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# Federal Register

Wednesday
March 2, 1988

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For information on briefings in Tampa, FL, and Fort Lauderdale, FL, see announcement on the inside cover of this issue.

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

**WHO:** The Office of the Federal Register.

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

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

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**WHERE:** Auditorium
Tampa-Hillsborough County Public Library
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# Presidential Documents

Title 3—

The President

## Executive Order 12627 of February 29, 1988

## Amending the President's Commission on Privatization

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, and in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), it is hereby ordered that section 2(d) of Executive Order No. 12607 of September 2, 1987, entitled "President's Commission on Privatization" is amended by deleting "March 1, 1988" and inserting in lieu thereof "March 31, 1988."

Ronald Reagan

THE WHITE HOUSE,
*February 29, 1988.*

[FR Doc. 88-4693
Filed 3-1-88; 10:21 am]
Billing code 3195-01-M

# Rules and Regulations

Federal Register
Vol. 53, No. 41
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 831

### Retirement—Survivor Benefits

**AGENCY:** Office of Personnel Management.

**ACTION:** Final regulations.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations implementing section 502 of the Federal Employees Retirement System Technical Corrections Act of 1986 (FERSTCA). These regulations establish guidelines for giving a widow(er) or former spouse of an employee or Member who dies in service without waiving military retired pay for civil service retirement purposes credit for the military service in the computation of his or her annuity unless he or she elects to have the military service excluded.

**EFFECTIVE DATE:** April 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Rochester, (202) 632–4682.

**SUPPLEMENTARY INFORMATION:** On March 30, 1987, we published (at 52 FR 10025) interim regulations implementing section 502 of FERSTCA. Interested parties were given until May 29, 1987, to comment.

We received only one comment. The actions taken based on the comment and the editorial changes made to clarify material based on questions and actual cases that have arisen since the law was enacted are summarized below.

1. *Sections 831.301 (a)(2) and (b)(2).* One recommendation in the comment was that the parenthetical phrase "* * * (or was not receiving at the time of death) * * *." in § 831.301 (a)(2) and (b)(2) should be deleted for consistency with the provisions of section 502 of FERSTCA. The final regulations include the text of those two sections with the parenthetical phrases deleted for consistency with the statutory change.

2. *Section 831.301(d)(1).* This section has been amended to clarify the fact that military service credit given to widow(er)s and former spouses will be subject to the military deposit provisions in § 831.301 (a) and (b). For individuals who died in service after April 25, 1987, deposits should be made to the employing agency as provided by the instructions for military deposits currently in effect. For individuals who died in service after September 30, 1982, but before April 25, 1987, deposits for military service may be made to OPM in accordance with instructions to be provided by OPM to each applicant eligible to make the deposit.

3. *Section 831.301(d)(2)(i).* This section has been amended for the sake of clarity. First, the amount of the reduction for "survivor benefits under a retirement system for members of the uniformed services" is the amount of the survivor benefit before any reductions to offset payments of other Federal benefits except those payable under title II of the Social Security Act. Second, OPM will use the amount of the reduction for "survivor benefits under a retirement system for members of the uniformed services" as of the date the survivor's benefit commences subject to review and adjustment if the individual becomes eligible for payments under title II of the Social Security Act.

4. *Section 831.301(d)(2)(ii).* This section has been amended to allow adjustments in the amount of monthly civil service annuity when the military survivor benefit is reduced because the annuitant is eligible for payments under title II of the Social Security Act.

5. *Section 831.301(d)(3).* Another recommendation in the comment was that § 831.301(d)(3) be amended to allow an extension of what was believed to be a 30-day time limit for a widow or former spouse of an employee or Member who dies in service on or after April 25, 1987, to elect not to include the decedent's military service. We did not adopt this suggestion since the widow(er) or former spouse can make the election at any time between the date the application is filed and 30 calendar days after the date of the first regular monthly annuity payment. This provision will rarely, if ever, result in an election period of less than 60 days. Changes in the election will not generally be permitted; however, if the election was based on incomplete or erroneous information, the survivor annuitant may request OPM to consider a change in election retroactive to the commencing date of the annuity.

### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations will only affect retirement payments to spouses and former spouses of Government employees or Members who die in service.

### List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income tax, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management
**Constance Horner,**
*Director.*

Accordingly, OPM amends 5 CFR Part 831 as follows:

## PART 831—RETIREMENT

### Subpart C—Credit for Service

1. The authority citation for Subpart C of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

2. In § 831.301, paragraphs (a)(2), (b)(2), and (d) are revised to read as follows:

**§ 831.301 Military service.**

(a) * * *

(2) The employee or Member is not receiving military retired pay awarded for reasons other than (i) service-connected disability incurred in combat with an enemy of the United States, (ii) service-connected disability caused by an instrumentality of war and incurred in line of duty during a period of war (as that term is used in Chapter 11 of Title 38, United States Code), or (iii) under Chapter 67 of Title 10, United States Code; and

* * * * *

(b) * * *

(2) The employee or Member is not receiving military retired pay awarded for reasons other than (i) service-connected disability incurred in combat with an enemy of the United States, (ii) service-connected disability caused by an instrumentality of war and incurred in line of duty during a period of war (as that term is used in Chapter 11 of Title 38, United States Code), or (iii) under Chapter 67 of Title 10, United States Code; and

* * * * *

(d) *Widow(er)s and former spouses entitled to annuity based on the service of employees or Members who die in service*—(1) *Military service is included unless the widow(er) or former spouse elects otherwise.* Effective April 25, 1987, unless a widow(er) or former spouse of an employee or Member who dies—on or after that date—before being separated from service files a written election to the contrary, his or her annuity will include credit for periods of military service (subject to the provisions of paragraphs (a) and (b) of this section) that would ordinarily be excluded from the computation of the employee's or Member's annuity under 5 U.S.C. 8332(c)(2).

(2) *Reduction by the amount of survivor benefits payable based on the military service.* (i) In paragraph (d)(2)(ii) of this section, "survivor benefits under a retirement system for members of the uniformed services" means survivor benefits before any offsets for benefits payable from another Federal benefit system except for those payable under title II of the Social Security Act. The amount of the survivor benefit to be deducted will be the amount payable to the current or former spouse and attributable to the decedent's retired or retainer pay for the period of military service to be included in the CSRS survivor annuity. However, the survivor benefit will never be reduced below the amount payable based on the civilian service alone.

(ii) OPM will obtain information on the amount of any monthly survivor benefits payable to each applicant for CSRS current or former spouse annuity. OPM will reduce the CSRS survivor annuity by the monthly military survivor benefit on its commencing date. OPM will not make a subsequent adjustment unless it is necessary to increase or decrease the CSRS survivor benefit because of a change in the amount of military survivor benefits attributable to the period of service or a change in the period of military service to be included in the CSRS annuity when the survivor annnuitant becomes eligible for benefits under title II of the Social Security Act.

(3) *Widow(er)s or former spouses of employees or Members who die on or after April 25, 1987—election not to be included.* OPM will accept a written election from a widow(er) or former spouse who does not wish to be covered by § 831.301(d) provided it is postmarked within the period ending 30 calendar days after the date of the first regular monthly annuity payment.

(4) *Widow(er)s or former spouses of employees or Members who die before April 25, 1987—application to OPM for credit.* Widow(er)s or former spouses of employees or Members who died before April 25, 1987, must apply to OPM in writing to have credit for military service included in the survivor annuity computation. If the survivor annuity is increased by including credit for the military service, the increase will be effective on the first of the month following the 60th calendar day after the date the written application for inclusion of the military service is received in OPM.

[FR Doc. 88-4439 Filed 3-1-88; 8:45 am]
BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Parts 272 and 273

[Amdt. No. 300]

### Food Stamp Program; Eligible Alien Status

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Immigration Reform and Control Act of 1986, Pub. L. 99-603, enacted on November 6, 1986, establishes a number of new categories of legal aliens. On May 29, 1987, the Department issued interim rules to specify those categories of legalized aliens who also gain eligible alien status to participate in the Food Stamp Program as a result of the Immigration Reform and Control Act of 1986. This action finalizes the interim rule and addresses those comments which were received on the interim rule.

**DATE:** The provisions of this rulemaking are effective retroactive to November 6, 1986, the date of enactment of the Immigration Reform and Control Act of 1986. Under the terms of the amendments made by that Act, and incorporated in this rulemaking, certain categories of aliens will not actually become eligible for food stamp benefits until specified dates in the future as reflected in this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Judith M. Seymour, Certification Rulemaking Section, Eligibility and Monitoring Branch, Program Development Division, Food and Nutrition Service, USDA, Alexandria, VA 22302, (703)756-3457. Copies of the Regulatory Impact Analysis summarized in the preamble are available from Ms. Seymour.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1519-1. It has been determined that this rulemaking is a major action because it is anticipated that the Food Stamp Program's costs will increase by more than $100 million. However, this action will not result in an increase in costs or prices for consumers, individuals, or State and local governments. Additionally, this action will not have a significant effect on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

#### Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). Anna Kondrata, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The changes affect food stamp applicants and the State and local agencies which administer the Food Stamp Program.

#### Paperwork Reduction Act

This rulemaking does not contain any reporting and/or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

**Regulatory Impact Analysis**

*Need for Action*

This action is required as a result of the Immigration Reform and Control Act of 1986 which established new categories of legal aliens. As a result, certain categories of aliens will gain eligible alien status to participate in the Food Stamp Program in accordance with section 6(f) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2015(f)).

*Benefits*

This action increases the number of potentially eligible food stamp recipients. This action will not affect the food purchasing power of current program participants.

*Costs*

The Department estimates that this action will increase the cost of the Program by approximately $148 million in Fiscal Year 1988, $180 million in 1989 and $106 million in 1990.

**Background**

On May 29, 1987, the Department published an interim rule at 52 FR 20055 that identified the categories of aliens who are, or will become, eligible to participate in the Food Stamp Program (FSP) as a result of the Immigration Reform and Control Act (IRCA) of 1986. The interim rule also specified that the alien applications must provide documentation that verifies their alien status.

The categories of aliens which became eligible to participate in the FSP as a result of the IRCA are: (1) Those who have resided continuously in the United States since before January 1, 1972 in accordance with section 249 of the Immigration and Nationality Act (INA); (2) those who have been granted lawful permanent resident status by the Immigration and Naturalization Service (INS) and are aged, blind or disabled as defined in section 1614(a)(1) of the Social Security Act; (3) those who were granted temporary resident status pursuant to section 245A(a) of the INA at least five years prior to applying for food stamps and who subsequently gained lawful permanent resident status pursuant to section 245A(b)(1) of the INA; (4) those who are granted lawful resident status as a special agricultural worker (SAW) under section 210(a) of the INA; and (5) those who are granted lawful resident status as an additional special agricultural worker (ASAW) in fiscal years 1990 through 1993 under section 210A(d) of the INA.

The Department received eight comments on the May 29, 1987 interim rule from five commenters. The Department received comments from two State agencies, one local agency and two public interest groups. Two of the comments are not directly related to the provisions in the interim rule and are not discussed further in this preamble. The remaining six comments are discussed below.

**Eligibility**

The Department received one comment pertaining to the categories of aliens which become eligible to participate in the FSP. The commenter argued that the SAW and ASAW alien applicants are eligible to participate in the FSP as of the date they file for SAW or ASAW status with the INS because they are permanently residing in the United States under color of law. As noted by the commenter, several court decisions have supported alien eligibility in other benefit programs when the alien is considered to be residing in the United States under color of law (*Holley* v. *Lavine*, 553 F.2d 845 (2nd Cir. 1977), *cert. denied*, 435 U.S. 947 (1978); *Berger* v. *Heckler*, 771 F.2d 1556 (2d Cir 1985).

These court decisions reflect the "color of law" provision specified in the Social Security Act. Under the Social Security Act, the phrase "color of law" is interpreted to include all alien categories recognized by immigration law, policy and practice. Thus, those aliens who are known to the INS and who the INS does not contemplate deporting may be considered as persons residing under color of law (PRUCOL).

However, in contrast to the Social Security Act's provision governing PRUCOL, the Food Stamp Act of 1977, as amended, specifically identifies the categories of aliens who are eligible to participate in the FSP. Relative to alien eligibility, section 6(f) of the Food Stamp Act of 1977, as amended, states in part as follows:

> No individual who is a member of a household otherwise eligible to participate in the food stamp program under this section shall be eligible to participate as a member of that or any other household unless he or she is (1) a resident of the United States and (2) either (A) a citizen; or (B) an alien lawfully admitted for permanent residence as an immigrant as defined by sections 101(a)(15) and 101(a)(20)) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15) and 8 U.S.C. 1101(a)(20), excluding, among others, alien visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country; of (C) an alien who entered the United States prior to June 30, 1948, or such subsequent date as is enacted by law, has continuously maintained his or her residence in the United States since then, and is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 249 of the Immigration and Nationality Act (8 U.S.C. 1259); or (D) an alien who has qualified for conditional entry pursuant to sections 207 and 208 of the Immigration and Nationality Act (8 U.S.C. 1157 and 1158) * * *

Therefore, in contrast to the court cases cited above, in order to be eligible to receive food stamps, an SAW or ASAW alien applicant must be lawfully admitted in an alien status specified by the Food Stamp Act, not simply admitted under color of law. Moreover, as noted above, SAW and ASAW applicants are effectively temporarily ineligible under the amendments made by sections 210(a) and 210A(d) of the INA and therefore not entitled to participate as of the date they file for SAW or SAW status with INS.

The commenter was also concerned that the interim rule was improperly designated as an interpretive rule because of the Department's discretion in determining when the SAW and ASAW applicants gain an eligible alien status. Rather than issue an interim rule, the commenter felt that the Department should have issued a notice of proposed rulemaking (NPRM). As stated above, the Department was not exercising discretion in implementing the provisions related to SAW and ASAW eligibility. The interim rule was nondiscretionary in that the provisions are specifically prescribed by law and cannot be affected in substance by the public comment offered under a NPRM. Opportunity for public comment was provided in the interim rule in an effort to improve and simplify administration of the rule.

Accordingly, the interim rule at § 273.4(a) is adopted in final without change.

**Verification**

Prior to the publication of the interim rule, all alien applicants were required to provide an INS document that verified their eligible alien status. If the applicant could not provide INS documentation, the applicant had to provide other forms of documentation or conclusive evidence that verified his/her alien status. The interim rule specified that acceptable verification may consist of documents (such as a notice, letter, or identification card) that establish the alien's eligible status.

The Department received two comments in the area of verification. The first comment was from a local agency and expressed the concern that the greater latitude in the types of

acceptable verification may result in increased errors. The commenter, therefore, recommended that acceptable documentation be limited to INS documentation.

Although the Department agrees that INS documentation is the most obvious type of acceptable verification, the verification requirement in the regulation reflects a provision in the IRCA which affects the verification requirement of all aliens applying for food stamp benefits. Section 121(a) of IRCA requires State agencies to determine what constitutes acceptable documentation of the alien's immigration status. Because this provision is mandated by IRCA, the Department cannot limit acceptable documentation to INS documentation. This provision will be discussed in a separate future rulemaking which will address requirements associated with the Systematic Alien Verification for Entitlements (SAVE).

In the preamble to the May 29, 1987 interim rule, the Department solicited comments regarding the adequacy of the current verification procedures to obtain verification from applicants who have resources available to them in their home country. Only one comment was received in this area. Because of the difficulty SAW households would have in providing verification from outside of the country, the commenter recommended that the regulations allow households not to verify reported out-of-country resources unless there is an indication that the value of the resources exceeds FSP limits. If it would be difficult or impossible for the SAW household to verify the out-of-country resources, the commenter further recommended that the SAW household should be presumed eligible for FSP benefits if otherwise eligible. The commenter also provided data which suggested that in most SAW households, the value of out-of-country resources would not exceed the FSP resource limit.

The Department believes that the current regulations at 7 CFR 273.2(f)(3)(i)(A) provide State agencies with the flexibility to determine the circumstances under which the value of an out-of-country resource would be questioned or included as mandated verification and consequently no further revisions to 7 CFR 273.2 are included in this final rule. Specifically, this section of the regulations states that, for the eligibility or coupon allotment elements in which verification is not mandated, the State agency may establish its own standards for the use of verification provided that all questionable factors are verified and that the standards are reasonable.

**Miscellaneous Comments**

Two comments did not address changes which were implemented in the May 29 interim rule. However, the Department is addressing these comments in order to further clarify current food stamp regulations relating to the certification of applicant aliens.

In the first comment, a State agency commented that the regulations should specify that emergency food and/or food stamps must be provided when aliens are not able to produce necessary verification. As previously discussed, section 6(f) of the Food Stamp Act of 1977, as amended, specifies that an individual must be a citizen or alien lawfully admitted in one of several categories in order to participate in the Food Stamp Program. Current regulations at 7 CFR 273.2(f) further require that an applicant alien provide documentation that verifies his or her alien status before the applicant is allowed to participate in the program. Because the IRCA does not modify this verification requirement, aliens must still verify their alien status prior to obtaining food stamps.

However, some aliens without necessary verification may be eligible for expedited service. Under current procedures at 7 CFR 273.2(i), applicant households who are eligible for expedited service must be provided with benefits no later than the fifth calendar day following the date the application is filed. Except for an applicant's identity, verification of all eligibility factors can be postponed under expedited service procedures. Therefore, aliens who are eligible for expedited service in accordance with current regulations may receive at least initial food stamp benefits prior to providing necessary verification of alien status. Accordingly, this commenter's suggestion is not adopted in this final rule.

In the second comment, a State agency commented that the regulations should require the State agencies to refer an alien without sufficient documentation to an agency known as a "qualified designated entity" (QDE) rather than refer the alien to the INS. Under section 201(a) of IRCA, the Attorney General must designate QDEs for the purpose of assisting aliens with their applications to INS. In accordance with INS regulations at 8 CFR 210.1(m), a QDE is any State, local, church, community, or voluntary agency, farm organization, association of agricultural employers or individuals designated by the INS to assist aliens in the preparation of applications for legalization and/or SAW status. Aliens may, therefore, elect to apply for legalization or SAW status with INS or on their own with the assistance of a QDE.

The Department does not agree with the commenter that the FSP regulations should require eligibility workers to refer aliens to QDEs or other entities which assist aliens to apply or obtain a legal immigration status. The Department's primary concern is that aliens provide documentation that verifies their eligible alien status for purposes of the Food Stamp Program. To this end, current regulations at 7 CFR 273.2(f)(l)(ii) place the primary responsibility for obtaining documentation on the alien. Because the INS is the primary source of information on an alien's immigration status, current regulations also require the eligibility worker to advise aliens who present questionable documentation to either contact INS themselves or request that the eligibility worker contact INS on their behalf. The State agency may contact INS on the alien's behalf if the alien provides his/her written consent. Although this final rule does not change the current regulations, eligibility workers are not prohibited from also referring applicant aliens to a QDE or any other resource within their area which assists aliens.

**Implementation**

The implementation provisions specified in the May 29, 1987 interim rule at 7 CFR 272.1(g)(88), Amendment No. 292, are adopted without change by this final rule.

**List of Subjects**

*7 CFR Part 272*

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

*7 CFR Part 273*

Administrative practice and procedures, Aliens, Claims, Food Stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

**PARTS 272 AND 273—[AMENDED]**

Accordingly, the interim rule amending 7 CFR Parts 272 and 273 which was published at 52 FR 20055–20058 on May 29, 1987, is adopted as a final rule without change.

Date: February 26, 1988.

John W. Bode,

*Assistant Secretary for Food and Consumer Services.*

[FR Doc. 88-4524 Filed 3-1-88; 8:45 am]

BILLING CODE 3410-30-M

## Federal Crop Insurance Corporation

## 7 CFR Part 401

[Amdt. No. 8; Doc. No. 5117S]

## General Crop Insurance Regulations; Canning and Processing Bean Endorsement

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section, 7 CFR 401.118 to be known as the Canning and Processing Bean Endorsement. The intended effect of this rule is to add crop insurance protection on canning and processing fresh beans grown under contract with a processor as an endorsement to the General Crop Insurance policy which contains the standard terms and conditions common to most crops.

**EFFECTIVE DATE:** March 2, 1988.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as November 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith adds to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.118, the Canning and Processing Bean Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring fresh beans grown under contract with a processor for canning and processing.

In adding the new Canning and Processing Bean Endorsement to 7 CFR Part 401 as outlined below, FCIC herewith highlights some of the important provisions in the policy for insuring beans as follows:

1. *Section 1*—Allow fresh lima beans to be insurable as canning and processing beans.

Require a processor contract to be in effect before beans are insurable under this endorsement.

Provide that the actuarial table contain provisions for insurance coverage on beans planted in consecutive years in those counties where yearly crop rotation because of soil organisms and root diseases is not a requirement.

2. *Section 2*—Specify that beans not timely harvested will be insured only if the harvesting equipment cannot get on the unit due to adverse weather.

3. *Section 7*—Provide for the actuarial table to designate a sieve size or grade to be used in determining production to count in those areas where sieve sizes are used to determine production under the contract with the processor.

On Monday, November 9, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 43080 to add crop insurance protection on canning and processing fresh beans grown under contract as an endorsement to the General Crop Insurance policy which contains the standard terms and conditions common to most crops.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received.

In reviewing the rule FCIC has determined that the calendar date for the end of the insurance period for Delaware, Maryland, and New Jersey was inadvertently omitted. This error is herein corrected.

Additional language has been added to clarify the unit determinations for all states except Delaware, Maryland, New Jersey, and New York since these states have different practices making unit division extremely difficult. These changes are as follows:

*Section 4.c.*—An appropriate end of insurance period was added for Delaware, Maryland, and New Jersey. Snap beans are normally harvested up to the last week of October in these states. Delaware Agricultural Statistics, a publication of the Statistical Reporting Service of the U.S. Department of Agriculture, show a one in twelve chance of a frost before October 15 (New Jersey is approximately the same) so no major additional risk would result from this end of insurance period date.

*Section 5.*—The states to which the unit division guidelines apply are listed herein so as to exclude Delaware, Maryland, New Jersey and New York from guideline units. All New York production is commingled and records by unit would be difficult to obtain. In Delaware, Maryland, and New Jersey, it is common practice to plant snap beans back to back in the same crop year. An attempt at unit break down would be administratively impossible.

Since the provisions of the Canning and Processing Bean Endorsement must be provided to potential insureds as soon as possible so they may determine their insurance needs timely, good cause is shown for making this rule effective in less than 30 days.

Accordingly, FCIC adopts the proposed rule published at 52 FR 43080 as a final rule, with changes for clarification as outlined above.

### List of Subjects in 7 CFR Part 401

General Crop Insurance Regulations, Canning and processing beans.

### Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 401), effective

for the 1988 and succeeding crop years, in the following instances:

## PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub.L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.118, Canning and Processing Bean Endorsement, effective for the 1988 and succeeding crop years, to read as follows:

### § 401.118 Canning and Processing Bean Endorsement.

The provisions of the Canning and Processing Bean Endorsement for the 1988 and subsequent crop years are as follows:

**Federal Crop Insurance Corporation**

*Canning and Processing Bean Endorsement*

1. Insured crop and acreage.

a. The crop insured will be fresh beans (snap and lima) which are planted for harvest as canning or processing beans.

b. In addition to the beans not insurable under section 2 of the general crop insurance policy, we do not insure any beans;

(1) Not grown under a contract with a canner, processor or broker or excluded from the canner, processor or broker contract for, or during, the crop year (The contract must be executed and effective before you report your acreage);

(2) Planted for the fresh market; or

(3) Planted to snap beans, lima beans, green peas, mint, rye, soybeans, or sunflowers the previous crop year unless otherwise provided for on the actuarial table.

c. An instrument in the form of a "lease" under which you retain control of the acreage on which the insured beans are grown and which provides for delivery under certain conditions and at a stipulated price will, for the purpose of this endorsement, be treated as a contract under which you have a share in the beans.

2. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes not insured against in section 1 of the General Crop Insurance Policy, we will not insure against any loss of production due to the crop not being timely harvested unless such delay in harvesting is solely and directly due to adverse weather conditions which preclude harvesting equipment from entering into and moving about the unit.

3. Annual premium.

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

4. Insurance period.

In addition to the provisions in section 7 of the general crop insurance policy, for unharvested acreage, the date by which acreage should have been harvested is added as one of the dates, the earliest of which is used to designate the end of the insurance period. The calendar date for the end of the insurance period is the applicable date of the year in which the beans are normally harvested, as follows:

| | |
|---|---|
| Delaware, Maryland, and New Jersey—All Beans | October 15 |
| New York—Snap Beans | September 30 |
| All other states—Snap Beans | September 20 |
| All other states—Lima Beans | October 5 |

5. Unit division.

For Michigan, Minnesota, Oregon, Tennessee, Washington, and Wisconsin bean acreage by type (snap or lima) that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay an additional premium if required by the actuarial table and if for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and either;

a. Acreage planted to the insured beans is located in separate, legally identifiable sections or, in the absence of section descriptions, the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage can be easily determined; and

(2) The beans are planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

b. The acreage planted to the insured beans is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Beans planted on irrigated acreage do not continue into nonirrigated acreage in the same rows or planting pattern (Nonirrigated corners of a center pivot irrigation system planted to insurable beans are part of the irrigated unit. Production on the total unit, both irrigated and non-irrigated, will be combined to determine the yield for the purpose of determining the guarantee for the unit); and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good irrigated and nonirrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of damage or loss.

In addition to the notices required in section 8 of the general crop insurance policy if you are going to claim an indemnity on any unit which is not to be harvested or on which harvest has been discontinued, you must give us notice not later than 48 hours:

(1) After the time harvest would normally start; or

(2) After discontinuance of harvest.

For the purposes of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for indemnity.

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total bean production (tons) to be counted;

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production (tons) to be counted for a unit will include all harvested and appraised production.

(1) The tons of harvested production will be either the total net tons delivered to the processor or broker for which payment was received, as shown on the processor or broker settlement sheet, or will be determined by dividing the dollar amount received from the processor or broker by the contract price for the sieve size or grade factor designated by the actuarial table.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good bean farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Appraised production on unharvested acreage.

(d) If any acreage is not timely harvested, the production to count will be the greater of:

(i) That designated by the actuarial table;

(ii) The appraised production; or

(iii) The dollar amount received from the processor divided by the processor's base contract price per ton.

(e) Appraised production on insured acreage for which we have given written consent to be put to another use unless such acreage is:

(i) Not put to another use before harvest of beans becomes general in the county and is reappraised by us;

(ii) Further damaged by an insured cause and is reappraised by us; or

(iii) Harvested.

8. Cancellation and termination dates.

The cancellation and termination dates for all states are April 15.

9. Contract changes.

The date by which contract changes will be available in your service office is December 31 preceding the cancellation date.

10. Meaning of terms.

a. *"Harvest"* means the mechanical picking of bean pods from the vines for the purpose of delivery to the canner or processor.

Done in Washington, DC, on February 8, 1988.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 88-4529 Filed 3-1-88; 8:45 am]

BILLING CODE 3410-08-M

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**7 CFR 401**

**[Amdt. No. 12; Doc. No. 5240S]**

## General Crop Insurance Regulations; Stonefruit Endorsement

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section, 7 CFR 401.122, to be known as the Stonefruit Endorsement. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection of stonefruit in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops.

**EFFECTIVE DATE:** March 2, 1988.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulations 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as December 1, 1992.

John Marshall, Manager, FCIC, (1) had determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith adds to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.122, the Stonefruit Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring stonefruit, including clingstone peaches and apricots.

The provisions for insuring stonefruit contained in 7 CFR 401.122 will parallel those provisions contained in 7 CFR Part 451, the Canning and Processing Peach Crop Insurance Regulations, for the 1988 crop year. The policy contained in 7 CFR Part 451 will be terminated at the end of the 1988 crop year and later removed and reserved.

1987 crop year insureds under the Canning and Processing Peach Crop Insurance Policy may transfer coverage to the Stonefruit Endorsement, at the insured's option, before the sales closing date. Insureds under the Stonefruit Endorsement will not be allowed to transfer to the Canning and Processing Peach Policy. No new policies under 7 CFR part 451 will be issued.

On Friday, January 8, 1988, FCIC published a notice of proposed rulemaking in the **Federal Register** at 53 FR 505, to provide the regulations containing the provisions of crop insurance protection on stonefruit in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC herewith adopts as final the proposed rule published at 53 FR 505, effective for the 1988 and succeeding crop years.

Since policyholders must be allowed to review any changes in the policy for insuring stonefruit (canning and processing peaches and apricots) as soon as possible, good cause is shown for making this rule effective in less than 30 days.

**List of Subjects in 7 CFR Part 401**

General Crop Insurance Regulations, Stonefruit endorsement.

**Final Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

**PART 401—[AMENDED]**

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.122, Stonefruit Endorsement, effective for the 1988 and Succeeding Crop Years, to read as follows:

**§ 401.122 Stonefruit Endorsement.**

The provisions of the Stonefruit Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

**UNITED STATES DEPARTMENT OF AGRICULTURE**

**Federal Crop Insurance Corporation**

*Stonefruit Endorsement*

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Earthquake;
(3) Fire;
(4) Wildlife;
(5) Volcanic eruption;
(6) An insufficient number of chilling hours to effectively break dormancy; or
(7) Failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

Unless these causes of loss are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against under Section 1.b. of the general crop insurance policy, we will not insure against any loss of production due to:

(1) Fire, where weeds and other forms of undergrowth have not been controlled or tree

pruning debris has not been removed from the orchard;

(2) Insect infestation;

(3) Split pits regardless of cause; or

(4) Inability to market as a direct result of quarantine, boycott, or refusal of any entity to accept or harvest production unless production has actual physical damage due to a cause specified in subsection 1.a.

2. Insured crop and acreage.

a. The crop insured will be any of the following stonefruit types you elect in writing prior to the sales closing date and grown for fresh market fruit or processing (whichever is applicable) for which we provide a guarantee and premium rate:

Type I—Apricots—Fresh
Type II—Apricots—Processing
Type III—Nectarines—Fresh
Type IV—Peaches, Cling—Processing
Type V—Peaches, Freestone—Processing
Type VI—Peaches, Freestone—Fresh

b. You may insure any fresh market Stonefruit of Type I Apricots or Type VI Freestone Peaches as processing Type II Apricots or Type V Freestone Peaches respectively by converting fresh market lugs, harvested or appraised, to equivalent processing tons using the weight equivalents provided in paragraph 12.d.

c. In lieu of the provisions of paragraph 2.e. of the general crop insurance policy, we do not insure any stonefruit acreage:

(1) Which is not irrigated;

(2) On which the trees have not reached the fifth growing season after being set out;

(3) Which has not produced at least 200 lugs fresh market production per acre (at least 2.2 tons per acre for processing types);

(4) For which acceptable production records for the type elected for at least the previous crop year are not provided;

(5) Which we inspect and consider not acceptable;

(6) Which is interplanted with another crop;

(7) On which is grown a type or variety: not established as adapted to the area; excluded by the actuarial table; or not regulated by the California Tree Fruit agreement or a related crop advisory board for the State (for applicable types);

(8) From which the fruit is harvested directly by the public; or

(9) If the orchard practices carried out are not in accordance with the orchard practices for which the premium rates have been established.

3. Report of acreage, share, type, and practice (Acreage Report).

The acreage report must be filed on or before January 31. You must report the crop type in addition to the information required by the general crop insurance policy for the acreage report.

4. Production reporting and Production Guarantees.

a. In addition to the production report required in section 4 of the general crop insurance policy, you must report:

(1) The number of bearing trees;

(2) The number of trees planted per acre;

(3) Known tree damage or use of production practices which have or may reduce the yield from previous levels; and

(4) If the number of bearing trees (fifth growing season and older) is reduced more than 10% from the preceding calendar year. (The production guarantee will be reduced 1 percent (through adjustment to your average yield) for each 1 percent reduction in excess of 10 percent).

b. You may select only one coverage level and price election per type for the crop year.

c. The processing price elections will be applied to any applicable type (except type III—Nectarines) where an election:

(1) Has not been made by the insured; or

(2) Is not available in accordance with the provisions of the actuarial table.

5. Annual premium.

The annual premium is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time insurance attaches.

6. Insurance period.

In lieu of the provisions in section 7 of the general crop insurance policy, coverage begins for each crop year on February 1. Insurance ends on each acre at the earliest of:

a. Total destruction of the insured crop by type;

b. Harvest;

c. The date harvest would normally start for the type if the crop is not to be harvested;

d. Final adjustment of a loss; or

e. In all counties, the calendar date immediately following February 1 as follows:

(1) all apricots—July 31.

(2) all nectarines and peaches—September 30.

7. Units.

Stonefruit acreage of each type, grown on non-contiguous land, that would otherwise be one unit as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay an additional premium as provided for by the actuarial table and if for each proposed unit you maintain written, verifiable records of acreage and harvested production for at least the previous crop year.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between units will cause the production from those units to be combined for the purpose of calculating an indemnity.

8. Notice of damage or loss.

In lieu of the notices required in subsections 8.a.(2),(3), and (4) of the general crop insurance policy, in case of damage or probable loss you must give us written notice within 72 hours of the date of damage and indicate the cause of damage and whether a claim for indemnity is probable. Notwithstanding the previous sentence, if damage occurs within 72 hours of or during harvest, immediate notice stating the cause of damage and probability of a claim must be given to us. If notice is given under this paragraph, we must be notified of the time of harvest at least 72 hours before harvest begins.

9. Claim for indemnity.

In addition to Section 9 of the general crop insurance policy:

a. The indemnity will be determined separately for each unit of types I, III, and VI by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of fresh stonefruit by type to be counted (see section 9.b. or c.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by the insured share.

b. The total production (standard lug equivalents) (see section 12.d.) to be counted for a unit will include all production harvested, by type and all appraised production. For fresh apricots (Type I), such production must meet the California Department of Food and Agriculture minimum standards. For fresh nectarines (Type III) and fresh freestone peaches (Type VI), such production must meet U.S. #1 standards as modified by the latest California Tree Fruit Agreement Publication.

(1) Production of fresh stonefruit damaged by insurable causes within the insurance period, that could be marketed for any use as other than fresh packed stonefruit, will be determined by multiplying the number of tons that could be marketed by the value per ton of fruit or $50.00 per ton, whichever is greater, and dividing that result by the highest price election available for the type. This result will be the number of standard lug equivalents to be considered as production to count.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes;

(b) Not less than the applicable guarantee for any acreage which is abandoned, destroyed by you without our prior written consent, or not inspected by us prior to the completion of harvest;

(c) Any unharvested production where good stonefruit cultural practices were discontinued following an appraisal; and

(d) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Not harvested before the harvest of stonefruit becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause and is reappraised by us; or

(c) Harvested.

(4) The amount of production of any unharvested type may be determined on the basis of orchard appraisals conducted after the end of the insurance period or discontinuance of harvest. We may appraise and consider as production to count, any insured fruit remaining on acreage not clean harvested.

(5) We may delay final appraisal until the extent of damage can be determined.

c. The total production in tons to be counted for a processing unit will include all production harvested and all appraised production:

(1) For processing apricots (Type II), such production must meet California Department of Food and Agriculture minimum standards;

(2) For processing clingstone peaches (Type IV), such production must be graded by the California State Inspection Service as #2 or better;

(3) For processing freestone peaches (Type V), such production must meet California Department of Food and Agriculture minimum standards and will include all production harvested and appraised which is acceptable to the processor;

(4) Appraised production to be counted for Types II, IV, and V will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good stonefruit production practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed by you without our consent; and

(c) Any unharvested production.

(5) Any appraisal for processing fruit types will be conducted based on procedure stated in subsection 9.b(2), (3), and (4).

d. In the absence of acceptable records to determine the disposition of harvested stonefruit, we may elect to determine such disposition and the amount of such production to be counted for the unit.

e. You must authorize us in writing to examine and obtain any records pertaining to production and marketing of the insured fruit under this contract from the broker, shipper, canner, advisory board, marketing order or any other source we deem necessary.

10. *The cancellation and termination dates.*

The cancellation and termination dates are January 31.

11. *Contract changes.*

The date by which contract changes will be available in your service office is October 31 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

12. *Meaning of terms.*

For the purpose of Stonefruit crop insurance:

a. *"Appraisal"* means an estimate of the potential production determined by our representative using our prescribed procedures.

b. *"Crop Year"* means the period beginning with the date insurance attaches and extending through the normal harvest time and will be designated by the calendar year in which the insured type is normally harvested.

c. *"Harvest"* means the picking of mature fruit from the trees by hand or machine.

d. *"Lug"* means a container of fresh fruit of the weights shown below. All fresh production to count of varying lug sizes will be converted to standard lug equivalents on the basis of the following average net pounds of packed fruit:

| Type | Pounds/ lug |
|---|---|
| I Apricots | 24 |
| III Nectarines | 25 |
| VI Freestone Peaches | 22 |

e. *"Ton"* means a volume of apricots or processing peaches of type II, IV, or V marketable through processing channels and equaling 2000 pounds.

Done in Washington, D.C., on February 11, 1988.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 88-4530 Filed 3-1-88; 8:45 am]

BILLING CODE 3410-08-M

## 7 CFR Part 421

**[Amdt. No. 1; Doc. No. 5395S]**

## Cotton Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the Cotton Crop Insurance Regulations (7 CFR Part 421), effective for the 1988 crop year. The intended effect of this rule is to maintain the effectiveness of the present Cotton Crop Insurance Regulations only through the 1987 crop year. The provisions currently contained in this Part have been issued as an endorsement to 7 CFR Part 401, General Crop Insurance Regulations (401.119, Cotton Endorsement), effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, and substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC.

**EFFECTIVE DATE:** April 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

### Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV is terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 421 will be effective only

through the end of the 1987 crop year, FCIC herein amends the subpart heading of these regulations to specify that such will be the case.

On Monday, September 14, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 34674, to maintain the effectiveness of the present Cotton Crop Insurance Regulations only through the 1987 crop year. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC herewith adopts as final the rule published at 52 FR 34674 amending the subpart heading to provide that 7 CFR Part 421 be effective for the 1986 and 1987 crop years only.

**List of Subjects in 7 CFR Part 421**

Crop insurance, Cotton.

**Final Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Subpart heading to the Cotton Crop Insurance Regulations (7 CFR Part 421), as follows:

**PART 421—[AMENDED]**

1. The Authority citation for 7 CFR Part 421 continues to read as follows:

**Authority:** Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 421 is revised to read as follows:

**Subpart—Regulations for the 1986 and 1987 Crop Years**

Done in Washington, DC, on February 11, 1988.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 88–4533 Filed 3–1–88;8:45am]

**BILLING CODE 3410–08–M**

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**7 CFR Part 424**

**[Amdt. No. 2; Doc. No. 5394S]**

## Rice Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the Rice Crop Insurance Regulations (7 CFR Part 424), effective for the 1988 crop year. The intended effect of this rule is to maintain the effectiveness of the present Rice Crop Insurance Regulations only through the 1987 crop year. The provisions currently contained in this Part have been issued as an endorsement to 7 CFR Part 401, General Crop Insurance Regulations (401.121, Rice Endorsement), effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, and substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC.

**EFFECTIVE DATE:** April 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

John Marshall, Manager, FCIC, (1) had determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

**Background**

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV is terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 424 will be effective only through the end of the 1987 crop year, FCIC herein amends the subpart heading of these regulations to specify that such will be the case.

On Friday, September 18, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 35269, to maintain the effectiveness of the present Rice Crop Insurance Regulations only through the 1987 crop year. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC herewith adopts as final the rule published at 52 FR 35269 amending the subpart heading to provide that 7 CFR Part 424 be effective for the 1986 and 1987 crop years only.

**List of Subjects in 7 CFR Part 424**

Crop insurance, Rice.

**Final Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Subpart heading to the Rice Crop Insurance Regulations (7 CFR Part 424), as follows:

## PART 424—[AMENDED]

1. The authority citation for 7 CFR Part 424 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 424 is revised to read as follows:

### Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC on February 8, 1988.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 88–4535 Filed 3–1–88; 8:45 am]

BILLING CODE 3410-08-M

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## 7 CFR Part 428

**[Amdt. No. 1; Doc. No. 5393S]**

## Sunflower Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the Sunflower Crop Insurance Regulations (7 CFR Part 428), effective for the 1988 crop year. The intended effect of this rule is to maintain the effectiveness of the present Sunflower Crop Insurance Regulations only through the 1987 crop year. The provisions currently contained in this Part have been issued as an endorsement to 7 CFR Part 401, General Crop Insurance Regulations (401.124, Sunflower Endorsement), effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, and substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC.

**EFFECTIVE DATE:** April 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This actions does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1990.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (1) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

### Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV is terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 428 will be effective only through the end of the 1987 crop year, FCIC herein amends the subpart heading of these regulations to specify that such will be the case.

On Wednesday, December 25, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 45199, to maintain the effectiveness of the present Sunflower Crop Insurance Regulations only through the 1987 crop year. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC herewith adopts as final the rule published at 52 FR 45199 amending the subpart heading to provide that 7 CFR Part 428 be effective for the 1986 and 1987 crop years only.

### List of Subjects in 7 CFR Part 428

Crop Insurance, Sunflower.

### Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Subpart heading to the Sunflower Crop Insurance Regulations (7 CFR Part 428), as follows:

## PART 428—[AMENDED]

1. The Authority citation for 7 CFR Part 428 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 428 is revised to read as follows:

### Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC on February 11, 1988.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 88–4537 Filed 3–1–88; 8:45 am]

BILLING CODE 3410-08-M

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## 7 CFR Part 438

**[Amdt. No. 2; Doc. No. 5397S]**

## Canning and Processing Tomato Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the Canning

and Processing Tomato Crop Insurance Regulations (7 CFR Part 438), effective for the 1988 crop year. The intended effect of this rule is to maintain the effectiveness of the present Canning and Processing Tomato Crop Insurance Regulations only through the 1987 crop year. The provisions currently contained in this Part have been issued as an endorsement to 7 CFR Part 401, General Crop Insurance Regulations (401.114, Canning and Processing Tomato Endorsement), effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, and substantially reduces: (1) The time involved in amendment or revision; (2) the necessary of the present repetitious review process; and (3) the volume of paperwork processed by FCIC.

**EFFECTIVE DATE:** April 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

### Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV is terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 438 will be effective only through the end of the 1987 crop year, FCIC herein amends the subpart heading of these regulations to specify that such will be the case.

On Monday, September 14, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 34675, to maintain the effectiveness of the present Canning and Processing Tomato Crop Insurance Regulations only through the 1987 crop year. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC herewith adopts as final the rule published at 52 FR 34675 amending the subpart heading to provide that 7 CFR Part 438 be effective for the 1986 and 1987 crop years only.

### List of Subjects in 7 CFR Part 438

Crop insurance, Canning and processing tomato.

### Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Subpart heading to the Canning and Processing Tomato Crop Insurance Regulations (7 CFR Part 438), as follows:

## PART 438—[AMENDED]

1. The Authority citation for 7 CFR Part 438 continues to read as follows:

Authority: Secs. 506, 516, Pub.L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 438 is revised to read as follows:

### Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC on February 11, 1988.

John Marshall,

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 88–4531 Filed 3–1–88; 8:45 am]

BILLING CODE 3410–08–M

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## 7 CFR Part 448

**[Amdt. No. 1; Doc. No. 5389S]**

## ELS Cotton Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the ELS Cotton Crop Insurance Regulations (7 CFR Part 448), effective for the 1988 crop year. The intended effect of this rule is to maintain the effectiveness of the present ELS Cotton Crop Insurance Regulations only through the 1987 crop year. The provisions currently contained in this Part have been issued as an endorsement to 7 CFR Part 401, General Crop Insurance Regulations (401.121, ELS Cotton Endorsement), effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, and substantially reduces: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC.

**EFFECTIVE DATE:** April 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop

Insurance Corporation U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1989.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

### Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on the individual policies are necessary, FCIC will publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV is terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 448 will be effective only through the end of the 1987 crop year, FCIC herein amends the subpart heading of these regulations to specify that such will be the case.

On Friday, September 18, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 35270, to maintain the effectiveness of the present ELS Cotton Crop Insurance Regulations only through the 1987 crop year. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC herewith adopts as final the rule published at 52 FR 35720 thereby amending the subpart heading to provide that 7 CFR Part 448 be effective for the 1986 and 1987 crop years only.

### List of Subjects in 7 CFR Part 448

Crop insurance, ELS Cotton.

### Final rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Subpart heading to the ELS Cotton Crop Insurance Regulations (7 CFR Part 448), as follows:

## PART 448—[AMENDED]

1. The Authority citation for 7 CFR Part 448 continues to read as follows:

**Authority:** Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 448 is revised to read as follows:

### Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC on February 11, 1988.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 88–4532 Filed 3–1–88; 8:45 am]

**BILLING CODE 3140–08–M**

## 7 CFR Part 452

**[Amdt. No. 1; Doc. No. 5392S]**

## Safflower Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final Rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the Safflower Crop Insurance Regulations (7 CFR Part 452), effective for the 1988 crop year. The intended effect of this rule is to maintain the effectiveness of the present Safflower Crop Insurance Regulations only through the 1987 crop year. The provisions currently contained in this Part have been issued as an endorsement to 7 CFR Part 401, General Crop Insurance Regulations (401.121, Safflower Endorsement), effective for the 1988 and succeeding crop years. 7 CFR Part 401 is a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, and substantially reduces: (1) the time involved in amendment or revison; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC.

**EFFECTIVE DATE:** April 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is November 1, 1991.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden

for individuals, small businesess, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

### Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed required that over 40 different policies be changed, both in the Code of the Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has published in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV is terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 452 will be effective only through the end of the 1987 crop year, FCIC herein amends the subpart heading of these regulations to specify that such will be the case.

On Thursday, September 29, 1987 FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 36427, to maintain the effectiveness of the present Safflower Crop Insurance Regulations only through the 1987 crop year. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC herewith adopts as final the rule published at 52 FR 36427 amending the subpart heading to provide that 7 CFR Part 452 be effective for the 1986 and 1987 crop years only.

### List of Subjects in 7 CFR Part 452

Crop insurance, Safflower.

### Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Subpart heading to the Safflower Crop Insurance Regulations (7 CFR Part 452), as follows:

## PART 452—[AMENDED]

1. The Authority citation for 7 CFR Part 452 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 452 is revised to read as follows:

## Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC on February 11, 1988.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 88–4536 Filed 3–1–88; 8:45 am]

BILLING CODE 3410-08-M

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## 7 CFR Part 455

**[Doc. No. 4754S]**

## Macadamia Nut Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) adds a new Part 455 in Chapter IV of Title 7, Code of Federal Regulations to be known as the Macadamia Nut Crop Insurance Regulations (7 CFR Part 455), effective for the 1988 and succeeding crop years. The intended effect of this rule is to: (1) Prescribe procedures for insuring macadamia nuts in counties approved by the Board of Directors of FCIC; and (2) provide for codification of the Macadamia Nut Crop policy of insurance in 7 CFR Part 455 in the Code of Federal Regulations.

**EFFECTIVE DATE:** March 2, 1988.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations in January 1, 1993.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

### Background

On October 9, 1986, the Board of Directors of FCIC approved a resolution to authorize the introduction of crop insurance programs in the State of Hawaii as soon as possible for marketing by private insurance companies under a Standard Reinsurance Agreement or an Agency Sales and Service Contract with FCIC.

Hawaii is the only state without a crop insurance program and the Board, in authorizing the introduction of crop insurance protection to macadamia nut producers in the islands, is responding to a long standing interest in providing

Hawaiian producers protection against loss of production from natural hazards.

