78	1/1/89	40.34	80.68	121.02	161.36	322.72	806.80	1613.60	16136.	8.50%	8.50%	8.44%
11/78 THRU 11/78	11/1/88	39.15	78.30	117.45	156.60	313.20	783.00	1566.00	15660.	8.50%	8.50%	8.49%
12/78 THRU 12/78	12/1/88	39.23	78.46	117.69	156.92	313.84	784.60	1569.20	15692.	8.53%	8.50%	8.53%
1/79 THRU 4/79	1/1/89	39.23	78.46	117.69	156.92	313.84	784.60	1569.20	15692.	8.53%	8.50%	8.53%
5/79 THRU 5/79	11/1/88	38.19	76.38	114.57	152.76	305.52	763.80	1527.60	15276.	8.57%	8.50%	8.57%
6/79 THRU 6/79	12/1/88	38.27	76.54	114.81	153.08	306.16	765.40	1530.80	15308.	8.61%	8.50%	8.61%
7/79 THRU 10/79	1/1/89	38.27	76.54	114.81	153.08	306.16	765.40	1530.80	15308.	8.61%	8.50%	8.61%
11/79 THRU 11/79	11/1/88	37.24	74.48	111.72	148.96	297.92	744.80	1489.60	14896.	8.61%	8.50%	8.61%
12/79 THRU 12/79	12/1/88	37.24	74.48	111.72	148.96	297.92	744.80	1489.60	14896.	8.61%	8.50%	8.61%
1/80 THRU 4/80	1/1/89	37.24	74.48	111.72	148.96	297.92	744.80	1489.60	14896.	8.61%	8.50%	8.61%
5/80 THRU 5/80	11/1/88	36.26	72.52	108.78	145.04	290.08	725.20	1450.40	14504.	8.60%	8.50%	8.60%
6/80 THRU 6/80	12/1/88	36.26	72.52	108.78	145.04	290.08	725.20	1450.40	14504.	8.60%	8.50%	8.60%

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(3) MARKET BASED VARIABLE INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.

(4) GUARANTEED MINIMUM YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.

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U.S. SAVINGS BONDS, NOTES - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING NOV 1, 1988 THRU APR 1, 1989

ISSUE PRICE	$20.25	$40.50	$60.75	$81.00			
DENOMINATION	25.00	50.00	75.00	100.00			
ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)				ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
5/67 THRU 5/67	11/1/88	81.86	163.72	245.58	327.44	8.50%	8.50%	8.50%
6/67 THRU 6/67	12/1/88	82.24	164.48	246.72	328.96	8.50%	8.50%	8.50%
7/67 THRU 10/67	1/1/89	82.24	164.48	246.72	328.96	8.50%	8.50%	8.50%
11/67 THRU 11/67	11/1/88	79.64	159.28	238.92	318.56	8.50%	8.50%	8.50%
12/67 THRU 12/67	12/1/88	80.04	160.08	240.12	320.16	8.50%	8.50%	8.50%
1/68 THRU 4/68	1/1/89	80.04	160.08	240.12	320.16	8.50%	8.50%	8.50%
5/68 THRU 5/68	11/1/88	77.51	155.02	232.53	310.04	8.50%	8.50%	7.50%
6/68 THRU 6/68	12/1/88	78.77	157.54	236.31	315.08	8.50%	8.50%	7.50%
7/68 THRU 10/68	1/1/89	78.77	157.54	236.31	315.08	8.50%	8.50%	7.50%
11/68 THRU 11/68	11/1/88	76.29	152.58	228.87	305.16	8.50%	8.50%	7.58%
12/68 THRU 12/68	12/1/88	76.71	153.42	230.13	306.84	8.50%	8.50%	7.58%
1/69 THRU 4/69	1/1/89	76.71	153.42	230.13	306.84	8.50%	8.50%	7.58%
5/69 THRU 5/69	11/1/88	74.28	148.56	222.84	297.12	8.50%	8.50%	7.66%
6/69 THRU 6/69	12/1/88	74.63	149.26	223.89	298.52	8.50%	8.50%	7.67%
7/69 THRU 10/69	1/1/89	74.63	149.26	223.89	298.52	8.50%	8.50%	7.67%
11/69 THRU 11/69	11/1/88	72.31	144.62	216.93	289.24	8.50%	8.50%	7.75%
12/69 THRU 12/69	12/1/88	72.64	145.28	217.92	290.56	8.50%	8.50%	7.75%
1/70 THRU 4/70	1/1/89	72.64	145.28	217.92	290.56	8.50%	8.50%	7.75%
5/70 THRU 5/70	11/1/88	70.36	140.72	211.08	281.44	8.50%	8.50%	7.83%
6/70 THRU 6/70	12/1/88	70.68	141.36	212.04	282.72	8.50%	8.50%	7.84%
7/70 THRU 10/70	1/1/89	70.68	141.36	212.04	282.72	8.50%	8.50%	7.84%