On June 30, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 24299 to prescribe procedures for insuring macadamia nuts in counties in Hawaii approved by the Board of Directors of FCIC; and (2) provide for codification of the Macadamia Nut Crop policy of insurance in 7 CFR Part 455 in the Code of Federal Regulations.

The public was given 30 days in which to submit written comments, data, and opinions of the proposed rule, but none were received. Therefore, FCIC adopts as final the rule published at 52 FR 24299.

Since Hawaiian macadamia nut producers must be given sufficient time to study the progam of insurance protection and because such producers who file applications for crop insurance protection must wait for inspection of the acreage before insurance attaches, good cause is shown for making this rule effective in less than 30 days.

**List of Subjects in 7 CFR Part 455**

Crop insurance, Macadamia nuts.

**Final Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby adds a new Part 455 in Chapter IV of Title 7, Code of Federal Regulations, to be known as 7 CFR Part 455—Macadamia Nut Crop Insurance Regulations, effective for the 1988 and succeeding crop years, to read as follows:

## PART 455—MACADAMIA NUT CROP INSURANCE REGULATIONS

**Subpart—Regulations for the 1988 and Succeeding Crop Years**

Sec.

455.1 Availability of macadamia nut crop insurance.
455.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
455.3 OMB control numbers.
455.4 Creditors.
455.5 Good faith reliance on misrepresentation.
455.6 The contract.
455.7 The application and policy.

**Authority:** Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

### § 455.1 Availability of macadamia nut crop insurance.

(a) Insurance shall be offered under the provisions of this subpart on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended, (the Act). The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. The insurance is offered through two methods. First, the Corporation offers the contract contained in this part directly to the insured through Agents of the Corporation. Those contracts are specificially identified as being offered by the Federal Crop Insurance Corporation. Second, companies reinsured by the Corporation (hereinafter "Reinsured companies") offer contracts containing substantially the same terms and conditions as the contract set out in this part. No person may have in force more than one contract on the same crop for the crop year, whether insured by the Corporation or insured by a Reinsured company. If a person has more than one contract under the Act outstanding on the same crop for the same crop year, all such contracts will be voided for that crop year but the person will still be liable for the premium on all contracts unless the person can show to the satisfaction of the Corporation that the multiple contract insurance was inadvertent and without the fault of the insured. If the multiple contract insurance is shown to be inadvertent and without the fault of the insured, the contract with the earliest application will be valid and all other contracts on that crop for that crop year will be cancelled. No liability for indemnity or premium will attach to the contracts so cancelled. The person must repay all amounts received in violaton of this section with interest at the rate contained in the contract for delinquent premiums.

(b) An insured whose contract with the Corporation or with a Reinsured company under the Act has been terminated because of violation of the terms of the contract is not eligible to obtain multi-peril crop insurance under the Act with the Corporation or with a Reinsured company unless the insured can show that the default in the prior contract was cured prior to the sales closing date of the contract applied for or unless the insured can show that the termination was improper and should not result in subsequent ineligibility. All applicants for insurance under the Act must advise the agent, in writing, at the time of application, of any previous applications for a Contract under the Act and the present status of the applications or contracts.

### § 455.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for macadamia nuts which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time of application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices set by the actuarial table for the crop year.

### § 455.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

### § 455.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

### § 455.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the macadamia nut insurance contract, whenever—

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation or a Reinsured company:

(1) Is indebted to the Corporation or a Reinsured company for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000, or a Reinsured company finds that:

(1) An agent or employee of the Corporation or a Reinsured company did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such

insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation or a Reinsured company in writing.

**§ 455.6 The contract.**

The insurance contract shall become effective upon the acceptance by the Corporation or a Reinsured company of a duly executed application for insurance on a form prescribed by the Corporation or a Reinsured company. The contract shall cover the macadamia nut crop as provided in the policy. The contract shall consist of the application, the policy and the county actuarial table. This contract is not continuous. Application must be made annually for the macadamia nut contract on or prior to the sales closing date established by the actuarial table. The forms referred to in the contract are available at the applicable service offices.

**§ 455.7 The application and policy.**

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the macadamia nut crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation or a Reinsured company at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation or a Reinsured company may discontinue the acceptance of any application or applications in any county upon its determination that the insurance risk is excessive. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) A contract in the form provided for in this subpart will be in effect as a macadamia nut contract applicable for one year. A new application must be submitted for each subsequent crop year.

(d) The application for the 1988 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Macadamia Nut Crop Insurance Policy for the 1988 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

**Federal Crop Insurance Corporation**

*Macadamia Nut—Crop Insurance Policy*

(This is NOT a continuous contract. Refer to Section 15)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Earthquake;

(3) Fire;

(4) Volcanic eruption;

(5) Wildlife; or

(6) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches; unless those causes are excepted, excluded, or limited by the actuarial table or subsection 9.e.(4).

b. We will not insure against any loss of production due to:

(1) Unmarketability as a direct result of quarantine, boycott, or refusal of any entity to accept production unless production has actual physical damage due to a cause specified in subsection 1.a.;

(2) The neglect, mismanagement, or wrongdoing by you, any member of your household, your tenants, or employees;

(3) The failure to follow recognized good macadamia nut farming practices;

(4) Water contained by any governmental, public, or private dam or reservoir project;

(5) Flooding on any unit subject to a flood or water flowage easement;

(6) Flooding on any unit located between any body of water and a primary flood control structure for that body of water;

(7) Failure or breakdown of irrigation equipment or facilities;

(8) Failure to carry out a good macadamia nut irrigation practice; or

(9) Any cause not specified in subsection 1.a. as an insured cause of loss.

2. Crop, acreage, and share insured.

a. The crop insured will be all varieties of macadamia nuts grown for processing on insurable acreage which has been inspected and accepted by us and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be macadamia nuts grown on insurable acreage as designated by the actuarial table, and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured macadamia nuts at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your insured share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any macadamia nuts:

(1) If the farming practices carried out are not the same as those for which the guarantee and premium rate have been established;

(2) Of a type of variety not established as adapted to the area or excluded by the actuarial table;

(3) Produced by macadamia trees that have not reached the fifth growing season after transplanting or grafting;

(4) If the macadamia trees have not produced an average yield of at least 190 pounds of wet inshell nuts per acre in a previous year;

(5) If the trees are interplanted with a crop other than macadamia nuts;

(6) If acceptable production records of at least the previous crop year are not available;

(7) If there is less than a 50 percent stand of bearing trees based on the original planting pattern; or

(8) Which we consider not acceptable.

e. We may limit the insurable acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the date insurance attaches.

3. Report of acreage, share, variety, practice, and number of bearing trees.

You must report on our form by unit:

a. All the acreage of macadamia nuts in the county in which you have a share;

b. Your share at the time insurance attaches;

c. The variety;

d. The dates on which the trees were transplanted or grafted;

e. The practice; and

f. The number of bearing trees.

You must designate separately any acreage that is not insurable. This report must be submitted annually prior to the time insurance attaches. If insurance is provided for an irrigated practice, you must report as irrigated only the acreage for which you have adequate facilities and water, at the time insurance attaches, to carry out a good macadamia nut irrigation practice. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report within 15 days after the time insurance attaches, we may elect to determine, by unit, the insured acreage, share, practice, and number of bearing trees, or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. If the number of bearing trees (fifth growing season after transplanting or grafting

and older) is reduced more than 10 percent from the preceding calendar year as a result of damage occurring within that year, the production guarantee will be reduced 1 percent for each percent reduction in excess of 10 percent.

c. You may change the coverage level and price election for the succeeding crop year on or before December 31 of the current crop year.

d. You must report production to us for the insured crop year by December 31 of that crop year. If you do not provide the required production report, we will assign a yield for the insured crop year. The yield assigned by us will not be more than 75 percent of the yield used to determine your guarantee for the insured crop year. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the succeeding crop year. If you have filed a claim for the insured crop year, the production report will be calculated based on the actual production used to determine the indemnity payment.

5. Annual premium.

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

b. Interest will accrue at the rate of one and one-fourth percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the premium billing date.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its agencies.

7. Insurance period.

Insurance on insurable acreage attaches for each crop year on January 1. However, if we accept your application for insurance after January 1, insurance does not attach until the thirtieth (30th) day after you sign and submit a properly completed application. Insurance will not attach to any acreage inspected by us and determined to be unacceptable. Insurance ends on a per-acre basis at the earliest of:

a. Total destruction of the macadamia nuts on the unit;

b. The date harvest would normally start on the unit on any acreage which will not be harvested;

c. Completion of harvest;

d. Final adjustment of a loss; or

e. December 31 of the crop year.

8. Notice of damage or loss.

a. You must give us written notice:

(1) Without delay if damage resulting in probable loss occurs at any time during the period before harvest; and

(2) At least fifteen (15) days before the beginning of harvest if you anticipate a loss on any unit.

b. If probable loss is determined within fifteen (15) days prior to or during harvest and you are going to claim an indemnity on any unit, you must give us notice not later than seventy-two (72) hours after the earliest of:

(1) Total destruction of the macadamia nuts on the unit;

(2) Discontinuance of harvest of any acreage on the unit;

(3) The date harvest would normally start if any acreage on the unit is not to be harvested; or

(4) December 31 of the crop year.

c. You must obtain written consent from us before you destroy any of the macadamia nuts which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than sixty (60) days after the earliest of:

(1) Total destruction of the macadamia nuts on the unit;

(2) Harvest of the unit; or

(3) December 31 of the crop year.

b. We will not pay any indemnity unless you:

(1) Establish the total production of macadamia nuts on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of macadamia nuts to be counted (see subsection 9.e.);

(3) Multiplying the remainder of the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of this policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (wet inshell pounds) to be counted for a unit will include all harvested and appraised production.

(1) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good macadamia nut farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed by you without our prior written consent; and

(c) Any production detached from trees and not removed from the orchard.

(2) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Further damaged by an insured cause and reappraised by us; or

(b) Harvested.

(3) We may determine the amount of production of any unharvested macadamia nuts on the basis of field appraisals conducted after the end of the insurance period.

(4) If you elect to exclude hail and fire as insured causes of loss and the macadamia nuts are damaged by hail or fire, appraisals will be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire."

f. You must not abandon any acreage to us.

g. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

h. An indemnity will not be paid unless you comply with all policy provisions.

i. It is our policy to pay your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. However, we will pay simple interest computed on the net indemnity ultimately found to be due to you, if the reason for non-payment is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. Interest due will be paid from and including the 61st day after the date you sign, date, and submit to us the properly completed claim-for-indemnity form. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1.

The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payble under such other insurance.

For the purpose of this subsection, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop

year with respect to which such act or omission occurred.

11. Transfer of right to an indemnity—Insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation (Recovery of loss from a third party).

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay for your loss, then your right of recovery will, at our option, belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for three years, after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all macadamia nuts produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in: (a) Cancellation of the contract prior to the crop year to which the records apply; (b) assignment of production to units by us; or (c) a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year.

b. The term of this contract and ends as shown in section 7 of this policy. We are under no obligation to send you any renewal notice or other notice that the contract term is ending and the receipt by you of any such notice is not a waiver of this provision.

c. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end therof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

d. This contract will automatically terminate at the end of the current contract period unless we offer to renew the contract for a subsequent crop year and you accept.

16. Meaning of terms.

For the purposes of macadamia nut crop insurance:

a. "*Actuarial table*" means the forms and related material for the crop year approved by us. The Actuarial Table is available for public inspection in your service office and shows the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding macadamia nut insurance in the country.

b. "*County*" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "*Crop year*" means the period beginning with the date insurance attaches and extending through the normal harvest time and will be designated by the calendar year in which the macadamia nuts are normally harvested.

d. "*Harvest*" means the picking of the macadamia nuts from the ground.

e. "*Insurable acreage*" means the land classified as insurable by us and shown as such by the actuarial table.

f. "*Insured*" means the person who submitted the application accepted by us.

g. "*Person*" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

h. "*Service office*" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

i. "*Tenant*" means a person who rents land from another person for a share of the macadamia nuts or a share of the proceeds therefrom.

j. "*Unit*" means all insurable acreage of macadamia nuts in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the macadamia nuts on such land will be considered as owned by the lessee.

Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

k. "*Wet inshell*" means the weight of the macadamia nuts as they are removed from the orchard with the nuts meats in the shells after removal of the husk and prior to being dried.

17. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

18. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with the Appeal Regulations (7 CFR Part 400, Subpart J).

19. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC on February 5, 1988.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 88-4534 Filed 3-1-88; 8:45 am]

BILLING CODE 3410-08-M

## Agricultural Marketing Service

## 7 CFR Part 925

## Expenses and Assessment Rate for Marketing Order No. 925

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 925 for the 1988 fiscal period. Funds to administer this program are derived from assessments on handlers.

**EFFECTIVE DATE:** January 1, 1988, through December 31, 1988.

**FOR FURTHER INFORMATION CONTACT:** Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC. 20090-6456, telephone 202-447-5331.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 925 [7 CFR Part 925] regulating the handling of grapes grown in a designated area of southeastern California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

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 (AMS) has considered the economic impact of this rule on small entities.

While this final action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** [53 FR 2851, February 2, 1988]. That document contained a proposal to add § 925.207 to establish expenses and assessments for the California Desert Grape Administrative Committee. That rule provided that interested persons could file comments through February 12, 1988. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred, and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This budget and assessment rate should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553].

**List of Subjects in 7 CFR Part 925**

Marketing agreements and orders, grapes (California).

For the reasons set forth in the preamble, § 925.207 is added (the following section prescribes annual expenses and assessment rate and will not be published in the Code of Federal Regulations):

1. The authority citation for 7 CFR Part 925 continues to read as follows:

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

2. A new § 925.207 is added to read as follows:

## PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

**§ 925.207 Expenses and assessment rate.**

Expenses of $45,000 by the California Desert Grape Administrative Committee are authorized, and an assessement rate of $0.004 per 22-pound container of grapes is established for the fiscal period ending December 31, 1988. Unexpended funds may be carried over as a reserve.

Dated: February 26, 1988.

**Robert C. Keeney**

*Deputy Director, Fruit and Vegetable Division Agricultural Marketing Service.*

[FR Doc. 88–4521 Filed 3–1–88; 8:45 am]

BILLING CODE 3410–02–M

## DEPARTMENT OF THE TREASURY

### Comptroller of the Currency

### 12 CFR Part 4

**[Docket 88–4]**

### Description of Office, Procedures, Public Information

**AGENCY:** Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) has six (6) district offices located throughout the United States. This final rule changes the address of the Northeastern district office.

**EFFECTIVE DATE:** March 2, 1988.

**FOR FURTHER INFORMATION CONTACT:** Ferne Fishman Rubin, Attorney, Legal Advisory Services Division, (202) 447–1880, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** On February 5, 1988, the OCC's Northeastern district office moved; this amendment reflects the new location of that office.

**Notice and Comment**

The OCC has determined that notice and comment are unnecessary under 5 U.S.C. 553(b)(3)(A) since this final rule pertains to rules of agency organization and procedure.

**Reason for Immediate Effective Date**

This final rule informs the public about an address change that has already occurred. Confusion could result if the proper address is not employed immediately.

**Regulatory Flexibility Act**

A Regulatory Flexibility Analysis is required only for rules issued for notice and comment. Because this final rule pertains to office organization and is therefore exempt from notice and comment procedures, no Regulatory Flexibility Analysis will be prepared.

**Executive Order 12291**

Section 1(a)(3) of Executive Order 12291 exempts from coverage regulations related to agency organization, management, or personnel. Since this final rule is so classified, no Regulatory Impact Analysis is required.

**List of Subjects in 12 CFR Part 4**

National banks, Organization and functions (government agencies), Public information, Official forms, District offices, Field offices, Procedures, Delegation.

For the reasons given in the preamble, Part 4 of Chapter I, Title 12 of the Code of Federal Regulations is amended as follows:

## PART 4—DESCRIPTION OF OFFICE, PROCEDURES, PUBLIC INFORMATION

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

**Authority:** 12 U.S.C. 1 *et seq.*, 5 U.S.C. 552, unless otherwise noted.

2. In Part 4, § 4.1a is amended by revising the entry for the Northeastern district office in the table in paragraph (b)(1) to read as follows:

**§ 4.1a Central and field organization; delegations.**

* * * * *

(b) *Field organization. (1)* * * *

| *District and Area* | *Within District and Office Address* |
|---|---|
| Northeastern: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands. | —Comptroller of the Currency, 1114 Avenue of the Americas, Suite 3900, New York, NY 10036. |

* * * * *

Date: February 22, 1988.

**Robert L. Clarke,**

*Comptroller of the Currency.*

[FR Doc. 88–4357 Filed 3–1–88; 8:45 am]

BILLING CODE 4810–33–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 95

**[Docket No. 25551; Amdt. No 342]**

### IFR Altitudes; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

**EFFECTIVE DATES:** March 10, 1988.

**FOR FURTHER INFORMATION CONTACT:** Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington DC 20591; telephone: (202) 267–8277.

**SUPPLEMENTARY INFORMATION:** This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

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

**List of Subjects in 14 CFR Part 95**

Aircraft, Airspace

Issued in Washington, DC.

**Robert L. Goodrich,**

*Director of Flight Standards.*

**Adoption of the Amendment**

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 GMT:

1. The authority citation for Part 95 continues to read as follows:

Authority: 49 U.S.C. §§ 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended as follows:

BILLING CODE 4910–13–M

# REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

## AMENDMENT 342 EFFECTIVE DATE, MARCH 10, 1988

| FROM | TO | MEA |
|---|---|---|

### §95.1001 DIRECT ROUTES-U.S.

**IS AMENDED TO DELETE**

| | | |
|---|---|---|
| ANDLE, CT FIX | BLUME, CT FIX | 2600 |
| GROTON, CT VOR | LYMEE, CT FIX | *2000 |
| *1500 - MOCA | | MAA-17500 |
| PAWLING, NY VORTAC | *RAISE, NY FIX | 3000 |
| *4000 - MCA RAISE FIX, NW BND | | |

### §95.1001 DIRECT ROUTES-U.S.

**BAHAMA ROUTES**

**20 LIMA IS AMENDED BY ADDING**

| | | |
|---|---|---|
| FREEPORT, BF NDB | SATELLITE, FL NDB | *2000 |
| *1500 - MOCA | | |

**22V**

| | | |
|---|---|---|
| FORT LAUDERDALE, FL VOR/DME | DEKAL, FL FIX | *2000 |
| *1400 - MOCA | | |
| DEKAL, FL FIX | LINLE, BF FIX | *12000 |
| *1200 - MOCA | | |
| LINLE, BF FIX | NASSAU, BF VOR/DME | *2000 |
| *1400 - MOCA | | |
| NASSAU, BF VOR/DME | ELEUTHERA, BF VOR/DME | *2000 |
| *1500 - MOCA | | |

**57V N IS AMENDED TO DELETE**

| | | |
|---|---|---|
| FORT LAUDERDALE, FL VOR/DME | DEKAL, FL FIX | 2000 |
| DEKAL, FL FIX | LINLE, BF FIX | *12000 |
| *1200 - MOCA | | |
| LINLE, BF FIX | NASSAU, BF VOR/DME | *2000 |
| *1400 - MOCA | | |

**63V IS AMENDED BY ADDING**

| | | |
|---|---|---|
| HANKX, BF FIX | NASSAU, BF VOR/DME | *2000 |
| *1500 - MOCA | | |

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| *BAYRU, BF FIX | HANKX, BF FIX | **8000 |
| *6000 - MRA | | |
| **1200 - MOCA | | |

### §95.6001 VOR FEDERAL AIRWAY 1

**IS AMENDED BY ADDING**

| | | |
|---|---|---|
| COYLE, NJ VORTAC | KENNEDY, NY VORTAC | *2500 |
| *1600 - MOCA | | |

### §95.6001 VOR FEDERAL AIRWAY 1—Continued

| | | |
|---|---|---|
| KENNEDY, NY VORTAC | DEER PARK, NY VORTAC | 1800 |
| DEER PARK, NY VORTAC | MADISON, CT VORTAC | 2000 |
| MADISON, CT VORTAC | HARTFORD, CT VORTAC | 2500 |

### §95.6003 VOR FEDERAL AIRWAY 3

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| GORDONSVILLE, VA VORTAC | MARTINSBURG, WV VORTAC | *6000 |
| *5200 - MOCA | | |
| WESTMINSTER, MD VORTAC | VINNY, MD FIX | 3000 |
| VINNY, MD FIX | MODENA, PA VORTAC | *5000 |
| *2100 - MOCA | | |
| SOLBERG, NJ VORTAC | CARMEL, NY VORTAC | *3000 |
| *2500 - MOCA | | |
| RACEY, CT FIX | HARTFORD, CT VORTAC | 3000 |
| HARTFORD, CT VORTAC | JEWIT, CT FIX | *2600 |
| *2100 - MOCA | | |
| JEWIT, CT FIX | WOONS, RI FIX | 2500 |
| WOONS, RI FIX | BOSTON, MA VORTAC | 2000 |
| BOSTON, MA VORTAC | PEASE, NH VOR | *3000 |
| *1900 - MOCA | | |

### §95.6013 VOR FEDERAL AIRWAY 13

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| CLEEP, TX FIX | LEGGE, TX FIX | *5000 |
| *2000 - MOCA | | |
| RICH MOUNTAIN, OK VORTAC | *HADES, AR FIX | 4600 |
| *4200 - MRA | | |
| BUTLER, MO VORTAC | NAPOLEON, MO VORTAC | *2900 |
| *2400 - MOCA | | |
| NAPOLEON, MO VORTAC | PLASH, MO FIX | 2900 |

### §95.6014 VOR FEDERAL AIRWAY 14

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| GARDNER, MA VORTAC | NORWICH, CT VORTAC | *3000 |
| *2500 - MOCA | | |

### §95.6016 VOR FEDERAL AIRWAY 16

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| COYLE, NJ VORTAC | KENNEDY, NY VORTAC | *2500 |
| *1600 - MOCA | | |
| WOONS, RI FIX | BOSTON, MA VORTAC | 2000 |

| FROM | TO | MEA |
|---|---|---|

### §95.6017 VOR FEDERAL AIRWAY 17

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| MC ALLEN, TX VOR/DME<br>*1700 - MOCA | ELIZA, TX FIX | *2500 |
| ELIZA, TX FIX<br>*5500 - MRA<br>**1900 - MOCA | *NELEE, TX FIX | **4000 |
| LAREDO, TX VORTAC<br>*5000 - MRA<br>**1900 - MOCA | *KAHAN, TX FIX | **2400 |
| COTULLA, TX VORTAC<br>*1800 - MOCA | MILET, TX FIX | *2500 |
| MILET, TX FIX<br>*2100 - MOCA | SOMER, TX FIX | *4000 |
| ACTON, TX VORTAC<br>*2500 - MOCA | BRIDGEPORT, TX VORTAC | *3000 |
| BRIDGEPORT, TX VORTAC<br>*2500 - MOCA | DUNCAN, OK VOR/DME | *3000 |

### §95.6031 VOR FEDERAL AIRWAY 31

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| BALTIMORE, MD VORTAC | VINNY, MD FIX | 3000 |
| VINNY, MD FIX | HARRISBURG, PA VORTAC | 3000 |

### §95.6033 VOR FEDERAL AIRWAY 33

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| BALTIMORE, MD VORTAC | VINNY, MD FIX | 3000 |
| VINNY, MD FIX | HARRISBURG, PA VORTAC | 3000 |

### §95.6034 VOR FEDERAL AIRWAY 34

**IS AMENDED BY ADDING**

| | | |
|---|---|---|
| RIMBA, NY FIX<br>*5700 - MOCA | WEETS, NY FIX | *6000 |
| WEETS, NY FIX<br>*4000 - MOCA | PAWLING, NY VORTAC | *6000 |
| PAWLING, NY VORTAC | MADISON, CT VORTAC | 3000 |
| MADISON, CT VORTAC<br>*1400 - MOCA | SANDY POINT, RI VOR/DME | *2000 |

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| HANCOCK, NY VORTAC | RIMBA, NY FIX | 6000 |

**IS AMENDED TO DELETE**

| | | |
|---|---|---|
| ROOTE, NY FIX | CARMEL, NY VORTAC | 3000 |
| CARMEL, NY VORTAC | FLIBB, CT FIX | 2000 |

### §95.6039 VOR FEDERAL AIRWAY 39

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| GORDONSVILLE, VA VORTAC<br>*5100 - MOCA | MARTINSBURG, WV VORTAC | *6000 |

| FROM | TO | MEA |
|---|---|---|

### §95.6039 VOR FEDERAL AIRWAY 39—Continued

| | | |
|---|---|---|
| CARMEL, NY VORTAC | SOARS, CT FIX | 3000 |
| SOARS, CT FIX<br>*4100 - MOCA | STUBY, CT FIX | *6000 |
| STUBY, CT FIX<br>*3500 - MOCA | CHESTER, MA VORTAC | *4000 |

### §95.6044 VOR FEDERAL AIRWAY 44

**IS AMENDED BY ADDING**

| | | |
|---|---|---|
| DEER PARK, NY VORTAC | BRIDGEPORT, CT VOR | 2000 |
| BRIDGEPORT, CT VOR | PAWLING, NY VORTAC | 3000 |
| PAWLING, NY VORTAC | ALBANY, NY VORTAC | 3000 |

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| MARTINSBURG, WV VORTAC<br>*3300 - MOCA | WOOLY, MD FIX | *3800 |
| WOOLY, MD FIX | BALTIMORE, MD VORTAC | 2500 |
| BALTIMORE, MD VORTAC | SEA ISLE, NJ VORTAC | 2200 |
| SEA ISLE, NJ VORTAC | KARRS, NJ FIX | 1600 |
| KARRS, NJ FIX<br>*2000 - MOCA | DEER PARK, NY VORTAC | *4000 |

### §95.6058 VOR FEDERAL AIRWAY 58

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| LAKE HENRY, PA VORTAC | KINGSTON, NY VORTAC | 4000 |
| KINGSTON, NY VORTAC | HARTFORD, CT VORTAC | 3000 |
| HARTFORD, CT VORTAC | GROTON, CT VOR | 2500 |
| GROTON, CT VOR<br>*1500 - MOCA | SANDY POINT, RI VOR/DME | *2000 |
| SANDY POINT, RI VOR/DME | NANTUCKET, MA VORTAC | 2000 |

### §95.6082 VOR FEDERAL AIRWAY 82

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| BRAINERD, MN VORTAC<br>*6500 - MRA | *RAMAY, MN FIX | 3000 |
| RAMAY, MN FIX | GOPHER, MN VORTAC | 3000 |

### §95.6091 VOR FEDERAL AIRWAY 91

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| CALVERTON, NY VORTAC | BRIDGEPORT, CT VOR | 2000 |
| BRIDGEPORT, CT VOR<br>*4100 - MOCA | ALBANY, NY VORTAC | *6000 |

### §95.6093 VOR FEDERAL AIRWAY 93

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| BALTIMORE, MD VORTAC | VINNY, MD FIX | 3000 |
| VINNY, MD FIX<br>*2300 - MOCA | LANCASTER, PA VORTAC | *4500 |

| FROM | TO | MEA |
|---|---|---|
| **§95.6093 VOR FEDERAL AIRWAY 93—Continued** | | |
| HAILS, PA FIX<br>*3300 - MOCA | LYTEL, PA FIX | *4000 |
| LYTEL, PA FIX | WILKES-BARRE, PA VORTAC | 4000 |
| LAKE HENRY, PA VORTAC | KINGSTON, NY VORTAC | 4000 |
| KINGSTON, NY VORTAC | PAWLING, NY VORTAC | 3000 |

**§95.6099 VOR FEDERAL AIRWAY 99**

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| LA GUARDIA, NY VOR/DME | HARTFORD, CT VORTAC | 3000 |
| HARTFORD, CT VORTAC<br>*4000 - MRA<br>**2500 - MOCA | *GRAYM, MA FIX | **3000 |

**IS AMENDED TO DELETE**

| | | |
|---|---|---|
| LAYER, MA FIX | ANNOT, MA FIX | 3000 |
| ANNOT, MA FIX | LAWRENCE, MA VOR/DME | 2400 |

**§95.6106 VOR FEDERAL AIRWAY 106**

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| LAKE HENRY, PA VORTAC | WEARD, NY FIX | 4000 |
| WEARD, NY FIX<br>*4000 - MOCA | PAWLING, NY VORTAC | *6000 |

**§95.6123 VOR FEDERAL AIRWAY 123**

**IS AMENDED BY ADDING**

| | | |
|---|---|---|
| CARMEL, NY VORTAC | KINGSTON, NY VORTAC | 3000 |
| KINGSTON, NY VORTAC | ALBANY, NY VORTAC | 3000 |
| ALBANY, NY VORTAC<br>*3000 - MOCA | CAMBRIDGE, NY VORTAC | *4000 |
| CAMBRIDGE, NY VORTAC<br>*3400 - MOCA | GLENS FALLS, NY VORTAC | *3400 |

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| WOODSTOWN, NJ VORTAC<br>*2000 - MOCA | ROBBINSVILLE, NJ VORTAC | *3000 |
| LA GUARDIA, NY VOR/DME<br>*2000 - MOCA | CARMEL, NY VORTAC | *2500 |

**§95.6130 VOR FEDERAL AIRWAY 130**

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| ALBANY, NY VORTAC<br>*3800 - MOCA | BRADLEY, CT VORTAC | *6000 |
| BRADLEY, CT VORTAC<br>*2100 - MOCA | NORWICH, CT VORTAC | *5000 |
| NORWICH, CT VORTAC<br>*1800 - MOCA | MINNK, RI FIX | *2000 |

| FROM | TO | MEA |
|---|---|---|
| **§95.6130 VOR FEDERAL AIRWAY 130—Continued** | | |
| MINNK, RI FIX<br>*1400 - MOCA | MARTHAS VINEYARD, MA VOR/DME | *3000 |

**§95.6139 VOR FEDERAL AIRWAY 139**

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| HAMPTON, NY VORTAC | PROVIDENCE, RI VORTAC | 2000 |
| PROVIDENCE, RI VORTAC<br>*1500 - MOCA | INNDY, RI FIX | *2000 |
| INNDY, RI FIX<br>*1500 - MOCA | TONNI, MA FIX | *2000 |

**§95.6141 VOR FEDERAL AIRWAY 141**

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| HYANNIS, MA VORTAC<br>*2500 - MRA<br>**1500 - MOCA | *CELTS, MA FIX | **3000 |

**§95.6143 VOR FEDERAL AIRWAY 143**

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| MONTEBELLO, VA VOR/DME<br>*5200 - MOCA | MARTINSBURG, WV VORTAC | *6000 |

**§95.6146 VOR FEDERAL AIRWAY 146**

**IS AMENDED BY ADDING**

| | | |
|---|---|---|
| ALBANY, NY VORTAC<br>*3800 - MOCA | CHESTER, MA VORTAC | *6000 |
| CHESTER, MA VORTAC<br>*3200 - MOCA | BARNES, MA VORTAC | *4000 |
| BARNES, MA VORTAC<br>*2500 - MOCA | PUTNAM, CT VORTAC | *3000 |

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| PUTNAM, CT VORTAC<br>*2100 - MOCA | PROVIDENCE, RI VORTAC | *3000 |

**§95.6151 VOR FEDERAL AIRWAY 151**

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| PROVIDENCE, RI VORTAC<br>*2100 - MOCA | PUTNAM, CT VORTAC | *3000 |
| PUTNAM, CT VORTAC<br>*2700 - MOCA | GARDNER, MA VORTAC | *3000 |

| FROM | TO | MEA |
|---|---|---|

### §95.6153 VOR FEDERAL AIRWAY 153

**IS AMENDED TO READ**

| | | |
|---|---|---|
| LAKE HENRY, PA VORTAC | GEORGETOWN, NY VORTAC | 5000 |
| GEORGETOWN, NY VORTAC | SYRACUSE, NY VORTAC | 4000 |

### §95.6157 VOR FEDERAL AIRWAY 157

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| KENTON, DE VORTAC | WOODSTOWN, NJ VORTAC | *1900 |
| *1500 - MOCA | | |
| WOODSTOWN, NJ VORTAC | ROBBINSVILLE, NJ VORTAC | *3000 |
| *2000 - MOCA | | |
| ROBBINSVILLE, NJ VORTAC | LA GUARDIA, NY VOR/DME | 2700 |
| LA GUARDIA, NY VOR/DME | HAARP, NY FIX | *2500 |
| *2000 - MOCA | | |
| HAARP, NY FIX | KINGSTON, NY VORTAC | *4000 |
| *2700 - MOCA | | |
| KINGSTON, NY VORTAC | ALBANY, NY VORTAC | 3000 |

### §95.6161 VOR FEDERAL AIRWAY 161

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| BUTLER, MO VORTAC | NAPOLEON, MO VORTAC | *2900 |
| *2400 - MOCA | | |
| GOPHER, MN VORTAC | PLUGS, MN FIX | 3000 |
| PLUGS, MN FIX | *RAMAY, MN FIX | 3000 |
| *6500 - MRA | | |
| RAMAY, MN FIX | BRAINERD, MN VORTAC | 3000 |

### §95.6162 VOR FEDERAL AIRWAY 162

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| HYPER, MD FIX | HARRISBURG, PA VORTAC | *4000 |
| *3100 - MOCA | | |

**IS AMENDED TO DELETE**

| | | |
|---|---|---|
| HUGUENOT, NY VORTAC | CAPPO, NY FIX | 5000 |
| CAPPO, NY FIX | PAWLING, NY VORTAC | *4000 |
| *3500 - MOCA | | |

### §95.6163 VOR FEDERAL AIRWAY 163

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| ACTON, TX VORTAC | BRIDGEPORT, TX VORTAC | *3000 |
| *2500 - MOCA | | |

### §95.6167 VOR FEDERAL AIRWAY 167

**IS AMENDED BY ADDING**

| | | |
|---|---|---|
| HANCOCK, NY VORTAC | KINGSTON, NY VORTAC | 4000 |

| FROM | TO | MEA |
|---|---|---|

### §95.6169 VOR FEDERAL AIRWAY 169

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| CHADRON, NE VOR/DME | WAXER, NE FIX | 6900 |
| WAXER, NE FIX | RAPID CITY, SD VORTAC | 6000 |

### §95.6188 VOR FEDERAL AIRWAY 188

**IS AMENDED BY ADDING**

| | | |
|---|---|---|
| CARMEL, NY VORTAC | GROTON, CT VOR | *3000 |
| *2500 - MOCA | | |

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| SPARTA, NJ VORTAC | CARMEL, NY VORTAC | *3000 |
| *2500 - MOCA | | |

### §95.6203 VOR FEDERAL AIRWAY 203

**IS AMENDED TO DELETE**

| | | |
|---|---|---|
| NANTUCKET, MA VORTAC | WACKY, RI FIX | *2500 |
| *1700 - MOCA | | |
| WACKY, RI FIX | NORWICH, CT VORTAC | *2300 |
| *1800 - MOCA | | |
| NORWICH, CT VORTAC | *RUSEL, MA FIX | **3000 |
| *3500 - MCA RUSEL FIX, NW BND | | |
| **2200 - MOCA | | |
| RUSEL, MA FIX | CHESTER, MA VORTAC | 3700 |
| CHESTER, MA VORTAC | *CANAN, NY FIX | 4000 |
| *6000 - MRA | | |
| *6000 - MCA CANAN FIX, NW BND | | |
| CANAN, NY FIX | ALBANY, NY VORTAC | 6000 |

### §95.6205 VOR FEDERAL AIRWAY 205

**IS AMENDED TO READ**

| | | |
|---|---|---|
| COATE, NY FIX | HUGUENOT, NY VORTAC | *4000 |
| *3300 - MOCA | | |
| HUGUENOT, NY VORTAC | WEARD, NY FIX | *4000 |
| *3500 - MOCA | | |
| WEARD, NY FIX | WEETS, NY FIX | *6000 |
| *4000 - MOCA | | |
| WEETS, NY FIX | BRADLEY, CT VORTAC | *7000 |
| *3500 - MOCA | | |
| BRADLEY, CT VORTAC | PUTNAM, CT VORTAC | *6000 |
| *2300 - MOCA | | |

### §95.6213 VOR FEDERAL AIRWAY 213

**IS AMENDED TO READ IN PART**

| | | |
|---|---|---|
| KENTON, DE VORTAC | HOLEY, NJ FIX | *3000 |
| *1600 - MOCA | | |
| HOLEY, NJ FIX | ROBBINSVILLE, NJ VORTAC | *3000 |
| *2000 - MOCA | | |
| SPARTA, NJ VORTAC | WEETS, NY FIX | 4000 |
| WEETS, NY FIX | ALBANY, NY VORTAC | *6000 |
| *5500 - MOCA | | |

| FROM | TO | MEA |
|---|---|---|
| **§95.6222 VOR FEDERAL AIRWAY 222** | | |
| **IS AMENDED TO DELETE** | | |
| LYNCHBURG, VA VORTAC<br>*4000 - MRA<br>**2600 - MOCA | *AMHER, VA FIX | **3000 |
| AMHER, VA FIX<br>*2600 - MOCA | FORKS, VA FIX | *3300 |
| FORKS, VA FIX<br>*1800 - MOCA | BROOKE, VA VORTAC | *5000 |
| BROOKE, VA VORTAC<br>*1500 - MOCA | IRONS, MD FIX | *2000 |
| **§95.6223 VOR FEDERAL AIRWAY 223** | | |
| **IS AMENDED TO READ IN PART** | | |
| FLAT ROCK, VA VORTAC<br>*2100 - MOCA | HANEY, VA FIX | *2800 |
| HANEY, VA FIX | FLUKY, VA FIX | 2800 |
| **§95.6229 VOR FEDERAL AIRWAY 229** | | |
| **IS AMENDED BY ADDING** | | |
| PATUXENT, MD VORTAC<br>*1500 - MOCA | GARED, MD FIX | *2000 |
| GARED, MD FIX<br>*1500 - MOCA | DONIL, DE FIX | *8000 |
| DONIL, DE FIX<br>*1400 - MOCA | ATLANTIC CITY, NJ VORTAC | *2000 |
| **IS AMENDED TO READ IN PART** | | |
| ATLANTIC CITY, NJ VORTAC<br>*1500 - MOCA | MORTN, NJ FIX | *2000 |
| MORTN, NJ FIX<br>*1500 - MOCA | DIXIE, NJ FIX | *7000 |
| DIXIE, NJ FIX<br>*1600 - MOCA | KENNEDY, NY VORTAC | *2500 |
| KENNEDY, NY VORTAC | BRIDGEPORT, CT VOR | 2000 |
| BRIDGEPORT, CT VOR | HARTFORD, CT VORTAC | 2000 |
| HARTFORD, CT VORTAC<br>*2500 - MOCA | GARDNER, MA VORTAC | *3000 |
| **§95.6249 VOR FEDERAL AIRWAY 249** | | |
| **IS AMENDED TO READ IN PART** | | |
| SPARTA, NJ VORTAC | WEETS, NY FIX | 4000 |
| WEETS, NY FIX | RIMBA, NY FIX | 6000 |
| RIMBA, NY FIX<br>*4200 - MOCA | DE LANCEY, NY VOR | *5000 |
| **§95.6252 VOR FEDERAL AIRWAY 252** | | |
| **IS AMENDED TO READ IN PART** | | |
| DUPONT, DE VORTAC | COBUS, NJ FIX | 2000 |
| COBUS, NJ FIX<br>*1500 - MOCA | ROBBINSVILLE, NJ VORTAC | *2000 |
| HUGUENOT, NY VORTAC | RAGER, NY FIX | 4000 |

| FROM | TO | MEA |
|---|---|---|
| **§95.6257 VOR FEDERAL AIRWAY 257** | | |
| **IS AMENDED TO READ IN PART** | | |
| SCAAT, MT FIX | SIEBE, MT FIX | 9800 |
| SIEBE, MT FIX | WOKEN, MT FIX | 9000 |
| **§95.6268 VOR FEDERAL AIRWAY 268** | | |
| **IS AMENDED BY ADDING** | | |
| AVALO, NJ FIX<br>*2000 - MOCA | BRIGS, NJ FIX | *2500 |
| BRIGS, NJ FIX<br>*2000 - MOCA | HARBO, NJ FIX | *3000 |
| HARBO, NJ FIX<br>*2000 - MOCA | DRIFT, NJ FIX | *5000 |
| DRIFT, NJ FIX<br>*2000 - MOCA | MANTA, NJ FIX | *6000 |
| MANTA, NJ FIX<br>*2000 - MOCA | PLUME, NJ FIX | *7000 |
| PLUME, NJ FIX<br>*3000 - MOCA | BEADS, NY FIX | *4000 |
| BEADS, NY FIX<br>*1600 - MOCA | HAMPTON, NY VORTAC | *2500 |
| HAMPTON, NY VORTAC | SANDY POINT, RI VOR/DME | 2000 |
| SANDY POINT, RI VOR/DME | BURDY, MA FIX | 2000 |
| **§95.6270 VOR FEDERAL AIRWAY 270** | | |
| **IS AMENDED BY ADDING** | | |
| CHESTER, MA VORTAC | GLYDE, MA FIX | 4000 |
| GLYDE, MA FIX<br>*3000 - MOCA | BOSTON, MA VORTAC | *4000 |
| **§95.6273 VOR FEDERAL AIRWAY 273** | | |
| **IS AMENDED TO READ IN PART** | | |
| GEORGETOWN, NY VORTAC | SYRACUSE, NY VORTAC | 4000 |
| **§95.6286 VOR FEDERAL AIRWAY 286** | | |
| **IS AMENDED TO READ IN PART** | | |
| DERIN, WV FIX<br>*6100 - MOCA | CASANOVA, VA VORTAC | *6600 |
| **§95.6292 VOR FEDERAL AIRWAY 292** | | |
| **IS AMENDED BY ADDING** | | |
| HANCOCK, NY VORTAC | SAGES, NY FIX | 6000 |
| SAGES, NY FIX<br>*5200 - MOCA | BARNES, MA VORTAC | *10000 |

| FROM | TO | MEA |
|---|---|---|
| **§95.6292 VOR FEDERAL AIRWAY 292—Continued** | | |
| BARNES, MA VORTAC | BOSTON, MA VORTAC | 4000 |
| **IS AMENDED TO DELETE** | | |
| SPARTA, NJ VORTAC | HARVE, NY FIX | 3000 |
| HARVE, NY FIX | NYACK, NY FIX | 2300 |
| NYACK, NY FIX | CARMEL, NY VORTAC | 2000 |
| CARMEL, NY VORTAC | RACEY, CT FIX | 2100 |
| RACEY, CT FIX | HARTFORD, CT VORTAC | 2700 |
| HARTFORD, CT VORTAC *2100 - MOCA | PUTNAM, CT VORTAC | *2600 |
| PUTNAM, CT VORTAC | DREEM, MA FIX | 3000 |
| DREEM, MA FIX | LOBBY, MA FIX | 3500 |
| LOBBY, MA FIX | BOSTON, MA VORTAC | 2000 |
| **§95.6308 VOR FEDERAL AIRWAY 308** | | |
| **IS AMENDED BY ADDING** | | |
| NOTTINGHAM, MD VORTAC *1500 - MOCA | WATERLOO, DE VOR/DME | *2000 |
| WATERLOO, DE VOR/DME *1500 - MOCA | SEA ISLE, NJ VORTAC | *2000 |
| **IS AMENDED TO READ IN PART** | | |
| HAMPTON, NY VORTAC | GROTON, CT VOR | 2000 |
| GROTON, CT VOR | NORWICH, CT VORTAC | 2000 |
| **IS AMENDED TO DELETE** | | |
| BLAND, MD FIX *1300 - MOCA | HEDGE, MD FIX | *2000 |
| HEDGE, MD FIX *1400 - MOCA | DRUMM, DE FIX | *2400 |
| DRUMM, DE FIX *1500 - MOCA | SEA ISLE, NJ VORTAC | *2000 |
| **§95.6372 VOR FEDERAL AIRWAY 372** | | |
| **IS AMENDED TO READ IN PART** | | |
| PALM SPRINGS, CA VORTAC *7500 - MOCA | BLYTHE, CA VORTAC | *8000 |
| **§95.6373 VOR FEDERAL AIRWAY 373** | | |
| **IS DELETED** | | |
| GORDONSVILLE, VA VORTAC *1800 - MOCA | SABBI, VA FIX | *10000 |

| FROM | TO | MEA |
|---|---|---|
| **§95.6374 VOR FEDERAL AIRWAY 374** | | |
| **IS AMENDED TO READ IN PART** | | |
| CARMEL, NY VORTAC | CREAM, NY FIX | 2000 |
| CREAM, NY FIX | KURTY, CT FIX | 2500 |
| KURTY, CT FIX *2500 - MOCA | GROTON, CT VOR | *3000 |
| GROTON, CT VOR *1400 - MOCA | MARTHAS VINEYARD, MA VOR/DME | *3000 |
| **§95.6403 VOR FEDERAL AIRWAY 403** | | |
| **IS AMENDED TO READ IN PART** | | |
| BELAY, MD FIX *2000 - MOCA | BUCKS, PA FIX | *5000 |
| **§95.6405 VOR FEDERAL AIRWAY 405** | | |
| **IS AMENDED BY ADDING** | | |
| CARMEL, NY VORTAC | PAWLING, NY VORTAC | 3000 |
| PAWLING, NY VORTAC *3500 - MOCA | VEERS, CT FIX | *7000 |
| VEERS, CT FIX *3500 - MOCA | BRADLEY, CT VORTAC | *4000 |
| BRADLEY, CT VORTAC *2200 - MOCA | PROVIDENCE, RI VORTAC | *6000 |
| PROVIDENCE, RI VORTAC *1400 - MOCA | MARTHAS VINEYARD, MA VOR/DME | *3000 |
| **IS AMENDED TO READ IN PART** | | |
| BELAY, MD FIX *2000 - MOCA | BUCKS, PA FIX | *5000 |
| **§95.6407 VOR FEDERAL AIRWAY 407** | | |
| **IS AMENDED TO READ IN PART** | | |
| PALACIOS, TX VORTAC *1900 - MOCA | HUMBLE, TX VORTAC | *2500 |
| LUFKIN, TX VORTAC *1900 - MOCA | LINEN, LA FIX | *5500 |
| **§95.6408 VOR FEDERAL AIRWAY 408** | | |
| **IS AMENDED BY ADDING** | | |
| ROBRT, MD FIX *2100 - MOCA | MODENA, PA VORTAC | *5000 |

§95.6408 VOR FEDERAL AIRWAY 408—Continued

IS AMENDED TO READ IN PART

| FROM | TO | MEA |
|---|---|---|
| LAKE HENRY, PA VORTAC | SAGES, NY FIX | 5700 |

IS AMENDED TO DELETE

| FROM | TO | MEA |
|---|---|---|
| BALTIMORE, MD VORTAC<br>*2500 - MOCA | KLACK, PA | *4000 |
| KLACK, MD FIX<br>*2000 - MOCA | MODENA, PA VORTAC | *5000 |

§95.6419 VOR FEDERAL AIRWAY 419

IS AMENDED TO READ IN PART

| | | |
|---|---|---|
| MODENA, PA VORTAC | BIGGY, PA FIX | 2500 |
| BIGGY, PA FIX | SOLBERG, NJ VORTAC | 2000 |
| SOLBERG, NJ VORTAC<br>*2500 - MOCA | CARMEL, NY VORTAC | *3000 |
| CARMEL, NY VORTAC | BRADLEY, CT VORTAC | 3000 |
| BRADLEY, CT VORTAC<br>*4000 - MRA<br>**2500 - MOCA | *GRAYM, MA FIX | **3000 |
| GRAYM, MA FIX<br>*2500 - MOCA | BOSTON, MA VORTAC | *3000 |