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U.S. SAVINGS BONDS, SERIES EE - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING NOV 1, 1988 THRU APR 1, 1989

ISSUE PRICE	$25.00	$37.50	$50.00	$100.00	$250.00	$500.00	$2500.00	$5000.
DENOMINATION	50.00	75.00	100.00	200.00	500.00	1000.00	5000.00	10000.

ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)								ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
1/80 THRU 4/80	1/1/89	53.86	80.79	107.72	215.44	538.60	1077.20	5386.00	10772.	9.75%	8.50%	9.75%
5/80 THRU 10/80	11/1/88	52.06	78.09	104.12	208.24	520.60	1041.20	5206.00	10412.	9.73%	8.50%	9.73%
11/80 THRU 4/81	11/1/88	50.32	75.48	100.64	201.28	503.20	1006.40	5032.00	10064.	9.67%	8.50%	9.67%
5/81 THRU 10/81	11/1/88	48.14	72.21	96.28	192.56	481.40	962.80	4814.00	9628.	9.60%	8.50%	9.60%
11/81 THRU 4/82	11/1/88	45.86	68.79	91.72	183.44	458.60	917.20	4586.00	9172.	9.34%	8.50%	9.34%
5/82 THRU 10/82	11/1/88	43.70	65.55	87.40	174.80	437.00	874.00	4370.00	8740.	9.18%	8.50%	9.18%
11/82 THRU 4/83	11/1/88	41.20	61.80	82.40	164.80	412.00	824.00	4120.00	8240.	8.50%	8.50%	7.51%
5/83 THRU 10/83	11/1/88	39.00	58.50	78.00	156.00	390.00	780.00	3900.00	7800.	8.25%	8.25%	7.51%
11/83 THRU 4/84	11/1/88	37.02	55.53	74.04	148.08	370.20	740.40	3702.00	7404.	8.01%	8.00%	7.51%

(1) ACCRUAL DATE SHOWN IS FOR BONDS OF THE FIRST ISSUE DATE LISTED -- ADD ONE MONTH FOR EACH SUCCESSIVE MONTH OF ISSUE.
(2) ACTUAL INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.
(3) MARKET BASED VARIABLE INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.
(4) GUARANTEED MINIMUM YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.
NOTE: ADDITIONAL INVESTMENT INFORMATION IS OBTAINABLE FROM FEDERAL RESERVE BANKS AND THE BUREAU OF THE PUBLIC DEBT, SAVINGS BOND OPERATIONS OFFICE, 200 THIRD ST., PARKERSBURG, WV 26102-1328.

[FR Doc. 88-21987 Filed 9-22-88; 12:43 pm]
BILLING CODE 4810-10-C

DEPARTMENT OF THE TREASURY

Fiscal Service

[Department of the Treasury Circular No. 750, Fourth Revision]

Payment by Banks and Other Financial Institutions of United States Savings Bonds and United States Savings Notes; Freedom Shares

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice of change in the method of calculation of paying agent fees.

SUMMARY: This notice is being published to set out a revised schedule of fees payable to eligible paying agents of United States Savings Bonds and United States Savings Notes (Freedom Shares), and to explain the basis upon which the fees are computed.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Dean A. Adams, Assistant Chief Counsel, Bureau of the Public Debt, Savings Bond Operations Office, Parkersburg, WV 26106–1328, (304) 420–6505.

SUPPLEMENTARY INFORMATION: The Fourth Revision to Department of the Treasury Circular No. 750 (31 CFR Part 321), at § 321.23(a), provides that paying agents submitting redeemed bonds and notes through the Federal Reserve Check Collection System will receive a fee for each eligible security submitted in a separately sorted cash letter. Those agents which submit redeemed bonds and notes through the Fiscal Agency Department of the Federal Reserve Bank will receive a fee for each eligible savings bond and note redeemed. As provided in § 321.23(a), this notice is being separately published to set out the schedule of fees and the bases on which they are computed and paid. The revised fee schedule is applicable to redemptions transmitted to the Bureau of the Public Debt or the Pittsburgh Branch, Federal Reserve Bank of Cleveland, as fiscal agent of the United States, on or after the effective date of this notice.

Revision of the paying agent fee schedule has been undertaken to reflect the cost efficiencies that will be realized by those financial institutions which choose to redeem savings bonds and notes and process such securities through EZ CLEAR. The new system will allow paying agents and presenting institutions to use the Federal Reserve Check Collection System to process paid securities and eliminate the exception processing which is necessary under the current procedures.

The decision to modify the schedule under which fees are paid to paying agents and presenting institutions that redeem savings bonds and notes is based on the elimination of the exception processing currently required in the conduct of bond redemptions. With the implementation of EZ CLEAR, the process for those paying agents that choose to participate in the program will be simplified since paid bonds and notes will no longer have to be separately batched prior to their shipment to a Federal Reserve Bank or a correspondent bank. Instead, agents will have the opportunity to include them with their normal, daily shipment of checks. Cost savings to paying agents will be realized as a result of time savings due to the streamlined procedures.

Another benefit to participating paying agents will be the accelerated receipt of reimbursements, both for the value of the securities redeemed and for related service fees. Service fees will be paid on a monthly rather than quarterly basis

Lastly, postage savings will be realized by participating agents as bonds and notes can be sent to a Federal Reserve Bank together with the daily check work.

Dated: September 22, 1988.

Gerald Murphy,

Fiscal Assistant Secretary.

Schedules of Fees

Paying Agent Fees

Under the terms of the governing regulations, the Bureau of the Public Debt pays fees to agents which redeem savings bonds and notes. Beginning October 1, 1988, paying agents which redeem savings bonds and notes will have the option of presenting such securities through either the Fiscal Agency Department or the Check Department (which includes Regional Check Processing Centers) of the Federal Reserve Bank or Branch of their District, or through a correspondent bank. Paying agents submitting paid savings bonds and notes through a Fiscal Agency Department will receive payment of each Series A, B, C, D, E, and EE savings bond and savings note redeemed for cash, and for each eligible security redeemed in exchange for Series HH savings bonds under the provisions of Department of the Treasury Circular, Public Debt Series No. 2–80 (31 CFR Part 352). Institutions submitting paid bonds and notes through a Check Department will receive a fee for each such bond and note submitted in a separately sorted cash letter. No fee will be paid for items submitted in mixed cash letters. Authorized agents choosing to submit through Check Departments may arrange for actual presentation of such items through a correspondent institution. When such is the practice, fees will be paid to the correspondent institution in accordance with the conditions described below. The paying agent's collection of the fee from the correspondent is the responsibility of the agent and not the Department of the Treasury.

Fee Schedule

Fees will be paid on the following basis:

(1) Redeemed savings bonds and notes presented to Federal Reserve Fiscal Agency Departments:	
(a) Redemptions for cash	$0.30
(b) Redemptions in exchange for Series HH bonds	.50
(2) Redeemed savings bonds and notes presented to Federal Reserve Check Departments:	
(a) Redemptions for cash submitted in separately sorted cash letters	.30
(b) Redemptions in exchange for Series HH bonds submitted in separately sorted cash letters	.30
(c) Redemptions presented in mixed cash letters. (Charges will be made for such items in accordance with existing Federal Reserve Bank operating letters)	None

Basis for Determining Fees

(1) Paying agents submitting through Federal Reserve Fiscal Agency Departments—Fees will be calculated on the number of eligible bonds and notes paid during a calendar quarter, based on the transfer date assigned to the transmittal by a Federal Reserve Bank.

(2) Paying agents submitting through Federal Reserve Check Departments—Fees will be calculated on the number of eligible bonds and notes paid during a calendar month, based on the date of receipt by the Pittsburgh Branch, Federal Reserve Bank of Cleveland. Fees will be paid only to paying agents which present securities in separately sorted cash letters.

Converage of Fee

The fee is not intended to compensate paying agents for the reporting of interest paid as a part of the redemption value of the securities. Such reporting is required under the Internal Revenue regulations contained in Title 26, Code of Federal Regulations, § 1.6049–4.