§95.6431 VOR FEDERAL AIRWAY 431

IS AMENDED TO DELETE

| | | |
|---|---|---|
| HYANNIS, MA VORTAC<br>*2100 - MOCA | BOSTON, MA VORTAC | *3000 |

§95.6433 VOR FEDERAL AIRWAY 433

IS AMENDED TO READ IN PART

| | | |
|---|---|---|
| NOTTINGHAM, MD VORTAC | KERNO, MD FIX | 2500 |
| LA GUARDIA, NY VOR/DME<br>*1500 - MOCA | BRIDGEPORT, CT VOR | *2000 |
| BRIDGEPORT, CT VOR | PAWLING, NY VORTAC | 3000 |
| PAWLING, NY VORTAC | ROCKDALE, NY VORTAC | 6000 |
| ROCKDALE, NY VORTAC | STODA, NY FIX | 4000 |
| STODA, NY FIX | SYRACUSE, NY VORTAC | 2400 |

§95.6438 VOR FEDERAL AIRWAY 438

IS AMENDED TO READ IN PART

| | | |
|---|---|---|
| BIJOU, AK FIX | FORT YUKON, AK VORTAC | 2300 |
| MAYPO, AK FIX<br>VIA W ALTER | FORT YUKON, AK VORTAC<br>VIA W ALTER | 2300 |
| OOSIK, AK FIX<br>*1300 - MOCA | TUNDA, AK FIX | *6000 |

§95.6451 VOR FEDERAL AIRWAY 451

IS AMENDED BY ADDING

| | | |
|---|---|---|
| LA GUARDIA, NY VOR/DME<br>*1600 - MOCA | KEYED, NY FIX | *2500 |

§95.6451 VOR FEDERAL AIRWAY 451—Continued

| FROM | TO | MEA |
|---|---|---|
| KEYED, NY FIX | CREAM, NY FIX | 2000 |
| CREAM, NY FIX<br>*1500 - MOCA | GROTON, CT VOR | *2500 |
| GROTON, CT VOR | TONNI, MA FIX | 2000 |

IS AMENDED TO DELETE

| | | |
|---|---|---|
| DENNY, MA FIX<br>*2500 - MRA<br>**1400 - MOCA | *CELTS, MA FIX | **2500 |
| CELTS, MA FIX<br>*1200 - MOCA | TONNI, MA FIX | *3000 |

§95.6457 VOR FEDERAL AIRWAY 457

IS AMENDED TO READ IN PART

| | | |
|---|---|---|
| WESTMINSTER, MD VORTAC | VINNY, MD FIX | 3000 |
| VINNY, MD FIX<br>*2300 - MOCA | LANCASTER, PA VORTAC | *4500 |

§95.6467 VOR FEDERAL AIRWAY 467

IS DELETED

| | | |
|---|---|---|
| HEDGE, MD FIX<br>*1400 - MOCA | DRUMM, DE FIX | *2400 |
| DRUMM, DE FIX | CEDAR LAKE, NJ VORTAC | 1800 |
| CEDAR LAKE, NJ VORTAC | ADAPS, NJ FIX | 2000 |
| ADAPS, NJ FIX<br>*1600 - MOCA | NANCI, NY FIX | *3000 |
| NANCI, NY FIX | LA GUARDIA, NY VOR/DME | 2700 |
| LA GUARDIA, NY VOR/DME<br>*1500 - MOCA | MARES, CT FIX | *2000 |
| MARES, CT FIX<br>*2000 - MOCA | SEAMO, CT FIX | *3000 |
| SEAMO, CT FIX | HARTFORD, CT VORTAC | 2600 |

§95.6469 VOR FEDERAL AIRWAY 469

IS AMENDED TO READ IN PART

| | | |
|---|---|---|
| HARRISBURG, PA VORTAC | DUPONT, DE VORTAC | 3000<br>MAA- 8000 |
| DUPONT, DE VORTAC | WOODSTOWN, NJ VORTAC | 2000<br>MAA- 8000 |

§95.6475 VOR FEDERAL AIRWAY 475

IS AMENDED TO READ IN PART

| | | |
|---|---|---|
| LA GUARDIA, NY VOR/DME<br>*1500 - MOCA | BRIDGEPORT, CT VOR | *2000 |
| BRIDGEPORT, CT VOR<br>*1500 - MOCA | MADISON, CT VORTAC | *2000 |
| MADISON, CT VORTAC | NORWICH, CT VORTAC | 2300 |

| FROM | TO | MEA |
|---|---|---|
| **§95.6476 VOR FEDERAL AIRWAY 476 IS AMENDED TO DELETE** | | |
| GORDONSVILLE, VA VORTAC | STAFO, VA FIX | 4000 |
| STAFO, VA FIX | IRONS MD FIX | *3000 |
| *1600 - MOCA | | |
| **§95.6479 VOR FEDERAL AIRWAY 479 IS AMENDED TO READ IN PART** | | |
| DUPONT, DE VORTAC | YARDLEY, PA VORTAC | 2000 |
| **§95.6483 VOR FEDERAL AIRWAY 483 IS AMENDED TO READ IN PART** | | |
| DEER PARK, NY VORTAC | CARMEL, NY VORTAC | *2500 |
| *2000 - MOCA | | |
| CARMEL, NY VORTAC | KINGSTON, NY VORTAC | 3000 |
| KINGSTON, NY VORTAC | WEETS, NY FIX | 3000 |
| WEETS, NY FIX | RIMBA, NY FIX | 6000 |
| RIMBA, NY FIX | DE LANCEY, NY VOR | *5000 |
| *4200 - MOCA | | |
| **§95.6487 VOR FEDERAL AIRWAY 487 IS AMENDED TO READ** | | |
| LA GUARDIA, NY VOR/DME | BRIDGEPORT, CT VOR | *2000 |
| *1500 - MOCA | | |
| BRIDGEPORT, CT VOR | BOWAN, NY FIX | *6000 |
| *4100 - MOCA | | |
| BOWAN, NY FIX | CAMBRIDGE, NY VORTAC | *5000 |
| *4300 - MOCA | | |
| CAMBRIDGE, NY VORTAC | GRISS, NY FIX | 4000 |
| GRISS, NY FIX | ENSON, VT FIX | *4000 |
| *2700 - MOCA | | |

| FROM | TO | MEA |
|---|---|---|
| **§95.6487 VOR FEDERAL AIRWAY 487—Continued** | | |
| ENSON, VT FIX | *WEIGH, VT FIX | **4000 |
| *4000 - MRA | | |
| **2800 - MOCA | | |
| WEIGH, VT FIX | BURLINGTON, VT VORTAC | 3000 |
| BURLINGTON, VT VORTAC | U.S. CANADIAN BORDER | 2800 |
| **§95.6543 VOR FEDERAL AIRWAY 543 IS AMENDED TO READ IN PART** | | |
| NEW ORLEANS, LA VORTAC | MACAW, LA FIX | *1900 |
| *1400 - MOCA | | |
| **§95.6550 VOR FEDERAL AIRWAY 550 IS AMENDED TO READ IN PART** | | |
| COTULLA, TX VORTAC | MILET, TX FIX | *2500 |
| *1800 - MOCA | | |
| MILET, TX FIX | LEMIG, TX FIX | 2500 |
| **§95.6572 VOR FEDERAL AIRWAY 572 IS AMENDED TO READ IN PART** | | |
| *FRISY, AZ FIX | WINSLOW, AZ VORTAC | 10000 |
| *10500 - MCA FRISY FIX, W BND | | |
| **§95.6615 VOR FEDERAL AIRWAY 615 IS ADDED TO READ** | | |
| RALEIGH/DURHAM, NC VORTAC | DUFFI, NC FIX | 2500 |
| DUFFI, NC FIX | HOPEWELL, VA VORTAC | *4000 |
| *2400 - MOCA | | |

| FROM | TO | MEA | MAA |
|---|---|---|---|
| **§95.7006 JET ROUTE NO. 6** | | | |
| | **IS AMENDED BY ADDING** | | |
| MARTINSBURG, WV VORTAC | LANCASTER, PA VORTAC | 18000 | 32000 |
| | **IS AMENDED TO READ IN PART** | | |
| CHARLESTON, WV VORTAC | MARTINSBURG, WV VORTAC | 18000 | 45000 |
| | **IS AMENDED TO DELETE** | | |
| SHAWNEE, VA VORTAC | WESTMINSTER, MD VORTAC | 18000 | 45000 |
| WESTMINSTER, MD VORTAC | ROBBINSVILLE, NJ VORTAC | 18000 | 45000 |
| **§95.7008 JET ROUTE NO. 8** | | | |
| | **IS AMENDED TO READ IN PART** | | |
| CHARLESTON, WV VORTAC | CASANOVA, VA VORTAC | 18000 | 45000 |
| | **IS AMENDED TO DELETE** | | |
| CASANOVA, VA VORTAC | ROBBINSVILLE, NJ VORTAC | 18000 | 45000 |
| **§95.7014 JET ROUTE NO. 14** | | | |
| | **IS AMENDED TO READ IN PART** | | |
| RICHMOND, VA VORTAC | PATUXENT, MD VORTAC | 18000 | 45000 |
| **§95.7022 JET ROUTE NO. 22** | | | |
| | **IS AMENDED TO READ IN PART** | | |
| PULASKI, VA VORTAC | MONTEBELLO, VA VOR/DME | 18000 | 45000 |
| **§95.7024 JET ROUTE NO. 24** | | | |
| | **IS AMENDED TO READ IN PART** | | |
| CHARLESTON, WV VORTAC | MONTEBELLO, VA VOR/DME | 18000 | 45000 |
| MONTEBELLO, VA VOR/DME | FLAT ROCK, VA VORTAC | 18000 | 45000 |
| FLAT ROCK, VA VORTAC | HARCUM, VA VORTAC | 18000 | 45000 |

| FROM | TO | MEA | MAA |
|---|---|---|---|
| **§95.7030 JET ROUTE NO. 30**—Continued | | | |
| | **IS AMENDED TO READ IN PART** | | |
| APPLETON, OH VORTAC | KESSEL, WV VOR/DME | 18000 | 29000 |
| KESSEL, WV VOR/DME | TRIXY, VA FIX | 18000 | 45000 |
| **§95.7034 JET ROUTE NO. 34** | | | |
| | **IS AMENDED TO READ IN PART** | | |
| BELLAIRE, OH VORTAC | KESSEL, WV VOR/DME | 18000 | 29000 |
| KESSEL, WV VOR/DME | TRIXY, VA FIX | 18000 | 45000 |
| **§95.7037 JET ROUTE NO. 37** | | | |
| | **IS AMENDED TO READ IN PART** | | |
| GORDONSVILLE, VA VORTAC | BROOKE, VA VORTAC | 20000 | 45000 |
| BROOKE, VA VORTAC | COYLE, NJ VORTAC | 18000 | 45000 |
| KENNEDY, NY VORTAC | KINGSTON, NY VORTAC | 18000 | 45000 |
| KINGSTON, NY VORTAC | ALBANY, NY VORTAC | 18000 | 45000 |
| | **IS AMENDED TO DELETE** | | |
| COYLE, NJ VORTAC | KENNEDY, NY VORTAC | 18000 | 45000 |
| **§95.7040 JET ROUTE NO. 40** | | | |
| | **IS AMENDED TO DELETE** | | |
| RICHMOND, VA VORTAC | DUPONT, DE VORTAC | 18000 | 45000 |
| **§95.7042 JET ROUTE NO. 42** | | | |
| | **IS AMENDED BY ADDING** | | |
| LA GUARDIA, NY VOR/DME | HARTFORD, CT VORTAC | 18000 | 45000 |
| HARTFORD, CT VORTAC | PROVIDENCE, RI VORTAC | 18000 | 45000 |
| | **IS AMENDED TO READ IN PART** | | |
| BECKLEY, WV VORTAC | MONTEBELLO, VA VOR/DME | 18000 | 41000 |
| MONTEBELLO, VA VOR/DME | GORDONSVILLE, VA VORTAC | 18000 | 45000 |
| GORDONSVILLE, VA VORTAC | NOTTINGHAM, MD VORTAC | 18000 | 45000 |
| NOTTINGHAM, MD VORTAC | WOODSTOWN, NJ VORTAC | 18000 | 35000 |
| WOODSTOWN, NJ VORTAC | ROBBINSVILLE, NJ VORTAC | 18000 | 45000 |
| ROBBINSVILLE, NJ VORTAC | LA GUARDIA, NY VOR/DME | 18000 | 45000 |

| FROM | TO | MEA | MAA |
|---|---|---|---|
| **§95.7048 JET ROUTE NO. 48**—Continued | | | |
| | **IS AMENDED BY ADDING** | | |
| TOCCOA, GA VORTAC | MONTEBELLO, VA VOR/DME | 18000 | 41000 |
| MONTEBELLO, VA VOR/DME | CASANOVA, VA VORTAC | 18000 | 45000 |
| **§95.7055 JET ROUTE NO. 55** | | | |
| | **IS AMENDED BY ADDING** | | |
| HOPEWELL, VA VORTAC | HUBBS, MD FIX | 18000 | 20000 |
| | **IS AMENDED TO READ IN PART** | | |
| TUBAS, NC FIX | RALEIGH/DURHAM, NC VORTAC | 18000 | 45000 |
| RALEIGH/DURHAM, NC VORTAC | HOPEWELL, VA VORTAC | 18000 | 45000 |
| | **IS AMENDED TO DELETE** | | |
| FLAT ROCK, VA VORTAC | SEA ISLE, NJ VORTAC | 18000 | 45000 |
| **§95.7060 JET ROUTE NO. 60** | | | |
| | **IS AMENDED TO READ IN PART** | | |
| EAST TEXAS, PA VORTAC | SPARTA, NJ VORTAC | 18000 | 45000 |
| **§95.7062 JET ROUTE NO. 62** | | | |
| | **IS AMENDED TO READ IN PART** | | |
| ROBBINSVILLE, NJ VORTAC | NANTUCKET, MA VORTAC | 18000 | 45000 |
| **§95.7075 JET ROUTE NO. 75** | | | |
| | **IS AMENDED TO READ IN PART** | | |
| GORDONSVILLE, VA VORTAC | MODENA, PA VORTAC | 18000 | 45000 |
| **§95.7079 JET ROUTE NO. 79** | | | |
| | **IS AMENDED TO READ IN PART** | | |
| SALISBURY, MD VORTAC | KENNEDY, NY VORTAC | 18000 | 45000 |

| FROM | TO | MEA | MAA |
|---|---|---|---|
| **§95.7089 JET ROUTE NO. 89**—Continued | | | |
| | **IS AMENDED TO READ IN PART** | | |
| CAWLY, FL FIX | VALDOSTA, GA VOR/DME | 18000 | 45000 |
| VALDOSTA, GA VOR/DME | ATLANTA, GA VORTAC | 18000 | 45000 |
| | **IS AMENDED TO DELETE** | | |
| LAKELAND, FL VORTAC | NECOS, FL FIX | 25000 | 45000 |
| NECOS, FL FIX | ICBOD, GA FIX | 31000 | 45000 |
| ICBOD, GA FIX | ATLANTA, GA VORTAC | 25000 | 45000 |
| **§95.7109 JET ROUTE NO. 109** | | | |
| | **IS AMENDED TO READ** | | |
| WILMINGTON, NC VORTAC | FLAT ROCK, VA VORTAC | 18000 | 45000 |
| FLAT ROCK, VA VORTAC | LINDEN, VA VORTAC | 18000 | 45000 |
| LINDEN, VA VORTAC | BUFFALO, NY VORTAC | 18000 | 45000 |
| **§95.7110 JET ROUTE NO. 110** | | | |
| | **IS AMENDED TO DELETE** | | |
| COYLE, NJ VORTAC | KENNEDY, NY VORTAC | 18000 | 45000 |
| **§95.7121 JET ROUTE NO. 121** | | | |
| | **IS AMENDED BY ADDING** | | |
| SANDY POINT, RI VOR/DME | KENNEBUNK, ME VORTAC | 18000 | 45000 |
| | **IS AMENDED TO READ IN PART** | | |
| HAMPTON, NY VORTAC | SANDY POINT, RI VOR/DME | 18000 | 45000 |
| | **IS AMENDED TO DELETE** | | |
| PROVIDENCE, RI VORTAC | SCUPP, MA FIX | 18000 | 45000 |
| **§95.7134 JET ROUTE NO. 134** | | | |
| | **IS AMENDED TO READ IN PART** | | |
| HENDERSON, WV VORTAC | LINDEN, VA VORTAC | 18000 | 21000 |

| FROM | TO | MEA | MAA |
|---|---|---|---|
| **§95.7147 JET ROUTE NO. 147**—Continued | | | |
| | **IS AMENDED TO READ** | | |
| BECKLEY WV VORTAC | CASANOVA, VA VORTAC | 22000 | 45000 |
| **§95.7149 JET ROUTE NO. 149** | | | |
| | **IS AMENDED TO READ** | | |
| ARMEL, VA VORTAC | GEFFS, WV FIX | 25000 | 45000 |
| GEFFS, WV FIX | HACKS, WV FIX | 27000 | 45000 |
| HACKS, WV FIX | ROSEWOOD, OH VORTAC | 23000 | 45000 |
| ROSEWOOD, OH VORTAC | FORT WAYNE, IN VORTAC | 18000 | 45000 |
| **§95.7150 JET ROUTE NO. 150** | | | |
| | **IS AMENDED TO READ IN PART** | | |
| GORDONSVILLE, VA VORTAC | NOTTINGHAM, MD VORTAC | 18000 | 45000 |
| NOTTINGHAM, MD VORTAC | WOODSTOWN, NJ VORTAC | 18000 | 35000 |
| WOODSTOWN, NJ VORTAC | COYLE, NJ VORTAC | 18000 | 45000 |
| COYLE, NJ VORTAC | HAMPTON, NY VORTAC | 18000 | 45000 |
| **§95.7162 JET ROUTE NO. 162** | | | |
| | **IS AMENDED BY ADDING** | | |
| MORGANTOWN, WV VORTAC | MARTINSBURG, WV VORTAC | 18000 | 29000 |
| | **IS AMENDED TO READ IN PART** | | |
| BELLAIRE, OH VORTAC | MORGANTOWN, WV VORTAC | 18000 | 45000 |
| **§95.7190 JET ROUTE NO. 190** | | | |
| | **IS AMENDED TO READ IN PART** | | |
| SLATE RUN, PA VORTAC | BINGHAMTON, NY VORTAC | 18000 | 45000 |
| BINGHAMTON, NY VORTAC | ROCKDALE, NY VORTAC | 18000 | 45000 |
| **§95.7191 JET ROUTE NO. 191** | | | |
| | **IS AMENDED TO READ IN PART** | | |
| KENTON, DE VORTAC | ROBBINSVILLE, NJ VORTAC | 18000 | 33000 |

| FROM | TO | MEA | MAA |
|---|---|---|---|
| **§95.7209 JET ROUTE NO. 209**—Continued | | | |
| | **IS AMENDED BY ADDING** | | |
| SALISBURY, MD VORTAC | COYLE, NJ VORTAC | 18000 | 45000 |
| COYLE, NJ VORTAC | WHITE, NJ FIX | 18000 | 45000 |
| **§95.7213 JET ROUTE NO. 213** | | | |
| | **IS ADDED TO READ** | | |
| BECKLEY, WV VORTAC | ARMEL, VA VORTAC | 18000 | 45000 |
| **§95.7222 JET ROUTE NO. 222** | | | |
| | **IS ADDED TO READ** | | |
| ROBBINSVILLE, NJ VORTAC | KENNEDY, NY VORTAC | 18000 | 45000 |
| KENNEDY, NY VORTAC | CAMBRIDGE, NY VORTAC | 18000 | 31000 |
| CAMBRIDGE, NY VORTAC | PLATTSBURGH, NY VORTAC | 18000 | 45000 |
| **§95.7225 JET ROUTE NO. 225** | | | |
| | **IS ADDED TO READ** | | |
| CEDAR LAKE, NJ VORTAC | KENNEDY, NY VORTAC | 18000 | 35000 |
| KENNEDY, NY VORTAC | HARTFORD,CT VORTAC | 18000 | 45000 |
| HARTFORD, CT VORTAC | PUTNAM, CT VORTAC | 18000 | 45000 |
| PUTNAM, CT VORTAC | BOSTON, MA VORTAC | 18000 | 45000 |
| **§95.7228 JET ROUTE NO. 228** | | | |
| | **IS AMENDED TO DELETE** | | |
| BECKLEY, WV VORTAC | DRAPE, VA FIX | 22000 | 45000 |
| DRAPE, VA FIX | LINDEN, VA VORTAC | 18000 | 30000 |
| LINDEN, VA VORTAC | LANCASTER, PA VORTAC | 18000 | 38000 |
| **§95.75 8 JET ROUTE NO. 518** | | | |
| | **IS AMENDED TO READ** | | |
| DRYER, OH VORTAC | INDIAN HEAD, PA VORTAC | 18000 | 45000 |

| FROM | TO | MEA | MAA |
|---|---|---|---|
| **§95.7518 JET ROUTE NO. 518**—Continued | | | |
| INDIAN HEAD, PA VORTAC | BALTIMORE, MD VORTAC | 18000 | 35000 |
| **§95.7573 JET ROUTE NO. 573** | | | |
| | **IS AMENDED TO DELETE** | | |
| PROVIDENCE, RI VORTAC | KENNEBUNK, ME VORTAC | 18000 | 45000 |
| **§95.7581 JET ROUTE NO. 581** | | | |
| | **IS AMENDED TO DELETE** | | |
| KENNEDY, NY VORTAC | ARTII, CT FIX | 19000 | 45000 |
| ARTII, CT FIX | PUTNAM, CT VORTAC | 18000 | 45000 |

## §95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

| AIRWAY SEGMENT | | CHANGEOVER POINTS | |
|---|---|---|---|
| FROM | TO | DISTANCE | FROM |
| | **V-203** | | |
| | **IS AMENDED TO DELETE** | | |
| CHESTER, MA VORTAC | ALBANY, NY VORTAC | 24 | CHESTER |
| | **V-510** | | |
| | **IS AMENDED BY ADDING** | | |
| GAYLE, MI FIX | MUSKEGON, MI VORTAC | #47 | GAYLE |
| #COP MEASURED FROM MKG VORTAC. | | | |
| IS AMENDED TO DELETE | | | |
| FALLS, WI VOR | MUSKEGON, MI VORTAC | 41 | FALLS |

## §95.8005 JET ROUTES CHANGEOVER POINTS

| AIRWAY SEGMENT | | CHANGEOVER POINTS | |
|---|---|---|---|
| FROM | TO | DISTANCE | FROM |
| | **J-6** | | |
| | **IS AMENDED TO DELETE** | | |
| SHAWNEE, VA VORTAC | WESTMINSTER, MD VORTAC | 24 | SHAWNEE |
| | **J-37** | | |
| | **IS AMENDED BY ADDING** | | |
| KENNEDY, NY VORTAC | KINGSTON, NY VORTAC | 37 | KENNEDY |
| | **J-518** | | |
| | **IS AMENDED BY ADDING** | | |
| INDIAN HEAD, PA VORTAC | BALTIMORE, MD VORTAC | 20 | INDIAN HEAD |

[FR Doc. 88-4410 Filed 3-1-88; 8:45 am]
BILLING CODE 4910-13-C

**14 CFR Part 97**

**[Docket No. 25547; Amdt. No. 1368]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

*For Purchase—*

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

**SUPPLEMENTARY INFORMATION:** This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

**List of Subjects in CFR Part 97**

Approaches, standard instrument, Incorporation by reference.

Issued in Washington, DC on February 19, 1988.

**Robert L. Goodrich,**

*Director of Flight Standards*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

**PART 97—[AMENDED]**

1. The authority citation for Part 97 continues to read as follows:

**Authority:** 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983; and 14 CFR 11.49(b)(2)).

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . *Effective May 5, 1988*

Livermore, CA—Livermore Muni, ILS RWY 25R, Amdt. 5

. . . *Effective April 7, 1988*

San Diego, CA—Montgomery Field, NDB RWY 28R, Amdt. 1
San Diego, CA—Montgomery Field, ILS RWY 28R, Amdt. 2
Washington, DC—Dulles Intl, NDB RWY 1R, Amdt. 15
Washington, DC—Dulles Intl, ILS RWY 12, Amdt. 13
Washington, DC—Dulles Intl, ILS RWY 19R, Amdt. 19
Robinson, IL—Robinson Muni, VOR RWY 17, Amdt. 4
Robinson, IL—Robinson Muni, VOR RWY 27, Amdt. 4
Robinson, IL—Robinson Muni, NDB RWY 17, Amdt. 7
Creston, IA—Creston Muni, NDB RWY 34, Amdt. 4
Dodge City, KS—Dodge City Muni, LOC RWY 14, Orig.
Provincetown, MA—Provincetown Muni, NDB-A, Amdt. 6
Provincetown, MA—Provincetown Muni, ILS RWY 7, Amdt. 2
Buffalo, MN—Buffalo Muni, VOR-B, Amdt. 3
St. Cloud, MN—St. Cloud Muni, VOR/DME RWY 13, Amdt. 4
St. Cloud, MN—St. Cloud Muni, VOR RWY 31, Amdt. 7
St. Paul, MN—Lake Elmo, NDB RWY 3, Amdt. 1
Chadron, NE—Chadron Muni, VOR-A, Amdt. 10, CANCELLED
Burlington, NC—Burlington Muni, NDB RWY 6, Amdt. 3
Columbus, OH—Rickenbacker ANGB, VOR RWY 23L, Amdt. 2
Delaware, OH—Delaware Muni, VOR RWY 28, Amdt. 3
Mansfield, OH—Mansfield Lahm Muni, RNAV RWY 5, Amdt. 1, CANCELLED
Newark, OH—Licking County-Newark Heath, VOR-A, Amdt. 9
Greenville, SC—Greenville Downtown, NDB RWY 36, Amdt. 20
Green Bay, WI—Austin Straubel Field, VOR/DME or TACAN RWY 36L, Amdt. 5
Janesville, WI—Rock County, VOR/DME or TACAN RWY 22, Amdt. 3, CANCELLED
Medford, WI—Taylor County, NDB RWY 33, Amdt. 5

. . . *Effective March 10, 1988*

Lake Charles, LA—Chennault Industrial Airpark, ILS RWY 15R, ORIG.
Providence, RI—Theodore Francis Green State, VOR RWYs 5L/R, Amdt. 11
Providence, RI—Theodore Francis Green State, VOR/DME RWY 16, Amdt. 3
Providence, RI—Theodore Francis Green State, VOR/DME RWY 34, Amdt. 3
Providence, RI—Theodore Francis Green State, NDB RWY 5R, Amdt. 14
Providence, RI—Theodore Francis Green State, ILS RWY 5R, Amdt. 13

. . . *Effective February 11, 1988*

Jefferson City, MO—Jefferson City Meml, LOC BC RWY 12, Amdt. 1

[FR Doc. 88-4411 Filed 3-1-88; 8:45 am]
BILLING CODE 4910-13-M

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1016

### Policies and Procedures for Information Disclosure and Employee Testimony in Private Litigation

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final amendments.

**SUMMARY:** The Commission has regulations concerning its providing of documents and witnesses in legal proceedings that do not involve the Commission. Under amendments being made to these regulations, documents will continue to be provided for use in such proceedings to the fullest extent possible. However, in order to (a) avoid an undue burden on the Commission's resources and (b) maintain the effectiveness of Commission employees as witnesses in Commission cases, the testimony of employees in such proceedings will be generally prohibited.

**DATES:** The amendments will become effective on April 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Alan Shakin, Assistant General Counsel for Enforcement and Information, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6980.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Commission often receives requests from attorneys who want Commission employees to testify in product liability lawsuits (and sometimes in other lawsuits to which the Commission is not a party). These requests take different forms, including:

(1) Requests for an employee to authenticate, for evidentiary purposes, a Commission document such as an in-depth investigation report prepared by a field investigator; a laboratory report by a Commission technician; or an engineering, epidemiological, or other technical report written by a headquarters staff member.

(2) Requests for the testimony of a Commission employee who has some knowledge that bears on an issue of fact in a lawsuit.

(3) Requests for a Commission employee to testify as an expert witness.

Under the existing regulations, such requests may be granted if the General Counsel finds that they satisfy at least one of the three criteria specified at 16 CFR 1016.5(b)(2):

> "The party seeking testimony has made a showing [1] that the evidence or the facts adduced by him or her is not reasonably available by any other method, [2] that the results of the litigation will have significant implications for future Commission actions or policies, or [3] that Commission actions are material issues in the lawsuit. . . ."

However, these criteria fail to address the most important consideration: the fact that any testimony by a Commission employee in private litigation uses up resources that the Commission cannot spare from its own work.

The employee who is testifying and a Commission lawyer both devote time to preparation for the testimony and the testimony itself. If the testimony is at a trial, particularly one not near the employee's work location, travel time is also involved.

Another important consideration is that the effectiveness of the employee as a witness in Commission litigation could be adversely affected by his or her testimony in private litigation. For example, a staff engineer might testify for the plaintiff in a product liability case involving a consumer product. If the Commission later brought an action involving the same product, the engineer's impartiality as a witness could be questioned on the basis of his or her earlier testimony.

#### II. The Proposed Amendments

The Commission believes that the three criteria in the employee testimony regulations should be eliminated. Based on the letters and telephone calls received from lawyers, the criteria apparently give the impression that many requests for testimony satisfy at least one criterion and are, therefore, routinely granted. This is misleading because most requests meet none of the criteria and are denied.

In place of the criteria, the Commission proposed amendments to adopt a practical and straightforward approach toward employee testimony in private litigation. The amendments, proposed for public comment on December 15, 1987 (52 FR 47599), provided that such testimony would be generally prohibited. They gave the General Counsel discretionary authority to make an exception, but provided that the Commission would expect such discretion to be exercised only in the rare circumstances when (1) the testimony would directly further a

Commission interest and (2) no resource or partiality issues were present (§ 1016.4(c) below). Absent such a situation, the proposed amendments directed the General Counsel to take steps (through the Department of Justice) to quash any validly-served subpoena seeking the testimony of a Commission employee. If the subpoena were not quashed, the employee would be directed to appear but not to testify.

Providing documents for use in private litigation does not present the same problems for the Commission as employee testimony. Under the existing regulations, the Commission provides documents to the fullest extent permitted under the Freedom of Information Act, section 6 of the Consumer Product Safty Act, and implementing regulations. In addition, the authenticity of documents is certified upon request. Since the Commission knew of no reason to change this approach, the proposed amendments made only editorial changes to the existing provisions on documents.

In proposing the amendments, the Commission noted that they are not Commission action within the categories listed at 16 CFR 1021.5(b) having a potential for producing environmental effects. Therefore, neither an environmental assessment nor an environmental impact statement is required. In addition, because the number of employees testifying in private litigation and the number of documents provided for use in private litigation are unlikely to change, the Commission certified that the proposed amendments, if issued in final form, would not have a significant economic impact on a substantial number of small entities, under the Regulatory Flexibility Act. 5 U.S.C. 603(3).

The Commission provided a 45-day opportunity for all interested members of the public to submit written comments on the proposed amendments.

### III. The Public Comments

Stanley E. Karon, a trial attorney from St. Paul, Minnesota, submitted the only comment. Mr. Karon wrote that the amendments would "significantly hamper" and "dramatically reduce" the willingness of plaintiffs' lawyers to cooperate with the Commission. As a result, he expects more frequent defense verdicts which would signal to product manufacturers that they may continue to design, manufacture and distribute products they know may be defective and dangerous.

As noted in section II above, most requests for employee testimony are denied under the existing regulations. Therefore, the Commission knows of no reason why the amendments should cause a plaintiff's lawyer to be any less cooperative in providing information to the Commission on potentially dangerous products.

Mr. Karon noted, more specifically, that he would be reluctant to provide a potentially dangerous product to the Commission staff for testing and investigation if he could not utilize in his litigation the results of such staff testing and investigation. Mr. Karon recognized the Commission's resource limitations. However, he hoped that "some middle ground" could be found so that the Commission staff would not lose the opportunity to inspect a potentially dangerous product possessed by a plaintiff's lawyer.

The situation described by Mr. Karon is one kind in which the General Counsel may well decide to permit testimony. The Commission certainly has an interest in analyzing potentially dangerous products that have been involved in injury incidents. Therefore, private testimony by its employees concerning such analysis may be testimony "in the interests of the Commission" under § 1016.4(c) of the amended regulations. The General Counsel's decision on employee testimony could also take into account other relevant factors, such as whether the staff's tests destroyed the product so that it could no longer be tested by a non-Commission laboratory.

As under the existing regulations, employee testimony approval in the amended regulations is discretionary and no assurance of testimony in any particular case can be provided. Nevertheless, the Commission fully recognizes the situation described by Mr. Karon, and neither intends nor expects the amended regulations to change its current policy on this issue.

### IV. The Final Amendments

After considering the public comment on the proposed amendments, as well as other available information, the Commission has decided to issue the final amendments in the same form as they were proposed.

Accordingly, pursuant to provisions of the Consumer Product Safety Act (15 U.S.C. 2051–81), the Federal Hazardous Substances Act (15 U.S.C. §§ 1261–74), the Flammable Fabrics Act (15 U.S.C. 1191–1204), the Poison Prevention Packaging Act of 1970 (15 U.S.C. §§ 1471–76), the Refrigerator Safety Act (15 U.S.C. 1211–14), the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act of 1974 (5 U.S.C. 552a), the Commission amends Title 16 of the Code of Federal Regulations, Chapter II, Subchapter A by revising Part 1016 to read as follows:

## PART 1016—POLICIES AND PROCEDURES FOR INFORMATION DISCLOSURE AND COMMISSION EMPLOYEE TESTIMONY IN PRIVATE LITIGATION

Sec.

1016.1 Purpose and policy.
1016.2 Definition.
1016.3 Disclosure and certification of information and records.
1016.4 Testimony of Commission employees in private litigation.

**Authority:** 15 U.S.C. 2051–81; 15 U.S.C. 1261–74; 15 U.S.C. 1191–1204; 15 U.S.C. 1471–76; 15 U.S.C. 1211–14; 5 U.S.C. 552; and 5 U.S.C. 552a.

### § 1016.1 Purpose and policy.

(a) The Commission's policy is to make official records available to private litigants, to the fullest extent possible.

(b) The Commission's policy and responsibility is to conserve the time of its employees for work on Commission projects and activities. Participation of Commission employees in private litigation, in their official capacities, is generally contrary to this policy and responsibility. In addition, such participation could impair the effectiveness of Commission employees as witness in litigation in which the Commission is directly involved.

### § 1016.2 Definition.

"Private litigation" refers to any legal proceeding which does not involve the United States government, or any department or agency of the U.S. government, as a party.

### § 1016.3 Disclosure and certification of information and records.

(a) Identifiable information and records in the Commission's possession will be made available to private litigants in accordance with the Commission's Procedures for Disclosure or Production of Information under the Freedom of Information Act (16 CFR Part 1015), the Freedom of Information Act (5 U.S.C. 552), sections 6 and 25(c) of the Consumer Product Safety Act (15 U.S.C. 2055 and 2074(c)), and any other applicable statutes or regulations.

(b) The Secretary of the Commission shall certify the authenticity of copies of Commission records. Requests must be

in writing and must include the records to be certified. Requests should be sent to: Secretary, Consumer Product Safety Commission, Washington, DC 20207.

(c) Any subpoena duces tecum served on a Commission employee will be handled by the Office of the Secretary in conjunction with the Office of the General Counsel. Whenever necessary to prevent the improper disclosure of documents, the General Counsel will take steps, in conjunction with the Department of Justice, to quash such subpoenas or seek protective orders.

**§ 1016.4 Testimony of Commission employees in private litigation.**

(a) No Commission employee shall testify in his or her official capacity in any private litigation, without express authorization from the Commission's General Counsel. The Commission may, in its discretion, review a decision by the General Counsel to authorize such employee testimony. The General Counsel shall in such instances, where time permits, advise the Commission, on a no objection basis, of the authorization of such employee testimony.

(b) If any Commission employee is served with a subpoena seeking testimony in private litigation, he or she must immediately notify the Office of the General Counsel. The Office of the General Counsel, in conjunction with the Department of Justice, will (1) take steps to quash the subpoena or (2) direct the employee to appear in response to the subpoena but refuse to testify on the ground that it is prohibited by this section.

(c) If the General Counsel becomes aware of private litigation in which testimony by a Commission employee would be in the interests of the Commission, he or she may authorize such testimony, notwithstanding paragraph (b) of this section. The Commission may, in its discretion, review a decision by the General Counsel to authorize such employee testimony. The General Counsel shall in such instances, where time permits, advise the Commission, on a no objection basis, of the authorization of such employee testimony. Any such testimony must be provided in a way that minimizes the use of Commission resources as much as possible.

Dated: February 19, 1988.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 88-4014 Filed 3-1-88; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 172

**[Docket Nos. 83F-0035 and 84F-0137]**

## Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

**AGENCY:** Food and Drug Administration.

**ACTION:** Denial of requests for stay of effective date and for a public hearing; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is denying the request for a stay of the effective date of the final rules to amend the food additive regulation providing for the safe use of aspartame in tea beverages; breath mints; non-carbonated, refrigerated single-strength and frozen concentrates of fruit juice based drinks, fruit flavored drinks and ades, and imitation fruit flavored drinks and ades; and also in frozen stick-type confections and novelties. FDA is also denying the request for a public hearing on safety issues related to these final rules. After reviewing the objections and the requests for a stay and a public hearing, FDA has concluded that the public interest would not be served by a stay of the rules, and that no issues of material fact have been raised that would justify convening a hearing.

**DATE:** This document confirms November 28, 1986, as the effective date.

**FOR FURTHER INFORMATION CONTACT:** Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-5487.

**SUPPLEMENTARY INFORMATION:**

### Background

In the **Federal Register** of November 28, 1986, FDA issued final rules that amended § 172.804 of the food additive regulations (21 CFR 172.804) by adding new paragraphs (c) (8), (9), (10), and (11) to this section. Paragraphs (c)(8) and (c)(9) permitted the additional use of aspartame as a sweetener in noncarbonated, refrigerated single-strength, and frozen concentrates of fruit juice based drinks, fruit flavored drinks and ades, and imitation fruit flavored drinks and ades, and also in frozen stick-type confections and novelties (51 FR 42999). This final rule responded to petitions filed by the Coca-Cola Co., Division of Foods, and Tropicana Products, Inc. Paragraph (c)(10) permitted the additional use of aspartame as a sweetener in breath mints (51 FR 43000). This final rule responded to a petition filed by the Shaklee Corp. Paragraph (c)(11) permitted the additional use of aspartame as a sweetener in ready-to-serve tea beverages (51 FR 43001). This final rule responded to a petition filed by Thomas J. Lipton, Inc. Submissions were received from three groups in response to these final rules.

### Comments to the Final Rules and FDA's Response

The Florida Citrus Mutual (FCM), a cooperative association of Florida citrus growers, and the Department of Citrus of the State of Florida commented that § 172.804(c)(8) should not be established if it would permit the use of aspartame in nondiluted standardized fruit juices. Specifically, they contended that aspartame should not be permitted in nondiluted fruit juices such as orange juice and grapefruit juice. FCM also requested that the amendment be stayed pending completion of ongoing clinical research projects on aspartame. The Florida Department of Citrus also asked whether FDA agreed that additives could be added to standardized fruit juices and marketed as substitutes. This latter inquiry relates to the proposed fortification of orange juice with calcium. This issue is not relevant to the current proceeding and is fully addressed in a letter from the Associate Commissioner for Regulatory Affairs to the Florida Department of Citrus (June 12, 1987).

FDA agrees that aspartame should not be approved for use in nondiluted standardized fruit juices, and the final rules do not allow such use. The inclusion of food ingredients in Part 172 does not mean that the ingredients may be used in standardized foods. For such use to be appropriate, the ingredients must be recognized as optional ingredients in applicable food standards. At the present time, the applicable standards do not permit the addition of aspartame as an optional ingredient to standardized fruit juices.

### Objections to the Final Rules

The Community Nutrition Institute (CNI) objected to all three rules that would amend § 172.804 by adding paragraphs (c) (8), (9), (10), and (11). The objection makes the contention that the basic standard of safety of the Food Additives Amendment to the Federal Food, Drug, and Cosmetic Act (the act) has not been met and that, therefore, FDA should stay these amendments and convene a public hearing to receive and

evaluate evidence that aspartame is causing neurological damage in a significant portion of its users. The evidence that the objectors presented as needing evaluation is as follows:

In support of its objections, CNI incorporates by reference its citizen petition submitted on July 19, 1986, and an October 23, 1986, amendment to the petition. In the petition, CNI requested the repeal of § 172.804 on the ground that aspartame presented an imminent hazard to the public health. (The agency denied the petition by letter dated November 21, 1986.) Also in support of its objections, CNI contends that FDA's change from the 99th to 90th percentile consumption levels for evaluating the daily intake of aspartame is weakening the protection to the public health provided by previous aspartame regulations. In further support of its proposition, CNI submitted a letter from Dr. William M. Pardridge of the University of California, Los Angeles School of Medicine. The letter was published in the *Journal of the American Medical Association* (November 21, 1986) and contains Dr. Pardridge's opinions concerning the safety of aspartame.

**Provisions for Requesting a Stay and/or Hearing**

Under section 409(e) of the act (21 U.S.C. 348(e)), an action to amend a food additive regulation is effective upon publication. FDA may stay the effect of the action, however, if it receives a request for a hearing. Under the agency's procedural regulations (21 CFR 10.35(d)(1)), the agency may grant a stay of a challenged action when it finds that it is in the public interest to do so.

Because promulgation of the final rules constituted a finding by the agency that the action is in the public interest, a substantial showing to the contrary must be made to justify a stay (40 FR 40682, 40687; September 3, 1975). Under these circumstances, a stay of the final rule would be appropriate only upon a determination by FDA that the objection creates significant doubt as to the soundness of the initial finding of safety. If that were the case, the agency could find that a stay would be in the public interest

Section 409(f) of the act provides that any person adversely affected by a final food additive regulation may file objections, specifying with particularity the provisions of the order "deemed objectionable, stating reasonable grounds therefor," and request a public hearing based upon such objections. However, the Commissioner of Food and Drugs may deny the hearing request if the objections to the regulation do not raise genuine and significant issues of fact that can be resolved at a hearing. Specific criteria for determining whether a request for a hearing has been justified are codified at 21 CFR 12.24(b). The pertinent criteria in 21 CFR 12.24(b) for granting a hearing are:

(1) There is a genuine and substantial issue of fact for resolution at a hearing. A hearing will not be granted on issues of policy or law.

(2) The factual issues can be resolved by available and specifically identified reliable evidence. A hearing will not be granted on the basis of mere allegations or denials or general description of positions and contentions.

(3) The data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the person. A hearing will be denied if the Commissioner concludes that the data and information submitted are insufficient to justify the factual determination urged, even if accurate.

(4) Resolution of the factual issue in the way sought by the person is adequate to justify the action requested. A hearing will not be granted on factual issues that are not determinative with respect to the action requested, e.g., if the Commissioner concludes that the action would be the same even if the factual issue were resolved in the way sought.

A party seeking a hearing is required to meet a "threshold burden of tendering evidence suggesting the need for a hearing." *Costle* v. *Pacific Legal Foundation*, 445 U.S. 198, 214–215 (1980), *reh. den.*, 445 U.S. 947 (1980), citing *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 620–621, 1973. An allegation that a hearing is necessary to "sharpen the issues" or "fully develop the facts" does not meet this test. *Georgia Pacific Corp.* v. *U.S. E.P.A.*, 671 F.2d 1235, 1241 (9th Cir. 1982). If a hearing request fails to identify any evidence that would be the subject of a hearing, there is no point in holding one. In judicial proceedings, courts are authorized to issue summary judgment without an evidentiary hearing whenever they find that there are no material issues of fact in dispute and a party is entitled to judgment as a matter of law. (See Rule 56, Federal Rules of Civil Procedure.) The same principle applies in administrative proceedings.

A hearing request must not only contain evidence, but that evidence should raise a material issue of fact concerning which a meaningful hearing might be held. *Pineapple Growers Ass,n* v. *FDA*, 673 F.2d 1083, 1085 (9th Cir. 1982) (where the issues raised in the objection are, even if true, legally insufficient to alter the decision, the agency need not grant a hearing). *Dyestuffs and Chemicals, Inc.* v. *Flemming*, 271 F.2d 281 (8th Cir. 1959), *cert. denied*, 362 U.S. 911 (1960). FDA need not grant a hearing in each case where an objector submits additional information or posits a novel interpretation of existing information. See *United States* v. *Consolidated Mines & Smelting Co.*, 455 F.2d 432 (9th Cir. 1971). Stated another way, a hearing is justified only if the objections are made in good faith and if they "draw in question in a material way the underpinnings of the regulation at issue." *Pactra Industries* v. *CPSC*, 555 F.2d 677 (9th Cir. 1977). Finally, courts have uniformly recognized that a hearing need not be held to resolve questions of law or policy. See *Citizens for Allegany County, Inc.* v. *FPC*, 414 F.2d 1125 (D.C. 1969); *Sun Oil Co.*, v. *FPC*, 256 F.2d 233, 240 (5th Cir.), *cert. denied*, 358 U.S. 872 (1958).

Even if the objections raise material issues of fact, FDA need not grant a hearing if those same issues were adequately raised and considered in an earlier proceeding. Once an issue has been so raised and considered, a party is estopped from raising that same issue in a later proceeding without new evidence. The various judicial doctrines dealing with finality can be validly applied to the administrative process. In explaining why these principles "self-evidently" ought to apply to an agency proceeding, the D.C. Circuit wrote:

> The underlying concept is as simple as this: Justice requires that a party have a fair chance to present his position. But overall interests of administration do not require or generally contemplate that he will be given more than a fair opportunity.

*Retail Clerks Union, Local 1401, R.C.I.A.* v. *NLRB*, 463 F.2d 316, 322 (D.C. Cir. 1972). See *Costle* v. *Pacific Legal Foundation*, supra at 1106. See also *Pacific Seafarers, Inc.* v. *Pacific Far East Line, Inc.*, 404 F.2d 804 (D.C. Cir. 1968).

In conclusion, CNI has not justified a stay, because its request for a hearing must be denied. A request for a hearing, in order to be granted, must present sufficient credible evidence to raise a material issue of fact which has not already been the subject of an administrative hearing. Moreover, this evidence must be capable of resolving the issue in the requestor's favor. When analyzed according to these standards, CNI's objections fail to present any material issues of fact.

**Agency's Response to the Objections**

1. *Request for stay of regulations.* After a careful review of the specific safety issues raised in the request, as well as information in the earlier objections (Citizen Petition 6CP3956; see Docket No. 86P–0314), the agency has concluded that the request did not provide any new information to show that FDA's decision was inconsistent with the evidence before it nor that harm to the public health may result from the use of aspartame as provided by § 172.804(c) (8), (9), (10), and (11).

In fact, the safety of aspartame has been comprehensively studied over the past 13 years. The issues raised in the objections are substantially identical to issues that FDA has already examined and resolved in its response to CNI's Citizen Petition 6CP3956. Therefore, the request for a stay is denied. These issues are detailed in section 3 below.

2. *Request for a hearing.* As noted above, CNI requested that FDA convene a public hearing to receive and evaluate evidence that aspartame is causing neurological damage. CNI does not present sufficient credible evidence to warrant a hearing or, where credible evidence is presented, even if true, that evidence does not raise a material issue of fact. CNI's objection neither contains nor identifies any new data that would support its assertions. Moreover, the hearing request raises substantially the same issues that were presented at the Public Board of Inquiry. Those issues were considered in the Board's decision and reviewed in the Commissioner's decision (46 FR 38285; July 24, 1981). A previous attempt by CNI to reopen the administrative hearing on the safety of aspartame was rejected by the courts and the agency because of lack of substantive new evidence. *Community Nutrition Institute* v. *Young*, 773 F.2d 1356, 1364 (D.C. Cir. 1985), *cert. denied*, 106 S. Ct. 1642 (1986).

Finally, the request for a hearing raises issues concerning seizures, eye damage and neurological damage which were also addressed in CNI's July 17, 1986 (amended on October 23, 1986), request for a hearing (Citizen Petition 6CP3956, Docket No. 86P–0314). These issues were responded to by letter from the Associate Commissioner for Regulatory Affairs to CNI, dated November 21, 1986. (CNI sought judicial review of the FDA decision. *CNI* v. *FDA*, No. 87–1017 (D.C. Cir. filed January 14, 1987). Prior to oral argument of the case, however, CNI moved for and received a voluntary dismissal, with prejudice). The agency believes CNI has had a fair opportunity to present its position on these issues and an additional hearing on the same issues is unwarranted. Accordingly, the request for a hearing is denied.

3. *Evaluation of issues raised in objections.* The agency believes that it is in the public interest to address each of the assertions CNI makes in its requests in order to show that the decision to deny the stay and the hearing is justified not only on procedural grounds but also because CNI has failed to raise any substantive issue of fact. This section examines the specific issues identified in CNI's objections to the regulation. In responding to the various issues, the agency incorporates all materials in the administrative record as supportive of its findings in this proceeding. (Citizen Petition 6CP3956; Docket No. 86P–0314).

In examining the specific issues on safety, it is important to keep in mind the standard that the agency must meet in deciding whether a food additive can be safely used. Under 21 CFR 170.3(i), a food additive is safe if there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under its intended conditions of use. This regulation reflects the congressional judgment that an additive must be properly tested and the tests carefully evaluated, but that the additive need not, indeed cannot, be shown to be safe to an absolute certainty. As the House of Representatives' Report on the Food Additives Amendment stated: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of the additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstances" H. Rept. 2284, 85th Cong. 2d Sess., 1958.

a. *Evidence for onset of seizure.* The objections rely primarily on the data and information in their Citizen Petition, which, as noted above, have already been considered by the agency. The petition relied primarily on data and information collected by Dr. Wurtman and his associates describing the onset of seizures in conjunction with the consumption of products containing aspartame. After reviewing the data and information provided in the petition, the agency concluded that there was no evidence from controlled clinical studies, or other research, that indicates that current levels of aspartame consumption are not safe. In a letter of denial dated November 21, 1986, the agency explained its conclusions (see Docket No. 86P–0314). Neither new data nor specific responses to the November letter were included in the objections and request for a hearing.

b. *Evidence for eye damage.* On this matter the objections rely primarily on the data and information submitted in CNI's amendment to its Citizen Petition (6CP3956). These materials, as noted above, have also already been considered by the agency and were discussed in the letter of denial. The amendment relied upon statements and information from physicians concerning approximately 60 cases of individuals who had claimed that damage to their vision was connected with the consumption of aspartame. These reports were among 152 reports FDA had already received, reviewed, and evaluated. In the letter of denial, the agency concluded that the reports provided no basis for concluding that the occurrence of "eye damage" in these cases called into question the safety of aspartame. Neither new data nor specific responses to the November letter were included in the objections and request for a hearing.

c. *The change from the 99th to the 90th percentile consumption level, does not weaken the protection of the public health—1. Estimating maximum chronic exposure.* This matter involves a question of policy, not fact. In its November 28, 1986, final rules on aspartame, the agency clearly explained why the change from the 99th to 90th percentile in its exposure estimate would not weaken the protection of public health. In the preamble to the rules the agency explained that the 99th percentile was initially selected by the Commissioner because of the concerns about the potential consumer overexposure to one or a few types of products containing an artificial sweetener. This was a departure from the normal policy of relying on an estimate based on the 90th percentile. However, with the increase in the number of aspartame uses, the probability that a single individual will be a 99th percentile consumer of all uses diminishes significantly. Under these circumstances, continued use of the cumulative 99th percentile exposure estimate would lead to increasingly unrealistic estimates of exposure.

The agency believes that the explanation in the preamble to the final rules is clear. However, to alleviate any possible confusion about the matter, the agency is providing the following discussion.

The agency first selected the 99th percentile consumption level for estimating the daily intake of aspartame during the Commissioner's deliberations on the food additive petition (FAP 3A2885) submitted by G.D. Searle & Co., which resulted in the first approval for

the nutritive sweetener aspartame. The agency considered three methods for taking into account chronic consumption by the potential heavy user of aspartame sweetened products. Each method exaggerated the projected chronic consumption levels.

The first method assumed that aspartame was substituted for all carbohydrates in the diet of an average 60-kilogram-person, an unlikely assumption. This method projected that aspartame could be chronically consumed at a level of 25 milligrams per kilogram per day.

The second method, suggested by the petitioner, assumed that aspartame replaced all carbohydrate energy requirements in the diet of a 70-kilogram-adult. This method estimated the maximum chronic usage of aspartame to be 23 to 25 milligrams per kilogram per day.

The third method was based on data generated by the Market Research Corp. of America (MRCA). MRCA tabulated actual dietary records kept by 4,000 households (about 12,000 individuals) over 2-week periods, staggered throughout the year. These data were based on what people in given age brackets actually eat and were broken down into different percentile levels to account for both the average and heavy eaters. The chronic exposure estimate, based on the survey data, included exposure to not only the petitioned uses of aspartame, but also to additional categories for which aspartame had marketing potential, such as carbonated beverages. This method projected a potential chronic exposure of 34 milligrams per kilogram per day based on the 99th percentile eater for all age groups.

Although these figures were estimates, the consistency of the figures across the different methods added significantly to their credibility. Therefore, the Commissioner, being as cautious as possible, used the highest figure (34 milligrams per kilogram per day) obtained from the three consumption estimates in the safety assessment of aspartame. Because of the assumptions (heavy users, chronic intake, use in all food categories) made to derive this consumption level, the agency concluded at that time that this figure would represent the maximum marketing potential for aspartame.

Since this decision by the Commissioner in 1981, the agency has continued receiving new petitions requesting additional uses of aspartame. Because the act provides that the safe use of an additive must be based on probable consumption (section 409 of the act), the agency, in evaluating the new petitions, began to calculate cumulative premarket exposure estimates for the new uses of aspartame.

In evaluating the exposure for these new uses of aspartame, the agency recognized that simple summation of the 99th percentile estimated daily intake for each newly petitioned use was leading to an overly conservative and highly unrealistic exposure estimate. The continued use of this method would imply, inaccurately, that a person could consume, on a chronic basis, a level of aspartame that exceeded the level at which it would replace all dietary carbohydrate (a practical impossibility). Thus, continued use of the cumulative 99th percentile consumption level does not simply maintain the conservatism of the estimated daily intake but actually increases it to unrealistic levels. Hence, the 99th percentile cumulative chronic intake of aspartame from multiple dietary sources is inappropriate for use in the safety evaluation. Accordingly, the agency has returned to its customary use of the 90th percentile consumption level in evaluating the probable chronic consumption of food additives.

The 90th percentile cumulative exposure estimate is based on conservatisms which are sufficient to provide probable consumption levels which are overstated, yet not unreasonably so, with respect to actual chronic consumer intake. However, as was the case for the 99th percentile, cumulative 90th percentile intakes will tend to become more and more unrealistic as more products containing the additive enter the marketplace. This results from the decreasing probability that an individual will continue to consume at the 90th percentile in all food categories. The conservative character of the premarket estimated daily intake also derives from the agency's assumption that certain individuals will use aspartame as their only sweetener, in those foods for which aspartame is permitted. For example, as suggested at the beginning of the discussion on this issue, the premarket lifetime chronic exposure estimate for aspartame was based on the assumption that aspartame replaced sugar, high fructose corn syrup, and saccharin in all carbonated soft drinks. In addition, the agency emphasizes that chronic exposure estimates are intended to reflect usage of the additive on a daily basis over a lifetime—an important conservatism often overlooked by critics of the agency's exposure estimates.

The conservatism of the agency's 90th percentile intake estimates is also supported by postmarket survey data (on beverage use, a high consumption food item) that have been, and continue to be, submitted to FDA by G.D. Searle & Co. (NutraSweet Co.). According to these data (Market Research Corp. menu census for July 1985 through June 1986; 2,000 households and 5,227 individuals) the composite eaters-only 14-day average intakes of aspartame from all beverages (ready-to-drink and dry mixes) are, in milligrams per kilogram per day, 1.7 (mean) and 4.3 (90th percentile) for 2- to 5-year-olds; and 0.87 (mean) and 2.1 (90th percentile) for the "all-ages" group of the population.

2. *Acute exposure.* In addition to estimating chronic exposure to aspartame, the agency also has considered the possible short-term and acute exposure to aspartame. The agency believes that exposure estimates for chronic consumption are inappropriate for assessing toxicological effects due to acute or short-term exposure to aspartame. Whether it is safe to ingest, at a single sitting or on any particular day, levels of aspartame in excess of the chronic acceptable daily intake depends on how acutely toxic the additive is. Stegink et al. conducted a clinical study to determine the acute effect of the ingestion of single doses of 200 milligrams per kilogram of aspartame (four times the acceptable daily intake, which is expected to be consumed over the course of a day) on blood levels of amino acids in normal individuals (Ref. 1). (The Stegink data were reviewed by the Public Board of Inquiry). The data show that aspartame caused a rise in blood phenylalanine which declined to normal fasting levels within 24 hours. However, the highest blood levels were far below those associated with neurotoxicity in those humans who, because of a metabolic disorder, have chronically high blood levels of phenylalanine. Blood levels of aspartic acid, the other constituent amino acid in aspartame, were also well below levels known to be toxic. Since aspartame is a methyl ester, and its metabolism releases methanol, blood levels of methanol were also determined and found to be far below levels known to be toxic to humans or animals.

d. *Evidence in support of suggestion that liberal intake of aspartame may be harmful.* The objections rely, in part, upon the letter from Dr. Pardridge submitted by CNI. In his letter, Dr. Pardridge raises, but does not answer, two principal questions: (1) Whether increases in blood phenylalanine levels on the order of 200 micromoles per liter (20 micromoles per deciliter) are to be expected from the intake of aspartame and (2) whether blood phenylalanine levels of this magnitude are toxic to humans.

The information referred to in Dr. Pardridge's letter does not raise new issues. In fact, in a letter dated March 16, 1984, the Director for the Center for Food Safety and Applied Nutrition responded to similar concerns raised by Dr. Pardridge (Ref. 2). The letter underscored the fact that the agency has applied essentially all of the established toxicology methodologies known in reaching the conclusion that aspartame is safe for the prescribed conditions of use in food. Issues involving what constitutes safe blood levels of phenylalanine were exhaustively evaluated in the 1980 proceeding which led to the initial approval of aspartame for use as an additive in food. The Public Board of Inquiry evaluated expert testimony on virtually all known aspects of phenylalanine toxicity, including phenylketonuria, and hyperphenylalaninemia, as well as possible adverse effects on the developing fetus. The Board's scientists also established a plasma phenylalanine level that they considered a "conservative toxic threshold level," that is to say a level at which toxic effects could theoretically occur but in all probability will not. The scientists agreed that a plasma phenylalanine value of 500 to 600 micromoles per liter (50 to 60 micromoles per deciliter) represented this conservative toxic threshold level (46 FR 38287).

Even though the agency has exhaustively addressed the issues raised by Dr. Pardridge, the agency believes that it is important to discuss the matter one more time because the objections claim to provide new evidence. The information provided by Dr. Pardridge, however, does not in fact constitute new evidence.

The safety standard applied by FDA under the Food Additives Amendment is one of "reasonable certainty of no harm." In approving the additive, the agency found that this standard had been met. The agency recognizes that it is possible to speculate that some subtle, hypothetical mechanism for potential risk may exist as a result of the use of a food additive. Such speculations, however, are not sufficient to form a serious basis for questioning the safety of a food additive.

1. *Association between the consumption of aspartame and phenylalanine levels.* Most troublesome of the deficiencies in Dr. Pardridge's letter is his failure to confront data reviewed by the Public Board of Inquiry that show that there is no consistent dose-related relationship between the consumption of aspartame and increased levels of phenylalanine in blood serum. Moreover, Dr. Pardridge fails to acknowledge that phenylalanine is a constituent of protein and that, therefore, there are numerous sources of phenylalanine in the diet. An uncritical consideration of Dr. Pardridge's assertions might result in the erroneous conclusion that aspartame is the primary source of phenylalanine in a normal diet.

Furthermore, Dr. Pardridge fails to address data, also reviewed by the Public Board of Inquiry, that show that levels of phenylalanine on the order of 200 micromoles per liter of blood serum can occur in and cause no harm to specific populations, such as people who are heterozygous for the metabolic condition phenylketonuria (Ref. 3). Phenylalanine levels on the order of 200 micromoles per liter occur without the consumption of aspartame in these individuals because of variations in exposure to other dietary sources of phenylalanine. Daily ingestion of aspartame by such individuals, even at very high doses (up to 135 milligrams per kilogram, or approximately three times the acceptable daily intake), has not been shown to result in a consistent dose-related increase in serum phenylalanine (Ref. 4). Dr. Pardridge makes no mention of these findings which contradict his suggestion that blood phenylalanine levels on the order of 200 micromoles per liter can be expected to occur in normal individuals as the result of consuming aspartame-containing products.

2. *Toxicity of phenylalanine.* In support of his suggestion that levels of phenylalanine on the order of 200 micromoles per liter can be toxic, Dr. Pardridge cites a study by Levy and Waisbren (Ref. 5) and a study by Krause et al. (Ref. 6). Dr. Pardridge contends that the Levy and Waisbren study shows that mothers with 250 micromoles per liter increments in their blood phenylalanine level bore infants with a 10.5 drop in intelligence quotient (IQ). Levy and Waisbren, however, did not so interpret the data. Moreover, Levy and Waisbren suggested that their data reduced much of the concern raised in the past regarding the effect maternal phenylalanine levels in the range of 170 to 540 micromoles may have on the fetus. They also concluded that, when the data they collected were viewed as a whole, there may be a threshold effect on the fetal brain when maternal phenylalanine blood levels are at or near 600 micromoles per liter. This is consistent with FDA's and the Public Board of Inquiry's views on the subject.

Dr. Pardridge suggests that the Krause et al. study supports the proposition that increases in plasma phenylalanine levels from 50 to 250 micromoles per liter may cause "subtle yet distinct impairment in brain function in the developing fetus, children, and adults." The Krause et al. study, however, does not support this contention. Krause et al. studied 10 patients who were homozygous for the metabolic condition of phenylketonuria (a population more sensitive to phenylalanine than the heterozygous population). When the patients were given diets high in phenylalanine, they experienced dramatic increases in plasma phenylalanine levels (2.3- to 8.8-fold). However, their individual performances on the Choice Reaction Time Test showed either no change, a paradoxical decrease, or 10 to 27 percent increases in choice reaction times. The absolute increases in plasma phenylalanine concentrations which correlated with the increases in choice reaction times ranged from 54.5 to 349.9 micromoles per deciliter, not 25 micromoles per deciliter as described by Dr. Pardridge. Moreover, the absolute plasma phenylalanine levels in patients varied primarily not on the basis of diet but on whether a patient was phenylketonuric: 19.2 to 440.5 micromoles per deciliter for phenylketonuria subjects compared to levels in nonphenylketonuria subjects of 5 to 25 micromoles per deciliter.

In sum, the Krause et al. study contains no evidence that even liberal intake of aspartame would result in elevation of plasma phenylalanine levels sufficient to be toxic to the human brain in normal individuals or in those with low or intermediate degrees of hyperphenylalaninemia or their offspring.

Moreover, in phenylketonuric individuals, high blood phenylalanine levels are virtually continuous, whereas in nonphenylketonuric individuals, the metabolism of phenylalanine is relatively rapid (Ref. 7). Thus, in nonphenylketonurics, plasma phenylalanine concentrations which may rise above baseline levels return to those levels a number of times during a 24-hour period.

3. *"Liberal" consumption of aspartame.* As noted above, Dr. Pardridge cites no reliable support for his apparent proposition that blood phenylalanine levels on the order of 200 micromoles per liter are likely to occur as the result of the "liberal" consumption of aspartame. Moreover, he provides no reliable information that aspartame is "liberally" consumed. Dr. Pardridge merely cites a published report (Ref. 8) which he claims illustrates that when 7- to 12-year-old

children have free access to a "liberal" supply of aspartame-sweetened products, their average consumption is at least 50 milligrams per kilogram per day and ranges up to 77 milligrams per kilogram per day. The report, however, does not support Dr. Pardridge's assertions. The report was not a "free access" study but rather a structured study designed to ensure that exact amounts of aspartame were administered at specific times. The report cannot be interpreted to support any conclusions regarding free access to a "liberal" supply of aspartame-sweetened product.

Also, without any discussion, Dr. Pardridge characterizes the American Medical Association Council on Scientific Affairs (the Council) as assuming that 1 percent of the population will consume aspartame in excess of 34 milligrams per kilogram per day (Ref. 9). In fact, the Council's report does not address the issue of consumer exposure to aspartame from the consumption of products containing aspartame, but rather merely refers to FDA's projected 99th percentile consumption estimate of 34 milligrams per kilogram per day of aspartame. There is nothing, moreover, in the Council's report which provides a basis for claiming that the Council has made the assumption that only 1 percent of the population will consume aspartame in excess of 34 milligrams per kilogram per day.

4. *Summary.* Dr. Pardridge suggests that there is a relationship between the consumption of aspartame and the induction of toxic blood phenylalanine levels on the order of 200 micromoles per liter. The agency finds no reliable evidence to indicate that these levels of phenylalanine can cause cognitive damage. Even if they did, no reliable information has been submitted to show that this damage is due to the consumption of aspartame. Even in sensitive populations of individuals disposed to higher levels of blood phenylalanine, damage would not be expected to result from the consumption of aspartame.

### Conclusion

Based on the considerations discussed above the agency concludes that the objectors' requests for a stay of the amendments and a public hearing should be denied.

### References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Stegink, L.D., et al., "Blood Methanol Concentrations in Normal Adult Subjects Administered Abuse Doses of Aspartame," *Journal of Toxicology and Environmental Health*, 7:281–290, 1981.

2. Letter from Sanford A. Miller to William M. Pardridge, March 16, 1984.

3. Stegink, L.D., et al., "Effect of an Abuse Dose of Aspartame Upon Plasma and Erythrocyte Levels of Amino Acids in Phenylketonuric Heterozgotes and Normal Adults," *Journal of Nutrition*, 110:2216–2224, 1980.

4. Koch, R., et al., "Short Term Tolerance of Aspartame by Adult PKU Heterozygotes," Data Submission E–25, Food Additive Master File No. 134, 1972.

5. Levy, J.L., and S.E. Waisbren, "Effects of Untreated Maternal Phenylketonuria and Hyperphenylalaninemia on the Fetus," *New England Journal of Medicine*, 309:1269–1274, 1983.

6. Krause, et al., "Biochemical and Neuropsychological Effects of Elevated Plasma Phenylalanine in Patients With Treated Phenylketonuria," *Journal of Clinical Investigation*, 75:40–48, 1985.

7. Stegink, L.D., L.J. Filer, Jr., and G.L. Baker, "Effect of Aspartame and Aspartate Loading Upon Plasma and Erythrocyte Free Amino Acid Levels in Normal Adult Volunteers," *Journal of Nutrition*, 107:1837–1845, 1977.

8. Frey, G.H., "Long-Term Tolerance of Aspartame by Normal Children and Adolescents," *Journal of Toxicology and Environmental Health*, 2:401–415, 1976.

9. Council of Scientific Affairs: Aspartame, "Review of Safety Issues," *Journal of the American Medical Association*, 254:400–402, 1985.

Dated: February 20, 1988.

**Frank E. Young,**

*Commissioner of Food and Drugs.*

[FR Doc. 88–4429 Filed 3–1–88; 8:45 am]

BILLING CODE 4160–01–M

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

### 24 CFR Parts 200, 215, 221, 235, 236, 247, 812, 880, 881, 882, 883, 884, 886, 904, 905, 912, 960, and 3280

**[Docket No. N–88–1778]**

### Announcement of Effective Dates; Correction of Effective Date for Previously Published Final Rule

**AGENCY:** Office of the Secretary; Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice of announcement of effective dates for certain recent final rules; correction of effective date for previously published final rule.

**SUMMARY:** Section 7(o) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o)(3), requires HUD to wait thirty calendar days of continuous session of Congress before it makes a published rule effective. This notice announces the effective dates for certain recently published final rules. Thirty calendar days of continuous session of Congress have expired in the present Congress since these rules were published. For an explanation of subject matter on the rules, see **"SUPPLEMENTARY INFORMATION"**. The notice also corrects an effective date for the final rule, "Aliens: Withdrawal of Restrictions on the Use of Assisted Housing," published in the **Federal Register** on January 13, 1988 (53 FR 842).

**DATES:** For effective dates see **"SUPPLEMENTARY INFORMATION"**.

**FOR FURTHER INFORMATION CONTACT:** Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755–7055. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The effective date provision of the published rules stated that the rules would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the rules' effectiveness would be published in the **Federal Register**. Thirty calendar days of continuous session of Congress have expired in the present Congress since these rules were published.

The effective date published on January 13, 1988 (53 FR 842) for the final rule withdrawing restrictions on the use of assisted housing by aliens was stated to be March 15, 1988. That date was selected on the basis of HUD's statutory requirement that a final rule not become effective before the passage of at least 30 days of continuous session of Congress after its publication and HUD's rough estimate of when that time would be reached.

The interaction of amendatory instructions contained in this rule with amendatory instructions contained in a rule concerning preferences in provision of housing assistance published on January 15, 1988 (53 FR 1122) was also of concern. The rules had been drafted on the premise that the rule concerning aliens would take effect first (§§ 880.601(b) 881.601(b), 882.116(c),

882.209, 882.514, 883.702(b), 884.118(a) and 886.119(a)).

It has now become clear that the required congressional session day period will elapse by March 4, 1988 with respect to each rule. In each case, the Department wants to make the rule effective at the earliest possible date, while preserving the anticipated order of their effectiveness, so that changes made by the preference rule would not be wiped out by the changes in the alien rule. Both rules will be made effective on March 4, 1988, with the preference rule following the alien rule by one minute, to preserve the correct order.

Accordingly, the purpose of this notice is to announce the effective dates for the rules listed below and to correct the effective date for the final rule published in the **Federal Register** on January 13, 1988 (53 FR 842) as follows:

1. *24 CFR Part 200:* Mutual Insurance Programs Under the National Housing Act; Direct Endorsement Processing, Final Rule published February 4, 1988 (53 FR 3201), Docket No. R–88–1323; FR–2241. Effective Date: May 1, 1988.

2. *24 CFR Parts 215, 880, 881, 882, 883, 884, 886, 904, 905, and 960:* Preference in the Provision of Housing for Families Who are Occupying Substandard Housing, Involuntarily Displaced, or Paying More Than 50 Percent of Family Income for Rent, Final Rule published January 15, 1988 (53 FR 1122), Docket No. R–88–1187; FR–1597. Effective Date: March 4, 1988 at 12:02 a.m.

3. *24 CFR Parts 221 and 236:* Low Cost and Moderate Income Mortgage Insurance, Final Rule published January 11, 1988 (53 FR 615), Docket No. R–88–1368; FR–2418. Effective Date: March 4, 1988.

4. *24 CFR Part 3280:* Manufactured Home Construction and Safety Standards, Final Rule published December 15, 1987 (52 FR 47552), Docket No. R–87–1274; FR–2137. Effective Date: March 4, 1988.

5. The effective date for the final rule, *24 CFR Parts 200, 215, 235, 236, 247, 812, 880, 881, 882, 883, 884, 886, and 912,* Aliens; Withdrawal of Restrictions on the Use of Assisted Housing, Docket No. R–88–974; FR–1588, published in the **Federal Register** on January 13, 1988 (53 FR 842), first column, is corrected to read, "**EFFECTIVE DATE:** March 4, 1988 at 12:01 a.m.".

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Date: February 26, 1988.

Grady J. Norris,

*Assistant General Counsel for Regulations.*

[FR Doc. 88–4518 Filed 3–1–88; 8:45 am]

BILLING CODE 4210–32–M

## Government National Mortgage Association

## 24 CFR Part 300

**[Docket No. N–88–1777; FR–2446]**

## List of GNMA Attorneys-in-Fact

**AGENCY:** Government National Mortgage Association, HUD.

**ACTION:** Notice announcing list of attorneys-in-fact.

**SUMMARY:** This document updates the current list of persons appointed attorneys-in-fact by the Government National Mortgage Association (GNMA). Attorneys-in-fact are authorized to act for GNMA by executing documents in its name in conjunction with servicing GNMA's mortgage purchase programs. These appointments assist GNMA in carrying out its responsibilities under the National Housing Act.

**EFFECTIVE DATE:** March 2, 1988.

**FOR FURTHER INFORMATION CONTACT:** Walter T. Cassidy, Assistant General Counsel for Finance, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755–7260. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The Government National Mortgage Association (GNMA) periodically approves staff members of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corportation (Freddie Mac) to be delegated signatory authority to act in GNMA's behalf as attorneys-in-fact.

On August 12, 1983 (48 FR 36572), GNMA announced that it was removing the list of persons appointed to act from the CFR, changing the procedure of announcing appointments to a notice document, and publishing a complete list of persons currently appointed to act as attorneys-in-fact. The rule removing the list from the CFR was effective on October 11, 1983.

This notice today announces changes to the list of persons authorized to act as attorneys-in-fact. The changes include additions to and deletions from the Federal National Mortgage Association list. To enhance the usability of these notices, the Department has decided to republish the entire list of attorneys-in-fact each time changes are made.

Accordingly, the following lists represent all persons currently appointed as attorneys-in-fact delegated signatory authority to act in GNMA's behalf:

I. Staff members of the Federal National Mortgage Association, a government-sponsored private corporation, appointed attorneys-in-fact.

| *Name* | *Region* |
|---|---|
| Leopold E. Abueg | Los Angeles, CA |
| Charlotte Adelman | Los Angeles, CA |
| Angelina P. Alleva | Philadelphia, PA |
| David P. Antczak | Chicago, IL |
| Glenn T. Austin, Jr. | Atlanta, GA |
| J.J. Bacchus | Atlanta, GA |
| Irene S. Baggio | Philadelphia, PA |
| Darlene Bagley | Atlanta, GA |
| Anna H. Bender | Chicago, IL |
| Denise M. Benn | Chicago, IL |
| Frances E. Bennett | Atlanta, GA |
| Renee Y. Berryman | Los Angeles, CA |
| E.N. Biggerstaff | Atlanta, GA |
| J.C. Billinger | Atlanta, GA |
| James R. Blakeley | Los Angeles, CA |
| W.R. Bowen | Los Angeles, CA |
| W. James Bradley | Washington, DC |
| Debra Brown | Atlanta, GA |
| Larry W. Brown | Dallas, TX |
| Rena L. Busby | Los Angeles, CA |
| Donna M. Cabrera | Los Angeles, CA |
| E.P. Carr | Atlanta, GA |
| James S. Cash | Atlanta, GA |
| Robert A. Chambers | Atlanta, GA |
| Heinrich F. Charles | Los Angeles, CA |
| Patricia R. Charrier | Philadelphia, PA |
| John M. Coan | Washington, DC |
| Vincent Coletti II | Philadelphia, PA |
| Jean V. Cunniff | Chicago, IL |
| Edward F. Czubernat | Chicago, IL |
| Nitin J. Dave | Atlanta, GA |
| Edward Dodson | Philadelphia, PA |
| James E. Domenico | Chicago, IL |
| Lawrence J. Dondero, Jr. | Philadelphia, PA |
| Samuel A. Duca | Philadelphia, PA |
| Thomas M. Ducey | Los Angeles, CA |
| J. Ellis Dykes | Atlanta, GA |
| Patricia K. Eaton | Los Angeles, CA |
| Joseph R. Eldred | Philadelphia, PA |
| David J. Evans | Atlanta, GA |
| R. Douglas Ezzell | Atlanta, GA |
| Leon Fine | Philadelphia, PA |
| Robert H. Foster | Philadelphia, PA |
| Jimmy L. Gallahar | Atlanta, GA |
| Elizabeth A. Garvin | Los Angeles, CA |
| Hettye D. Gates | Atlanta, GA |
| Jo Anne Gerro | Los Angeles, CA |
| Robert R. Glinski | Philadelphia, PA |
| James D. Grady, Jr. | Philadelphia, PA |
| John J. Hagerty | Philadelphia, PA |
| Gerald P. La Haie | Washington, DC |
| Ann B. Hamilton | Philadelphia, PA |
| Charles W. Harvey, Jr. | Philadelphia, PA |
| Ronald W. Harwig | Chicago, IL |
| John R. Hayes | Chicago, IL |
| Robert J. Hearn | Philadelphia, PA |
| B.J. Hendryx | Dallas, TX |
| C.W. Heptinstall | Los Angeles, CA |
| J.W. Hester, Jr. | Atlanta, GA |
| Mark A. Hiatt | Dallas, TX |
| R.R. Holst | Los Angeles, CA |
| Debbie Howard | Dallas, TX |
| Carmen I. Huertas | Los Angeles, CA |
| Bob Humphrey | Dallas, TX |
| Robert A. Hunter | Atlanta, GA |
| Louise E. Isabel | Chicago, IL |
| William Jackson | Atlanta, GA |
| William S. Jones | Dallas, TX |
| Jeffrey H. Kay | Philadelphia, PA |
| Henry Konigsmark III | Atlanta, GA |
| Barbara J. Kosi | Chicago, IL |
| Pamela A. Lamoreaux | Los Angeles, CA |
| Denise Lee | Philadelphia, PA |
| Henry Lindsey | Los Angeles, CA |
| Robert E. Lis | Philadelphia, PA |
| Alfredo S. Loyola | Chicago, IL |
| Robert J. Mahn | Washington, DC |
| Elizabeth Mahoney | Los Angeles, CA |

| | |
|---|---|
| Noel J. Mangan | Chicago, IL |
| Philip J. McCarthy III | Philadelphia, PA |
| Glenda R. McCoy | Los Angeles, CA |
| Renay A. McKenzie | Chicago, IL |
| Susan McMahon | Chicago, IL |
| Dennis J. Miller | Washington, DC |
| Doris A. Morrow | Chicago, IL |
| Charleen N. Munson | Philadelphia, PA |
| R.A. Nevitt | Chicago, IL |
| Brenda J. Newbill | Chicago, IL |
| Philip R. Nichols, Jr. | Philadelphia, PA |
| Willis W. Nixon | Dallas, TX |
| B.J. Odom | Atlanta, GA |
| Zach Oppenheimer | Philadelphia, PA |
| Bentley C. Palez, Jr. | Dallas, TX |
| Dale L. Pea | Dallas, TX |
| Norman H. Peterson | Los Angeles, CA |
| Kathryn M. Phillips | Atlanta, GA |
| Robert G. Pike | Atlanta, GA |
| A. Chris Puchalski | Chicago, IL |
| Clotelia S. Riddell | Los Angeles, CA |
| Dolphus D. Roberts | Atlanta, GA |
| Tim J. Ryan | Chicago, IL |
| E.L. Schreiber | Dallas, TX |
| Michael R. Scott | Chicago, IL |
| Frank L. Scrivano | Dallas, TX |
| Linda Seibel | Philadelphia, PA |
| R.L. Shanteau | Atlanta, GA |
| George Sierra | Dallas, TX |
| Mary Simpson | Dallas, TX |
| Samuel M. Smith III | Atlanta, GA |
| Susan T. Smith | Dallas, TX |
| Charles G. Sower | Philadelphia, PA |
| Mary Lou Stellman | Dallas, TX |
| D. Stricklen | Dallas, TX |
| T.J. Swanson, Jr. | Atlanta, GA |
| Leta L. Terrell | Dallas, TX |
| Jimmie L. Thomas | Dallas, TX |
| William J. Tierney | Chicago, IL |
| Carmaleta Turner | Dallas, TX |
| Ruth C. Turner | Los Angeles, CA |
| J.H. Van House | Atlanta, GA |
| Lewis A. Vidmar | Dallas, TX |
| Mary E. Voigt | Los Angeles, CA |
| Erlinda C. Weaver | Los Angeles, CA |
| James H. Whitehead | Atlanta, GA |
| Sherry L. Williamson | Atlanta, GA |
| W.E. Yeager | Atlanta, GA |
| Barbara Zwijacz | Chicago, IL |

II. Staff members of the Federal Home Loan Mortgage Corporation, created under the laws of the United States, appointed attorneys-in-fact.

| *Name* | *Region* |
|---|---|
| Jeffrey L. Beatty | Arlington, VA |
| Joseph D. Blodgett | Arlington, VA |
| Jerry Brooks | Atlanta, GA |
| Dennis D. Downey | Dallas, TX |
| James L. Garrison | Arlington, VA |
| Susan J. Heaney | Chicago, IL |
| Stephen T. Hopkins | Chicago, IL |
| Linda W. Jones | Arlington, VA |
| Bernard Kruer | Sherman Oaks, CA |
| Daphine P. Lynch | Atlanta, GA |
| Lee W. McNutt | Atlanta, GA |
| Timothy D. Meagher | Sherman Oaks, CA |
| Jean Morgan | Dallas, TX |
| Robert P. Norwich | Chicago, Il |
| Richard A. Reed | Atlanta, GA |
| F. Michael Salb | Arlington, VA |
| John W. Unger | Sherman Oaks, CA |
| Debra Vick | Sherman Oaks, CA |
| Robert L. White | Dallas, TX |

Date: February 19, 1988.

**Loui C. Gasper,**

*Executive Vice President, Government National Mortgage Association.*

[FR Doc. 88-4516 Filed 3-1-88; 8:45 am]

BILLING CODE 4210-01-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[T.D. 8182]

## Income Tax; Requirement for Certain Partnerships and S Corporations to Separately State Meal, Travel, and Entertainment Expenses

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

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations relating to the requirement for certain partnerships or S corporations to separately state meal, travel, and entertainment expenses. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register.**

**DATES:** The regulations are effective for taxable years beginning on or after January 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** David R. Haglund of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3297, not a toll-free call).

**SUPPLEMENTARY INFORMATION:** Section 142 of the Tax Reform Act of 1986 (the Act) made significant changes to the rules for deducting meal, entertainment, and travel expenses. On March 2, 1987, the Internal Revenue Service published Notice 87-23 in Internal Revenue Bulletin 1987-9. The purpose of Notice 87-23 was to alert taxpayers to these changes. On June 22, 1987, the Service published Notice 87-45 in Internal Revenue Bulletin 1987-25. Notice 87-45 provided additional instructions to Form 1065 and Form 1120S concerning the treatment of expenses for meals, travel, and entertainment of certain 1986-87 fiscal year partnerships and S corporations.

In general, the changes made by the Act to the rules regarding deductions for meal, travel, and entertainment expenses are effective for taxable years beginning after December 31, 1986. In the case of a partnership or an S corporation, deductions for meals, travel, and entertainment expenses are reflected in the taxable income of a partner or shareholder for the taxable year with which or within which the taxable year of the partnership or S corporation ends. Under section 702(a)(7) of the Internal Revenue Code, in the case of a partnership, and section 1366(a)(1)(A), in the case of an S corporation, expenses that are subject to provisions of the Act are to be accounted for separately in certain years, since these items will affect the tax liability of partners and shareholders if separately stated in such years. For example, a partnership with a fiscal year ending June 30, 1987, should separately state meal and entertainment expenses paid or incurred during such taxable year (including amounts paid or incurred prior to January 1, 1987) and such amounts are subject to the new rules, such as the 80 percent limitation, with respect to partners with taxable years beginning on or after January 1, 1987. Accordingly, the changes made by the Act apply to expenses paid or incurred by partnerships or S corporations for taxable years ending after December 31, 1986, with respect to partners and S corporation shareholders whose taxable years begin on or after January 1, 1987.

However, because the application of the effective date provisions to partnerships and S corporations may impose substantial administrative burdens on taxpayers for expense paid or incurred prior to January 1, 1987, the temporary regulations do not apply to meal, travel, and entertainment expenses of partnerships and S corporations that are paid or incurred before January 1, 1987. Thus, the temporary regulations under sections 702(a)(7) and 1366(a)(1)(A) of the Code require partnerships and S corporations to separately state expenses paid or incurred after December 31, 1986, by partnerships or S corporations that have taxable years beginning before January 1, 1987, and ending with or within partners' or shareholders' taxable years beginning on or after January 1, 1987. In addition, with respect to skybox rentals (subject to provisions of the Act) a separate statement is required for rents paid or incurred after December 31, 1986, by partnerships or S corporations that have taxable years beginning before January 1, 1989, and ending with or within partners' or shareholders' taxable years beginning on or after January 1, 1987.

### Special Analyses

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no regulatory flexibility analysis is required for this rule. The Commissioner of Internal Revenue has

determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required.

**Drafting Information**

The principal author of these temporary regulations is David R. Haglund of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

**List of Subjects**

*26 CFR 1.701–1 through 1.771–1*

Income taxes, Partnerships.

*26 CFR 1.1361–OA through 1.1388–1*

Income taxes, Small business, Subchapter S corporation, Cooperatives.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR Part 1 is amended as follows:

**PART 1—AMENDED**

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

Authority: 26 U.S.C. 7805. * * *

Par. 2. New § 1.702–1T is added immediately after § 1.702–1 to read as follows:

**§ 1.702–1T Temporary regulations on requirement to separately state meal, travel, and entertainment expenses.**

Each partner shall take into account separately his or her distributive share of meal, travel, and entertainment expenses paid or incurred after December 31, 1986, by partnerships that have taxable years beginning before January 1, 1987, and ending with or within partners' taxable years beginning on or after January 1, 1987. In addition, with respect to skybox rentals under section 274(l)(2), each partner shall take into account separately his or her distributive share of rents paid or incurred after December 31, 1986, by partnerships that have taxable years beginning before January 1, 1989, and ending with or within partners' taxable years beginning on or after January 1, 1987.

Par. 3. New § 1.1366–1T is added immediately after § 1.1361–OA to read as follows:

**§ 1.1366–1T Temporary regulations on requirement to separately state meal, travel, and entertainment expenses.**

Each shareholder shall take into account separately his or her pro rata share of meal, travel, and entertainment expenses paid or incurred after December 31, 1986, by S corporations that have taxable years beginning before January 1, 1987, and ending with or within shareholders' taxable years beginning on or after January 1, 1987. In addition, with respect to skybox rentals under section 274(l)(2), each shareholder shall take into account separately his or her pro rata share of rents paid or incurred after December 31, 1986, by S corporations that have taxable years beginning before January 1, 1989, and ending with or within shareholders' taxable years beginning on or after January 1, 1987.

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

Approved:

**O. Donaldson Chapoton,**

*Assistant Secretary of the Treasury.*

February 9, 1988.

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**26 CFR Parts 1 and 602**

**[T.D. 8179]**

## Organizations Under Common Control; Eighty Percent Control Test for a Brother-Sister Controlled Group

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

**ACTION:** Final regulations and withdrawal of temporary regulations.

**SUMMARY:** This document provides final regulations relating to organizations under common control for purposes of certain rules relating to pension, profit-sharing, and stock bonus plans. The applicable tax law was enacted as part of the Employee Retirement Income Security Act of 1974 (ERISA) and amended by the Revenue Act of 1978 (1978 Act) and the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). This document also contains final amendments to the income tax regulations relating to the definition of a brother-sister group of corporations under common control. These amendments conform the regulations to the decision in *United States* v. *Vogel Fertilizer* by the Supreme Court which held that a person's stock ownership is not taken into account for purposes of the 80% control test unless that person owns stock in each corporation of the putative brother-sister controlled group. These regulations provide the public with the guidance needed to comply with the law.

**DATES:** Generally, the amendments to the regulations under section 52 of the Code (relating to tax credits for employees) apply to taxable years beginning after December 31, 1976. The amendments to § 1.414(b)–1 and § 1.414(c)–1 through (c)–4 (relating to employees of trades or businesses under common control) generally are effective for plan years beginning after September 2, 1974 (subject to special rules for plans in existence on January 1, 1974). Section 1.414(b)–1(c) and 1.414(c)–1 are amended to include references to section 408(k), which was added to the Code by the 1978 Act, and section 416, which was added by TEFRA. The additions of sections 408(k) and 416 are effective for taxable years beginning after December 31, 1978 and December 31, 1983, respectively. The amendments to § 1.1563–1, which defines a controlled group of corporations, are effective for taxable years ending after December 31, 1970. However, § 1.1563–1(d) provides that certain of the amendments will not apply retroactively if the result would be adverse to certain taxpayers.

**FOR FURTHER INFORMATION CONTACT:** Charles M Whedbee of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention CC:LR:T (202–566–3458, not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document contains final amendments to the Income Tax Regulations (26 CFR Parts 1, 11, and 13) under section 414 (b) and (c) of the Internal Revenue Code of 1954, relating to the aggregation of employees of members of a group of corporations, trades, or businesses that are under common control. The employees are treated as if employed by a single employer for purposes of applying certain rules relating to pension, profit-sharing, and stock bonus plans, enacted by the Employee Retirement Income Security Act of 1974 (88 Stat. 925). These regulations were published in proposed form in the **Federal Register** on November 5, 1975 (40 FR 51467), following the adoption of temporary regulations by Treasury decision, published on October 29, 1975 (40 FR 51435). The final regulations reflect

amendments to section 414 (b) and (c) made by section 152(d) of the 1978 Act (92 Stat. 2799) and section 240(c)(1) of TEFRA (96 Stat. 520), which made the provisions of section 414 (b) and (c) applicable with respect to simplified employee pension plans under section 408(k) and to the special rules for top-heavy plans under section 416, respectively.

The final amendments to the regulations under section 1563, relating to the definition of a brother-sister group of corporations under common control, conform those regulations to a decision of the Supreme Court, *United States* v. *Vogel Fertilizer Co.*, 455 U.S. 16 (1982). The amendments were proposed in a notice of rulemaking published in the **Federal Register** on November 16, 1983 (48 FR 52081). Section 414(c) delegates authority to the Secretary to prescribe regulations for the determination of common control, limited to rules based upon principles similar to those which apply in the case of section 414(b). Common control in section 414(b) is defined by reference to section 1563(a), determined without regard to subsections (a)(4) (relating to certain insurance companies) and (e)(3)(C) (relating to attribution from an employee's trust described in section 401(a)). In addition, section 52 provides that, for purposes of certain jobs credits, employees of members of the same group of controlled corporations or other business organizations are treated as employed by a single employer. Regulations prescribed under section 52 are also based on principles similar to the rules under section 1563. Because the proposed and temporary regulations under section 414 (b) and (c) and the regulations under section 52 paralleled the regulations under section 1563, the November 16, 1983 notice of rulemaking proposed conforming amendments to those regulations. Those amendments are also adopted by this Treasury decision.

**Comments**

Comments were received in response to both notices of proposed rulemaking, but no public hearing was requested and none was held. Generally, the comments raised issues that had already been considered before publication of the two notices of proposed rulemaking.

Several comments contended that the regulations initially proposed under section 414 (b) and (c) were partly inconsistent with the legislative history of ERISA. They objected that the proposed regulations aggregating employees of commonly controlled entities for various tests relating to coverage, vesting, and benefit limitations of employee plans could be interpreted to require complete uniformity among the separate plans established by individual organizations within the group. The proposed regulations therefore, did not give effect to certain permissible variances described in the report of the House Ways and Means Committee. The comments suggested that the final regulations contain a provision to the effect that section 414 (b) and (c) was "not intended to mean that all pension plans of a controlled group of corporations or partnerships must be exactly alike, or that a controlled group could not have pension plans for some corporations but not for others" (H.R. Rep. No. 779, 93d Cong., 2d Sess. 49 (1974)). This suggestion is not adopted. These regulations are intended to be definitional only, and do not determine the actual treatment of the employees of a group defined as being a single employer. Thus, once a group of organizations is defined as a single employer, whether or not plans maintained by members of that group are qualified is tested under sections 401, 408(k), 410, 411, 415, and 416.

Other comments suggested that foreign organizations be ignored for purposes of section 414 (b) and (c) and that only employees or organizations that are under common control and engaged in similar businesses be aggregrated. These suggestions are also rejected as beyond the scope of definitional regulations.

Only one comment was received in response to the second notice of rulemaking. The comment noted that the decision in *Vogel Fertilizer* and the proposed amendments to the regulations result in the retroactive disaggregation of what were brother-sister controlled groups under the regulations before their amendment by this Treasury decision. Such disaggregation may decrease the tax liability of the individual organizations that no longer have to share a graduated rate schedule (or a single surtax exemption for taxable years beginning before January 1, 1979) or other deductions and credits. The comment suggested that the effects of this disaggregation be mitigated by allowing taxpayers to file amended returns, including claims for refunds, even for closed taxable years. This suggestion is not adopted because the period of limitation on filing a claim for credit or refund as specified in section 6511 cannot be extended by regulation.

**Description of Changes**

Two changes have been made to the regulations as proposed. The first is to add references to sections 408(k) and 416 as provisions to which these regulations apply. These references were added to sections 414 (b) and (c) by section 152(d) of the 1978 Act and section 240(c)(1) of TEFRA, respectively.

A new paragraph (f) has been added to § 1.414(c)–3. That section generally provides that for purposes of determining control of an organization, certain defined interests will not be counted as either an "interest" or as "stock". However, in some situations the application of this general rule will result in the exclusion of an organization from a controlled group. The new paragraph provides that if an interest is owned by a person directly or constructively and that ownership results in the inclusion of an organization in a group of trades or businesses under common control, then that interest will not be treated as not outstanding under paragraph (b) or (c) of § 1.414(c)–3 if the result would be that the organization would not be a member of a group of trades or businesses under common control. This rule, which is necessary to prevent the exclusion rules from being used to avoid common control status, is analogous to the rule of section 1563(f)(3)(C), which applies for purposes of determining whether a corporation is a component member of a controlled group of corporations. New paragraph (f) of § 1.414(c)–3 is effective April 1, 1988.

**Removal of Temporary Regulations**

The final regulations under section 414 (b) and (c) supersede the temporary regulations (§§ 11.414(c)–1 through 11.414(c)–5) under ERISA, published in the **Federal Register** on October 29, 1975 (40 FR 51435). This document, therefore, removes those temporary regulations.

Temporary regulations under the Tax Reform Act of 1969 (26 CFR §§ 13.16 and 13.16–1) were superseded by final regulations published on April 25, 1972 (37 FR 8068). As proposed in the notice of rulemaking published on November 16, 1983 (48 FR 52081), those temporary regulations are removed.