Charges to Customers

Paying agents are not authorized to make any charge for redeeming savings bonds and notes presented.

[FR Doc. 88–21986 Filed 9–22–88; 12:43 pm]
BILLING CODE 4810–10–M

federal register

Monday
September 26, 1988

Part XI

Department of Transportation

Maritime Administration

46 CFR Part 252

Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in Worldwide Services; Exclusion of Cargoes Reserved for U.S.-Flag Carriers; Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 252

[Docket R-121]

RIN 2133-AA51

Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in Worldwide Services; Exclusion of Cargoes Reserved for U.S.-Flag Carriers

AGENCY: Maritime Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Maritime Administration, (MARAD) proposes to amend its regulations governing the payment of ODS for bulk cargo vessels engaged in worldwide service. This proposed amendment states MARAD's policy of paying operating differential subsidy (ODS) for bulk vessel operations only when the payment of ODS for such service is necessary to allow a vessel to meet foreign-flag competition, to promote U.S. foreign commerce and to increase U.S.-flag carriage of bulk cargoes.

DATE: Comments must be received on or before November 25, 1988.

ADDRESS: Send the original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Edmond Fitzgerald, Director, Office of Trade Analysis and Insurance, Maritime Administration, DOT, 400 7th Street SW., Washington, DC. 20598, Tel. (202) 366-2400.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of Title VI of the Merchant Marine Act, 1936, as amended (Act) (46 App. U.S.C. 1171 *et seq.*), MARAD, under authority delegated by the Secretary of Transportation, administers the ODS program. ODS agreements (ODSAs), to which MARAD is a party, provide for the payment of ODS to the operators of eligible U.S.-flag cargo vessels that are operating in an "essential service in the foreign commerce of the United States." Payment of ODS is intended to help make the cost of operating U.S.-flag vessels comparable to that of operating similar vessels under the registry of a foreign country, which vessels are substantial competitors of the subsidized U.S.-flag vessels (46 App. U.S.C. 1173(b)).

Background—Legislative History

In 1970, Congress enacted amendments to the Act that extended authorization to pay ODS for the carriage of cargo on bulk cargo vessels (vessels that are chartered or operated for one or more voyages over a period of time to carry large shipments under contract, and that are not operated on any particular service, route or line). Prior to 1970, authorization to pay ODS was restricted to liner vessels (common carriers that travel on regular schedules along designated trade routes)

The legislative history of the 1970 amendments indicates that the Congress contemplated that cargoes that are reserved to U.S.-flag vessels by the cargo preference laws of the United States (including, but not limited to, 10 U.S.C. 2361, and 46 App. U.S.C. 1241), when carried by bulk vessels, would eventually be carried, if on a subsidized basis, at "world rates."[1] World rates are set by competitive factors (e.g., supply and demand) in the world market, in contrast to the sometimes higher, "fair and reasonable rates" (or "premium rates") that are paid to U.S.-flag vessels carrying reserved preference cargoes.

However, the Congress also intended that the Secretary of Transportation consider the criteria under sections 601 and 605(c) of the Act (46 App. U.S.C. 1171 and 1175(c)) in connection with any subsidy award to bulk ship operators.[2] Thus, before executing an ODS agreement for one or more bulk vessels, it is necessary that the Secretary determine, *inter alia*, that: (1) the operation of additional vessels with ODS would carry out the purposes and policy of the Act; (2) the operation of such vessel or vessels is required to meet foreign-flag competition and promote the foreign commerce of the United States; and (3) U.S.-flag service in the bulk trades is inadequate.

Prior MARAD Policy

The initial bulk ship applicants voluntarily excluded the carriage of preference cargoes from their intended service. As a result, the ODS contracts entered into the bulk applicants specified that "said vessels shall carry exclusively commercial liquid and dry bulk cargoes not subject to the cargo preference statutes of the United States * * *"

In 1973, MARAD promulgated a regulation (46 CFR Part 294) establishing a program for subsidizing the carriage of raw and processed agricultural commodities from the United States to the Union of Soviet Socialist Republics (USSR). Pursuant to a bilateral agreement, one-third of such cargoes was reserved for U.S.-flag vessels, but only if they could carry the cargo at a specified charter rate. Under 46 CFR Part 294, MARAD entered into short-term ODSAs which provided subsidy for such carriage, on a voyage-to-voyage basis, subject to a finding that service provided by U.S.-flag vessels in that trade was inadequate and that payment of such ODS furthered the purposes and policy of the Act. The subsidy payable by MARAD was subject to abatement, calculated by a formula, if the charter rate exceeded a specified level. It was intended to further the foreign and trade policies of the United States, evidenced by maritime agreements that have been in effect between the United States and the USSR at various times.

In 1976, ODSAs for bulk vessels that were not engaged in the grain trade with the USSR were amended to provide that the vessels could carry non-reserved portions of preference cargoes at world rates *with subsidy*, but could not carry any portion of cargo reserved to U.S.-flag vessels.

In 1977, ODSAs for tankers were amended to allow the vessels to carry liquid bulk preference cargoes to meet the requirements of the Strategic Petroleum Reserve (SPR) Program. The amendments specified that MARAD would not pay ODS for the carriage of that portion of SPR cargo reserved for U.S.-flag ships—again consistent with MARAD's general policy.

Also in 1977, an affiliated group of bulk operators applied for amendments to their existing ODSAs to allow the carriage of dry bulk statutory preference cargo with ODS. The carriage of preference cargo was to be at world rates. Following exhaustive administrative proceedings, and judicial review, the Maritime Subsidy Board (Board) issued a Final Opinion and Order in Docket No. A-132, 22 SRR 599 (M.S.B. 1983), which confirmed admission of the subject vessels into the preference trades with ODS. (See, *Atlas Marine Co.*, Docket Nos. S-605, S-607, S-614, 18 SRR 987 (M.S.B. 1978); *Aeron Marine Shipping Co.*, Docket No. A-132, 9 SRR 111 (M.S.B. 1979); *Aeron Marine Shipping Co.*, Docket No. A-132, 19 SRR 491 (M.S.B. 1979). Also see *Aeron Marine Shipping Co.* v. *United States*, 525 F. Supp. 527 (D. D.C. 1981); and *Aeron Marine Shipping Co., et al.* v. *United States*, 695 F. 2d 567 (D.C. Cir. 1982). The Board found that U.S.-flag service in the bulk preference trades, including that of the applicants' bulk

[1] H.R. Rep. No. 1073, 91st Cong., 2nd Sess., at p. 38 (1970).

[2] *Id.*, at p. 42, S. Rep. No. 1080, 91st Cong., 2nd Sess., at p. 38 (1970).

vessels, was and would continue to be inadequate, and that operation of the additional vessels in these trades would further the purposes and policy of the Act, within the meaning of section 605(c) of the Act.

The finding of inadequacy of U.S.-flag service was based on the standard that there be a bare minimum of 50 percent U.S.-flag participation in the preference trade. The relevant pool of cargo used to determine that percentage was the bulk cargo that would move in the preference trades, not that which would move worldwide. The Board determined that the bulk preference trades may be treated as a separate market for applicants under section 605(c) of the Act.

The Board, in making the necessary findings under section 601(a) of the Act that ODS for the vessel(s) in docket A–132 was "required to meet foreign-flag competition * * *," determined that section 601 does not require operations exclusively meeting foreign-flag competition, but only substantially meeting foreign-flag competition. It was not proposed that the vessels operate exclusively in preference trade, but that such trade be available to the vessels only in addition to the normal commercial trade. The applicants limited their proposed carriage of preference cargo to no more than one-half of vessel operating revenue, on an annual basis and on the same conditions as are applicable to subsidized liner vessels under 46 CFR 280.4, provided the rates were "fair and reasonable" for U.S.-flag commercial vessels. Under 46 CFR 280.4, a reduction in ODS is effected for carriage of preference cargoes in excess of 50 percent, by gross freight revenue, on an annual basis.

As a result of judicial and administrative proceedings involving Docket A–132, MARAD entered into contract amendments with the applicants allowing them to carry cargo subject to the cargo preference laws of the United States at fair and reasonable rates for privately owned subsidized U.S.-flag commercial vessels, subject to subsidy abatement identical to that applicable to liner vessels, as prescribed in 46 CFR 280.4. These amendments were superseded by amendments similar in nature, but which included an "augmented bid" procedure to be used by Government agencies when evaluating bids from subsidized and unsubsidized bulk carriers. The augmented bid procedure was formalized by regulation effective October 11, 1984 (46 CFR 381.8).