**Executive Order 12291 and Regulatory Flexibility Act**

The Commissioner of the Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The Regulatory Flexibility Act does not apply to the portion of this document that adopts the amendments to the regulations proposed in 1975. The Internal Revenue Service has also concluded that the portion of the final regulations contained herein, which

adopt the amendments proposed in 1983, are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

**Paperwork Reduction Act**

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

**Drafting Information**

The principal author of these final regulations is Michel A. Dazé of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

**List of Subjects**

*26 CFR 1.0–1 through 1.58–8*

Income taxes, Tax liability, Tax rates, Credits.

*26 CFR 1.401–0 through 1.425–1*

Income taxes, Employee benefit plans, Pensions, Stock options, Individual Retirement Accounts, Employee stock ownership plans.

*26 CFR 1.1501–1 through 1.1564–1*

Income taxes, Controlled group of corporations, Consolidated returns.

*26 CFR Part 11*

Income taxes, Pensions, Employee Retirement Income Security Act of 1974.

*26 CFR Part 13*

Income taxes, Tax Reform Act of 1969.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Adoption of amendments to the regulations**

Accordingly, 26 CFR Part 1, Part 11, Part 13, and Part 602 are amended as follows:

## PART 1—[AMENDED]

**Paragraph 1.** The authority citation for Part 1 is amended to add the following citations:

Authority: 26 U.S.C. 7805. * * * § 1.52–1 also issued under 26 U.S.C. 52 (b); §§ 1.414(c)–1 through 1.414(c)–5 also issued under 26 U.S.C. 414(c).

**Par. 2.** Section 1.52–1 is amended as follows:

1. Paragraphs (c)(1)(i), (c)(1)(ii), and (d)(1)(i) are amended by removing "§ 11.414(c)–4(b)(1)" and adding instead "§ 1.414(c)–4(b)(1)".

2. Paragraph (d)(1)(i) is also amended by removing ", singly or in combination,".

3. A new flush paragraph to read as set forth below is added at the end of paragraph (d)(1)(ii).

4. Paragraph (g) is amended by removing "§ 11.414(c)–3" from the first sentence and adding instead "§ 1.414(c)–3".

5. A new paragraph (h) is added at the end thereof to read as set forth below.

**§ 1.52–1 Trades or businesses that are under common control.**

* * * * *

(d) *Brother-sister group of trade or businesses under common control*—(1) *In general.* * * *

The five or fewer persons whose ownership is considered for purposes of the controlling interest requirement for each organization must be the same persons whose ownership is considered for purposes of the effective control requirement.

* * * * *

(h) *Transitional rule*—(1) *In general.* Paragraph (d) of this section, as amended by T.D. 8179, applies to all taxable years to which section 52(b) applies.

(2) *Election.* In the case of taxable years ending before March 2, 1988.

(i) If, pursuant to paragraph (b) of this section, an organization indicated in a timely filed return that is chose to be a member of a brother-sister group under common control, and it is not a member of such group because of the amendments to paragraph (d) of this section made by T.D. 8179 such organization may make the choice described in paragraph (b) of this section by filing an amended return on or before September 2, 1988 if such organization would otherwise still be a member of more than one group of trades or businesses under common control, and

(ii) If an organization

(A) Is a member of a brother-sister group of trades or businesses under common control under § 1.52–1(d)(1) as in effect before amendment by T.D. 8179 ("old group"), for such taxable year and

(B) Is not such a member for such taxable year because of the amendments made by such Treasury decision.

such organization (whether or not a corporation) nevertheless will be treated as a member of such old group if all the organizations (whether or not corporations) that are members of the old group meet all the requirements of § 1.1563–1(d)(3) with respect to such taxable year.

**Par. 3.** The following new sections are added immediately after § 1.413–2.

**§ 1.414(b)–1 Controlled group of corporations.**

(a) *Defintion of controlled group of corporations.* For purposes of this section, the term "controlled group of corporations" has the same meaning as is assigned to the term in section 1563(a) and the regulations thereunder, except that (1) the term "controlled group of corporations" shall not include an "insurance group" described in section 1563(a)(4), and (2) section 1563(e)(3)(C) (relating to stock owned by certain employees' trusts) shall not apply. For purposes of this section, the term "members of a controlled group" means two or more corporations connected through stock ownership described in section 1563(a) (1), (2), or (3), whether or not such corporations are "component members of a controlled group" within the meaning of section 1563(b). Two or more corporations are members of a controlled group at any time such corporations meet the requirements of section 1563(a) (as modified by this paragraph). For purposes of this section, if a corporation is a member of more than one controlled group of corporations, such corporation shall be treated as a member of each controlled group.

(b) *Single plan adopted by two or more members.* If two or more members of a controlled group of corporations adopt a single plan for a plan year, then the minimum funding standard provided in section 412, the tax imposed by section 4971, and the applicable limitations provided by section 404(a) shall be determined as if such members were a single employer. In such a case, the amount of such items and the allocable portion attributable to each member shall be determined in the manner provided in regulations under sections 412, 4971, and 404(a).

(c) *Cross reference.* For rules relating to the application of sections 401, 408(k) 410, 411, 415, and 416 with respect to two or more trades or businesses which are under common control, see section 414(c) and the regulations thereunder.

**§ 1.414(c)–1 Commonly controlled trades or businesses.**

For purposes of applying the provisions of sections 401 (relating to qualified pension, profit-sharing, and stock bonus plans), 408(k) (relating to simplified employee pensions), 410 (relating to minimum participation standards), 411 (relating to minimum vesting standards), 415 (relating to limitations on benefits and contributions under qualified plans), and 416 (relating to top-heavy plans), all employees of two or more trades or businesses under common control within the meaning of § 1.414(c)–2 for any period shall be treated as employed by a single employer. See sections 401, 408(k), 410, 411, 415, and 416 and the regulations thereunder for rules relating to employees of trades or businesses which are under common control. See § 1.414(c)–5 for effective date.

**§ 1.414(c)–2 Two or more trades or businesses under common control.**

(a) *In general.* For purposes of this section, the term "two or more trades or businesses under common control" means any group of trades or businesses which is either a "parent-subsidiary group of trades or businesses under common control" as defined in paragraph (b) of this section, a "brother-sister group of trades or businesses under common control" as defined in paragraph (c) of this section, or a "combined group of trades or businesses under common control" as defined in paragraph (d) of this section. For purposes of this section and §§ 1.414(c)–3 and 1.414(c)–4, the term "organization" means a sole proprietorship, a partnership (as defined in section 7701(a)(2)), a trust, an estate, or a corporation.

(b) *Parent-subsidiary group of trades or businesses under common control*—(1) *In general.* The term "parent-subsidiary group of trades or businesses under common control" means one or more chains of organizations conducting trades or businesses connected through ownership of a controlling interest with a common parent organization if—

(i) A controlling interest in each of the organizations, except the common parent organization, is owned (directly and with the application of § 1.414(c)–4(b)(1), relating to options) by one or more of the other organizations; and

(ii) The common parent organization owns (directly and with the application of § 1.414(c)–4(b)(1), relating to options) a controlling interest in at least one of the other organizations, excluding, in computing such controlling interest, any direct ownership interest by such other organizations.

(2) *Controlling interest defined*—(i) *Controlling interest.* For purposes of paragraphs (b) and (c) of this section, the phrase "controlling interest" means:

(A) In the case of an organization which is a corporation, ownership of stock possessing at least 80 percent of total combined voting power of all classes of stock entitled to vote of such corporation or at least 80 percent of the total value of shares of all classes of stock of such corporation;

(B) In the case of an organization which is a trust or estate, ownership of an actuarial interest of at least 80 percent of such trust or estate;

(C) In the case of an organization which is a partnership, ownership of at least 80 percent of the profits interest or capital interest of such partnership; and

(D) In the case of an organization which is a sole proprietorship, ownership of such sole proprietorship.

(ii) *Actuarial interest.* For purposes of this section, the actuarial interest of each beneficiary of trust or estate shall be determined by assuming the maximum exercise of discretion by the fiduciary in favor of such beneficiary. The factors and methods prescribed in § 20.2031–7 or § 20.2031–10 (Estate Tax Regulations), whichever is appropriate, for use in ascertaining the value of an interest in property for estate tax purposes shall be used for purposes of this subdivision in determining a beneficiary's actuarial interest.

(c) *Brother-sister group of trades or businesses under common control*—(1) *In general.* The term "brother-sister group of trades or businesses under common control" means two or more organizations conducting trades or businesses if (i) the same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of § 1.414(c)–4) a controlling interest in each organization, and (ii) taking into account the ownership of each such person only to the extent such ownership is identical with respect to each such organization, such persons are in effective control of each organization. The five or fewer persons whose ownership is considered for purposes of the controlling interest requirement for each organization must be the same persons whose ownership is considered for purposes of the effective control requirement.

(2) *Effective control defined.* For purposes of this paragraph, persons are in "effective control" of an organization if—

(i) In the case of an organization which is a corporation, such persons own stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of such corporation;

(ii) In the case of an organization which is a trust or estate, such persons own an aggregate actuarial interest of more than 50 percent of such trust or estate;

(iii) In the case of an organization which is a partnership, such persons own an aggregate of more than 50 percent of the profits interest or capital interest of such partnership; and

(iv) In the case of an organization which is a sole proprietorship, one of such persons owns such sole proprietorship.

(d) *Combined group of trades or businesses under common control.* The term "combined group of trades or businesses under common control" means any group of three or more organizations, if (1) each such organization is a member of either a parent-subsidiary group of trades or businesses under common control or a brother-sister group of trades or businesses under common control, and (2) at least one such organization is the common parent organization of a parent-subsidiary group of trades or businesses under common control and is also a member of a brother-sister group of trades or businesses under common control.

(e) *Examples.* The definitions of parent-subsidiary group of trades or businesses under common control, brother-sister group of trades or businesses under common control, and combined group of trades or businesses under common control may be illustrated by the following examples.

*Example (1).* (a) The ABC partnership owns stock possessing 80 percent of the total combined voting power of all classes of stock entitled to voting of S corporation. ABC partnership is the common parent of a parent-subsidiary group of trades or businesses under common control consisting of the ABC partnership and S Corporation.

(b) Assume the same facts as in (a) and assume further that S owns 80 percent of the profits interest in the DEF Partnership. The ABC Partnership is the common parent of a parent-subsidiary group of trades or businesses under common control consisting of the ABC Partnership, S Corporation, and the DEF Partnership. The result would be the same if the ABC Partnership, rather than S, owned 80 percent of the profits interest in the DEF Partnership.

*Example (2).* L Corporation owns 80 percent of the only class of stock of T Corporation, and T, in turn, owns 40 percent of the capital interest in the GHI Partnership. L also owns 80 percent of the only class of stock of N Corporation and N, in turn, owns 40 percent of the capital interest in the GHI Partnership. L is the common parent of a parent-subsidiary group of trades or

businesses under common control consisting of L Corporation, T Corporation, N Corporation, and the GHI Partnership.

*Example (3).* ABC Partnership owns 75 percent of the only class of stock of X and Y Corporations; X owns all the remaining stock of Y, and Y owns all the remaining stock of X. Since interorganization ownership is excluded (that is, treated as not outstanding) for purposes of determining whether ABC owns a controlling interest of at least one of the other organizations, ABC is treated as the owner of stock possessing 100 percent of the voting power and value of all classes of stock of X and of Y for purposes of paragraph (b)(1)(ii) of this section. Therefore, ABC is the common parent of a parent-subsidiary group of trades or businesses under common control consisting of the ABC Partnership, X Corporation, and Y Corporation.

*Example (4).* Unrelated individuals A, B, C, D, E, and F own an interest in sole proprietorship A, a capital interest in the GHI Partnership, and stock of corporations M, W, X, Y, and Z (each of which has only one class of stock outstanding) in the following proportions:

ORGANIZATIONS

| Individuals | A | GHI | M | W | X | Y | Z |
|---|---|---|---|---|---|---|---|
| A | 100% | 50% | 100% | 60% | 40% | 20% | 60% |
| B | — | 40% | — | 15% | 40% | 50% | 30% |
| C | — | — | — | — | 10% | 10% | 10% |
| D | — | — | — | 25% | — | 20% | — |
| E | — | 10% | — | — | 10% | — | — |
| | 100% | 100% | 100% | 100% | 100% | 100% | 100% |

Under these facts the following four brother-sister groups of trades or businesses under common control exist: GHI, X and Z; X, Y and Z; W and Y; A and M. In the case of GHI, X, and Z, for example, A and B together have effective control of each organization because their combined identical ownership of GHI, X and Z is greater than 50%. (A's identical ownership of GHI, X and Z is 40% because A owns at least a 40% interest in each organization. B's identical ownership of GHI, X and Z is 30% because B owns at least a 30% interest in each organization.) A and B (the persons whose ownership is considered for purposes of the effective control requirement) together own a controlling interest in each organization because they own at least 80% of the capital interest of partnership GHI and at least 80% of the total combined voting power of corporations X and Z. Therefore, GHI, X and Z comprise a brother-sister group of trades or businesses under common control. Y is not a member of this group because neither the effective control requirement nor the 80% controlling interest requirement are met. (The effective control requirement is not met because A's and B's combined identical ownership in GHI, X, Y and Z (20% for A and 30% for B) does not exceed 50%. The 80% controlling interest test is not met because A and B together only own 70% of the total combined voting power of the stock of Y.) A and M are not members of this group because B owns no interest in either organization and A's ownership of GHI, X and Z, considered alone, is less than 80%.

*Example (5).* The outstanding stock of corporations U and V, which have only one class of stock outstanding, is owned by the following unrelated individuals:

CORPORATIONS

| Individuals | U (percent) | V (percent) |
|---|---|---|
| A | 12 | 12 |
| B | 12 | 12 |
| C | 12 | 12 |
| D | 12 | 12 |
| E | 13 | 13 |
| F | 13 | 13 |
| G | 13 | 13 |
| H | 13 | 13 |
| | 100 | 100 |

Any group of five of the shareholders will own more than 50 percent of the stock in each corporation, in identical holdings. However, U and V are not members of a brother-sister group of trades or businesses under common control because at least 80 percent of the stock of each corporation is not owned by the same five or fewer persons.

*Example (6).* A, an individual, owns a controlling interest in ABC Partnership and DEF Partnership. ABC, in turn, owns a controlling interest in X Corporation. Since ABC, DEF, and X are each members of either a parent-subsidiary group or a brother-sister group of trades or businesses under common control, and ABC is the common parent of a parent-subsidiary group of trades or businesses under common control consisting of ABC and X, and also a member of a brother-sister group of trades or businesses under common control consisting of ABC and DEF, ABC Partnership, DEF Partnership, and X Corporation are members of the same combined group of trades or businesses under common control.

**§ 1.414(c)-3 Exclusion of certain interests or stock in determining control.**

(a) *In general.* For purposes of § 1.414(c)-2(b) (2) (i) and (c)(2), the term "interest" and the term "stock" do not include an interest which is treated as not outstanding under paragraph (b) of this section in the case of a parent-subsidiary group of trades or businesses under common control or under paragraph (c) of this section in the case of a brother-sister group of trades or businesses under common control. In addition, the term "stock" does not include treasury stock or nonvoting stock which is limited and preferred as to dividends. For definitions of certain terms used in this section, see paragraph (d) of this section.

(b) *Parent-subsidiary group of trades or businesses under common control—* (1) *In general.* If an organization (hereinafter in this section referred to as "parent organization") owns (within the meaning of paragraph (b)(2) of this section)—

(i) In the case of a corporation, 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of such corporation.

(ii) In the case of a trust or an estate, an actuarial interest (within the meaning of § 1.414(c)-2(b)(2)(ii)) of 50 percent or more of such trust or estate, and

(iii) In the case of a partnership, 50 percent or more of the profits or capital interest of such partnership, then for purposes of determining whether the parent organization or such other organization (hereinafter in this section referred to as "subsidiary organization") is a member of a parent-subsidiary group of trades or businesses under common control, an interest in such subsidiary organization excluded under

paragraph (b) (3), (4), (5), or (6) of this section shall be treated as not outstanding.

(2) *Ownership.* For purposes of paragraph (b)(1) of this section, a parent organization shall be considered to own an interest in or stock of another organization which it owns directly or indirectly with the application of paragraph (b)(1) of § 1.414(c)–4 and—

(i) In the case of a parent organization which is a partnership, a trust, or an estate, with the application of paragraphs (b) (2), (3), and (4) of § 1.414(c)–4, and

(ii) In the case of a parent organization which is a corporation, with the application of paragraph (b)(4) of § 1.414(c)–4.

(3) *Plan of deferred compensation.* An interest which is an interest in or stock of the subsidiary organization held by a trust which is part of a plan of deferred compensation (within the meaning of section 406(a)(3) and the regulations thereunder) for the benefit of the employees of the parent organization or the subsidiary organization shall be excluded.

(4) *Principal owners, officers, etc.* An interest which is an interest in or stock of the subsidiary organization owned (directly and with the application of § 1.414(c)–4) by an individual who is a principal owner, officer, partner, or fiduciary of the parent organization shall be excluded.

(5) *Employees.* An interest which is an interest in or stock of the subsidiary organization owned (directly and with the application of § 1.414(c)–4) by an employee of the subsidiary organization shall be excluded if such interest or such stock is subject to conditions which substantially restrict or limit the employee's right (or if the employee constructively owns such interest or such stock, the direct or record owner's right) to dispose of such interest or such stock and which run in favor of the parent or subsidiary organization.

(6) *Controlled exempt organization.* An interest which is an interest in or stock of the subsidiary organization shall be excluded if owned (directly and with the application of § 1.414(c)–4) by an organization (other than the parent organization):

(i) To which section 501 (relating to certain educational and charitable organizations which are exempt from tax) applies, and

(ii) Which is controlled directly or indirectly (within the meaning of paragraph (d)(7) of this section) by the parent organization or subsidiary organization, by an individual, estate, or trust that is a principal owner of the parent organization, by an officer, partner, or fiduciary of the parent organization, or by any combination thereof.

(c) *Brother-sister group of trades or businesses under common control*—(1) *In general.* If five or fewer persons (hereinafter in this section referred to as "common owners") who are individuals, estates, or trusts own (directly and with the application of § 1.414(c)–4)—

(i) In the case of a corporation, 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock or such corporation,

(ii) In the case of a trust or an estate, an actuarial interest (within the meaning of § 1.414(c)–2(b)(2)(ii)) of 50 percent or more of such trust or estate, and

(iii) In the case of a partnership, 50 percent or more of the profits or capital interest of such partnership, then for purposes of determining whether such organization is a member of a brother-sister group of trades or businesses under common control, an interest in such organization excluded under paragraph (c) (2), (3), or (4) of this section shall be treated as not outstanding.

(2) *Exempt employees' trust.* An interest which is an interest in or stock of such organization held by an employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be excluded if such trust is for the benefit of the employees of such organization.

(3) *Employees.* An interest which is an interest in or stock of such organization owned (directly and with the application of § 1.414(c)–4) by an employee of such organization shall be excluded if such interest or stock is subject to conditions which run in favor of a common owner of such organization or in favor of such organization and which substantially restrict or limit the employee's right (or if the employee constructively owns such interest or stock, the direct or record owner's right) to dispose of such interest or stock.

(4) *Controlled exempt organization.* An interest which is an interest in or stock of such organization shall be excluded if owned (directly and with the application of § 1.414(c)–4) by an organization:

(i) To which section 501(c)(3) (relating to certain educational and charitable organizations which are exempt from tax) applies, and

(ii) Which is controlled directly or indirectly (within the meaning of paragraph (d)(7) of this section) by such organization, by an individual, estate, or trust that is a principal owner of such organization, by an officer, partner, or fiduciary of such organization, or by any combination thereof.

(d) *Definitions*—(1) *Employee.* For purposes of this section, the term "employee" has the same meaning such term is given in section 3306(i) of the Code (relating to definitions for purposes of the Federal Unemployment Tax Act).

(2) *Principal owner.* For purposes of this section, the term "principal owner" means a person who owns (directly and with the application of § 1.414(c)–4)—

(i) In the case of a corporation, 5 percent or more of the total combined voting power of all classes of stock entitled to vote in such corporation or 5 percent of more of the total value of shares of all classes of stock of such corporation;

(ii) In the case of a trust or estate, an actuarial interest of 5 percent or more of such trust or estate; or

(iii) In the case of a partnership, 5 percent or more of the profits or capital interest of such partnership.

(3) *Officer.* For purposes of this section, the term "officer" includes the president, vice-presidents, general manager, treasurer, secretary, and comptroller of a corporation, and any other person who performs duties corresponding to those normally performed by persons occupying such positions.

(4) *Partner.* For purposes of this section, the term "partner" means any person defined in section 7701(a)(2) (relating to definitions of partner).

(5) *Fiduciary.* For purposes of this section and § 1.414(c)–4, the term "fiduciary" has the same meaning as such term is given in section 7701(a)(6) and the regulations thereunder.

(6) *Substantial conditions.* (i) *In general.* For purposes of this section, an interest in or stock of an organization is subject to conditions which substantially restrict or limit the right to dispose of such interest or stock and with run in favor of another person if the condition extends directly or indirectly to such person preferential rights with respect to the acquisition of the direct owner's (or the record owner's) interest or stock. For a condition to be in favor of another person it is not necessary that such person be extended a discriminatory concession with respect to price. A right of first refusal with respect to an interest or stock in favor of another person is a condition which substantially restricts or limits the direct or record owner's right of disposition which runs in favor of such person. Further, any legally enforceable condition which prohibits the direct or record owner from disposing of his or her interest or stock without the consent

of another person will be considered to be a substantial limitation running in favor of such person.

(ii) *Special rule.* For purposes of paragraph (c)(3) of this section only, if a condition which restricts or limits an employee's right (or direct or record owner's right) to dispose of his or her interest or stock also applies to the interest or stock in such organization held by a common owner pursuant to a bonafide reciprocal purchase arrangement, such condition shall not be treated as a substantial limitation or restriction. An example of a reciprocal purchase arrangement is an agreement whereby a common owner and the employee are given a right of first refusal with respect to stock of the employer corporation owned by the other party. If, however, the agreement also provides that the common owner has the right to purchase the stock of the employer corporation owned by the employee in the event the corporation should discharge the employee for reasonable cause, the purchase arrangement would not be reciprocal within the meaning of this subdivision.

(7) *Control.* For purposes of paragraphs (b)(6) and (c)(4) of this section, the term "control" means control in fact. The determination of whether there exists control in fact will depend upon all of the facts and circumstances of each case, without regard to whether such control is legally enforceable and irrespective of the method by which such control is exercised or exercisable.

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example (1).* ABC Partnership owns 70 percent of the capital interest and of the profits interest in the DEF Partnership. The remaining capital interest and profits interest in DEF is owned as follows: 4 percent by A (a general partner in ABC), and 26 percent by D (a limited partner in ABC). ABC satisfies the 50-percent capital interest or profits interest ownership requirement of paragraph (b)(1)(iii) of this section with respect to DEF. Since A and D are partners and ABC, under paragraph (b)(4) of this section the capital and profits interests in DEF owned by A and D are treated as not outstanding for purposes of determining whether ABC and DEF are members of a parent-subsidiary group of trades or businesses under common control under § 1.414 (c)–2(b). Thus, ABC is considered to own 100 percent (70÷70) of the capital interest and profits interest in DEF. Accordingly, ABC and DEF are members of a parent-subsidiary group of trades or businesses under common control.

*Example (2).* Assume the same facts as in example (1) and assume further that A owns 15 shares of the 100 shares of the only class of stock of S Corporation and DEF Partnership owns 75 shares of such stock. ABC satisfies the 50 percent stock requirement of paragraph (b)(1)(i) of this section with respect to S since ABC is considered as owning 52.5 percent (70 percent×75 percent) of the S stock with the application of § 1.414 (c)–4(b)(2). Since A is a partner of ABC, the S stock owned by A is treated as not outstanding for purposes of determining whether S is a member of a parent-subsidiary group of trades or businesses under common control. Thus, DEF Partnership is considered to own stock possessing 88.2 percent (75÷85) of the voting power and value of the S stock. Accordingly, ABC Partnership, DEF Partnership, and S Corporation are members of a parent-subsidiary group of trades or businesses under common control.

*Example (3).* ABC Partnership owns 60 percent of the only class of stock of Corporation Y. D, the president of Y, owns the remaining 40 percent of the stock of Y. D has agreed that if she offers her stock in Y for sale she will first offer the stock to ABC at a price equal to the fair market value of the stock on the first date the stock is offered for sale. Since D is an employee of Y within the meaning of section 3306(i) of the Code and her stock in Y is subject to a condition which substantially restricts or limits her right to dispose of such stock and runs in favor of ABC Partnership, under paragraph (b)(5) of this section such stock is treated as not outstanding for purposes of determining whether ABC and Y are members of a parent-subsidiary group of trades or businesses under common control. Thus, ABC Partnership is considered to own stock possessing 100 percent of the voting power and value of the stock of Y. Accordingly, ABC Partnership and Y Corporation are members of a parent-subsidiary group of trades or businesses under common control. The result would be the same if D's husband, instead of D, owned directly the 40 percent stock interest in Y and such stock was subject to a right of first refusal running in favor of ABC Partnership.

(f) *Exception*—(1) *In general.* If an interest in an organization (including stock of a corporation) is owned by a person directly or with the application of the rules of paragraph (b) of § 1.414 (c)–4 and such ownership results in the membership of that organization in a group of two or more trades or businesses under common control for any period, then the interest will not be treated as an excluded interest under paragraph (b) or (c) of this section if the result of applying such provisions is that the organization is not a member of a group of two or more trades or businesses under common control for the period.

(2) *Example.* The provisions of this paragraph may be illustrated by the following example:

*Example.* Corporation P owns directly 50 of the 100 shares of the only class of stock of corporation S. A, an officer of P, owns directly 30 shares of S stock which P has an option to acquire. If, under paragraph (b)(4) of this section, the 30 shares owned directly by A are treated as not outstanding, P would be treated as owning stock possessing only 71 percent (50/70) of the total voting power and value of S stock, and S should not be a member of a parent-subsidiary group of trades or businesses under common control. However, because the 30 shares owned by A that P has an option to purchase are considered as owned by P under paragraph (b)(2) of this section, and that ownership plus P's direct ownership of 50 shares result in S's membership in a parent-subsidiary group of trades or businesses under common control for 1985, the provisions of this paragraph apply. Therefore, A's stock is not treated as an excluded interest and S is a member of a parent-subsidiary group consisting of P and S.

**§ 1.414(c)–4 Rules for determining ownership.**

(a) *In general.* In determining the ownership of an interest in an organization for purposes of § 1.414(c)–2 and § 1.414(c)–3, the constructive ownership rules of paragraph (b) of this section shall apply, subject to the operating rules contained in paragraph (c). For purposes of this section the term "interest" means: in the case of a corporation, stock; in the case of a trust or estate, an actuarial interest; in the case of a partnership, an interest in the profits or capital; and in the case of a sole proprietorship, the proprietorship.

(b) *Constructive ownership*—(1) *Options.* If a person has an option to acquire any outstanding interest in an organization, such interest shall be considered as owned by such person. For this purpose, an option to acquire an option, and each one of a series of such options shall be considered as an option to acquire such interest.

(2) *Attribution from partnerships*—(i) *General.* An interest owned, directly or indirectly, by or for a partnership shall be considered as owned by any partner having an interest of 5 percent or more in either the profits or capital of the partnership in proportion to such partner's interest in the profits or capital, whichever such proportion is greater.

(ii) *Example.* The provisions of paragraph (b)(2)(i) of this section may be illustrated by the following example:

*Example.* A, B, and C, unrelated individuals, are partners in the ABC Partnership. The partners' interest in the capital and profits of ABC are as follows:

(In percent)

| Partner | Capital | Profits |
|---|---|---|
| A | 36 | 25 |
| B | 60 | 71 |
| C | 4 | 4 |

The ABC Partnership owns the entire outstanding stock (100 shares) of X Corporation. Under paragraph (b)(2)(i) of this section, A is considered to own the stock of X owned by the partnership in proportion to his interest in capital (36 percent) or profits (25 percent), whichever such proportion is greater. Therefore, A is considered to own 36 shares of X stock. Since B has a greater interest in the profits of the partnership than in the capital, B is considered to own X stock in proportion to his interest in such profits. Therefore, B is considered to own 71 shares of X stock. Since C does not have an interest of 5 percent or more in either the capital or profits of ABC, he is not considered to own any shares of X stock.

(3) *Attribution from estates and trusts*—(i) *In general.* An interest in an organization (hereinafter called an "organization interest") owned, directly or indirectly, by or for an estate or trust shall be considered as owned by any beneficiary of such estate or trust who has an actuarial interest of 5 percent or more in such organization interest, to the extent of such actuarial interest. For purposes of this subparagraph, the actuarial interest of each beneficiary shall be determined by assuming the maximum exercise of discretion by the fiduciary in favor of such beneficiary and the maximum use of the organization interest to satisfy the beneficiary's rights. A beneficiary of an estate or trust who cannot under any circumstances receive any part of an organization interest held by the estate or trust, including the proceeds from the disposition thereof, or the income therefrom, does not have an actuarial interest in such organization interest. Thus, where stock owned by a decedent's estate has been specifically bequeathed to certain beneficiaries and the remainder of the estate has been specifically bequeathed to other beneficiaries, the stock is attributable only to the beneficiaries to whom it is specifically bequeathed. Similarly a remainderman of a trust who cannot under any circumstances receive any interest in the stock of a corporation which is a part of the corpus of the trust (including any accumulated income therefrom or the proceeds from a disposition thereof) does not have an actuarial interest in such stock. However, an income beneficiary of a trust does have an actuarial interest in stock if he has any right to the income from such stock even though under the terms of the trust instrument such stock can never be distributed to him. The factors and methods prescribed in § 20.2031–7 or § 20.2031–10 (Estate Tax Regulations), whichever is appropriate for use in ascertaining the value of an interest in property for estate tax purposes shall be used for purposes of this subdivision in determining a beneficiary's actuarial interest in an organization interest owned directly or indirectly by or for an estate or trust.

(ii) *Special rules for estates.* (A) For purposes of this paragraph (b)(3) with respect to an estate, property of a decedent shall be considered as owned by his or her estate if such property is subject to administration by the executor or administrator for the purposes of paying claims against the estate and expenses of administration notwithstanding that, under local law, legal title to such property vests in the decendent's heirs, legatees or devisees immediately upon death.

(B) For purposes of this paragraph (b)(3) with respect to an estate, the term "beneficiary" includes any person entitled to receive property of a decedent pursuant to a will or pursuant to laws of descent and distribution.

(C) For purposes of this paragraph (b)(3) with respect to an estate, a person shall no longer be considered a beneficiary of an estate when all the property to which he or she is entitled has been received by him or her, when he or she no longer has a claim against the estate arising out of having been a beneficiary, and when there is only a remote possibility that it will be necessary for the estate to seek the return of property from him or her or to seek payment from him or her by contribution or otherwise to satisfy claims against the estate or expenses of administration.

(iii) *Grantor trusts, etc.* An interest owned, directly or indirectly, by or for any portion of a trust of which a person is considered the owner under subpart E, part I, subchapter J of the Code (relating to grantors and others treated as substantial owners) is considered as owned by such person.

(4) *Attribution from corporations*—(i) *General.* An interest owned, directly or indirectly, by or for a corporation shall be considered as owned by any person who owns (directly and, in the case of a parent-subsidiary group of trades or businesses under common control, with the application of paragraph (b)(1) of this section, or in the case of a brother-sister group of trades or business under common control, with the application of this section), 5 percent or more in value of the stock in that proportion which the value of the stock which such person so owns bears to the total value of all the stock in such corporation.

(ii) *Example.* The provisions of paragraph (b)(4)(i) of this section may be illustrated by the following example:

*Example.* B, an individual, owns 60 of the 100 shares of the only class of outstanding stock of corporation P. C, an individual, owns 4 shares of the P stock, and corporation X owns 36 shares of the P stock. Corporation P owns, directly and indirectly, 50 shares of the stock of corporation S. Under this subparagraph, B is considered to own 30 shares of the S stock (60/100×50), and X is considered to own 18 shares of S stock (36/100×50). Since C does not own 5 percent or more in the value of P stock, he is not considered as owning any of the S stock owned by P. If in this example, C's wife had owned directly 1 share of the P stock, C and his wife would each be considered as owning 5 shares of the P stock, and therefore C and his wife would be considered as owning 2.5 shares of the S stock (5/100×50).

(5) *Spouse*—(i) *General rule.* Except as provided in paragraph (b)(5)(ii) of this section, an individual shall be considered to own an interest owned, directly or indirectly, by or for his or her spouse, other than a spouse who is legally separated from the individual under a decree of divorce, whether interlocutory or final, or a decree of separate maintenance.

(ii) *Exception.* An individual shall not be considered to own an interest in an organization owned, directly or indirectly, by or for his or her spouse on any day of a taxable year of such organization, provided that each of the following conditions are satisfied with respect to such taxable year:

(A) Such individual does not, at any time during such taxable year, own directly any interest in such organization;

(B) Such individual is not a member of the board of directors, a fiduciary, or an employee of such organization and does not participate in the management of such organization at any time during such taxable year;

(C) Not more than 50 percent of such organization's gross income for such taxable year was derived from royalties, rents, dividends, interest, and annuities; and

(D) Such interest in such organization is not, at any time during such taxable year, subject to conditions which substantially restrict or limit the spouse's right to dispose of such interest and which run in favor of the individual or the individual's children who have not attained the age of 21 years. The principles of § 1.414(c)–3(d)(6)(i) shall apply in determining whether a condition is a condition described in the preceding sentence.

(iii) *Definitions.* For purposes of paragraph (b)(5)(ii)(C) of this section,

the gross income of an organization shall be determined under section 61 and the regulations thereunder. The terms "interest", "royalties", "rents", "dividends", and "annuities" shall have the same meaning such terms are given for purposes of section 1244(c) and § 1.1244(c)–1(e)(1).

(6) *Children, grandchildren, parents, and grandparents*—(i) *Children and parents.* An individual shall be considered to own an interest owned, directly or indirectly, by or for the individual's children who have not attained the age of 21 years, and if the individual has not attained the age of 21 years, an interest owned, directly or indirectly, by or for the individual's parents.

(ii) *Children, grandchildren, parents, and grandparents.* In an individual is in effective control (within the meaning of § 1.414(c)–2(c)(2)), directly and with the application of the rules of this paragraph without regard to this subdivision, of an organization, then such individual shall be considered to own an interest in such organization owned, directly or indirectly, by or for the individual's parents, grandparents, grandchildren, and children who have attained the age of 21 years.

(iii) *Adopted children.* For purposes of this section, a legally adopted child of an individual shall be treated as a child of such individual.

(iv) *Example.* The provisions of this subparagraph (6) may be illustrated by the following example:

*Example*—(A) *Facts.* Individual F owns directly 40 percent of the profits interest of the DEF Partnership. His son, M, 20 years of age, owns directly 30 percent of the profits interest of DEF, and his son, A, 30 years of age, owns directly 20 percent of the profits interest of DEF. The 10 percent remaining of the profits interest and 100 percent of the capital interest of DEF is owned by an unrelated person.

(B) *F's ownership.* F owns 40 percent of the profits interest in DEF directly and is considered to own the 30 percent profits interest owned directly by M. Since, for purposes of the effective control test contained in paragraph (b)(6)(ii) of this section, F is treated as owning 70 percent of the profits interest of DEF, F is also considered as owning the 20 percent profits interest of DEF owned by his adult son, A. Accordingly, F is considered as owning a total of 90 percent of the profits interest in DEF.

(C) *M's ownership.* Minor son, M, owns 30 percent of the profits interest in DEF directly, and is considered to own the 40 percent profits interest owned directly by his father, F. However, M is not considered to own the 20 percent profits interest of DEF owned directly by his brother, A, and constructively by F, because an interest constructively owned by F by reason of family attribution is not considered as owned by him for purposes of making another member of his family the constructive owner of such interest. (See paragraph (c)(2) of this section.) Accordingly, M is considered as owning a total of 70 percent of the profits interest of the DEF Partnership.

(D) *A's ownership.* Adult son, A, owns 20 percent of the profits interest in DEF directly. Since, for purposes of determining whether A effectively controls DEF under paragraph (b)(6)(ii) of this section, A is treated as owning only the percentage of profits interest he owns directly, he does not satisfy the condition precedent for the attribution of the DEF profits interest from his father. Accordingly, A is considered as owning only the 20 percent profits interest in DEF which he owns directly.

(c) *Operating rules*—(1) *In general.* Except as provided in paragraph (c)(2) of this section, an interest constructively owned by a person by reason of the application of paragraph (b) (1), (2), (3), (4), (5), or (6) of this section shall, for the purposes of applying such paragraph, be treated as actually owned by such person.

(2) *Members of family.* An interest constructively owned by an individual by reason of the application of paragraph (b) (5) or (6) of this section shall not be treated as owned by such individual for purposes of again applying such subparagraphs in order to make another the constructive owner of such interest.

(3) *Precedence of option attribution.* For purposes of this section, if an interest may be considered as owned under paragraph (b)(1) of this section (relating to option attribution) and under any other subparagraph of paragraph (b) of this section, such interest shall be considered as owned by such person under paragraph (b)(1) of this section.

(4) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

*Example (1).* A, 30 years of age, has a 90 percent interest in the capital and profits of DEF Partnership. DEF owns all the outstanding stock of corporation X and X owns 60 shares of the 100 outstanding shares of corporation Y. Under paragraph (c)(1) of this section, the 60 shares of Y constructively owned by DEF by reason of paragraph (b)(4) of this section are treated as actually owned by DEF for purposes of applying paragraph (b)(2) of this section. Therefore, A is considered as owning 54 shares of the Y stock (90 percent of 60 shares).

*Example (2).* Assume the same facts as in example (1). Assume further that B, who is 20 years of age and the brother of A, directly owns 40 shares of Y stock. Although the stock of Y owned by B is considered as owned by C (the father of A and B) under paragraph (b)(6)(i) of this section, under paragraph (c)(2) of this section such stock may not be treated as owned by C for purposes of applying paragraph (b)(6)(ii) of this section in order to make A the constructive owner of such stock.

*Example (3).* Assume the same facts as in example (2), and further assume that C has an option to acquire the 40 shares of Y stock owned by his son, B. The rule contained in paragraph (c)(2) of this section does not prevent the reattribution of such 40 shares to A because, under paragraph (c)(3) of this section, C is considered as owning the 40 shares by reason of option attribution and not by reason of family attribution. Therefore, since A is in effective control of Y under paragraph (b)(6)(ii) of this section, the 40 shares of Y stock constructively owned by C are reattributed to A. A is considered as owning a total of 94 shares of Y stock.

**§ 1.414(c)–5 Effective date.**

(a) *General rule.* Except as provided in paragraph (b), (c), (e), or (f) of this section, the provisions of § 1.414(b)–1 and §§ 1.414(c)–1 through 1.414 (c)–4 shall apply for plan years beginning after September 2, 1974.

(b) *Existing plans.* In the case of a plan in existence on January 1, 1974, unless paragraph (c) of this section applies, the provisions of "§ 1.414 (b)–1 and §§ 1.414(c)–1 through 1.414(c)–4 shall apply for plan years beginning after December 31, 1975. For definition of the term "existing plan", see § 1.410(a)–2(c).

(c) *Existing plans electing new provisions.* In the case of a plan in existence on January 1, 1974, for which the plan administrator makes an election under § 1.410 (a)–2 (d), the provisions of § 1.414 (b)–1 and §§ 1.414 (c)–1 through 1.414 (c)–4 shall apply to the plan years elected under § 1.410 (a)–2 (d).

(d) *Application.* For purposes of the Employee Retirement Income Security Act of 1974, the provisions of § 1.414 (b)–1 and §§ 1.414 (c)–1 through 1.414 (c)–4 oo not apply for any period of time before the plan years described in paragraph (a), (b), or (c) of this section, whichever is applicable.

(e) *Special rule.* Notwithstanding paragraph (a), (b), or (c) of this section, § 1.414 (c)–3 (f) is effective April 1, 1988.

(f) *Transitional rule*—(1) *In general.* The amendments made by T.D. 8179 apply to the plan years or period described in paragraphs (a), (b), or (c) of this section, whichever is applicable.

(2) *Exception.* In the case of a plan year or period beginning before March 2, 1988, if an organization—

(i) Is a member of a brother-sister group of trades or businesses under common control under § 11.414 (c)–2 (c), as in effect before removal by T.D. 8179 ("old group"), for such plan year or period, and

(ii) Is not such a member for such plan year or period because of the

amendments made by such Treasury decision,

such member (whether or not a corporation) nevertheless will be treated as a member of such old group for purposes of section 414(c) for that plan year or period to the extent provided in § 1.1563–1 (d)(2). Also, such member will be treated as a member of an old group for all purposes of the Code for such plan year or period if all the organizations (whether or not corporations) that are members of the old group meet all the requirements of §1.1563–1 (d)(3) with respect to such plan year or period.

**Par. 4.** Section 1.1563–1 is amended as follows.

1. Paragraph (a)(3)(i) is amended by deleting ", singly or in combination," and by adding a new flush paragraph at the end of (a)(3)(i)(b) as set forth below.

2. Paragraph (a)(3) is amended by revising Examples (1) and (2) and by adding new Examples (3) and (4) in paragraph (a)(3)(ii) and by adding a new paragraph (a)(3)(iii) as set forth below.

3. Paragraph (c)(2)(iv) is amended by revising the charts in Examples (1) and (2) as set forth below.

4. Paragraph (d) is added to read as set forth below.

**§ 1.1563–1 Definition of controlled group of corporations and component members.**

(a) *Controlled group of corporations.* * * *

(3) *Brother-sister controlled group.* (i) * * *

The five or fewer persons whose stock ownership is considered for purposes of the 80 percent requirement must be the same persons whose stock ownership is considered for purposes of the more-than-50 percent requirement.

(ii) * * *

*Example (1).* The outstanding stock of corporations P, Q, R, S, and T, which have only one class of stock outstanding is owned by the following unrelated individuals:

CORPORATIONS

| Individuals | P | Q | R | S | T | Identical ownership |
|---|---|---|---|---|---|---|
| A | 55% | 51% | 55% | 55% | 55% | 51%. |
| B | 45% | 49% | | | | (45% in P & Q). |
| C | | | 45% | | | |
| D | | | | 45% | | |
| E | | | | | 45% | |
| Total | 100% | 100% | 100% | 100% | 100% | |

Corporations P and Q are members of a brother-sister controlled group of corporations. Although the more-than-50 percent identical ownership requirement is met for all 5 corporations, corporations R, S, and T are not members becasue at least 80 percent of the stock of each of those corporations is not owned by the same 5 or fewer persons whose stock ownership is considered for purposes of the more-than-50 percent identical ownership requirement.

*Example (2).* The outstanding stock of corporations U and V, which have only one class of stock outstanding, is owned by the following unrelated individuals:

| Individuals | Corporations | |
|---|---|---|
| | U (percent) | V (percent) |
| A | 12 | 12 |
| B | 12 | 12 |
| C | 12 | 12 |
| D | 12 | 12 |
| E | 13 | 13 |
| F | 13 | 13 |
| G | 13 | 13 |
| H | 13 | 13 |
| Total | 100 | 100 |

Any group of five of the shareholders will own more than 50 percent of the stock in each corporation, in identical holdings. However, U and V are not members of brother-sister controlled group because at least 80 percent of the stock of each corporation is not owned by the same five or fewer persons.

*Example (3).* Corporation X and Y each have two classes of stock outstanding, voting common and non-voting common. (None of this stock is excluded from the definition of stock under section 1563(c).) Unrelated individuals A and B owns the following percentages of the class of stock entitled to vote (voting) and of the total value of shares of all classes of stock (value) in each of corporations X and Y:

| Individuals | Corporations | |
|---|---|---|
| | X | Y |
| A | 100% voting, 60% value. | 75% voting, 60% value. |
| B | 0% voting, 10% value. | 25% voting, 10% value. |

No other shareholder of X owns (or is considered to own) any stock in Y. X and Y are a brother-sister controlled group of corporations. The group meets the more-than-50 percent ownership requirements because A and B own more than 50 percent of the total value of shares of all classes of stock X and Y in identical holdings. (The group also meets the more-than-50 percent ownership requirement because of A's voting stock ownership.) The group meets the 80 percent requirement because A and B own at least 80 percent of the total combined voting power of all classes of stock entitled to vote.

*Example (4).* Assume the same facts as in example (3) except that the value of the stock owned by A and B is not more than 50 percent of the total value of shares of all classes of stock of each corporation in identical holdings. X and Y are not a brother-sister controlled group of corporations. The group meets the more-than-50 percent ownership requirement because A owns more than 50 percent of the total combined voting power of the voting stock of each corporation. For purposes of the 80 percent requirement, B's voting stock in Y cannot be combined with A's voting stock in Y since B, who does not own any voting stock in X, is not a person whose ownership is considered for purposes of the more-than-50 percent requirement. Because no other shareholder owns stock in both X and Y, these other shareholders' stock ownership is not counted towards meeting either the more-than-50 percent ownership requirement or the 80-percent ownership requirement.

(iii) Paragraph (a)(3) of this section, as amended, by T.D. 8179 applies to taxable years ending on or after December 31, 1970. See, however, the transitional rule in paragraph (d) of this section.

* * * * *

(c) *Overlapping groups.* * * *

(2) *Brother-sister controlled groups.* * * *

(iv) * * *

*Example (1).* * * *

| Individuals | Corporations | | |
|---|---|---|---|
| | M | N | P |
| A. | 55% | 40% | 5% |
| B. | 40% | 20% | 40% |
| C. | 5% | 40% | 55% |

*Example (2).* * * *

| Individuals | Corporations | | | | |
|---|---|---|---|---|---|
| | S | T | W | X | Z |
| D | 52% | 52% | 52% | 52% | 52% |
| E | 40% | 2% | 2% | 2% | 2% |
| F | 2% | 40% | 2% | 2% | 2% |
| G | 2% | 2% | 40% | 2% | 2% |
| H | 2% | 2% | 2% | 40% | 2% |
| I | 2% | 2% | 2% | 2% | 40% |

* * * * *

(d) *Transitional rules*—(1) *In general.* Treasury decision 8179 amended paragraph (a)(3) of this section to revise the definition of a brother-sister controlled group of corporations. In general, those amendments are effective for taxable years ending on or after December 31, 1970.

(2) *Limited nonretroactivity.* (i) Under the authority of section 7805(b), the Internal Revenue Service will treat an old group as a brother-sister controlled group corporations for purposes of applying sections 401, 404(a), 408(k), 409A, 410, 411, 412, 414, 415, and 4971 of the Code and sections 202, 203, 204, and 302 of the Employment Retirement Income Security Act of 1974 (ERISA) in a plan year or taxable year beginning before March 2, 1988. To the extent necessary to prevent an adverse effect on any old member (or any other corporation), or on any plan or other entity described in such sections (including plans, *etc.*, of corporations not part of such old group), that would result solely from the retroactive effect of the amendment to this section by T.D. 8179. An adverse effect includes the disqualification of a plan or the disallowance of a deduction or credit for a contribution to a plan. The Internal Revenue Service, however, will not treat an old member as a member of an old group to the extent that such treatment will have an adverse effect on that old member.

(ii) Section 7805(b) will not be applied pursuant to paragraph (d)(2)(i) of this section to treat an old member of an old group as a member of a brother-sister controlled group to prevent an adverse effect for a taxable year if, for that taxable year, that old member treats or has treated itself as not being a member of that old group for purposes of section 401, 404(a), 408(k), 409A, 410, 411, 412, 414, 415, and 4971 of the Code and sections 202, 203, 204, and 302 and Title IV of ERISA for such taxable year (such as by filing, with respect to such taxable year, a return, amended return, or claim for credit or refund in which the amount of any deduction, credit, limitation, or tax due is determined by treating itself as not being a member of the old group for purposes of those sections). However, the fact that one or more (but not all) of the old members do not qualify for section 7805(b) treatment because of the preceding sentence will not preclude that old member (or members) from being treated as a member of the old group under paragraph (d)(2)(i) of this section in order to prevent the disallowance of a deduction or credit of another old member (or other corporation) or to prevent the disqualification of, or other adverse effect on, another old member's plan (or other entity) described in the sections of the Code and ERISA enumerated in such paragraph.

(3) *Election of general nonretroactivity.* In the case of a taxable year ending on or after December 31, 1970, and before March 2, 1988. An old group will be treated as a brother-sister controlled group of corporations for all purposes of the Code for such taxable year if—

(i) Each old member files a statement consenting to such treatment for such taxable year with the District Director having audit jurisdiction over its return within six months after March 2, 1988, and

(ii) No old member (A) files or has filed, with respect to such taxable year, a return, amended return, or claim for credit or refund in which the amount of any deduction, credit, limitation, or tax due is determined by treating any old member as not a member of the old group or (B) treats the employees of all members of the old group as not being employed by a single employer for purposes of sections 401, 404(a), 408(k), 409A, 410, 411, 412, 414, 415, and 4971 of the Code and sections 202, 203, 204, and 302 of ERISA for such taxable year.

(4) *Definitions.* For purposes of this paragraph (d) of this section—

(i) An "old group" is a brother-sister controlled group of corporations, determined by applying paragraph (a)(3) of this section as in effect before the amendments made by Treasury decision 8179, that is not a brother-sister controlled group of corporations, determined by applying paragraph (a)(3) of this section as amended by such Treasury decision, and

(ii) An "old member" is any corporation that is a member of an old group.

(5) *Election to choose between membership in more than one controlled group.* If—

(i) An old member has filed an election under paragraph (c)(2) of this section to be treated as a component member of an old group for a December 31 before March 2, 1988, and

(ii) That corporation would (without regard to such paragraph) be a component member of more than one brother-sister controlled group (not including an old group) on the December 31, that corporation may make an election under that paragraph by filing an amended return on or before September 2, 1988. This paragraph (d)(5) does not apply to a corporation that is treated as a member of an old group under paragraph (d)(3) of this section.

(6) *Refunds.* See section 6511(a) for period of limitation on filing claims for credit or refund.

**Par. 5.** Section 1.1563–3 is amended by revising Example (3) in paragraph (d)(3) as set forth below.

**§ 1.1563–3 Rules for determining stock ownership.**

* * * * *

(d) *Special rule of section 1563(f)(3)(B)* * * *

(3) *Examples.* * * *

*Example (3).* Unrelated individuals A and B each own 49 percent of all the outstanding stock of corporation R, which in turn owns 70 percent of the only class of outstanding stock of corporation S. The remaining 30 percent of the stock of corporation S is owned by unrelated individual C. C also owns the remaining 2 percent of the stock of corporation R. Under the attribution rule of paragraph (b)(4) of this section A and B are each considered to own 34.3 percent of the stock of corporation S. Accordingly, since five or fewer persons own at least 80 percent of the stock of corporations R and S and also own more than 50 percent identically (A's and B's identical ownership each is 34.3 percent, C's identical ownership is 2 percent), on December 31, 1970, corporations R and S are treated as component members of the same brother-sister controlled group.

**§ 1.7476–1 [Amended]**

**Par. 6.** Section 1.7476–1 is amended by removing from paragraph (b)(2)(i) "§ 11.414 (c)–3 of this chapter (Temporary Income Tax Regulations under the Employee Retirement Income Security Act of 1974))" and adding instead "§ 1.414 (c)–3)".

## PART 11—TEMPORARY INCOME TAX REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

**Par. 7.** The authority citation for Part 11 continues to read in part:

**Authority:** 26 U.S.C. 7805. * * *

**§§ 11.414(c)–1 through 11.414(c)–5 [Removed]**

**Par. 8.** Sections 11.414 (c)–1 through 11.414 (c)–5 are removed.

## PART 13—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1969

Par. 9. The authority citation for Part 13 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

§§ 13.16 and 13.16–1 [Removed]

Par. 10. Sections 13.16 and 13.16–1 are removed.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 11. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 12. Section 602.101(c) is amended by adding the following citations to the table in the appropriate places:

| | |
|---|---|
| § 1.52–1(h) | 1545–0797 |
| § 1.414(c)–5(f) | 1545–0797 |
| § 1.1563–1(d) | 1545–0797 |

Lawrence B. Gibbs,

*Commissioner of Internal Revenue.*

Approved: February 9, 1988.

O. Donaldson Chapoton,

*Assistant Secretary of the Treasury.*

[FR Doc. 88–4238 Filed 3–1–88; 8:45 am]

BILLING CODE 4830–01–M

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## 26 CFR Parts 1 and 602

[T.D. 8183]

## Income Taxes; Investment Credit for Qualified Progress Expenditures

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the investment credit for qualified progress expenditures. Changes in the applicable tax law were made by the Tax Reduction Act of 1975, the Tax Reform Act of 1976, and the Revenue Act of 1978. These regulations provide the public with guidance needed to comply with the law.

**DATES:** The amendments to the Income Tax Regulations under the Tax Reduction Act of 1975 (1975 Act) (new § 1.46–5) are effective upon publication and apply to taxable years ending after December 31, 1974. The amendments under the Tax Reform Act of 1976 (1976 Act) (§ 1.46–5(m) as applied to certain property) are effective upon publication and apply to taxable years ending after December 31, 1976. The amendments under section 312(b)(2) of the Revenue Act of 1978 (§ 1.46–5(m) as applied to certain property) are effective upon publication and apply to taxable years ending after December 31, 1978.

**FOR FURTHER INFORMATION CONTACT:** Michel A. Daze of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T (202–566–6456, not a toll free call).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains final amendments to the Income Tax Regulations (26 CFR Part 1) under section 46(d) of the Internal Revenue Code of 1954, relating to the investment credit for qualified progress expenditures. These regulations were published in proposed form in the **Federal Register** on January 30, 1979 (44 FR 5910). A public hearing was held on June 27, 1979. After consideration of all comments regarding the proposed amendments, those amendments are adopted, as revised, by this Treasury Decision.

Before the 1975 Act, the investment credit was available only in the year in which property was placed in service. Section 46(d) (as added by the 1975 Act) allows taxpayers to elect the investment credit for qualified progress expenditures made during construction of certain property. The property must be new section 38 property that takes at least two years to construct and has an estimated useful life of 7 years or more.

This Treasury decision adds a new § 1.46–5 to provide rules for claiming the investment credit under section 46(d) for qualified progress expenditures. Under these rules, qualified progress expenditures made during a taxable year are added to a taxpayer's qualified investment otherwise determined under § 1.46–3 for that year. However, expenditures made in a taxable year beginning before 1980 are not allowed in full in computing qualified investment for that year, but are phased-in over a 5-year period.

The final regulations amed §§ 1.47–1 and 1.47–3 to provide rules for recapturing the investment credit for progress expenditure property. In general, those rules are similar to the rules for recapture for other section 38 property. Special rules apply, however, for recapture involving certain leased property.

The final regulations also reflect certain amendments made by section 301 of the 1975 Act, sections 1701(b) and 1703 of the Tax Reform Act of 1976, and sections 311(a) and 312(b)(2) of the Revenue Act of 1978. Section 301 of the 1975 Act provides an alternative limitation on the amount of tax liability that may be offset by investment credit for public utility property. Sections 1701(b) and 1703 of the 1976 Act provide a similar limitation for railroad and airline property. Section 312(b)(2) of the 1978 Act consolidates the alternative limitations on railroad and airline property into section 46(a)(8) before its repeal by section 205(b)(2)(A) of the Tax Equity and Fiscal Responsibility Act of 1982. The final regulations apply the alternative limitation to progress expenditure property that is public utility, railroad, or airline property for the period that those limitations are in effect.

The final regulations do not reflect subsequent amendments to the Code, such as those relating to recovery property made to section 46(d) by the Economic Recovery Tax Act of 1981, or the repeal of the alternative limitations on the investment credit for utility, airline, and railroad property.

### Definition of Construction

Section 46(d)(2)(A) defines progress expenditure property, in part, as any property which is being constructed by or for the taxpayer, which has a normal construction period of two years or more, and which will be new section 38 property in the hands of the taxpayer when it is placed in service. Section 1.46–5(c)(2)(ii) of the proposed regulations defined construction as building or manufacturing property from materials and component parts. That section further provided that construction did not include activities such as cultivating orchards, raising livestock, or creating a motion picture film or videotape. Some commentators argued that the exclusion of these activities from the meaning of construction is not supported by section 46(d) or the legislative history. The commentators contended specifically that orchards may be treated as new section 38 property in the year in which they reach an income-producing stage and that there is no basis to exclude any particular type of new section 38 property from progress expenditure treatment. They also argued that the proposed regulations were inconsistent with Rev. Rul. 69–249 (1969–1 C.B. 31), which held that the underlying purpose and principles of "construction" as used in section 48(b) of the Code are equally applicable to the planting and development of an orchard.

As evidenced by the examples of ships, pipelines, and machinery in the legislative history (H.R. Rep. No. 19, 94th Cong., 1st Sess. 37–43 (1975)), Congress

intended in defining progress expenditure property that the term "construction" have its ordinary meaning. Section 48(b) contains a transitional rule which determines the portion of the basis of property to be taken into account when computing the investment credit. For purposes of the transitional rule, property is divided into two categories: property constructed by the taxpayer and property acquired by the taxpayer. Although an orchard is not constructed in the ordinary sense of the word, an orchard was properly assigned to that category in order to apply section 48(b) to the facts of the ruling. Because the provisions of sections 46(d) and 48(b) have different purposes, a similar stretching of the meaning of "construction" is neither mandated nor intended in order to implement section 46(d). Accordingly, § 1.46–5(d) of the final regulations provides that property, which is being constructed by or for the taxpayer, is progress expenditure property only if it is built or manufactured from materials and component parts. Thus, progress expenditure property does not include property such as orchards, vineyards, livestock, or motion picture films or videotapes.

Another commentator suggested that the proposed definition of construction would arguably exclude from the definition of qualified progress expenditures for non-self-constructed property an amount paid for designs or plans or to acquire materials to be used in construction because it is not an amount paid "for construction" under section 46(d)(3)(B)(i). To clarify the interpretation of "for construction", § 1.46–5(j)(1) of the final regulations provides examples of expenditures for construction of non-self-constructed property. Whether an amount paid to acquire materials for use by a taxpayer's employees in construction of a portion of non-self-constructed property is a qualified progress expenditure is determined under § 1.46–5(j)(2) of the final regulations (see discussion of qualified progress expenditures below). Materials acquired by a taxpayer and delivered to a manufacturer or contractor for construction may constitute an amount paid in the form of property under §§ 1.46–5(d)(3)(iii) and 1.46–5(j)(4) of the proposed and final regulations, respectively.

**Normal Construction Period**

*General Rule*

Under section 46(d)(2)(B), the normal construction period begins on the date physical work on construction of the property begins and ends on the date when it is expected that the property will be available for placing in service. For a determination of the normal construction period, § 1.46–5(c)(2)(i) of the proposed regulations provided that physical work on construction does not include preliminary activities such as planning or designing, securing financing, exploring, researching or developing. One commentator recommended that the final regulations provide a general rule and examples describing the types of activities that constitute the commencement of physical work on construction. Other commentators suggested that the normal construction period should be measured from the earlier of the beginning of on-site construction of progress expenditure property or the start of off-site manufacture of a component unique to the progress expenditure property. Instead of a general rule, § 1.46–5(e)(1) of the final regulations provides that the time when physical work on construction commences is based on the facts and circumstances of each case, because of the diversity of activities that may mark the onset of construction. That section also provides that physical work on construction may include the manufacture of a component to be placed in service as part of the property if designated specifically for that property. Generally, physical work on construction does not include physical activity that is not necessary to complete construction of the property, nor does it include physical work on construction of a building or other property that will not be new section 38 property when placed in service.

Taxpayers also observed that a blanket description of research and development as not constituting the beginning of physical work on construction was overly broad and could be construed to disqualify work on property and part of the cost of which is deductible under section 174. Accordingly, these activities have been removed from the list of excluded activities in § 1.46–5(e)(1)(i) of the final regulations. Section 1.46–5(e)(1)(iii) clarifies that research and development activities in a laboratory or experimental setting are not physical work on construction. Whether other activities mark the beginning of physical work on construction will be determined from the facts and circumstances of each case as provided in § 1.46–5(e)(1)(ii) of the final regulations.

Section 1.46–5(c)(2)(iv) of the proposed regulations, interpreting section 46(d)(2)(B)(ii), provided that the normal construction period ends on the date it is expected the property will be available to be placed in service. One commentator believed that the phrase in the statute "available for placing in service" should be interpreted in the same manner as the phrase "placed in service" so that the regulations under section 46(d) coincide with § 1.46–3(d). The rule remains unchanged in the final regulations (§ 1.46–5(e)(1)(iv)). There is no support in the legislative history for construing obviously different phrases similarly. Further, § 1.46–3(d) provides rules for determining when section 38 property is placed in service for purposes of computing qualified investment and claiming the investment credit in the proper taxable year. The provision of the final regulations only determines the time when construction of property has been completed, not when the investment credit for that property is allowed.

*Estimate of Normal Construction Period*

Section 1.46–5(c)(2)(iii) of the proposed regulations required a taxpayer to attach to its income tax return a statement of the basis relied upon in estimating the normal construction period. In response to several comments, § 1.46–5(e)(2) of the final regulations requires a taxpayer to attach a statement only if the estimate is not based on normal industry practice. The rule in the final regulations is prospective only.

*Integrated Unit*

Both the proposed and final regulations provide that, if property is to be placed in service as part of an integrated unit, the normal construction period is determined for the unit as a whole. Under § 1.46–5(c)(2)(v) of the proposed regulations, property is part of an integrated unit only if the operation of that item is essential to the performance of the function to which the unit is assigned. Although one commentator urged that the definition was too restrictive and difficult to apply, the definition remains unchanged in § 1.46–5(e)(3)(ii) of the final regulations. The definition has been amplified, however, to explain that property essential to the performance of the function to which the unit is assigned includes property the use of which is significantly connected to that function and which effects the safe, proper, or efficient performance of the unit. The final regulations also provide that generally property must be placed in service at the same time to be considered part of the same integrated unit.

In response to several comments, § 1.46–5(e)(3)(iii) clarifies that physical work on construction of an integrated unit may commence at a site different from the main construction site of the unit.

**Qualified Progress Expenditures**

Whether progress expenditure property is self-constructed or non-self-constructed determines what amounts attributable to construction of the property may be treated as qualified progress expenditures. Self-constructed property, as defined in section 46(d)(5)(A), is property more than half of the construction expenditures for which it is reasonable to believe will be made directly by the taxpayer. All other property is non-self-constructed (section 46(d)(5)(B)). Under section 46(d)(3)(B), qualified progress expenditures for non-self-constructed property are amounts actually paid to another person for construction, but only to the extent that the payments represent progress in construction. Progress is generally measured by the percentage of construction completed during a taxable year. Construction is presumed to occur not more rapidly than ratably throughout the construction period unless the taxpayer establishes otherwise by clear and convincing evidence. For self-constructed property, qualified progress expenditures are amounts properly chargeable to capital account during a taxable year with respect to that property (section 46(d)(3)(A)). Section 1.46–5(h)(1) of the final regulations makes clear that those amounts include both direct costs (for example, labor, materials, and parts) and indirect costs (for example, overhead and insurance). Because progress is expected to correspond to progress expenditures in the case of self-constructed property, the expenditures are not subject to the requirement of actual payment and the percentage-of-completion limitation applicable to expenditures for non-self-constructed property.

Commentators observed that the proposed regulations did not adequately consider property that is not entirely self-constructed or non-self-constructed. Section 1.46–5(h)(2) of the final regulations provides that amounts paid by the taxpayer to another person for construction of a portion of an item of self-constructed property are not subject to the limitations of section 46(d)(3)(B) (relating to actual payment and progress in construction) imposed upon expenditures for non-self-constructed property. For example, the percentage-of-completion limitation does not apply to payments made to a manufacturer for a turbine used in a ship if that ship is self-constructed property. Those payments are eligible for progress expenditure treatment when properly chargeable to capital account. Section 1.46–5(h)(3) of the final regulations provides rules for determining when amounts paid or incurred with respect to self-constructed property are properly chargeable to capital account.

For property that is non-self-constructed, but for which the taxpayer makes some construction expenditures directly, section 1.46–5(j)(2) of the final regulations provides that the rules of section 46(d)(3)(B) (relating to actual payment and progress in construction) and paragraph (j) of the regulations apply to determine if any expenditure (whether or not made directly by the taxpayer) is a qualified progress expenditure for non-self-constructed property. Wages actually paid to a taxpayer's employees are presumed to correspond to progress in construction. Other amounts, including expenditures for materials, parts, and overhead, must be actually paid, not borrowed from the payee, and attributable to progress made in construction.

Section 1.46–5(d)(3)(ii) of the proposed regulations required that a taxpayer apply the percentage-of-completion limitation to amounts paid to each manufacturer or contractor in each taxable year. Thus, progress is measured on a manufacturer by manufacturer basis, so that the taxpayer takes into account only those progress expenditures made to a manufacturer that was made progress (H.R. Rep. No. 19, *supra*, at 39). In response to comments that the proposed rule is unduly burdensome if applied at a subcontractor level, § 1.46–5(j)(3) of the final regulations applies the requirement only with respect to persons that have a direct contractual relationship with the taxpayer (taking into account the progress made by those persons' subcontractors), rather than with respect to each subcontractor.

If, after the first year of construction, there is a change in either the total cost to the taxpayer or the total cost of construction by another person, § 1.46–5(d)(3)(vi) of the proposed regulations required the taxpayer to recompute the percentage-of-completion limitation on the basis of the revised cost. Under the proposed rule, the recomputation would affect only years subsequent to the taxable year of change. Commentators contend that the recomputation should also apply to the taxable year in which the change occurs. This suggestion is adopted in § 1.46–5(j)(6)(ii) of the final regulations.

While § 1.46–5(c)(2)(i) of the proposed regulations excluded certain preliminary activities from a determination of the normal construction period, the proposed regulations did not specifically exclude from the definition of qualified progress expenditures amounts incurred prior to the commencement of the normal construction period. Taxpayers suggested that, once property has been determined to have a normal construction period of two years or more, such amounts should be eligible for progress expenditure treatment and should be included in qualified investment when made, or in any case, no later than in the year in which physical work on construction commences. The suggestion is not adopted. The regulations interpret the statute in a manner consistent with the legislative history, which provides that "progress expenditures", as well as "progress", are not to be taken into account to the extent that they occur before the start of the normal construction period (H.R. Rep. No. 19, *supra*, at 39). Accordingly, § 1.46–5(g)(2)(i) of the final regulations excludes such amounts from the definition of qualified progress expenditures. That section also summarizes other amounts that are ineligible for progress expenditure treatment.

Section 46(d)(4)(A) does provide a limited "catchup" rule. Under that section, property which is to be a component of, or otherwise included in, progress expenditure property is to be taken into account (1) at a time not earlier than the time it is irrevocably devoted to use in the progress expenditure property, and (2) as if the taxpayer (at that time) had expended an amount equal to that portion of the cost of the component which is properly chargeable to capital account with respect to the property. Thus, under § 1.46–5(h)(3)(i), expenditures for component parts and materials for self-constructed property may not be considered chargeable to capital account until physical work on construction begins and the materials or parts become irrevocably devoted to use in the property.

Taxpayers have suggested that section 46(d)(4)(A) is also applicable to non-self-constructed property, and that once a component part is irrevocably devoted to the property and chargeable to capital account, the taxpayer is treated as having (*i.e.*, paid) an amount equal to the cost of the component part that has been charged to capital account. This amount, therefore, is a qualified progress expenditure without

the application of the payment, progress, or borrowing rule. This suggestion is not adopted. section 46(d)(4)(A) refers to the cost of a component part or other property which is properly chargeable to capital account with respect to the progress expenditure property in which the component part or other property is to be included, thus paralleling the definition of qualified progress expenditures for self-constructed property in section 46(d)(3)(A). Furthermore, the committee report refers specifically to self-constructed property in its explanation of "irrevocably devoted" as used in section 46(d)(4)(A) (H.R. Rep. No. 19, *supra*, at 38). There is no indication that Congress intended section 46(d)(4)(A) to override the payment, progress, and borrowing rules.

**Definition of Self-Constructed Property**

Self-constructed property is defined in section 46(d)(5)(A) as property more than half of the construction expenditures for which it is reasonable to believe will be made directly by the taxpayer. Under § 1.46–5(d)(5) of the proposed regulations, construction expenditures are considered made "directly" by the taxpayer only if the taxpayer uses its own employees to construct the property. The majority of comments objected that this rule is unduly restrictive and inconsistent with the interpretation of the terms "construction completed by the taxpayer" in section 48(b) and "constructed by the taxpayer" in § 1.48–2(b)(1).

Under § 1.48–2(b)(1), property is constructed by the taxpayer if the work is done for him in accordance with his specifications. Courts interpreting this provision have focused on the taxpayer's right of control over construction (*Public Service Company of New Mexico v. United States*, 431 F.2d 980 (10th Cir. 1970); *Lykes Bros. Steamship Co., Inc. v. United States*, 513 F.2d 1342 (Ct. Cl. 1975)). In both cases, the property for which the investment credit was claimed was held to be acquired within the meaning of section 48(b)(2), rather than constructed by the taxpayer. The Service has announced that it will follow *Lykes Bros.* and a similar case, *Pacific Far East Line, Inc. v. United States*, 513 F.2d 1355 (Ct. Cl. 1975), in cases with identical factual situations. If a taxpayer engages the services of a contractor to construct property and the facts and circumstances show sufficient involvement of the taxpayer in the construction, the property is considered constructed by the taxpayer for purposes of section 48(b) (Rev. Rul. 77–107, 1977–1 C.B. 6).

As discussed in connection with the definition of construction, sections 46(d) and 48(b) have different purposes and need not be read *in pari materia*. Congress, aware of the distinction in section 48(b) between property constructed by the taxpayer and acquired property, used different terminology and established two different categories of progress expenditure property under section 46(d). The operating rules of section 46(d) governing expenditures for non-self-constructed property are designed to ensure that the investment credit is allowed only if the taxpayer has borne sufficient economic detriment and to prevent manipulation of the timing of the credit. These policy concerns exist whether the property is constructed by either a closely supervised or a completely independent contractor. Section 1.46–5(k)(1) of the final regulations, therefore, adopts the proposed rule for determining whether expenditures for construction are made directly by the taxpayer.

Section 1.46–5(k)(1) clarifies that construction expenditures include both direct costs, such as wages and materials, and indirect costs, such as overhead, attributable to construction of the property. Expenditures are considered made directly by the taxpayer only to the extent that the expenditures directly benefit the construction of the property by the taxpayer's employees. Thus, expenditures for materials and supplies, which are used by employees of the taxpayer to constructed progress expenditure property, are considered made directly by the taxpayer.

**Election**

Under § 1.46–5(g)(1) of the proposed regulations, the election under section 46(d) is binding for all progress expenditure property constructed or acquired by the taxpayer. Several commentators argued that the election should be made on a project-by-project basis. Because section 46(d) prescribes the timing of a credit, its effect is analogous to prescribing a method of accounting. The final regulations adopt the proposed rule, requiring a taxpayer to apply the progress expenditure election consistently to all eligible property.

Section 1.46–5(g)(1) of the proposed regulations also requires that the election under section 46(d) be made by each partner rather than by a partnership. The suggestion that the partnership make the election is not adopted because the investment credit affects the computation of tax and not the computation of taxable income. Thus, section 703(b), which generally requires a partnership to make elections affecting the computation of taxable income, is not applicable to the election under section 46(d). Section 1.46–5(o)(1) of the final regulations adopts the proposed rule to give each partner the flexibility to choose progress expenditure treatment and to ensure that the election binds the taxpayer even if it leaves the partnership. The final regulations also make clear that the election applies to all of a partner's progress expenditure property including property held in its own capacity.

Under § 1.46–5(g)(1) of the proposed regulations, an election under section 46(d) must be made by filing a written statement containing specified information with the original return for the first taxable year to which the election will apply. In response to several comments, this requirement is not adopted in the final regulations. Instead § 1.46–5(o)(2) provides that the election under section 46(d) is to be made on Form 3468. A transitional rule is also provided so that elections before the adoption of the final regulations will not be invalidated.

**Transferred Property**

Under § 1.46–5(a)(2) of the proposed regulations, a transferee is entitled to qualified progress expenditures in the year the transferor, as a result of the transfer, must recapture the credit for progress expenditures previously allowed, and in subsequent years, if the transferee otherwise would be entitled to claim the credit with respect to that property. Taxpayers commented that it was unclear whether the transferee could treat the full amount paid to the transferor as qualified progress expenditures in addition to future payments for construction.

Section 1.46–5(r) of the final regulations contains a more comprehensive rule for transferred property with respect to which the transferor's election does not carry over to the transferee, and with respect to which the transferor must recapture the credit (if claimed). The transferee may treat the amount paid to the transferor as a payment for construction of the property to the extent that (A) it is properly includible in the basis of the property, (B) the taxpayer can show the amount is attributable to construction costs paid or chargeable to capital account after physical work on construction of the property began, and (C) it does not exceed the amount by which the transferor has increased qualified investment for qualified progress expenditures incurred with respect to the property (or would have increased qualified investment if the transferor had made an election under

section 46(d)), plus an amount that would have been treated as a qualified progress expenditure by the transferor had the property not been transferred.

Once the status of the property as self-constructed property or non-self-constructed property in the hands of the transferee has been determined, all rules governing that type of property apply in determining the amount of the credit for qualified progress expenditures allowed to the transferee for that property. For example, the transferred property must have a normal construction period of two years or more in the hands of the transferee. Also, if the property is non-self-constructed property in the hands of the transferee, the transferee's expenditures with respect to the property (including the amounts paid to the transferor that are treated as amounts paid for construction) are subject to the limitations of section 46(d)(3)(B) (relating to actual payment and progress in construction). In the case of non-self-constructed property, however, the transferee determines the limitations of section 46(d)(3)(B) using the normal construction period of the transferor.

**Executive Order 12291 and Regulatory Flexibility Act**

The Commissioner of Internal Revenue has determined that this final order is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The Internal Revenue Service had concluded that the final regulations contained herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

**Paperwork Reduction Act**

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

**Drafting Information**

The principal author of these final regulations is Michel A. Dazé of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

**List of Subjects**

*26 CFR 1.0–1—1.58–8*

Income taxes, Tax liability, Tax rates, Credits.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Adoption of amendments to the regulations**

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

## PART 601—[AMENDED]

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

**Authority:** 26 U.S.C. 7805. * * * Section 1.46–5 also issued under 26 U.S.C. 46(d)(6) and 26 U.S.C. 47(a)(3)(C).

**Par. 2.** Section 1.46–1 is amended by adding at the end of paragraph (g) a new paragraph (g)(6) and by adding at the end of paragraph (n) new examples (6) and (7) to read as set forth below.

**§ 1.46–1 Determination of amount.**

* * * * *

(g) *Transitional rule for regular and ESOP credit.* * * *

(6) *Qualified progress expenditures.* For progress expenditure property that is constructed, reconstructed, or erected by the taxpayer within the meaning of § 1.48–2(b), the ten-percent credit applies in the year the property is placed in service to the portion of the qualified investment that remains after reduction for qualified progress expenditures under section 46(c)(4), but only to the extent that the remaining qualified investment is attributable to construction, reconstruction, or erection after January 21, 1975. For progress expenditure property that is acquired by the taxpayer (within the meaning of § 1.48–2(b)) after January 21, 1975, and placed in service after that date, the ten-percent credit applies in the year the property is placed in service to the entire portion of qualified investment that remains after reduction for qualified progress expenditures.

* * * * *

(n) *Examples.* * * *

*Example (6)* (i) Corporation X, a calendar year taxpayer, constructs a ship on which it begins construction on January 1, 1973, and which, when placed in service on December 31, 1980, has a basis of $450,000. Of that amount $100,000 is attributable to construction before January 22, 1975. X makes an election under section 46(d) (qualified progress expenditures) for taxable years after 1975.

(ii) For 1976, 1977, 1978, and 1979, qualified progress expenditures total $200,000. The ten-percent credit applies to those expenditures.

(iii) For 1980, qualified investment for the ship is $450,000. Under section 46(c)(4), X must reduce this amount by $200,000, the amount of qualified progress expenditures taken into account. The ten-percent credit applies to the portion of the remaining qualified investment attributable to construction after January 21, 1975 ($150,000). The seven-percent credit applies to the portion of qualified investment attributable to construction before January 22, 1975 ($100,000).

*Example (7).* (i) Corporation Y agrees to build a ship for Corporation X, which uses the calendar year. In 1973, Y begins construction of the ship which X acquires and places in service on December 31, 1980. X makes an election under section 46(d) for taxable years after 1974. The contract price is $400,000.

(ii) For 1975, 1976, 1977, 1978, and 1979, qualified progress expenditures total $250,000. The ten-percent credit applies to those expenditures.

(iii) For 1980, qualified investment for the ship is $400,000, which is the contract price. X must reduce qualified investment by $250,000, the amount of qualified progress expenditures. The ten-percent credit applies to the $150,000 of qualified investment that remains after reduction for qualified progress expenditures.

* * * * *

**Par. 3.** Section 1.46–3 is amended by adding a new sentence at the end of paragraph (a)(1) to read as follows:

**§ 1.46–3 Qualified investment.**

(a) *In general.* * * *

(1) * * * *See* § 1.46–5 for special rules for progress expenditure property.

* * * * *

**Par. 4.** A new § 1.46–5 is added immediately after § 1.46–4 to read as follows:

**§ 1.46–5 Qualified progress expenditures.**

(a) *Effective date.* This section applies to taxable years ending after December 31, 1974. This section reflects amendments to the Internal Revenue Code made only by the Tax Reduction Act of 1975, the Tax Reform Act of 1976, and the Revenue Act of 1978.

(b) *General rule.* Under section 46(d), a taxpayer may elect to take the investment credit for qualified progress expenditures (as defined in paragraph (g) of this section). In general, qualified progress expenditures are amounts paid (paid or incurred in the case of self-constructed property) for construction of progress expenditure property. The taxpayer must reasonably estimate that the property will take at least 2 years to construct and that the useful life of the property will be 7 year or more. Qualified progress expenditures may not

be taken into account if made before the later of January 22, 1975, or the first taxable year to which an election under section 46(d) applies. In general, qualified progress expenditures are not allowed for the year property is placed in service, nor for the first year or any subsequent year recapture is required under section 47(a)(3). There is a percentage limitation on qualified progress expenditures for taxable years beginning before January 1, 1980. For a special rule relating to transfers of progress expenditure property, see paragraph (r) of this section.

(c) *Reduction of qualified investment.* Under section 46(c)(4), a taxpayer must reduce qualified investment for the year property is placed in service by qualified progress expenditures taken into account by that person or a predecessor. A "predecessor" of a taxpayer is a person whose election under section 46(d) carries over to the taxpayer under paragraph (o)(3) of this section.

(d) *Progress expenditure property.* Progress expenditure property is property constructed by or for the taxpayer, with a normal construction period of 2 years or more. The taxpayer must reasonably believe that the property will be new section 38 property with a useful life of 7 years or more when placed in service. Whether property is progress expenditure property is determined on the basis of facts know at the close of the taxable year of the taxpayer in which construction begins (or, if later, at the close of the first taxable year to which an election under section 46(d) applies). For purposes of this paragraph (d), property is constructed by or for the taxpayer only if it is built or manufactured from materials and component parts. Accordingly, progress expenditure property does not include property such as orchards, vineyards, livestock, or motion picture films or videotapes.

(e) *Normal construction period*—(1) *In general.* (i) The normal construction period is the period the taxpayer reasonably expects will be required to construct the property. The period begins on the date physical work on construction of the property commences and ends on the date the property is available to be placed in service. The normal construction period does not include, however, construction before January 22, 1975, nor construction before the first day of the first taxable year for which an election under section 46(d) is in effect. Physical work on construction of property does not include preliminary activities such as planning, designing, preparing blueprints, exploring, or securing financing.

(ii) The determination of the time when physical work on construction commences is based on the facts and circumstances of each case. Physical work on construction of property may include the physical work done by a subcontractor on a component specifically designated as part of the property. Also, the commencement of physical work on construction may occur at a site different from the main site of construction of the property. For example, if a shipyard orders a turbine before it begins work on building a ship, the normal construction period of the ship is measured from the time the subcontractor commences physical work on construction of the turbine (if it is normal for such work to precede the work of the main contractor).

(iii) Generally, physical work on construction does not include physical activity that is not necessary to complete construction of the property, nor does it include physical work on construction of a building or other property that will not be new section 38 property when placed in service. Physical work on construction also does not include research and development activities in a laboratory or experimental setting.

(iv) The normal construction period of property ends on the date it is expected the property will be available to be placed in service. Property is considered available to be placed in service when construction is completed and the property is available for delivery to the site of its assigned function. It is not necessary that property be in a state of readiness for a specifically assigned function. Nor is it necessary that it actually be delivered to the site of its assigned function.

(2) *Estimates.* Taxpayers should refer to normal industry practice in estimating the normal construction period of particular items. A different period may be used if special circumstances exist making it impractical to make the estimate on the basis of normal industry practice. The estimate must be based on information available at the close of the taxable year in which physical work on construction of the property begins, or, if later, at the close of the first taxable year for which an election under section 46(d) is in effect for the taxpayer. If the estimate is reasonable when made, the actual time it takes to complete the work is, in general, irrelevant in determining whether property is progress expenditure property. However, if there is a significant error in estimating the normal construction period, it may be evidence that the estimate was unreasonable when made. For taxable years ending after April 1, 1988, a taxpayer not relying or normal industry practice to estimate the normal construction period of particular property must attach to the tax return for the taxable year in which physical work on construction of the property begins (or, if later, the first taxable year for which an election under section 46(d) is in effect) a statement of the basis relied upon in estimating the normal construction period of the property.

(3) *Integrated unit.* (i) In determining whether property has a normal construction period of 2 years or more, property that will be placed in service separately is to be considered separately. For example, if two ships are contracted for at the same time, each ship is considered separately under this paragraph. However, for property that will be placed in service as an integrated unit, the taxpayer must determine the normal construction period of the integrated unit. If the normal construction period of the integrated unit is 2 years or more, the normal construction period of each item of new section 38 property that is a part of the integrated unit is considered to be 2 years or more. Thus, the normal construction period of an integrated unit may be 2 years or more even if no part of the unit has a normal construction period of 2 years or more.

(ii) Property is part of an integrated unit only if the operation of that item is essential to the performance of the function to which the unit is assigned. Property essential to the performance of the function to which the unit is assigned includes property the use of which is significantly connected to that function and which effects the safe, proper, or efficient performance of the unit. Generally, property must be placed in service at the same time to be considered part of the same integrated unit. Properties are not an integrated unit, however, solely because they are to be placed in service at the same time.

(iii) The normal construction period for an integrated unit begins on the date the normal construction period of the first item of new section 38 property that is part of the unit begins. It is not necessary that physical work commence at the main construction site of the integrated unit.

The period ends on the date the last item of new section 38 property that is part of that unit is available to be placed in service. Property that is not new section 38 property, such as a building, is not considered part of an integrated unit for purposes of determining the

normal construction period of that unit. For example, if a manufacturing plant has a normal construction period of two years or more but the equipment (*i.e.*, new section 38 property) to be installed in the plant has a normal construction period of less than two years, the plant and the equipment do not constitute an integrated unit with a construction period of two years or more and the equipment is not progress expenditure property.

(4) *Examples.* The following examples illustrate this paragraph (e).

*Example (1).* On July 1, 1974, corporation X begins physical work on construction of a machine with an estimated useful life when placed in service of more than 7 years. For its taxable year ending June 30, 1975, X makes an election under section 46(d). For purposes of determining on June 30, 1975, whether the machine is "progress expenditure property", the normal construction period is treated as having begun on January 22, 1975. Thus, the machine will be considered to be progress expenditure property on June 30, 1975, only if the estimated time required to complete construction after June 30 is at least 18 months and 22 days (*i.e.*, 2 years less the period January 22, 1975, through June 30, 1975).

*Example (2).* (i) Corporation X constructs a pipeline in two sections and simultaneously begins physical work on construction of each section on January 1, 1976. One section extends from city M to city N. The other extends from city N to city O. Oil will be transferred to storage tanks at both city N and city O. Corporation X also begins construction on January 1, 1976, of a pumping station necessary to the operation of the pipeline from city M to city N. Construction of a pumping station necessary to the operation of the pipeline from city N to city O begins on June 30, 1977. For 1976, corporation X makes an election under section 46(d).

(ii) The section of pipeline from city M to city N and the associated pumping station will be available to be placed in service on January 1, 1977. Construction of the section of the pipeline from city N to city O will be completed on June 30, 1977. However, that section of the pipeline will not be available to be placed in service until completion of the associated pumping station on January 1, 1978.

(iii) The section of pipeline from city M to city N and the section from city N to city O must be considered separately in determining the normal construction period of the property. Each section will be placed in service separately. However, each section of the pipeline and the associated pumping station may be considered an integrated unit. The pumping stations are essential to the operation of each section of pipeline. Each section of pipeline and the associated pumping station are placed in service at the same time.

(iv) The section of pipeline from city M to city N and the associated pumping station are not progress expenditure property, because the normal construction period of that unit is only 1 year (January 1, 1976 to January 1, 1977).

(v) The section of pipeline from city N to city O and the associated pumping station are progress expenditure property, because the normal construction of that integrated unit is 2 years (January 1, 1976 to January 1, 1978). It is immaterial that neither the construction period of that section of pipeline (January 1, 1976 to June 30, 1977) nor the construction period of the associated pumping station (June 30, 1977 to January 1, 1978) is 2 years.

(vi) Assume the pumping station associated with the pipeline from city N to city O includes backup pumping equipment that will be used only if the primary pumping equipment fails. The backup equipment is part of the integrated unit because it serves to effect the safe or efficient performance of the unit.

(f) *New section 38 property with a 7-year useful life*—(1) *In general.* The taxpayer must determine if property will be new section 38 property with a useful life of 7 years or more when placed in service. The determination must be made at the close of the taxable year in which construction begins or, if later, at the close of the first taxable year to which an election under section 46(d) applies for the taxpayer.

(2) *Determination based on reasonably expected use.* The determination of whether property will be "new section 38 property" (within the meaning of §§ 1.48–1 and 1.48–2 when placed in service must be based on the reasonably expected use of the property by the taxpayer. There is a presumption that property will be new section 38 property if it would be new section 38 property if placed in service by the taxpayer when the determination is made. For example, in determining if property is an integral part of manufacturing under section 48(a)(1)(B)(i), it will be presumed that property will be new section 38 property if the taxpayer is engaged in manufacturing when the determination is made. Also, significant steps taken to establish a trade or business will be evidence the taxpayer will be engaged in that trade or business when the property is placed in service.

(3) *Estimated useful life.* The determination of whether property will have an estimated useful life of 7 years or more when placed in service must be made by applying the principles of § 1.46–3(e). If the estimated useful life is less than 7 years when the property is actually placed in service, the credit previously allowed under section 46(d) must be recomputed under section 47(a)(3)(B).

(g) *Definition of qualified progress expenditures*—(1) *In general.* A taxpayer's qualified progress expenditures are the sum of qualified progress expenditures for self-constructed property (determined under paragraph (h) of this section), plus qualified progress expenditures for non-self-constructed property (determined under paragraph (j) of this section). Only amounts includible under § 1.46–3(c) in the basis of new section 38 property may be considered as qualified progress expenditures.

(2) *Excluded amounts.* Qualified progress expenditures do not include:

(i) In the case of non-self-constructed property, amounts incurred (whether or not paid)—

(A) Before the normal construction period begins, or

(B) Before the later of January 22, 1975, or the first day of the first taxable year for which an election under section 46(d) applies for the taxpayer;

(ii) In the case of self-constructed property, amounts chargeable to capital account—

(A) Before the normal construction period begins, or

(B) Before the later of January 22, 1975, or the first day of the first taxable year for which an election under section 46(d) applies for the taxpayer.

(See, however, section 46(d)(4)(A) and paragraph (h)(3)(i) of this section, relating to the time when amounts for component parts and materials are properly chargeable to capital account);

(iii) Expenditures with respect to particular property in the earlier of—

(A) The taxable year in which the property is placed in service, or

(B) The taxable year in which the taxpayer must recapture investment credit under section 47(a)(3) for the property or any subsequent year;

(iv) Expenditures for construction, reconstruction, or erection of property that is not section 38 property; or

(v) Amounts treated as an expense and deducted in the year paid or accrued.

(h) *Qualified progress expenditures for self-constructed property*—(1) *In general.* Qualified progress expenditures for self-constructed property (as defined in paragraph (k) of this section) are amounts properly chargeable to capital account in connection with that property. In general, amounts paid or incurred are chargeable to capital account if under the taxpayer's method of accounting they are properly includible in computing basis under § 1.46–3. Qualified progress expenditures for self-constructed property include both direct costs (*e.g.*, labor, material, parts) and indirect costs (*e.g.*, overhead, insurance) associated with construction of property to the extent those costs are properly chargeable to capital account.

(2) *Property partially non-self constructed.* If an item of property is self-constructed because more than half of the construction expenditures are made directly by the taxpayer, then any expenditures (whether or not made directly by the taxpayer) for construction of that item of property are not subject to the limitations of section 46(d)(3)(B) and paragraph (j) of this section (relating to actual payment and progress in construction).

(3) *Time when amounts paid or incurred are properly chargeable to capital account.* (i) In general, expenditures for component parts and materials to be used in construction of self-constructed property are not properly chargeable to capital account until consumed or physically attached in the construction process. Component parts and materials that have been neither consumed nor physically attached in the construction process, but which have been irrevocably allocated to construction of that property are properly chargeable to capital account. Component parts and materials designed specifically for the self-constructed property may be considered irrevocably allocated to construction of that property at the time of manufacture of the component parts and materials. Component parts and materials not designed specifically for the property may be considered irrevocably allocated to construction at the time of delivery to the construction site if they would be economically impractical to remove. For example, pumps delivered to sites of construction of a tundra pipeline may be treated as irrevocably allocated to that pipeline on the date of delivery, even if they would be usable, but for their location on the tundra, in connection with other property. Component parts and materials are not to be considered irrevocably allocated to use in self-constructed property until physical work on construction of that property has begun (as determined under paragraph (e)(1)(ii) of this section). Mere bookkeeping notations are not sufficient evidence that the necessary allocation has been made.

(ii) A taxpayer's procedure for determining the time when an expenditure is properly chargeable to capital account for self-constructed property is a method of accounting. Under section 446(e), the method of accounting, once adopted, may not be changed without consent of the Secretary.

(4) *Records requirement.* The taxpayer shall maintain detailed records which permit specific identification of the amounts properly chargeable by the taxpayer during each taxable year to capital account for each time of self-constructed property.

(i) [Reserved].

(j) *Qualified progress expenditures for non-self-constructed property*—(1) *In general.* Qualified progress expenditures for non-self-constructed property (as defined in paragraph (l) of this section) are amounts actually paid by the taxpayer to another person for construction of the property, but only to the extent progress is made in construction. For example, such expenditures may include payments to the manufacturer of an item of progress expenditure property, payments to a contractor building progress expenditure property, or payments for engineering designs or blueprints that are drawn up during the normal construction period.

(2) *Property partially self-constructed.* If an item of property is non-self-constructed, but a taxpayer uses its own employees to construct a portion of the property, expenditures for construction of that portion are made directly by the taxpayer (see § 1.46–5(h)(1)). Subject to the limitations of paragraph (g) of this section, those expenditures are qualified progress expenditures for non-self-constructed property if they satisfy the requirements of paragraph (j) (4), (5), and (6) of this section. Wages actually paid to the taxpayer's employees are presumed to correspond to progress in construction. Other amounts, including expenditures for materials, parts, and overhead, must be actually paid, not borrowed from the payee, and attributable to progress made in construction by the taxpayer.

(3) *Property constructed by more than one person.* The percentage of completion limitation (as prescribed in paragraph (j)(6) of this section), including the presumption of ratable progress in construction, applies to an item of progress expenditure property as a whole. However, if several manufacturers or contractors do work in connection with the same property, the progress that each person makes toward completion of construction of the property must be determined separately. Section 46(d)(3)(B) is then applied separately to amounts paid to each manufacturer or contractor based on each person's progress in construction. For example, assume the taxpayer contracts with three persons to build an item of equipment. The taxpayer contracts with A to build the frame, B to build the motor, and C to assemble the frame and motor. Assume each contract represents 33⅓ percent of the construction costs of the property. If, within the taxable year in which construction begins, A and B each complete 50 percent of the construction of the frame and motor, respectively, amounts paid to A during that taxable year not in excess of 16⅔ percent of the overall cost of the property, and amounts paid to B during that taxable year not in excess of 16⅔ percent of the overall cost of the property, are qualified progress expenditures. Section 46(d)(3)(B) does not apply, however, to persons, such as lower-tier subcontractors, that do not have a direct contractual relationship with the taxpayer. If, in the above example, A engages a subcontractor to construct part of the frame, section 46(d)(3)(B) is applied only to amounts paid by the taxpayer to A, B, and C, but the portion of construction completed by A during a taxable year includes the portion completed by A's subcontractor.

(4) *Requirement of actual payment.* Qualified progress expenditures for non-self-constructed property must be actually paid and not merely incurred. Amounts paid during the taxable year to another person for construction of non-self-constructed property may be in the form of money or property (*e.g.*, materials). However, property given as payment may be considered only to the extent it will be includible under § 1.46–3(c) in the basis of the non-self-constructed property when it is placed in service.

(5) *Certain borrowing disregarded.* Qualified progress expenditures for non-self-constructed property do not include any amount paid to another person (the "payee") for construction if the amount is paid out of funds borrowed directly or indirectly from the payee. Amounts borrowed directly or indirectly from the payee by any person that is related to the taxpayer (within the meaning of section 267) or that is a member of the same controlled group of corporations (as defined in section 1563(a)) will be considered borrowed indirectly from the payee. Similarly, amounts borrowed under any financing arrangement that has the effect of making the payee a surety will be considered amounts borrowed indirectly by the taxpayer from the payee.

(6) *Percentage of completion limitation.* (i) Under section 46(d)(3)(B)(ii), payments made in any taxable year may be considered qualified progress expenditures for non-self-constructed property only to the extent they are attributable to progress made in construction (percentage of completion limitation). Progress will generally be measured in terms of the manufacturer's incurred cost, as a fraction of the anticipated cost (as

adjusted from year to year). Architectural or engineering estimates will be evidence of progress made in construction. Cost accounting records also will be evidence of progress. Progress will be presumed to occur not more rapidly than ratably over the normal construction period. However, the taxpayer may rebut the presumption by clear and convincing evidence of a greater percentage of completion.