On February 28, 1986, the Board authorized amendments to the contracts of subsidized bulk operators to allow their vessels to transport dry bulk preference cargo at fair and reasonable rates without ODS and subject to certain conditions. (Docket No. S–764). Presently, no U.S.-flag bulk operator has a contract allowing carriage of premium rated reserved preference cargoes with ODS.

Policy Clarification and Extension

A shift in the form of U.S. foreign aid to certain countries that affects the use of U.S.-flag bulk vessels has occasioned a need to reexamine and clarify MARAD's policy regarding payment of ODS for the carriage of cargoes reserved to U.S.-flag vessels. Foreign assistance to some countries, previously provided under the Commodity Import Program (CIP), has shifted to nonreimbursable cash grants ("cash transfer program"). The cargoes that move under the CIP (as well as other foreign assistance programs) are clearly covered by the cargo preference statutes. MARAD has consistently prohibited subsidized bulk carriers from carrying these cargoes with subsidy, or has allowed carriage subject to either an augmented bid procedure or a subsidy abatement formula.

A recent court decision, *Council of American-Flag Ship Operators v. U.S.*, 596 F. Supp. 160 (D. D.C. 1984), *affd.* 783 F. 2d 278 (D.C. Cir., 1986), involved the question of whether cargoes shipped from the United States to a country that is the recipient of funds received under the cash transfer program are subject to the Cargo Preference Act. If answered in the affirmative, such cargoes would be subject to the requirement that at least 50 percent of the gross tonnage be carried on U.S.-flag commercial vessels. The court held that the Cargo Preference Act does not apply to the cash transfer program because that program, unlike the CIP, provides for unrestricted cash transfers not tied to any obligation to make purchases in the United States.

This decision notwithstanding, the principal recipient of cash transfers under this program (Israel) voluntarily entered into a commitment to continue to follow procedures which had been followed under the CIP and to ship 50 percent of its imports of U.S. grain on U.S.-flag dry bulk carriers, at fair and reasonable rates. Because U.S. costs exceed foreign costs, the fair and reasonable rate for shipment of such cargoes has historically exceeded the world rate, and has moved at a "premium" rate.

Foreign assistance in the nature of cash transfers was not known at the time MARAD entered into the long-term subsidy contracts with U.S. bulk operators, nor did this type of reservation scheme then exist. Had it existed, such cargoes would have been treated identically with statutory preference cargoes. The carriage of any bulk cargoes strictly reserved to U.S.-flag bulk operators must be considered as being in addition to the operator's existing subsidized service for competitive worldwide carriage of bulk commercial cargoes. For example, the Soviet grain subsidy program was not an adjunct of commercial carriage, but required separate consideration, just as separate consideration was required in Docket A–132. Any approval of ODS for such additional service must be conditioned, *inter alia*, on a finding that U.S.-flag service in the bulk preference trades is inadequate, that the operation of additional vessels with ODS would further the accomplishment of the purposes and policy of the Act, and that the operation of such vessel(s) is required to meet foreign-flag competition and to promote the foreign commerce of the United States.

Absent these findings, on a current basis, MARAD believes that it is prohibited by statute from paying ODS for the carriage of bulk cargoes which are reserved exclusively to U.S.-flag vessels, whether by statute or by voluntary agreement of a country that receives financial assistance from the U.S. Government in the form of unrestricted cash transfers. For the purposes of sections 601 and 605 of the Act, there is no substantive distinction between these cargoes and preference cargoes. Since both types of reserved cargoes will move on U.S.-flag bulk vessels, irrespective of subsidy, the award of subsidy would, absent special circumstances, not further the purposes and policy of the Act.

Accordingly, MARAD is proposing this rule that would clarify and continue its existing policy of paying ODS only for bulk vessel operations when the payment of ODS for such service is necessary to permit a vessel to meet foreign-flag competition, to promote U.S. foreign commerce and to increase U.S.-flag carriage of bulk cargoes.

MARAD is also prepared to consider comments on two related issues. First, should U.S.-flag vessels carrying this type of reserved cargo on a part-time basis, and otherwise carrying competitive commercial cargo that provides substantial portions of its total annual freight revenue, be considered substantially meeting foreign competition? If so, should payment of ODS for such operation be subject to a reduction formula that is similar to that in 46 CFR 280.4? MARAD is asking that

commenters address these matters specifically.