(ii) If, after the first year of construction, there is a change in either the total cost to the taxpayer or the total cost of construction by another person, the taxpayer must recompute the percentage of completion limitation on the basis of revised cost. However, the recomputation will affect only amounts allowed as qualified progress expenditures in the taxable year in which the change occurs and in subsequent taxable years. The recomputation remains subject to the presumption of pro rata completion.

(iii) If, for any taxable year, the amount paid to another person for construction of an item of property under section 46(d)(3)(B)(i) exceeds the percentage of completion limitation in section 46(d)(3)(B)(ii), the excess is treated as an amount paid to the other person for construction for the succeeding taxable year. If for any taxable year the percentage of completion limitation for an item of property exceeds the amount paid to another during the taxable year for construction, the excess is added to the percentage of completion limitation for that property for the succeeding taxable year.

(iv) The taxpayer must maintain detailed records which permit specific identification of the amounts paid to each person for construction of each item of property and the percentage of construction completed by each person for each taxable year.

(7) *Example.* The following example illustrates paragraph (j)(6) of this section.

*Example.* (i) Corporation X agrees to build an airplane for corporation Y, a calendar year taxpayer. The airplane is non-self-constructed progress expenditure property. Physical work on construction begins on January 1, 1980. The normal construction period for the airplane is five years and the airplane is delivered and placed in service on December 31, 1984.

(ii) The cost of construction to corporation X is $500,00. The contract price is $550,000. Corporation Y makes a $110,000 payment in each of the years 1980 and 1981, an $85,000 payment in 1982, a $135,000 payment in 1983, and a $110,000 payment in 1984.

(iii) For 1980, corporation Y makes an election under section 46(d). Progress is presumed to occur ratably over the 5-year construction period, which is 20 percent in each year. Twenty percent of the contract price is $110,000. The percentage of completion limitation for each year, thus, is $110,000.

(iv) For each of the years 1980 and 1981, the $110,000 payments may be treated as qualified progress expenditures. The payments equal the percentage of completion limitation.

(v) For 1982, the $85,000 payment may be treated as a qualified progress expenditure, because it is less than the percentage of completion limitation. The excess of the percentage of completion limitation ($110,000) over the 1982 payment ($85,000) is added to the percentage of completion limitation for 1983. One hundred and ten thousand dollars minus $85,000 equals $25,000. Twenty-five thousand dollars plus $110,000 equals $135,000, which is the percentage of completion limitation for 1983.

(vi) For 1983, the entire $135,000 payment may be treated as a qualified progress expenditure. The payment equals the percentage of completion limitation for 1983.

(vii) For 1984, no qualified progress expenditures may be taken into account, because the airplane is placed in service in that year.

(viii) See example (2) of paragraph (r)(4) of this section for the result if Y sells its contract rights to the property on December 31, 1982.

(k) *Definition of self-constructed property*—(1) *In general.* Property is self-constructed property if it is reasonable to believe that more than half of the construction expenditures for the property will be made directly by the taxpayer. Construction expenditures made directly by the taxpayer include direct costs such as wages and materials and indirect costs such as overhead attributable to construction of the property. Expenditures for direct and indirect costs of construction will be treated as construction expenditures made directly by the taxpayer only to the extent that the expenditures directly benefit the construction of the property by employees of the taxpayer. Thus, wages paid to taxpayers's employees and expenditures for basic construction materials, such as sheet metal, lumber, glass, and nails, which are used by employees of the taxpayer to construct progress expenditure property, will be considered made directly by the taxpayer. Construction expenditures made by the taxpayer to a contractor or manufacturer, in general, will not be considered made directly by the taxpayer. Thus, the cost of component parts, such as boilers and turbines, which are purchased and merely installed or assembled by the taxpayer, will not be considered expenditures made directly by the taxpayer for construction. (*See* paragraph (h)(3) of this section to determine when such cost is properly chargeable to capital account.)

(2) *Time when determination made.* The determination of whether property is self-constructed is to be made at the close of the taxable year in which physical work on construction of the property begins, or, if later, the close of the first taxable year to which an election under this section applies. Once it is reasonably estimated that more than half of construction expenditures will be made directly by the taxpayer, the fact the taxpayer actually makes half, or less than half, of the expenditures directly will not affect classification of the property as self-constructed property. Similarly, once a determination has been made, classification of property as self-constructed property is not affected by a change in circumstances in a later taxable year. However, a significant error unrelated to a change in circumstances may be evidence that the estimate was unreasonable when made.

(3) *Determination based on certain expenditures.* For purposes of determining whether more than half of the expenditures for construction of an item of property will be made directly by the taxpayer, the taxpayer may take into account only expenditures properly includable by the taxpayer in the basis of the property under the provisions of § 1.46–3(c). Thus, property is self-constructed property only if more than half of the estimated basis of the property to be used for purposes of determining the credit allowed by section 38 is attributable to expenditures made directly by the taxpayer.

(l) *Definition of non-self-constructed property.* Non-self-constructed property is property that is not self-constructed property. Thus, property is non-self-constructed property if it is reasonable to believe that only half, or less than half, of the expenditures for construction will be made directly by the taxpayer.

(m) *Alternative limitations for public utility, railroad, or airline property.* The alternative limitations on qualified investment under section 46(a) (7) and (8) for public utility, railroad, or airline property (whichever applies) apply in determining the credit for qualified progress expenditures. The determination of whether progress expenditure property will be public utility, railroad, or airline property (whichever applies) when placed in service must be made at the close of the taxable year in which physical work on construction begins or, if later, at the close of the first taxable year for which an election under section 46(d) is in effect. If, at that time, the taxpayer is in

a trade or business as a public utility, railroad, or airline (as described in section 46(c)(3)(B) and 46(a)(8) (D) and (E), respectively), it is evidence the property will be public utility, railroad, or airline property when placed in service.

(n) *Leased property.* A lessor of progress expenditure property may not elect under section 48(d) to treat a lessee (or a person who will be a lessee) as having made qualified progress expenditures.

(o) *Election*—(1) In *general.* The election under section 46(d)(6) to increase qualified investment by qualified progress expenditures may be made for any taxable year ending after December 31, 1974. Except as provided in paragraph (o)(2) of this section, the election is effective for the first taxable year for which it is made and for all taxable years thereafter unless it is revoked with the consent of the Commissioner. Except as provided in paragraphs (o) (2) and (3) of this section, the election applies to all qualified progress expenditures made by the taypayer during the taxable year for construction of any progress expenditure property. Thus, the taxpayer may not make the election for one item of progress expenditure property and not for other items. If progress expenditure property is being constructed by or for a partnership, S corporation (as defined in section 1361(a)), trust, or estate, an election under section 46(d)(6) must be made separately by each partner or shareholder, or each beneficiary if the beneficiary, in determining his tax liability, would be allowed investment credit under section 38 for property subject to the election. The election may not be made by a partnership or S corporation, and may be made by a trust or estate only if the trust or estate, in determining its tax liability, would be allowed investment credit under section 38 for property subject to the election. The election of any partner, shareholder, beneficiary, trust, or estate will be effective for that person, even if a related partner, shareholder, beneficiary, trust, or estate does not make the election. An election made by a partner, shareholder, beneficiary, trust, or estate applies to all progress expenditure property of that person. For example, an election made by corporation X, which is a partner in the XYZ partnership, applies to progress expenditure property the corporation holds in its own capacity and also to its interest in progress expenditure property of the partnership.

(2) *Time and manner of making election.* An election under section 46(d)(6) must be made on Form 3468 and filed with the original income tax return for the first taxable year ending after December 31, 1974 to which the election will apply. An election made before March 2, 1988, by filing a written statement (whether or not attached to the income tax return) will be considered valid. The election may not be made on an amended return filed after the time prescribed for filing the original return (including extensions) for that taxable year. However, an election under this section may be made or revoked by filing a statement with an amended return filed on or before May 31, 1988, if the due date for filing a return for the first taxable year to which the election applies is before May 31, 1988.

(3) *Carryover of election in certain transactions.* In general, and election under section 46(d)(6) does not carry over to the transferee of progress expenditure property (or an interest therein). However, if under section 47(b) the property does not cease to be progress expenditure property because of the transfer, the election will carry over to the transferee. If so, the election will apply only to the property transferred. For rules relating to the determination of qualified progress expenditures of the transferee, see paragraph (r) of this section.

(p) *Partnerships, S corporations, trusts, or estates*—(1) *In general.* Each partner, shareholder, trust estate, or beneficiary of a trust or estate that makes an election under section 46(d) shall take into account its share of qualified progress expenditures (determined under paragraph (p)(2) of this section) made by the partnership, S corporation, trust, or estate. In determining qualified investment for the year in which the property is placed in service, the basis of the property is apportioned as provided in §§ 1.46–3(f), 1.48–6, or 1.48–5 (whichever applies). Each partner, shareholder, trust, estate, or beneficiary that made the election must reduce qualified investment under section 46(c)(4) for the year the property is placed in service by qualified progress expenditures taken into account by that person.

(2) *Determination of share of qualified progress expenditures.* The share of qualified progress expenditures of each partner, shareholder, trust, estate, or beneficiary that makes an election under section 46(d) must be determined in accordance with the same ratio used under §§ 1.46–3(f)(2), 1.48–5(a)(1), or 1.48–6(a)(1) (whichever applies) to determine its share of basis (or cost). The last sentence of § 1.46–3(f)(2)(i) must be applied by referring to the date on which qualified progress expenditures are paid or chargeable to capital amount (whichever is applicable).

(3) *Examples.* The followng examples illustrate this paragraph (p).

*Example (1).* (i) Corporation X contracts to build a ship for partnership AB that qualifies as progress expenditure property. The contract price is $100,000. Physical work on construction of the ship begins on January 1, 1980. The ship is placed in service on December 31, 1983.

(ii) The AB partnership reports income on the calendar year basis. Partners A and B share profits equally. For A's taxable year ending December 31, 1980, A makes an election under section 46(d) B does not make the election.

(iii) For each of the years 1980, 1981, 1982, and 1983, the AB partnership makes $25,000 payments to corporation X. The payments made in 1980, 1981, and 1982 are qualified progress expenditures. The 1983 payment is not a qualified progress expenditure, because the ship is placed in service in that year.

(iv) For each of the years 1980, 1981, and 1982, A may take into account qualified progress expenditures of $12,500 because A had a 50 percent partnership interest in each of those years.

(v) For 1983, qualified investment for the ship is $100,000. A and B's share are $50,000 each, because each had a 50 percent partnership interest in 1983. However, A must reduce its $50,000 share for 1983 by $37,500, the amount of qualified progress expenditures taken into account by A. B's share is not reduced, because B did not take into account qualified progess expenditures.

*Example (2).* (i) The facts are the same as in example (1) except that on June 30, 1983, the partnership agreement is amended to admit a new partner, C. The partners agree to share profits equally. There is no special allocation in effect under section 704 with respect to the ship.

(ii) For each of the years 1980, 1981, and 1982, A may take into account qualified progress expenditures of $12,500 because A has a 50 percent partnership interest in those years.

(iii) For 1983, A, B, and C's share of qualified investment is $33,333 each, because each had a 33⅓ percent partnership interest in that year. A must reduce its share to zero, because it look $37,500 into account as qualified progress expenditures. In addition, the excess of the $37,500 over the $33,333 applied as a reduction is subject to recapture under section 47(a)(3)(B). B and C's shares are not reduced, because neither taxpayer took into account qualified progress expenditures.

(q) *Limitation on qualified progress expenditures for taxable years beginning before 1980*—(1) *In general.* (i) Under section 46(d)(7), qualified progress expenditures for any taxable year beginning before January 1, 1980, are limited. The taxpayer must apply the limitation under section 46(d)(7) on an item by item basis. In general, the taxpayer

may take into account the applicable percentage (as determined under the table in section 46(d)(7)(A)) of qualified progress expenditures for each of those years. In addition, the taxpayer may take into account for each of those years 20 percent of qualified investment for each of the preceding taxable years determined without applying the limitations of section 46(d)(7).

(ii) The applicable percentage under section 46(d)(7)(A) may be applied only for one taxable year that ends within a calendar year in determining qualified investment for an item of progress expenditure property. For example, calendar year partners of a calendar year partnership may increase qualified investment for 1976 by 20 percent of qualified progress expenditures made in 1975 for an item of property. If the partnership incorporates in 1976 and the taxable year of the corporation begins on July 1, 1976, and ends on June 30, 1977, qualified investment of the corporation for its taxable year beginning on July 1, 1976, cannot be increased by 20 percent of the 1975 expenditure.

(2) *Example.* The following example illustrates this paragraph (q).

*Example.* (i) Corporation X contracts with A on January 1, 1976, to build an electric generator that qualifies as non-self-constructed progress expenditure property. A will build the generator at a cost of $125,000. Corporation X agrees to pay A $150,000. Corporation X reports income on the calendar year basis. Corporation X makes an election under section 46(d) for 1976. Physical work on construction begins on January 1, 1976. Corporation X makes payments of $30,000 to A for construction of the generator in each of the years 1976, 1977, 1978, 1979, and 1980. A incurs a cost of $25,000 in each of those years for construction of the property. The property is placed in service in 1980.

(ii) For 1976, X may increase qualified investment by $12,000, 40 percent of the payment made in 1976.

(iii) For 1977, corporation X may increase qualified investment by $24,000. Eighteen thousand dollars of that amount is 60 percent of the 1977 payment. The remaining $6,000 is 20 percent of the $30,000 payment made in 1976.

(iv) For 1978, corporation X may increase qualified investment by $36,000. Twenty-four thousand dollars of that amount is 80 percent of the 1978 payment. The remaining $12,000 is 20 percent of the $30,000 payment made in 1976, plus 20 percent of the $30,000 payment made in 1977.

(v) For 1979, corporation X may increase qualified investment by $48,000. Thirty thousand dollars of that amount is 100 percent of the 1979 payment. The remaining $18,000 of that amount is 20 percent of the $30,000 payments made in each of the years 1976, 1977, and 1978.

(vi) Qualified investment for corporation X for 1980 is $30,000. The $30,000 is the basis (or cost) of the generator ($150,000), reduced by qualified progress expenditures allowed with respect to that property ($120,000).

(r) *Special rules for transferred property*—(1) *In general.* A transferee of progress expenditure property (or an interest therein) may take into account qualified progress expenditures for the property only if—

(i) The property is progress expenditure property in the hands of the transferee, and

(ii) The transferee makes an election under section 46(d) or the election made by the transferor (or its predecessor) carries over to the transferee under paragraph (o)(3) of this section.

(2) *Status as progress expenditure property.* (i) If the transfer requires recapture under section 47(a)(3) and § 1.47–1(g) (or would require recapture if the transferor had made an election under section 46(d)), then—

(A) For purposes of determining if the property is progress expenditure property in the hands of the transferee, the normal construction period for the property begins on the date of the transfer, or, if later, on the first day of the first taxable year for which the transferee makes an election under section 46(d), and

(B) For purposes of determining whether the property is self-constructed or non-self-constructed in the hands of the transferee, the amount paid or incurred for the transfer of the property will not be considered a construction expenditure made directly by the transferee.

(ii) If the transfer does not require recapture under section 47(a)(3) and § 1.47–1(g), and the election carries over to the taxpayer under paragraph (o)(3) of this section, the property does not lose its status as progress expenditure property because of the transfer.

(3) *Amount of qualified progress expenditures for transferee.* (i) If the transfer does not require recapture under section 47(a)(3) and § 147–1(g), and the election carries over to the taxpayer under paragraph (o)(3) of this section, the transferee must determine its qualified progress expenditures—

(A) By using the same normal construction period used by the transferor,

(B) By treating the property as having the same status as self-constructed or non-self-constructed as the property had in the hands of the transferor, and

(C) In the case of non-self-constructed property, by taking into account any excess described in section 46(d)(4)(C)(i) (relating to the excess of payments over the percentage-of-completion limitation) or section 46(d)(4)(C)(ii) (relating to the excess of the percentage-of-completion limitation over the amount of payments) that the transferor would have taken into account with respect to that property.

(ii) If the transfer requires recapture under section 47(a)(3) and § 1.47–1(g) (or would require recapture if the transferor had made an election under section 46(d)), the amount paid or incurred for the transfer will be considered a payment for construction of that property to the extent that—

(A) It is properly includible in the basis of the property under § 1.46–3(c),

(B) The taxpayer can show the amount is attributable to construction costs paid or chargeable to capital account by the transferor or other person after physical work on construction of the property began, and

(C) It does not exceed the amount by which the transferor has increased qualified investment for qualified progress expenditures incurred with respect to the property (or would have increased qualified investment but for the "lesser of" limitation of section 46(d)(3)(B) or the absence of an election under section 46(d)), plus any amount that would have been treated as a qualified progress expenditure by the transferor had the property not been transferred.

Once the status of the property as self-constructed or non-self-constructed property in the hands of the transferee has been determined, all rules under this section for determining the amount of qualified progress expenditures for that type of property apply. For example, if the property is non-self-constructed in the hands of the transferee, amounts merely incurred (but not paid) for the transfer are not taken into account as qualified progress expenditures. Actual payment is necessary (see paragraph (j)(3) of this section). In applying section 46(d)(3)(B)(ii), the amount paid or incurred for the transfer (to the extent that it qualifies as a payment for construction under the first sentence of this paragraph (r)(3)(ii)) is considered to be part of the overall cost to the transferee of construction by another person, and the portion of construction which is completed during the taxable year is determined by taking into account construction that was completed before the constructed property was acquired by the transferee. If the transferee makes an election under section 46(d) and this section for the taxable year in which the transfer occurs, then for purposes of applying the presumption in section 46(d)(4)(D) that construction is deemed to occur not more rapidly than ratably over the normal construction period, the transferee's normal construction period is considered to have begun on the date on which physical work on construction of the acquired property began.

(4) *Examples.* The following examples illustrate this paragraph (r).

*Example (1).* Corporation X begins physical work on construction of progress expenditure property for corporation Y on January 1, 1976. Y accurately estimates a 3-year normal construction period and elects under section 46(d) on its return for its taxable year ending December 31, 1976. On January 1, 1978, Y sells the contract rights for construction of the property to corporation Z, which uses a fiscal year ending June 30. Qualified progress expenditures allowed to Y in 1976 and 1977 are subject to recapture under section 47(a)(3). Because Z's normal construction period for the property is less than 2 years (January 1, 1978 to January 1, 1979), the property is not progress expenditure property in Z's hands. Z may not elect progress expenditure treatment for the property.

*Example (2).* (i) Assume the same facts as in the example in paragraph (j)(7) of this section, except on, December 31, 1982, Y sells its contract rights to the property for $340,000 to corporation Z, which also uses the calendar year. Z pays Y the full $340,000 on that date. The property is still to be placed in service on December 31, 1984, and will not be available for placing in service at an earlier date. Z makes payments to X of $135,000 on December 31, 1983, and $110,000 on December 31, 1984.

(ii) The investment credit allowed Y in 1980 and 1981 for qualified progress expenditures is subject to recapture under section 47(a)(3) and Y may not treat its $85,000 payment in 1982 as a qualified progress expenditure.

(iii) For purposes of determining if the airplane is qualified progress expenditure property with respect to Z, the normal construction period for the property for Z begins on December 31, 1982, the date of transfer. Since the remaining construction period is two years, the property is progress expenditure property if it otherwise qualifies in Z's hands.

(iv) Only $305,000 of the $340,000 payment to Y can qualify as a qualified progress expenditure, because only that amount is attributable to construction costs paid by Y and does not exceed the sum of the amount by which Y increased qualified investment in 1980 and 1981 for qualified progress expenditures ($220,000) and the amount that Y would have treated as a qualified progress expenditure in 1982 ($85,000).

(v) Assume that Z cannot establish that progress in construction has been completed more rapidly than ratably. If Z makes an election under section 46(d) for 1982, then for purposes of applying the percentage of completion limitation, Z's normal construction period is considered to begin on January 1, 1980. Progress is presumed to occur ratably over the 5-year construction period, which is 20 percent in each year.

(vi) For 1982, Z may treat the full $305,000 as a qualified progress expenditure because it is less than the percentage of completion limitation, $330,000 ($110,000 a year for 1980, 1981, and 1982).

(vii) For 1983, Z may treat the entire $135,000 payment as a qualified progress expenditure, since it does not exceed the percentage of completion limitation for that year, $135,000 ($110,000 plus the $25,000 excess from 1982).

(viii) For Z's taxable year ending December 31, 1984, no qualified progress expenditures may be taken into account because the property is placed in service during that year.

**Par. 5.** Section 1.47–1 is amended by adding a new sentence at the end of paragraph (a)(1)(i) and by adding a new paragraph (g) to read as follows:

**§ 1.47–1 Recomputation of credit allowed by section 38.**

(a) *General rule*—(1) *In general.* (i) * * * For special rules relating to recomputation of credit allowed by section 38 if progress expenditure property (as defined in § 1.46–5(d)) ceases to be progress expenditure property with respect to the taxpayer, see paragraph (g) of this section.

* * * * *

(g) *Special rules for progress expenditure property.* Under section 47(a)(3), a recapture determination is required if property ceases to be progress expenditure property (as defined in § 1.46–5(d)). Property ceases to be progress expenditure property if it is sold or otherwise disposed of before it is placed in service. For example, cancellation of the contract for progress expenditure property or abandonment of the project by the taxpayer will be considered a "disposition" within the meaning of § 1.47–2. A cessation occurs if progress expenditure property ceases to be property that will be section 38 property with a useful life of 7 years or more when placed in service. In general, a sale and leaseback is treated as a cessation. However, see paragraph (g)(2) of § 1.47–3 for special rules for certain sale and leaseback transactions. Recapture determinations for progress expenditure property are to be made in a way similar to that provided under §§ 1.47–1 through 1.47–6. Reduction of qualified investment must begin with the most recent credit year (*i.e.*, the most recent taxable year the property is taken into account in computing qualified investment under § 1.46–3 or 1.46–5).

**Par. 6.** Section 1.47–3 is amended by designating the existing text of paragraph (g) as (g)(1), adding a heading for (g)(1), and by adding a new paragraph (g)(2). These new and revised provisions read as set forth below.

**§ 1.47–3 Exceptions to the application of § 1.47–1.**

* * * * *

(g) *Sale-and-leaseback transactions*—(1) *In general.* * * *

(2) *Special rule for progress expenditure property.* The sale and leaseback (or agreement or contract to leaseback) of progress expenditure property (including any contract rights to the property), in general, will be treated as a cessation described in section 47(a)(3)(A) with respect to the seller-lessee. However, a sale and leaseback (or agreement or contract to leaseback) will not be treated as a cessation to the extent qualified investment passed through to the lessee under section 48(d) in the year the property is placed in service equals or exceeds qualified progress expenditures for the property taken into account by the lessee. If a sale-leaseback transaction is treated as a cessation, qualified investment must be reduced and the credit recomputed, beginning with the most recent credit year (*i.e.*, the most recent year property is taken into account in computing qualified investment under § 1.46–3 or 1.46–5). The amount of the reduction is the amount, if any, by which qualified progress expenditures taken into account by the lessee in all prior years exceeds qualified investment passed through to the lessee under section 48(d). This paragraph (g)(2) does not apply to any progress expenditure property that has been placed in service by a vendor-lessee (as described in paragraph (g)(1) of this section) prior to a sale-leaseback of that property in a transaction described in paragraph (g)(1) of this section.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

**Par. 7.** The authority citation for Part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**§ 602.101 [Amended]**

**Par. 8.** Section 602.101 (c) is amended by inserting in the appropriate places in the table:

"§ 1.46–5 (e) (2)..... 1545–0155",
"§ 1.46–5 (h) (4)..... 1545–0155",
"§ 1.46–5 (j) (6) (iv)..... 1545–0155", and
"§ 1.46–5 (o) (2)..... 1545–0155".

**Lawrence B. Gibbs,**
*Commissioner of Internal Revenue.*

Approved: February 9, 1988.

**O. Donaldson Chapoton,**
*Assistant Secretary of the Treasury*

[FR Doc. 88–4451 Filed 3–1–88; 8:45 am]
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**26 CFR Part 41**

**[T.D. 8177]**

## Excise Tax on Use of Certain Highway Motor Vehicles; Reduction of Heavy Vehicle Use Tax for Foreign-Based Vehicles

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the imposition of the heavy vehicle use tax on foreign-based highway motor vehicles. Changes to the applicable law were made by the Surface Transportation and Uniform Relocation Assistance Act of 1987. The regulations affect owners of highway motor vehicles that have a base for registration purposes in a contiguous foreign country and provide them with the guidance needed to comply with the law.

**DATES:** The regulations are effective for taxable periods beginning after June 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** William A. Jackson of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T (LR–33–87) (202) 566–3287, not a toll-free call.

**SUPPLEMENTARY INFORMATION:**

### Background

On September 4, 1987, the **Federal Register** published a notice of proposed rulemaking proposing amendments to the Excise Tax Regulations (26 CFR Part 41) under sections 4481, 4483, 6001, and 6091 of the Internal Revenue Code of 1986 (Code) (52 FR 33602) by cross-reference to temporary regulations published the same day in the **Federal Register** (52 FR 33583). These amendments were proposed to conform the regulations to section 507 of the Highway Revenue Act of 1987 (Title V of the Surface Transportation and Uniform Relocation Assistance Act of 1987) (Pub. L. 100–17, 101 Stat. 260) which imposed the heavy vehicle use tax under section 4481 of the Code on foreign-based highway motor vehicles. The Internal Revenue Service did not receive any comments on the proposed regulations. No public hearing was requested or held. For this reason, the final regulations adopt the temporary regulations without any substantive changes.

### Special Analysis

It has been determined that this regulation will not have a significant impact on a substantial number of small entities. The number of small entities affected is minimal. Accordingly, these final regulations are not subject to the Regulatory Flexibility Act of 1980 (5 U.S.C. Chapter 6). The Commissioner of Internal Revenue has determined that this regulation is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

### Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. These regulations have been approved by OMB.

### Drafting Information

The principal author of these regulations is William A. Jackson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations both on matters of substance and style.

### List of Subjects in 26 CFR Part 41

Excise taxes, Motor vehicles.

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 41 is amended as follows:

**Paragraph 1.** The authority for Part 41 is amended by removing the citation for § 41.6001–3T, and adding the following citation:

**Authority:** 26 U.S.C. 7805. * * * Section 41.6001–3 also issued under 101 Stat. 260.

**Par. 2.** Temporary regulations § 41.4483–7T and § 41.6001–3T, as published on September 4, 1987, in 52 FR 33583, are adopted as final regulations; the new sections are redesignated as § 41.4483–7 and § 41.6001–3, respectively.

**Par. 3.** In paragraph(a)(2)(ii) of § 41.4481–1, the language "§ 4.4483–7T" is removed and the language "§ 41.4483–7" is added in its place.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

Approved: February 9, 1988.

**Donaldson Chapoton,**

*Assistant Secretary of the Treasury.*

[[FR Doc. 88–4448 Filed 3–1–88; 8:45 am]

**BILLING CODE 4830–01–M**

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## 26 CFR Part 51

**[T.D. 8185]**

## Excise Tax Regulations Under the Crude Oil Windfall Profit Tax Act of 1980; Newly Discovered Oil

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

**ACTION:** Final regulations.

**SUMMARY:** This document provides final excise tax regulations relating to the definition of the term "newly discovered oil" for purposes of the windfall profit tax. Changes to the applicable tax law were made by the Crude Oil Windfall Profit Tax Act of 1980, by the Economic Recovery Tax Act of 1981, and by the Tax Reform Act of 1986. The final requirements provide guidance on the requirements for the qualification of crude oil as newly discovered oil, as well as a definition of production in "commercial quantities" that affects the definition of property, the net income limitation on windfall profit, and the exemption for Alaskan oil.

**DATE:** The final regulations are effective with respect to all crude oil removed (or deemed removed) from the premises after February 29, 1980.

**FOR FURTHER INFORMATION CONTACT:** David R. Haglund of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–3297).

**SUPPLEMENTARY INFORMATION:**

### Background

On November 5, 1982, the **Federal Register** published proposed amendments to the Excise Tax Regulations Under the Crude Oil Windfall Profit Tax Act of 1980 (26 CFR Part 51) under sections 4988, 4991, and 4996 of the Internal Revenue Code of 1954 (47 FR 50306). The amendments were proposed to conform the regulations to section 101(a)(1) of the Crude Oil Windfall Profit Tax Act of 1980 (94 Stat. 230). A public hearing was held in April 12, 1983. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

### Explanation of Provisions

*Commercial Quantities—In General*

The Conference Committee Report accompanying the Crude Oil Windfall Profit Tax Act of 1980 (Rep. No. 817, 96th Cong., 2d Sess. 97–8 (1980)) stated that it was the intention of the Committee that the term "newly discovered oil" should include production from a property that did not produce crude oil in commercial quantities in calendar year 1978. The report stated that this included production from a property on which oil was produced in 1978 if that 1978 production was incident to the drilling of exploratory or test wells and was not part of continuous or commercial production.

The proposed regulations defined crude oil produced in "commercial

quantities" as any crude oil production (1) sold or exchanged or (2) retained for beneficial economic use by the operator or by any producer. However, crude oil produced incident to the drilling of an exploratory well (including a test well) was to be disregarded. The proposed regulations also provided that in no case would crude oil produced from a well after its casing, including the so-called "Christmas tree," had been installed be considered to be crude oil produced incident to such drilling.

Comments submitted with respect to the proposed rule pointed out that the rule did not conform to industry practices. In many instances installation of casing and a flow control device are required in order to comply with environmental and conservation practices, and such installation is not necessarily evidence of the termination of the "exploration" phase. As a result, the final regulations modify the position taken in the proposed regulations by adopting the rule stated in the conference report. Under this rule, the determination of each particular case is based solely on the facts and circumstances of that case.

*Commercial Quantities—Newly Discovered Oil*

For the purpose of defining the term "newly discovered oil," the Tax Reform Act of 1986 clarifies the "exploratory well" exception described in the Conference Committee Report accompanying the Crude Oil Windfall Profit Tax Act of 1980. The 1986 Act provides that the term "newly discovered oil" includes production from a property that produced crude oil in calendar year 1978 if (1) not more than 2,200 barrels was produced from the property in that year, and (2) no well on the property was in production for more than 72 hours during that year. For the purpose of this test, it is irrelevant whether or not the 1978 crude oil production was sold or exchanged, or was retained for beneficial economic use. Also, for the purpose of the second requirement of this test, a dual completion well is treated as two separate wells (*i.e.*, one well for each horizon). The final regulations incorporate this test.

*New Lease*

The proposed regulations provided that crude oil produced from a new lease on the Outer Continental Shelf would qualify as newly discovered oil. The term "new lease" was defined as a lease entered into on or after January 1, 1979, of submerged acreage that did not produce crude oil in commercial quantities in calendar year 1978. Consequently, the proposed regulations provided that a lease would be denied new lease status if any portion of its submerged acreage was included at any time during 1978 in a lease on the Outer Continental Shelf whose submerged acreage produced crude oil in commercial quantities in calendar year 1978. Some commentators urged that the final regulations should adopt the on-shore property rules and define the term "newly discovered oil" to include crude oil produced from new reservoirs on Outer Continental Shelf leases entered into before 1979.

The final regulations adopt the Outer Continental Shelf rules as proposed in the notice. Section 4991 (e) (2) provides that the term "newly discovered oil" has the meaning given to such term by the June 1979 energy regulations. Under the June 1979 energy regulations, the determination of whether or not Outer Continental Shelf production is treated as newly discovered oil is based entirely on the new lease concept. Unlike the commercial quantities rule, the committee reports did not indicate an intention to depart from the June 1979 energy regulations. Indeed, all references in the legislative history to Outer Continental Shelf production assume that the definition of newly discovered oil provided in the June 1979 energy regulations would remain unchanged in that regard. Consequently, the final regulations provide that newly discovered oil produced from the Outer Continental Shelf is classified only on a lease basis.

## Special Analyses

The Commissioner of Internal Revenue has determined that a Regulatory Impact Analysis is not required because this final rule is not a major rule under Executive Order 12291.

The Commissioner of Internal Revenue has concluded that this final regulation is interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, this final regulation is a regulation not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

## Drafting Information

The principal author of these final regulations was Robert H. Ginsburgh of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these final regulations, both on matters of substance and style.

## List of Subjects in 26 CFR Part 51

Excise tax, Petroleum, Crude Oil Windfall Profit Tax Act of 1980.

## Adoption of Amendments to the Regulations

The amendments to 26 CFR Part 51 are hereby adopted as set forth below:

## PART 51—[AMENDED]

**Paragraph 1.** The authority citation for Part 51 continues to read in part:

Authority: 26 U.S.C. 4997, 7805. * * *

**Par. 2.** Section 51.4996–1 is amended by redesignating paragraph (m) as paragraph (o) and by inserting immediately after paragraph (l) new paragraphs (m) and (n), to read as follows:

**§ 51.4996–1 Definitions.**

* * * * *

(m) *Newly discovered oil*—(1) *In general.* The term "newly discovered oil" means taxable crude oil that either is produced from a newly discovered crude oil property or is imputed newly discovered oil from a unitized property.

(2) *Newly discovered crude oil property.* The term "newly discovered crude oil property" means—

(i) A new lease on the Outer Continental Shelf; or

(ii) A property (not on the Outer Continental Shelf) that did not produce crude oil in commercial quantities in calendar year 1978; or

(iii) Any unitized property that is made up entirely of leases described in paragraph (m)(2)(i) of this section or properties described in paragraph (m)(2)(ii) of this section, or both.

(3) *Imputed newly discovered oil.* [Reserved]

(4) *New lease.* The term "new lease" means any lease of submerged acreage that satisfies all of the following three requirements:

(i) It was entered into on or after January 1, 1979;

(ii) Its submerged acreage did not produce crude oil in commercial quantities in calendar year 1978; and

(iii) No portion of its submerged acreage was included at any time during 1978 in a lease on the Outer Continental Shelf whose submerged acreage produced crude oil in commercial quantities in calendar year 1978. Determinations under paragraph (m)(4)(i) of this section of the date on which a lease was entered into shall be made without regard to any extension, renewal, modification, assignment, or sublease of the lease. Accordingly, the original date on which that lease was

entered into is controlling for purposes of that paragraph.

(5) *Outer Continental Shelf.* The term "Outer Continental Shelf" means Outer Continental Shelf as defined by section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)).

(6) *Production in commercial quantities in 1978.* A property (or submerged acreage on the Outer Continental Shelf) produced crude oil in commercial quantities in calendar year 1978 if any crude oil that was produced in calendar year 1978 (other than crude oil production that is disregarded under paragraph (n) of this section because it was incidental to the drilling of an exploratory well, including a test well, and was not part of continuous or commercial production) from that property (or submerged acreage) ultimately was sold or exchanged or was retained for beneficial economic use. However, a property (or submerged acreage) shall be treated as not producing crude oil in commercial quantities in calendar year 1978 if, during calendar year 1978, both of the following requirements are met:

(i) The aggregate amount of crude oil produced from the property (or submerged acreage) did not exceed 2,200 barrels, and

(ii) No well on the property (or submerged acreage) was in production for a total of more than 72 hours.

For the purposes of paragraph (m)(6) (i) and (ii) of this section, it is irrelevant whether or not the crude oil produced was sold or exchanged or was retained for beneficial economic use. In additon, for the purpose of paragraph (m)(6)(ii) of this section, a dual completion well shall be treated as two separate wells (*i.e.*, one well for each horizon).

(n) *Commercial quantities.* Crude oil is produced in commercial quantities if any of the crude oil produced is—

(1) Sold or exchanged; or

(2) Retained for beneficial economic use (*e.g.*, to power any production equipment or to inject into a well).

However, crude oil production that is incidental to the drilling of an exploratory well (including a test well), and that is not part of continuous or commercial production, shall be disregarded. Whether crude oil production is incidental to such drilling and is not part of continuous or commerical production shall be determined on the basis of all the facts and circumstances of the particular case.

(o) *Other.* * * *

**Par. 3.** Paragraph (b) of § 51.4991–1 is amended by revising the sixth sentence to read as follows:

**§ 51.4991–1 Taxable crude oil; tiers of oil.**

* * * * *

(b) *Tiers of oil.* * * * The term "newly discovered oil" has the meaning given to that term in § 51.4996–1(m). * * *

**Par. 4.** Section 51.4988–2 is amended by adding at the end of paragraph (b)(3)(iii) a sixth sentence to read as follows:

**§ 51.4988–2 Net income limitation on windfall profit.**

* * * * *

(b) *Calculation of net income limitation.* * * *

(3) *Taxable income from the property reduced by cost depletion.*

* * * * *

(iii) * * * See paragraph (n) of § 51.4996–1 for the definition of the term "commercial quantities."

* * * * *

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

Approved: February 12, 1988.

**O. Donaldson Chapoton,**

*Assistant Secretary of the Treasury.*

[FR Doc. 88–4484 Filed 3–1–88; 8:45 am]

BILLING CODE 4830–01–M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Part 1910

### Occupational Exposure to Formaldehyde; Approval of Information Collection Requirements; Technical Amendment

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice of partial approval of information collection requirements.

**SUMMARY:** On December 4, 1987, the Occupational Safety and Health Administration (OSHA) published a final rule in the **Federal Register** for occupational exposure to formaldehyde (29 CFR 1910.1048, 52 FR 46168). This rule was transmitted to the Office of Management and Budget (OMB) for review and clearance of the information collection requirements contained in the final rule, in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and 5 CFR Part 1320. The following information collection requirements contained in the final rule for formaldehyde have now received OMB paperwork clearance: paragraphs (d)(1)(i), (d)(2), (d)(3), (d)(4), (d)(6), (g)(3)(i), (g)(3)(ii), (l)(3), (l)(4), (l)(5), (l)(6), (l)(7), (m)(1), (n)(3), (n)(4), and (o). The OMB clearance number is 1218–0145. The OMB clearance expires on February 28, 1991.

The hazard communication requirements of the Formaldehyde Standard, including labeling and material safety data sheets, paragraphs (m)(1)(i) through (m)(4)(ii), have been disapproved by OMB. Until OSHA determines what further steps to take in response to OMB's denial, OSHA will continue to enforce the labeling and material safety data sheet requirements of the Hazard Communication Standard, 29 CFR 1910.1200, for formaldehyde. This is consistent with OMB's direction to the Agency and with OSHA's application of the Hazard Communication Standard.

**EFFECTIVE DATE:** March 2, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Foster, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3649, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523–8151.

**SUPPLEMENTARY INFORMATION:** OSHA published a final rule on formaldehyde on December 4, 1987 (52 FR 46168). At the time of promulgation of the final rule, the information collection provisions in the standard had not been approved by OMB under the Paperwork Reduction Act. On February 2, 1988, OMB approved all of the information collection requirements of 29 CFR 1910.1048 with the exception of those contained in paragraphs (m)(1)(i), (m)(2), (m)(3), and (m)(4). The clearance control number is 1218–1045. Accordingly, all paragraphs in the standard except paragraphs (m)(1)(i) through (m)(4)(ii) are in effect.

In addition, the Agency inadvertently failed to give a delayed start-up date for updating the written materials in the training program. Therefore, paragraph (p) will be amended to provide sufficient time to allow employers to come into compliance with these requirements.

### Authority and Signature

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210.

This action is taken pursuant to sections 4(b), 6(b), and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1597, 1599, 29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR Part 1911).

**List of Subjects in 29 CFR Part 1910**

Formaldehyde, Occupational safety and health, Chemicals, Cancer, Health, Risk assessment.

Signed at Washington, DC, this 26th day of February 1988.

**John A. Pendergrass,**

*Assistant Secretary of Labor.*

Part 1910 of Title 29 the Code of Federal Regulations is amended as set forth below:

**PART 1910—[AMENDED]**

1. The authority citation for Subpart Z of Part 1910 continues to read as follows:

**Authority:** Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12–71 [36 FR 8754], 8–76 [41 FR 25059], or 9–83 [48 FR 35736] as applicable; and 29 CFR Part 1911. Section 1910.1000 Tables Z–1, Z–2, Z–3 also issued under 5 U.S.C. 533. * * * Section 1910.048 also issued under 29 U.S.C. 653.

* * * * *

2. By adding a new paragraph (p)(2)(vi) to § 1910.1048 to read as follows:

**§ 1910.1048 Formaldehyde.**

* * * * *

(p) * * *

(2) * * *

(vi) *Employee training.* Written materials for employee training shall be updated as soon as possible, but no later than two months after the effective date of the standard.

3. By adding the following language at the end of § 1910.1048 to read as follows:

[Approved, except for paragraphs (m)(1)(i) through (m)(4)(ii), by the Office of Management and Budget under Control Number 1218–0145]

[FR Doc. 88–4489 Filed 3–1–88; 8:45 am]

BILLING CODE 4510–26–M

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**42 CFR Parts 405, 406, 409, 410, 413, 416, 421, 424, 489, and 498**

**[BERC–431–FC]**

## Medicare Program; Conditions for Medicare Payment

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

**ACTION:** Final rule with comment period.

**SUMMARY:** These rules are part of our ongoing project to assign a separate part of this chapter for each major aspect of the Medicare program. They also—

- Modify the requirements that a home health agency (HHA) must meet to be classified as a "sole community HHA".
- Clarify and simplify previous regulations (without substantive change) so that they are easier to understand and apply.
- Incorporate procedural changes that were put into effect to reduce paperwork and permit more efficient processing of Medicare claims.

**DATES:** *Effective date:* These regulations are effective March 31, 1988.

*Comment date:* We will consider comments received by May 2, 1988, from anyone who considers that, in the process of redesignation and clarification, we have made substantive changes other than the procedural changes discussed in this preamble.

**ADDRESS:** Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–431–FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you comment on information collection requirements, please send a copy of those comments directly to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code [BERC–431–FC]. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

**FOR FURTHER INFORMATION CONTACT:** Luisa V. Iglesias, Telephone (202) 245–0383.

**SUPPLEMENTARY INFORMATION:**

### Purpose and Scope

*Requirements for Sole Community HHA*

Final rules published on June 30, 1986 (51 FR 23541) modified the provisions that prohibit a physician from certifying a need for home health services and establishing a plan for those services if the physician has a "significant interest in, or a significant financial or contractual relationship with" the HHA that would furnish the services.

Those rules also established criteria and procedures to implement one of the provisions of section 2336 of the Deficit Reduction Act of 1984 (Pub. L. 98–369). Under that provision, the above noted prohibition does not apply to "an HHA that is a sole community HHA as determined by the Secretary".

The June 30 rules required, as the condition for an HHA to be classified as a "sole community HHA", that the facility designate a particular area and show that—

- No other HHA provides services within that area; and
- There are no physicians (other than those with a significant interest in, or relationship with the HHA) available to perform certification and plan of treatment functions.

Because we believed that it was in the public interest to put into effect promptly the exemption of sole community HHAs, we included those provisions in the final rule and specifically requested comments on them from the public.

We received comments from two national home health associations, both objecting to the requirement that there be no physicians available (other than those subject to the prohibition) to perform certification and plan of treatment functions. Both groups cited committee reports issued before the Conference Committee Report as stating the intent of Congress to ensure that patients in underserved areas were not forced to change physicians in order to avail themselves of the home health benefit.

After reviewing the legislative history of this amendment, including the committee reports that preceded the Conference Committee Report (S. Rep. No. 98–300, 98th Cong., 1st Sess. 151–52 (1983) and H.R. Rep. No. 98–432, 98th Cong., 1st Sess. 454 (1984)), we agree that the second requirement is contrary to congressional intent. The requirement that there be no other physicians (other than those subject to the prohibition) could indeed nullify that intent by making it necessary for beneficiaries to change doctors in order to be certified in need of home health services and have a plan developed for those services. Accordingly, we are revising redesignated § 424.22(g) to remove paragraph (g)(2).

*Procedural Changes*

We have revised the regulations to reflect procedural changes already in

effect that extend the validity of request for payment statements to cover more than one Medicare claim, and establish uniform time limits for filing those claims. Claims for payment may be submitted either by the entity that furnished the services or, in some cases, by the beneficiary who received them. But a request for payment, signed by or on behalf of the beneficiary, is required for all claims.

*Redesignation and Clarification*

These regulations bring together in a new Part 424, policies previously contained in Subparts A and P of Part 405 of the Medicare rules. The new Part 424 will be easier to understand and apply because it uses shorter sentences, lists and numbers separate provisions, and groups related sections under appropriate subparts. For example, it brings together, under a new Subpart G, all the rules pertaining to emergency services furnished by nonparticipating hospitals. Other major topics presented as separate subparts are certification and plan of treatment requirements, claims for payment, special rules that apply to services furnished in a foreign country, and the persons or entities to whom payment may be made.

The redesignation table will help the reader to determine where the content of previous provisions is located in the new Part 424, or in Part 405, 406, or 409.

We note that on July 1, 1986 (51 FR 23792), we published a notice of proposed rulemaking to amend the Medicare regulations to incorporate legislative changes on payment procedures for Medicare Part B benefits. The proposed amendments affect § 405.1685, with conforming changes to §§ 405.1672, 405.1679, and 405.1686. These sections are redesignated in this document as they now exist in the Code of Federal Regulations. When the final regulations are issued on the July 1, 1986 NPRM, the legislative changes will be incorporated in the appropriate sections of the regulations as redesignated.

**Provisions of the Regulations**

The content of each subpart of the new Part 424, any changes made in those subparts, and the reasons for the changes, are discussed below.

**General Provisions**

Subpart A—

- Describes the statutory basis and scope of Part 424;
- Summarizes general requirements applicable to all Medicare payments such as the requirement that the services must be covered and the individual must be entitled to Medicare at the time the services are furnished; and
- Sets forth some general limitations that are related to the requirements for utilization review.

*Certification Requirements*

Subpart B redesignates current requirements for a physician to certify and recertify the need for services, and to establish a plan of treatment and review it periodically. It contains the change discussed above in the requirements for classification as a sole community HHA.

*Claims for Payment*

Subpart C sets forth the requirements and procedures for Medicare claims and the time limits for a provider or supplier or a beneficiary to file or complete a claim for Medicare payment.

Claims Process

Regardless of who files a claim, the claim must include (or refer to) a request for payment statement signed by or on behalf of the beneficiary. Under previous regulations, the signature of the beneficiary or the beneficiary's representative was normally required on a request for payment statement on each claim submitted. In lieu of obtaining signatures on each claim, providers and physicians and other suppliers could, in certain cases, obtain a separate request for payment statement from the beneficiary, authorizing the submission and processing of claims over an extended period of time. In order to simplify and facilitate the submission and processing of claims, HCFA issued guidelines (sections 3047.1–3047.3 of the carrier manual and section 3302.2 of the intermediary manual) to add other circumstances under which a single request for payment statement (hereafter called "request") may be used. These guidelines are incorporated in § 424.40 of the revised regulations.

They provide that:

1. A hospital or other provider may—

a. When a beneficiary is admitted, obtain a request, effective for the period of confinement, authorizing the provider or any physician to submit claims on the beneficiary's behalf for inpatient services furnished by or in the provider; and

b. At the start of outpatient care, obtain a request that constitutes a lifetime authorization for the provider or any physician to submit claims on the beneficiary's behalf for outpatient services furnished by or in the provider.

In the case of physician services, the claims submitted under an extended request may be either assigned or unassigned.

2. A physician or other supplier may obtain from the beneficiary a request that constitutes a lifetime authorization for the supplier to submit assigned and unassigned claims on the beneficiary's behalf.