E.O. 1229, Statutory and DOT Requirements

The Maritime Administrator has determined that this proposed rule is not major, as defined in E.O. 12291, but is significant under DOT regulatory policies and procedures (DOT Order 2100.5) due to its considerable public interest. This proposed rule has been classified as a significant regulatory action in the Administration's 1988 Regulatory Program.

Economic Evaluation

This proposed rule would only clarify and continue MARAD's existing policy concerning payment of ODS for bulk ship operators and, therefore, will have little new, significant impact. There is currently only one situation to which the proposed rule would apply. American Maritime Transport, Inc.'s (AMT) vessel ULTRASEA is presently engaged in a consecutive voyage charter to the government of Israel carrying dry bulk cargoes under the Cash Transfer Program for three years with options for two more years. Fifty percent of the Cash Transfer Program cargoes are reserved for U.S.-flag vessels under a Side Agreement Letter. The annual ODS savings on this ship would be approximately $2.4 million. The total annual ODS savings attributable to vessels that would be engaged in existing Cash Transfer Programs, if Egypt entered into a similar Side Agreement as the Israelis have, is estimated at $11.4 million annually as follows:

Vessel	ODS	Cash transfer program
ULTRASEA	$2,400,000	Israel.
U.S.-flag	3,000,000	Do.
Do	3,000,000	Egypt.
Do	3,000,000	Do.
	11,400,000	

Foreign-flag rates in the U.S. Gulf to Israel dry bulk preference trades last year were in the $19.50 range for cargoes averaging 55,000 tons. U.S.-flag ships such as the ULTRASEA, carrying cargoes averaging 65,000 tons, are receiving higher rates. This occurs due to the fact that U.S.-flag vessels can bid up to a MARAD-calculated fair and reasonable rate which covers higher U.S.-flag operating costs. U.S.-flag vessels are permitted this advantage because of their higher costs. Under such circumstances, the U.S.-flag vessels are not considered to be competing with foreign-flag vessels. Since the purpose of ODS is to maintain competitive parity for U.S.-flag ships with their foreign competition, for certain cost items, ODS is not permissible. Moreover, since MARAD believes the economic impact of the rule would be minimal, further regulatory evaluation is not necessary.

Since this proposal would principally affect operators of U.S.-flag vessels with substantial annual revenues, the Maritime Administrator certifies that this regulation, if finalized, would not exert a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et. seq.*). The proposed rule contains no new information collection requirements that require approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*), in addition to those requirements in 46 CFR 252.24 that have been approved under OMB Control No. 2133–024.

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it has no federalism implication that warrants the preparation of a federalism assessment.

List of Subjects in 46 CFR Part 252

Grant programs—Transportation, Maritime administration, Maritime carriers, Reporting requirements.

Accordingly, MARAD proposes to amend 46 CFR Part 252 as follows:

PART 252—[AMENDED]

1. Revise the authority citation to read as follows.

Authority: Secs. 204(b), 207, 211, 601, 603 and 605, Merchant Marine Act, 1936 as amended (46 U.S.C. 1114(b), 1117, 1121, 1171, 1172, 1173 and 1175); 49 CFR 1.66.

2. Amend the Table of Contents for Subpart C—Operation—to substitute, in 252.23, for the term "[Reserved]" the subject, "Continued eligibility for subsidy."

3. Add a new § 252.23 to read as follows:

§ 252.23 Continued eligibility for subsidy.

Operators shall remain eligible for ODS so long as they are engaged in service which would, under this Part and sections 601(a), 602, and 605(c) of the Act, qualify for approval of an ODSA. The payment of ODS will be made only for carriage of commercial cargoes for which U.S.-flag vessels are in direct competition with foreign-flag vessels. An example of cargo that would be excluded is bulk cargo reported by a shipper as the U.S.-flag share of cargoes subject to an agreement between the United States and a foreign government in connection with any U.S. cash transfer foreign assistance program. In such a circumstance, there is no foreign-flag competition for such cargoes.

By order of the Maritime Administrator.

Date: September 22, 1988.

Joel C. Richard,

Assistant Secretary.

[FR Doc. 88–22096 Filed 9–23–88; 8:45 am]

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr 1, 1980, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.