Rental of durable medical equipment for which the claim has not been assigned to the supplier is excluded from this provision. This is necessary so that, through a new request, the carrier can learn when the beneficiary has returned the equipment, has recovered, has died, or has gone into an institution. If a claim has been assigned to the supplier, this exclusion is not necessary because the supplier must assume liability for any overpayment that results from its failure to promptly notify the carrier that one of those events has occurred. As a safeguard against program abuse, a supplier is required to obtain a new request whenever a new item of equipment is purchased or rented, regardless of whether the claim is assigned or unassigned.

Under the previous regulations (§ 405.1664(e)), if a provider furnished services without personal contact with the beneficiary (e.g., a hospital did diagnostic tests on a blood sample drawn by the physician in his office and sent to the hospital), the provider could sign the request for payment statement on behalf of the beneficiary. The revised regulation makes this procedure available to suppliers under similar circumstances (e.g., to an independent laboratory that performs tests on a blood sample drawn by the physician at his office and sent to the laboratory). This procedure would not be available to a supplier, however, when the supplier furnishes the services in a facility that has personal contact with the beneficiary. In that situation, the facility can obtain the necessary request covering the supplier's services.

Time Limits

The basic time limits for filing claims (which remain unchanged) are—

- December 31 of the following year for services that were furnished during the first 9 months of a calendar year.
- December 31 of the second following year for services furnished during the last 3 months of a calendar year.

When delay in filing is the result of error or misrepresentation by an employee or agent of the Department, the basic time limit is extended to 6 months after the error or misrepresentation is corrected. Previous regulations (§ 405.1667(b)(1)) limited that extension to December 31 of the third year after the calendar year in which the

services were furnished, but only for services of providers. Section 405.1693 imposed no such additional limit for services payable on a charge basis. The revised regulations (§ 424.35) delete the additional limitation. The aim is to ensure equity when the delay is the result of Department error and to simplify administration by providing a single rule on extension of time limits for filing claims.

Under previous regulations (§ 405.1693), for services payable on a charge basis, a claimant could meet the requirement for timely filing by filing a claim in proper form or a statement of written intent to claim benefits with any intermediary or carrier or HCFA or SSA. (A statement of written intent had to be perfected by filing a claim in proper form by the close of the sixth month after the month in which the carrier advised the claimant to do so.) On the other hand, (under § 405.1667), for services of providers, a claimant would ordinarily meet the requirements for timely filing only by filing the claim in proper form with the appropriate intermediary. (The only exception to this rule was that a provider could establish a filing date for a claim by filing an admission or start-of-care notice with its intermediary and perfecting that notice by the filing of the claim in proper form within 60 days after the intermediary replied to the admission notice.) For the sake of equity and greater uniformity of administration, the revised regulations generally conform the rules on claims for services of providers to those for services payable on a charge basis.

Thus, § 424.45 provides for the use of written statements of intent to claim benefits, and allows 6 months for formalizing a claim, regardless of whether the services are paid to a provider or on a charge basis.

*To Whom Payment May be Made*

Subparts D and E specify to whom Medicare payment is ordinarily made and to whom Medicare payment is made in special situations.

Section 424.62 deals with Medicare payment after a beneficiary's death, on the beneficiary's claim for direct payment, when the bill has been paid. Section 424.64 deals with situations in which the beneficiary has died and the bill has not been paid.

*Limitation on Assignment or Reassignment of Claims*

Subpart F redesignates previous regulations that limit assignment and reassigment of claims.

Section 424.73 deals with the limitations on assignment of claims by a provider.

Section 424.74 specifies that HCFA may terminate the provider agreement of a provider that persists in trying to have payment made contrary to the provisions of these regulations.

Section 424.80 deals with the limitations on reassignment of claims by physicians and other suppliers. The basic rule (established by section 1842(b)(6) of the Act) is that Medicare Part B payments may be made only to the beneficiary or to the physician or other supplier that furnished the service. That rule is set forth in paragraph (a); certain exceptions to the rule are specified in paragraph (b).

Sections 424.82 through 424.84 set forth the procedures for revoking a supplier's right to receive assignment if the supplier violates the conditions of assignment, seeks to obtain payment contrary to the regulations, or fails to furnish evidence of compliance with the requirements of 424.80. Section 424.86 deals with the limitations on assignment of claims by individuals.

Section 424.90 deals with court ordered assignments.

*Services Furnished by Nonparticipating Hospitals*

Subpart G sets forth the special conditions for payment for emergency inpatient or outpatient services furnished to Medicare beneficiaries by a nonparticipating U.S. hospital, that is, a hospital that does not have an agreement (known as a provider agreement) to participate in the Medicare program, but, at the time of the emergency, was nearer or more accessible to the beneficiary than the nearest participating hospital, and was equipped to furnish those services.

Subpart H sets forth the conditions for payment for

- Emergency or nonemergency inpatient services furnished to Medicare beneficiaries by a foreign hospital that was nearer or more accessible (to the site of the emergency or to the patient's residence) than the nearest U.S. hospital; and
- Physicians' services and ambulance services furnished in connection with those inpatient services.

The regulations in these two subparts set forth the conditions the nonparticipating or foreign hospital must meet. They also specify criteria and procedures for determining—

- Whether an emergency existed and when it ended;
- Whether the nonparticipating U.S. hospital was closer or more accessible than the nearest participating hospital; and
- Whether the foreign hospital was closer or more accessible than the nearest U.S. hospital.

*Replacement of Medicare Checks*

Subpart M sets forth the procedures for replacement of Medicare checks that are lost, stolen, defaced, mutilated, destroyed, or paid on forged endorsement.

*Conforming Amendments*

Current rules in Part 409 do not set forth the conditions for Medicare Part A payment of emergency services furnished by a nonparticipating hospital in the United States, and of services furnished in Mexico or Canada. Current § 410.168 does specify the conditions for payment of emergency services furnished by nonparticipating U.S. hospitals. In order to avoid duplication but ensure awareness of the conditions set forth for Part A and Part B services in Subparts G and H of the new Part 424, § 410.168 is removed, and reference to Part 424 is added in §§ 409.100 and 410.64. In § 410.175, content that is now covered in §§ 424.5 and 424.32 is removed.

Section 489.30 of the Medicare rules, as amended by final regulations published on November 14, 1986 (51 FR 41350) contained an exception applicable only under Medicare Part B (paragraph (b)(5)). We have now determined that section 1889(b) of the Act, on which the exception is based, also applies under Medicare Part A. Accordingly, we have made a conforming change in § 489.30(a)(4).

*Technical Amendments*

The redesignation of Subparts A and P of Part 405 required correction of references to those parts, since they are being removed from the CFR. Those corrections include changes in—

- Part 410, which was established by the final rules published on November 14, 1986, and does not yet appear in the printed CFR; and
- Other parts of this chapter with references that were corrected by the November 14 rules, but become outdated with the establishment of Part 424.

**Waiver of Proposed Rulemaking**

The "Sole Community HHA" change is responsive to public comments, conforms the rule to Congressional intent, and ensures that beneficiaries in rural areas will not have to change physicians in order to receive home health services.

The changes discussed under "Procedural Changes" reduce

administrative burdens and restrictions and contribute to more equitable and efficient handling of Medicare claims. The remaining sections of the regulation represent a reorganization and rewriting of current policy with no substantive change. Accordingly, we find that there is good cause to dispense with proposed rulemaking.

However, as previously indicated, we will consider comments from anyone who believes that, in the process of reorganizing and simplifying the existing regulations, we inadvertently have made substantive changes. We will modify the redesignated regulations if comments indicate that this is necessary. Although we cannot acknowledge individual comments, if we change these regulations, we will discuss the comments in the preamble to the revised regulations.

**Regulatory Impact Statement**

*Executive Order 12291*

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulation that is likely to have an annual economic impact of $100 million or more, cause a major increase in costs or prices, or meet other thresholds specified in section 1(b) of the order.

We have determined that a regulatory impact analysis is not required for these rules because they will not have an annual impact of $100 million or more or meet any of the other criteria.

*Regulatory Flexibility Act (RFA)*

Consistent with the RFA, we prepare and publish a regulatory flexibility analysis for any regulation that will have "a significant economic impact on a substantial number of small entities". A small entity is defined as a small business, a nonprofit enterprise, or a governmental jurisdiction (such as a county, city, or township) with a population of less than 50,000. We consider all providers and suppliers as small entities.

We have determined, and the Secretary certifies, that, as shown by the discussion under "waiver of proposed rulemaking", these rules will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

These regulations contain no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

**List of Subjects**

*42 CFR Part 405*

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing home, Reporting and recordkeeping requirements, Rural areas, X-rays.

*42 CFR Part 406*

Health facilities, Kidney diseases, Medicare.

*42 CFR Part 409*

Health facilities, Medicare.

*42 CFR Part 410*

Medical and other health services, Medicare.

*42 CFR Part 424*

Assignment of benefits, Physician certification, Claims for payment, Emergency services, Plan of treatment.

**Redesignation Table**

| Old section | New section |
|---|---|
| 405.100 | 424.10. |
| 405.150 | 409.100 and 424.51. |
| 405.152(a) (1) and (2) | 424.101. |
| 405.152(a)(3) | 424.103 Introductory text. |
| 405.152(a)(4) | Removed as duplicative of 405.152(c). |
| 405.152(a)(5) | 424.103(a)(2). |
| 405.152(a)(6) | Removed as duplicative of 405.1660. |
| 405.152(a)(7) | 424.103(a)(1). |
| 405.152(a)(8) | 424.103(b). |
| 405.152(b) | 424.101. |
| 405.152 (c), (d), and (e) | 424.104. |
| 405.153(a) | 424.121(a). |
| 405.153(a)(1) | 424.122(a). |
| 405.153(a)(2) | 424.122(b). |
| 405.153(a)(3) | 424.122(d) and 424.123 (c) and (d). |
| 405.153(b) | 424.121(a). |
| 405.153(b)(1) | 424.123(a). |
| 405.153(b)(2) | 424.123(b). |
| 405.153(b)(3) | 424.123(c). |
| 405.153(c)(1) | 424.123(d) and 424.126. |
| 405.153(c)(2) | 424.127. |
| 405.157 | 424.103(a) and 424.109(a). |
| 405.158 | 424.109(b). |
| 405.160(a) (1) and (2) | 424.5. |
| 405.160(a)(3) | 424.7. |
| 405.160(b)(1) | 424.5(a)(5). |
| 405.160(b)(2) | 424.5(a)(4), 424.11, 424.14. |
| 405.160(b)(3) | 424.14. |
| 405.160(b)(4) | 424.7. |
| 405.160(c) | Removed as no longer pertinent. Inpatient services in TB hospitals are no longer included in the statute. |
| 405.162 | 424.7(a). |
| 405.163 | 424.7(b). |
| 405.165(a) | 424.5(a)(5). |
| 405.165(b) | 424.5(a)(4), 424.11, 424.20. |
| 405.165(c) | 424.7. |
| 405.166 | 424.7(a). |
| 405.167 | 424.7(b). |
| 405.170(a) | 424.5(a)(5). |
| 405.170(b) | 424.5(a)(4), 424.11, 424.22. |
| 405.170(c) | 424.5(a)(1). |
| 405.191(a) | 424.103(a)(4). |
| 405.191(b) | Removed as unnecessary. |
| 405.191(b)(1) | 424.103(b). |
| 405.191(b)(2) | 424.103(b). |
| 405.191(b)(3) | 424.103(a)(3). |
| 405.191(b)(4) 1st sentence. | Removed as poor example. |
| 405.191(b)(4) 2nd sentence. | 424.102(a). |
| 405.191(b)(5) | 424.102(b). |
| 405.192(a) | 424.106(a). |
| 405.192(b) | Removed as unnecessary. |
| 405.192(b) (1)–(3) | 424.106(b). |
| 405.192(b)(4) | 424.106(c). |
| 405.192(c) | 424.106(d). |
| 405.192(d)(1) | Removed as inconsistent with definition of emergency. |
| 405.192(d)(2) | Removed as redundant with 405.192(c). |
| 405.1625(a) | 424.10(a). |
| 405.1625(b) | 424.11(a). |
| 405.1625(c) | 424.11(b). |
| 405.1625(d) | 424.11(c). |
| 405.1625(e) | 424.11(d). |
| 405.1627 (a)(1)–(a)(3) | 424.13(a). |
| 405.1627(b) | 424.13(b). |
| 405.1627(c) | 424.13(c). |
| 405.1627(d) | 424.13(d). |
| 405.1627(e)(1) | 424.13(d). |
| 405.1627(e)(2) | 424.13(e). |
| 405.1627(e)(3) | 424.13(f). |
| 405.1627(e)(4) | 424.13(g). |
| 405.1629 Undesignated portion. | 424.14 (a) and (d). |
| 405.1629 (a) and (b) | 424.14 (b) and (c). |
| 405.1629(c) | Removed as no longer pertinent. (See comment on § 405.160(c)). |
| 405.1630 | 424.16. |
| 405.1632(a) | 424.20, Introductory statement. |
| 405.1632(b) | 424.20(a). |
| 405.1632(c) | 424.20(b). |
| 405.1632(d) | 424.20(c). |
| 405.1632(e) (1) and (2) | 424.20(d). |
| 405.1632(e)(3) | 424.20(f). |
| 405.1632(e)(4) | 424.20(g). |
| 405.1632(f) | 424.20(e). |
| 405.1633 | 424.22. |
| 405.1634(a)(1) | 424.24(a). |
| 405.1634(a)(2) | 424.24(c)(4). |
| 405.1634(a)(3) | Removed as duplicative of 405.1625(c). |
| 405.1634(a)(4) | 424.24(c)(3). |
| 405.1634(a)(5) | 424.24(c)(2). |
| 405.1634(b) | 424.24(c)(1) and 424.25. |
| 405.1634(c) | 424.24(d). |
| 405.1635 | 424.27. |
| 405.1660 (a) and (b) | Removed as duplicative of other content. |
| 405.1660(c) | 424.5(a)(5). |
| 405.1662(a) 1st sentence. | 405.207 and 406.7. |
| 405.1662(a) 2nd and 3rd sentences. | 424.32(a). |
| 405.1662(a) last sentence. | Removed as unnecessary. |
| 405.1662(b) list of forms | 405.207 and 406.7. |
| 405.1662(b) narrative | Removed as duplicative of 405.205 and 406.6. |
| 405.1662(c) | 424.32(b). |
| 405.1662(d) | 405.207, 406.7, and 424.32(c). |

| Old section | New section |
|---|---|
| 405.1663 Undesignated portion. | 424.5(a)(5). |
| 405.1663 (a) and (c) | 424.40(b)(1). |
| 405.1663 (b) and (d) | 424.40(b)(2). |
| 405.1664 | 424.36 and 424.37(b). |
| 405.1665 | 424.37(a). |
| 405.1666 | 424.36. |
| 405.1667(a) | 424.32. |
| 405.1667(b) (1) and (2) | 424.44. |
| 405.1667(b)(3) | 424.45. |
| 405.1667(c) | Removed as outdated. |
| 405.1668(a) | 424.70. |
| 405.1668 (b) and (c) | 424.73. |
| 405.1668(d) | 424.74. |
| 405.1672 (a) and (b) | 424.53. |
| 405.1672(c) | 424.34(a). |
| 405.1672(d) | 424.54. |
| 405.1672 (e) and (f) | 424.73(b), 424.80(b), 424.86(b). |
| 405.1674 | 424.34. |
| 405.1675(a)(1) | 424.55. |
| 405.1675(a)(2) | 424.56. |
| 405.1675(b) | 424.80(c). |
| 405.1678 | Removed as duplicative of 405.1675. |
| 405.1679 | 424.36. |
| 405.1680(a) | 424.70(b). |
| 405.1680(b) | 424.71. |
| 405.1680(c) | 424.80(a). |
| 405.1680(d) | 424.80(b). |
| 405.1681 (a)-(h) | 424.82. |
| 405.1681 (i) and (j) | 424.83. |
| 405.1681 (k) and (l) | 424.84. |
| 405.1682(a) | 424.71. |
| 405.1682(b) | 424.90(a). |
| 405.1682(c) | 424.90(b). |
| 405.1682(d) | 424.90(c). |
| 405.1683 | 424.62. |
| 405.1684 | 424.64. |
| 405.1685 | 424.66 (c) and (d). |
| 405.1686 | 424.66(a). |
| 405.1692 | 424.44. |
| 405.1693 | 424.45. |
| 405.1694 | 424.44(c). |
| 405.1695 | 424.350. |
| 405.1696 | 424.352. |
| 405.1697 | 424.354. |

42 CFR Chapter IV is amended as set forth below:

A.

## PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Part 405 is amended as follows:

### Subpart A—[Removed and Reserved]

1. Subpart A (§§ 405.100–405.192) is removed and reserved, and the table of contents is amended to reflect this change.

2. Subpart B is amended as set forth below:

a. The Subpart heading is revised to read:

### Subpart B—Supplementary Medical Insurance Enrollment and Entitlement

b The authority citation for Subpart B is revised to read:

**Authority:** Secs. 1102, 1836–1838, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395o–1395q, and 1395hh) unless otherwise noted.

c. A new § 405.207 is added, to read as set forth below, and the table of contents is amended to reflect that addition:

#### § 405.207 Forms used to apply for enrollment under Medicare Part B.

The following forms, available free of charge by mail from HCFA, or at any Social Security branch or district office, are used to apply for enrollment under the supplementary medical insurance program.

HCFA–4040—Application for Enrollment in the Supplementary Medical Insurance Program. (This form is used for enrollment by individuals who are not eligible for monthly benefits or for hospital insurance.)

HCFA–40–B—Application for Medical Insurance. (For general use by the SSA District Office in requesting medical insurance protection during the general enrollment period or during the initial enrollment period if the enrollee is not subject to automatic enrollment is SMI.)

HCFA–40–D—Application for Enrollment in the Suplementary Medical Insurance Program. (This form is mailed to individuals who do not have current supplementary medical insurance because of prior refusals, voluntary withdrawal, or premium default from prior coverage. It is used during the annual general enrollment period.)

HCFA–40–F—Application for Medical Insurance. (For use by beneficiaries residing outside the United States.)

HCFA–18–F–5—Application for Hospital Insurance Entitlement. (For use by individuals who are not eligible for retirement benefits under Title II of the Social Security Act or under the Railroad Retirement Act. This form may also be used for enrollment in the supplementary medical insurance program.)

As an alternative, the individual may request enrollment by answering the Part B enrollment questions on an application for monthly Social Security benefits, or by signing a simple statement of request, if he or she is eligible to enroll at that time.

### Subpart P—[Removed and Reserved]

3. Subpart P is removed and reserved, and the table of contents is amended to reflect this change.

B.

## PART 406—HOSPITAL INSURANCE ELIGIBILITY AND ENTITLEMENT

The authority citation for Part 406 is revised to read as follows:

**Authority:** Secs. 202(t), 202(u), 226, 226A, 1102, 1818, and 1871 of the Social Security Act (42 U.S.C. 402(t) 402(u), 426, 426–1, 1302, 1395i–z, and 1395hh) and 3103 of Pub. L. 89–97 (42 U.S.C. 426a) unless otherwised noted.

Part 406 is amended by adding a new § 406.7 to read as set forth below, and amending the table of contents to reflect this addition:

#### § 406.7 Forms to apply for entitlement under Medicare Part A.

The following forms, available free of charge by mail from HCFA or at any Social Security branch or district office, are used to apply for Medicare entitlement under the circumstances indicated:

HCFA–18–F–5—Application for Hospital Insurance Entitlement. (For use by individuals who are not eligible for retirement benefits under Title II of the Social Security Act or under the Railroad Retirement Act. This form may also be used for enrollment in the supplementary medical insurance program.)

HCFA–43—Application for Health Insurance Benefits under Medicare for Individuals with End Stage Renal Disease (ESRD). (An initial application for entitlement by individuals with ESRD).

As an alternative, an individual may use the application for monthly social benefits to apply also for Medicare entitlement if he or she is eligible for hospital insurance at that time.

C.

## PART 409—HOSPITAL INSURANCE BENEFITS

1. The authority citation for Part 409 continues to read as follows:

**Authority:** Secs. 1102, 1812, 1813, 1814, 1861, 1866, 1971, 1881, and 1883 of the Social Security Act (42 U.S.C. 1302, 1395d, 1395e, 1395f, 1395x, 1395cc, 1395hh, 1395rr and 1395tt).

#### § 409.69 [Removed]

2. Section 409.69 is removed and the table of contents is amended to reflect this change and to add a new Subpart H as follows:

**Subpart H—Payment of Hospital Insurance Benefits**

Sec.
409.100 To whom payment is made.
409.102 Amounts of payment.

3. A new Subpart H is added to read as follows:

### Subpart H—Payment of Hospital Insurance Benefits

#### § 409.100 To whom payment is made.

(a) *Basic rule.* Except as provided in paragraph (b) of this section, Medicare pays hospital insurance benefits only to a participating provider.

(b) *Exceptions.* Medicare may pay hospital insurance benefits as follows:

(1) For emergency services furnished by a nonparticipating hospital, to the hospital or to the beneficiary, under the conditions prescribed in Subpart G of Part 424 of this chapter.

(2) For services furnished by a Canadian or Mexican hospital, to the hospital or to the beneficiary, under the conditions prescribed in Subpart H of Part 424 of this chapter.

**§ 409.102 Amounts of payment.**

(a) The amounts Medicare pays for hospital insurance benefits are generally determined in accordance with Part 412 or Part 413 of this chapter.

(b) Except as provided in §§ 409.61(d) and 409.89, hospital insurance benefits are subject to the deductible and coinsurance requirements set forth in Subpart G of this part.

D.

## PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

1. The authority citation for Part 410 continues to read:

**Authority:** Secs. 1102, 1832, 1833, 1835, 1861(r), (s) and (cc), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395k, 1395l, 1395n, 1395x, (r), (s) and (cc), 1395hh, and 1395rr).

2. Part 410 is amended as set forth below:

a. A new § 410.64 is added, to read as follows and the table of contents is amended to reflect the addition:

**§ 410.64 Emergency outpatient services furnished by a nonparticipating hospital and services furnished in Mexico or Canada.**

Conditions for payment of emergency outpatient services furnished by a nonparticipating U.S. hospital and for services furnished in Mexico or Canada are set forth in Subparts G and H of Part 424 of this chapter.

**§ 410.168 [Removed]**

b. Section 410.168 is removed, the table of contents is amended to reflect that change, and all references to "§ 410.168", throughout this Chapter IV, are changed to refer to "Subpart G of Part 424 of this chapter".

c. Section 410.175 is revised to read as follows:

**§ 410.175 Alien absent from the United States.**

(a) Medicare does not pay Part B benefits for services furnished to an individual who is not a citizen or a national of the United States if those services are furnished in any month for which the individual is not paid monthly social security cash benefits (or would not be paid if he or she were entitled to those benefits) because he or she has been outside the United States continuously for 6 full calendar months.

(b) Payment of benefits resumes with services furnished during the first full calendar month the alien is back in the United States.

E.

Part 424 is added to read as follows:

## PART 424—CONDITIONS FOR MEDICARE PAYMENT

### Subpart A—General Provisions

Sec.

424.1 Basis and scope.
424.3 Definitions.
424.5 Basic conditions.
424.7 General limitations.

### Subpart B—Physician Certification and Plan of Treatment Requirements

424.10 Purpose and scope.
424.11 General procedures.
424.13 Requirements for inpatient services of hospitals other than psychiatric hospitals.
424.14 Requirements for inpatient services of psychiatric hospitals.
424.16 Timing of certification for individual admitted to a hospital before entitlement to Medicare benefits.
424.20 Requirements for posthospital SNF care.
424.22 Requirements for home health services.
424.24 Requirements for medical and other health services under Medicare Part B.
424.25 Plan of treatment requirements for outpatient physical therapy and speech pathology services.
424.27 Requirements for comprehensive outpatient rehabilitation facility (CORF) services.

### Subpart C—Claims for Payment

424.30 Scope.
424.32 Basic requirements for all claims.
424.33 Additional requirements: Claims for services of providers and claims by suppliers and nonparticipating hospitals.
424.34 Additional requirements: Beneficiary's claim for direct payment.
424.36 Signature requirements.
424.37 Evidence of authority to sign on behalf of the beneficiary.
424.40 Request for payment effective for more than one claim.
424.44 Time limits for filing claims.
424.45 What constitutes a claim for purposes of meeting the time limits.

### Subpart D—To Whom Payment is Ordinarily Made

424.50 Scope.
424.51 Payment to the provider.
424.52 Payment to a nonparticipating hospital.
424.53 Payment to the beneficiary.
424.54 Payment to the beneficiary's legal representative or representative payee.
424.55 Payment to the supplier.
424.56 Payment to a beneficiary and to a supplier.

### Subpart E—To Whom Payment is Made in Special Situations

424.60 Scope.
424.62 Payment after beneficiary's death: Bill has been paid.
424.64 Payment after beneficiary's death: Bill has not been paid.
424.66 Payment to organizations.

### Subpart F—Limitations on Assignment and Reassignment of Claims

424.70 Basis and scope.
424.71 Definitions.
424.73 Prohibition of assignment of claims by providers.
424.74 Termination of provider agreement.
424.80 Prohibition of reassignment of claims by suppliers.
424.82 Revocation of right to receive assigned benefits.
424.83 Hearings on revocation of right to receive assigned benefits.
424.84 Final determination on revocation of right to receive assigned benefits.
424.86 Prohibition of assignment of claims by beneficiaries.
424.90 Court-ordered assignments: Conditions and limitations.

### Subpart G—Special Conditions: Emergency Services Furnished by a Nonparticipating Hospital

424.100 Scope.
424.101 Definitions.
424.102 Situations that do not constitute an emergency.
424.103 Conditions for payment for emergency services.
424.104 Election to claim payment for emergency services furnished during a calendar year.
424.106 Criteria for determining whether the hospital was the most accessible.
424.108 Payment to a hospital.
424.109 Payment to the beneficiary.

### Subpart H—Special Conditions: Services Furnished in a Foreign Country

424.120 Scope.
424.121 Scope of payments.
424.122 Conditions for payment for emergency inpatient hospital services.
424.123 Conditions for payment for nonemergency inpatient services furnished by a hospital closer to the individual's residence.
424.124 Conditions for payment for physician services and ambulance services.
424.126 Payment to the hospital.
424.127 Payment to the beneficiary.

### Subparts I-L—[Reserved]

### Subpart M—Replacement and Reclamation of Medicare Payments

424.350 Replacement of U.S. Government checks that are lost, stolen, defaced, mutilated, destroyed, or paid on forged endorsements.
424.352 Replacement of intermediary and carrier checks that are lost, stolen, defaced, mutilated, destroyed, or paid on forged endorsements.
424.354 Reclamation proceedings: Checks issued by carriers or intermediaries.

Authority: Secs. 216(j), 1102, 1814, 1815(c), 1835, 1842(b), 1861, 1866(d), 1870 (e) and (f), 1871 and 1872 of the Social Security Act (42 U.S.C. 416(j), 1302, 1395f, 1395g, 1395n, 1395u, 1395x, 1395cc, 1395gg, 1395hh and 1395ii).

## Subpart A—General Provisions

### § 424.1 Basis and scope.

(a) *Statutory basis.* This part implements the provisions of sections 1814, 1835, 1842(b)(3), and 1870 (e) and (f) of the Act, which establish conditions for and limitations on Medicare payments, and sections 1815(c) and 1842(b)(6), which prohibit assignment or reassignment of the right to those payments.

(b) *Scope.* This part sets forth certain specific conditions and limitations applicable to Medicare payments and cites other conditions and limitations set forth elsewhere in this chapter. This Subpart A provides a general overview. Other subparts deal specifically with—

(1) The requirement that a physician certify the need for services and establish a plan of treatment (Subpart B);

(2) The procedures and time limits for filing claims (Subpart C);

(3) The individuals or entities to whom payment may be made (Subparts D and E);

(4) The limitations on assignment and reassignment of claims (Subpart F);

(5) Special requirements that apply to services furnished by nonparticipating U.S. hospitals and foreign hospitals (Subparts G and H); and

(6) The replacement and reclamation of Medicare payment checks (Subpart M).

Except for § 424.40(c)(3), this part does not deal with the conditions for payment of rural health clinic (RHC) services or ambulatory surgical center (ASC) services. Those conditions are set forth in Part 405, Subpart X, and Part 481 Subpart A of this chapter for RHC services; and in Part 416 of this chapter, for ASC services.

### § 424.3 Definitions.

As used in this part, unless the context indicates otherwise—

*"Nonparticipating hospital"* means a hospital that does not have in effect a provider agreement to participate in Medicare.

*"Participating hospital"* means a hospital that has in effect a provider agreement to participate in Medicare.

### § 424.5 Basic conditions.

(a) As a basis for Medicare payment, the following conditions must be met:

(1) *Types of services.* The services must be—

(i) Covered services, as specified in Part 409 or Part 410 of this chapter; or

(ii) Services excluded from coverage as custodial care or services not reasonable and necessary, but reimbursable in accordance with §§ 405.332 through 405.334 of this chapter, pertaining to limitation of liability.

(2) *Sources of services.* The services must have been furnished by a provider, nonparticipating hospital, or supplier that was, at the time it furnished the services, qualified to have payment made for them.

(3) *Recipient of services.* Except as provided in § 409.68 of this chapter, the services must have been furnished while the individual was eligible to have payment made for them. (Section 409.68 provides for payment on inpatient hospital services furnished before the hospital is notified that the beneficiary has exhausted the Medicare benefits available for the current benefit period.)

(4) *Certification of need for services.* When required, the provider must obtain physician certification and recertification of the need for the services in accordance with Subpart B of this part.

(5) *Claim for payment.* The provider, supplier, or beneficiary, as appropriate, must file a claim that includes or makes reference to a request for payment, in accordance with Subpart C of this part.

(6) *Sufficient information.* The provider, supplier, or beneficiary, as appropriate, must furnish to the intermediary or carrier sufficient information to determine whether payment is due and the amount of payment.

(b) Additional conditions applicable in certain circumstances or to certain services are set forth in other sections of this part.

### § 424.7 General limitations.

(a) *Utilization review finding on medical necessity.* When a PRO or a UR committee notifies a hospital or SNF of its finding that further services are not medically necessary, the following rules apply:

(1) *Hospitals subject to PPS.* Payment may not be made for inpatient hospital services furnished by a PPS hospital after the second day after the day on which the hospital received the notice.

(2) *Hospitals not subject to PPS and SNFs.*—(i) *Basic rule.* Except as provided in paragraph (a)(2) of this section, payment may not be made for inpatient hospital services or posthospital SNF care furnished after the day on which the hospital or SNF received the notice.

(ii) *Exception.* Payment may be made for 1 or 2 additional days if the PRO or UR committee approves them as necessary for planning for post-discharge care.

(b) *Failure to make timely utilization review.* Payment may not be made for inpatient hospital services or posthospital SNF care furnished, after the 20th consecutive day of a stay, to an individual who is admitted to the hospital or SNF after HCFA has determined that the hospital or SNF has failed to make timely utilization review in long stay cases. (This provision does not apply to a hospital or SNF for which a PRO has assumed binding review.)

## Subpart B—Physician Certification and Plan of Treatment Requirements

### § 424.10 Purpose and scope.

(a) *Purpose.* The physician has a major role in determining utilization of health services furnished by providers. The physician decides upon admissions, orders tests, drugs, and treatments, and determines the length of stay. Accordingly, sections 1814(a)(2) and 1835(a)(2) of the Act establish as a condition for Medicare payment that a physician certify the necessity of the services and, in some instances, recertify the continued need for those services.

(b) *Scope.* This subpart sets forth the content and timing requirements for certification and recertification of need for most services and the plan of treatment requirements for home health services, outpatient physical therapy and speech pathology services, home dialysis support services, and Comprehensive Outpatient Rehabilitation Facility (CORF) services.

### § 424.11 General procedures.

(a) *Responsibility of the provider.* The provider must—

(1) Obtain the required certification and recertification statements;

(2) Keep them on file for verification by the intermediary, if necessary; and

(3) Certify, on the appropriate billing form, that the statements have been obtained and are on file.

(b) *Obtaining the certification and recertification statements.* No specific procedures or forms are required for certification and recertification statements. The provider may adopt any method that permits verification. The certification and recertification statements may be entered on forms, notes, or records that a physician signs, or on a special separate form. Except as provided in paragraph (d) of this section for delayed certifications, there must be

a separate signed statement for each certification or recertification.

(c) *Required information.* The succeeding sections of this subpart set forth specific information required for different types of services. If that information is contained in other provider records, such as physicians' progress notes, it need not be repeated. It will suffice for the statement to indicate where the information is to be found.

(d) *Timeliness.* (1) The succeeding sections of this subpart also specify the time frames for certifications and for initial and subsequent recertifications.

(2) A hospital or SNF may provide for obtaining a certification or recertification earlier than required by these regulations, or vary the time frame (within the prescribed outer limits) for different diagnostic or clinical categories.

(3) Delayed certification and recertification statements are acceptable when there is a legitimate reason for delay. (For instance, the patient was unaware of his or her entitlement when he or she was treated.) Delayed certification and recertification statements must include an explanation of the reason for the delay.

(4) A delayed certification may be included with one or more recertifications on a single signed statement.

(e) *Limitation on authorization to sign statements.* A physician certification or recertification statement may be signed only by one of the following:

(1) A physician who is a doctor of medicine or osteopathy.

(2) A dentist in the circumstances specified in § 424.13(c).

(3) A doctor of podiatric medicine if his or her certification is consistent with—

(i) The policy of the institution or agency to which he or she provides the certification; and

(ii) The functions he or she is authorized to perform under State law.

**§ 424.13 Requirements for inpatient services of hospitals other than psychiatric hospitals.**

(a) *Content of certification and recertification.* Medicare Part A pays for inpatient hospital services of hospitals other than psychiatric hospitals only if a physician certifies and recertifies the following:

(1) The reasons for either—

(i) Continued hospitalization of the patient for medical treatment or medically required inpatient diagnostic study; or

(ii) Special or unusual services for cost outlier cases (under the prospective payment system set forth in Subpart F of Part 412 of this chapter).

(2) The estimated time the patient will need to remain in the hospital.

(3) The plans for posthospital care, if appropriate.

(b) *Certification of need for hospitalization when a SNF bed is not available.* (1) A physician may certify or recertify need for continued hospitalization if the physician finds that the patient could receive proper treatment in a SNF but no bed is available in a participating SNF.

(2) If this is the basis for the physician's certification or recertification, the required statement must so indicate; and the physician is expected to continue efforts to place the patient in a participating SNF as soon as a bed becomes available.

(c) *Signatures.* (1) *Basic rule.* Except as specified in paragraph (c)(2) of this section, certifications and recertifications must be signed by the physician responsible for the case, or by another physician who has knowledge of the case and who is authorized to do so by the responsible physician or by the hospital's medical staff.

(2) *Exception.* If the intermediary requests certification of the need to admit a patient in connection with dental procedures, because his or her underlying medical condition and clinical status or the severity of the dental procedures require hospitalization, that certification may be signed by the dentist caring for the patient.

(d) *Timing of certifications and recertifications: Cases not subject to the prospective payment system.* (PPS) (1) For cases that are not subject to PPS, certification is required no later than as of the 12th day of hospitalization. A hospital may, at its option, provide for the certification to be made earlier, or it may vary the timing of the certification within the 12-day period by diagnostic or clinical categories. (2) The first recertification is required no later than as of the 18th day of hospitalization. (3) Subsequent recertifications are required at intervals established by the UR committee (on a case-by-case basis if it so chooses), but no less frequently than every 30 days.

(e) *Timing of certification and recertification: Cases subject to PPS.* For cases subject to PPS, certification is required as follows:

(1) For day-outlier cases, certification is required no later than one day after the hospital reasonably assumes that the case meets the outlier criteria, established in accordance with § 412.80(a)(1)(i) of this chapter, or no later than 20 days into the hospital stay, whichever is earlier. The first and subsequent recertifications are required at intervals established by the UR committee (on a case-by-case basis if it so chooses) but not less frequently than every 30 days.

(2) For cost-outlier cases, certification is required no later than the date on which the hospital requests cost outlier payment or 20 days into the hospital stay, whichever is earlier. If possible, certification must be made before the hospital incurs costs for which it will seek cost outlier payment. In cost outlier cases, the first and subsequent recertifications are required at intervals established by the UR committee (on a case-by-case basis if it so chooses).

(f) *Recertification requirement fulfilled by utilization review.* (1) At the hospital's option, extended stay review by its UR committee may take the place of the second and subsequent physician recertifications required for cases not subject to PPS and for PPS day-outlier cases.

(2) A utilization review that is used to fulfill the recertification rquirement is considered timely if performed no later than the seventh day after the day the physician recertification would have been required. The next physician recertification would need to be made no later than the 30th day following such review; if review by the UR committee took the place of this physician recertification, the review could be performed as late as the seventh day following the 30th day.

(g) *Description of procedures.* The hospital must have available on file a written description that specifies the time schedule for certifications and recertifications, and indicates whether utilization review of long-stay cases fulfills the requirement for second and subsequent recertifications of all cases not subject to PPS and of PPS day outlier cases.

**§ 424.14 Requirements for inpatient services of psychiatric hospitals.**

(a) *Content of certification and recertification: General considerations.* The content requirements differ from those for other hospitals because the care furnished in psychiatric hospitals is often purely custodial and thus not covered under Medicare. The purpose of the statements, therefore, is to help ensure that Medicare pays only for services of the type appropriate for Medicare coverage. Accordingly, Medicare Part A pays for inpatient care in a psychiatric hospital only if a physician certifies and recertifies the need for services consistent with the

content of paragraphs (b) or (c) of this section, as appropriate.

(b) *Content of certification.* Inpatient psychiatric services were required—

(1) For treatment that could reasonably be expected to improve the patient's condition; or

(2) For diagnostic study.

(c) *Content of recertification.* (1) Inpatient services furnished since the previous certification or recertification were, and continue to be, required—

(i) For treatment that could reasonably be expected to improve the patient's condition; or

(ii) For diagnostic study; and

(2) The hospital records show that the services furnished were—

(i) Intensive treatment services;

(ii) Admission and related services necessary for diagnostic study; or

(iii) Equivalent services.

(d) *Timing of certification and recertification.* (1) Certification is required at the time of admission or as soon thereafter as is reasonable and practicable.

(2) The first recertification is required as of the 18th day of hospitalization. Subsequent recertifications are required at intervals established by the UR committee (on a case-by-case basis if it so chooses), but no less frequently than every 30 days.

(e) *Other requirements.* Psychiatric hospitals must also meet the requirements set forth in § 424.13 (b), (c), (f), and (g).

**§ 424.16 Timing of certification for individual admitted to a hospital before entitlement to Medicare benefits.**

(a) *Basic rule.* If an indivdual is admitted to a hospital before becoming entitled to Medicare benefits (for instance, before attaining age 65), the day of entitlement (instead of the day of admission) is the starting point for the time limits specified in § 424.13(e) for certification and recertification.

(b) *Example. (Hospital other than a psychiatric hospital).* For a patient who is admitted on August 15 and becomes entitled on September 1—

(1) The certification is required no later than September 12;

(2) The first recertification is required no later than September 18; and

(3) Subsequent recertifications are required at least every 30 days after September 18.

**§ 424.20 Requirements for posthospital SNF care.**

Medicare Part A pays for posthospital SNF care furnished by a SNF or a hospital with a swing-bed approval only if a physician certifies and recertifies the need for services consistent with the content of paragraph (a) or (c) of this section, as appropriate.

(a) *Content of certification.* (1) Posthospital SNF care is or was required because the individual needs or needed on a daily basis skilled nursing care (furnished directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services that, as a practical matter, can only be provided in a SNF or a swing-bed hospital on an inpatient basis; and

(2) The SNF care is or was needed for a condition for which the individual received inpatient care in a participating hospital or a qualified hospital, as defined in § 409.3 of this chapter.

(b) *Timing of certification.* The certification must be obtained at the time of admission or as soon thereafter as is reasonable and practicable.

(c) *Content of recertifications.* (1) The reasons for the continued need for posthospital SNF care;

(2) The estimated time the individual will need to remain in the SNF;

(3) Plans for home care, if any; and

(4) If appropriate, the fact that continued services are needed for a condition that arose after admission to the SNF and while the individual was still under treatment for the condition for which he or she had received inpatient hospital services.

(d) *Timing of recertifications.* (1) The first recertification is required no later than the 14th day of posthospital SNF care.

(2) Subsequent recertifications are required at least every 30 days after the first recertification.

(e) *Signature.* Certification and recertification statements may be signed by the physician responsible for the case or, with his or her authorization, by a physician on the SNF staff or a physician who is available in case of an emergency and has knowledge of the case.

(f) *Recertification requirement fulfilled by utilization review.* A SNF may substitute utilization review of extended stay cases for the second and subsequent recertifications, if it includes this procedure in its utilization review plan.

(g) *Description of procedures.* The SNF must have available on file a written description that specifies the certification and recertification time schedule and indicates whether utilization review is used as an alternative to the second and subsequent recertifications.

**§ 424.22 Requirements for home health services.**

Medicare Part A or Part B pays for home health services only if a physician certifies and recertifies the content specified in paragraphs (a)(1) and (b)(2) of this section, as appropriate.

(a) *Certification—*

(1) *Content of certification.* As a condition for payment of home health services under Medicare Part A or Medicare Part B, a physician must certify as follows:

(i) The individual needs or needed intermittent skilled nursing care, or physical or speech therapy, or (for the period from July through November 30, 1981) occupational therapy.

(ii) Home health services were required because the individual was confined to the home except when receiving outpatient services.

(iii) A plan for furnishing the services has been established and is periodically reviewed by a physician who is a doctor of medicine, osteopathy, or podiatric medicine, and who is not precluded from performing this function under paragraph (d) of this section. (Performance of plan of treatment functions by a doctor of podiatric medicine is subject to limitations specified in § 409.42(d) of this chapter.)

(iv) The services were furnished while the individual was under the care of a physician who is a doctor of medicine, osteopathy, or podiatric medicine.[1] (Care by a doctor of podiatric medicine fulfills this requirement only if the conditions of § 409.42(b)(2) of this chapter are met.)

(2) *Timing and signature.* The certification of need for home health services must be obtained at the time the plan of treatment is established or as soon thereafter as possible and must be signed by the physician who establishes the plan.

(b) *Recertification*—(1) *Timing and signature of recertification.* Recertification is required at least every 2 months, preferably at the time the plan is reviewed, and must be signed by the physician who reviews the plan.

(2) *Content and basis of recertification.* The recertification statement must indicate the continuing need for services and estimate how much longer the services will be required. Need for occupational therapy may be the basis for continuing services that were initiated because the individual needed skilled nursing care or physical or speech therapy.

(c) *Certification by a doctor of podiatric medicine.* After December 31,

[1] As a condition of Medicare Part A payment for home health services furnished before July 1981, the physician was also required to certify that the services were needed for a condition for which the individual had received inpatient hospital or SNF services.

1980, for purposes of certifying and recertifying need for home health services, the term "physician" may include a doctor of podiatric medicine if—

(1) The beneficiary needs the services because of a podiatric condition which that doctor is legally authorized to treat; and

(2) Performance of the certification function by a doctor of podiatric medicine is consistent with the HHA's policy.

(d) *Limitations on the performance of certification and plan of treatment functions.*—(1) *Basic rule.* Beginning November 26, 1982, and except as provided in paragraph (e) of this section, need for home health services to be provided by an HHA may not be certified or recertified, and a plan of treatment may not be established and reviewed, by any physician who has a significant ownership interest in, or a significant financial or contractual relationship with, that HHA.

(2) *Significant ownership interest.* A physician is considered to have a significant ownership interest in an HHA if he or she—

(i) Has a direct or indirect ownership interest of 5 percent or more in the capital, the stock, or the profits of the home health agency; or

(ii) Has an ownership interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation that is secured by the agency, if that interest equals 5 percent or more of the agency's assets.

(3) *Significant financial or contractual relationship.* Beginning November 26, 1982, a physician is considered to have a significant financial or contractual relationship with an HHA if he or she—

(i) Receives any compensation as an officer or director of the HHA; or

(ii) Has direct or indirect business transactions with the HHA that, in any fiscal year, amount to more than $25,000 or 5 percent of the agency's total operating expenses, whichever is less. Business transactions means contracts, agreements, purchase orders, or leases to obtain services, supplies, equipment, and space and, after August 29, 1986, salaried employment.

(4) *Exemption of uncompensated officer director.* A physician who serves as an uncompensated officer or director of an HHA is not precluded from performing physician certification and plan of treatment functions for that HHA.

(e) *Exceptions to limitations.*—(1) *Exceptions for governmental entities.* The limitations of paragraph (d) of this section do not apply to an HHA that is operated by a Federal, State, or local governmental authority.

(2) *Exception for sole community HHAs.* The limitations of paragraph (d) of this section do not apply on or after the date on which the HHA is classified as a sole community HHA in accordance with paragraphs (f) and (g) of this section.

(f) *Procedures for classification as a sole community HHA.* (1) The HHA must submit to its intermediary a request for classification, showing that it meets the conditions of paragraph (g) of this section.

(2) The intermediary reviews the request and sends the request, with its recommendations, to HCFA.

(3) HCFA reviews the request and the intermediary's recommendation and forwards its approval or disapproval to the intermediary

(4) An approved classification as sole community HHA remains in effect without need for reapproval unless there is a change in the circumstances under which the classification was approved.

(g) *Basis for classification as a sole community HHA.* HCFA approves a classification as sole community HHA only if the HHA designates a particular area and shows that no other HHA provides services within that area.

**§ 424.24 Requirements for medical and other health services under Medicare Part B.**

(a) *Exempted services.* Certification is not required for—

(1) Hospital services and supplies, including drugs and biologicals that cannot be self-administered, incident to physicians' services furnished to outpatients;

(2) Outpatient hospital diagnostic services, including necessary drugs and biologicals, ordinarily furnished or arranged for by a hospital for the purpose of diagnostic study; or

(3) Outpatient physical therapy services furnished in the patient's home or in the practitioner's office, by or under the direct supervision of a qualified physical therapist in independent practice. (See § 424.25 for plan of treatment requirements applicable to these services.)

(b) *General rule.* Medicare Part B pays for medical and other health services not exempted under paragraph (a) of this section only if a physician certifies the content specified in paragraph (c)(1), (c)(4), (d), or (e)(1) of this section, as appropriate.

(c) *Outpatient physical therapy and speech pathology services.*—(1) *Content of certification.* (i) The individual needs, or needed, physical therapy or speech pathology services.

(ii) The services were furnished while the individual was under the care of a physician. (For physical therapy services furnished after July 17, 1984, the physician may be a doctor of podiatric medicine, provided the services are consistent with the functions he or she is authorized to perform under State law and, if the services are furnished in an institution or agency, with the policy of that institution or agency.)

(iii) The services were furnished under a plan of treatment that meets the requirements of § 424.25.

(2) *Timing.* The certification statement must be obtained at the time the plan of treatment is established, or as soon thereafter as possible.

(3) *Signature.* (i) If the plan of treatment is established by a physician, the certification must be signed by that physician.

(ii) If the plan of treatment is established by a physician therapist or speech pathologist, the certification must be signed by a physician who has knowledge of the case.

(4) *Recertification*—(i) *Timing.* Recertification statements are required at least every 30 days and must be signed by the physician who reviews the plan of treatment.

(ii) *Content.* The continuing need for physical therapy or speech pathology services and an estimate of how much longer the services will be needed.

(d) *Home dialysis support services: Content of certification.* A physician must certify that the services are furnished in accordance with a written plan of treatment established and periodically reviewed by a team that includes the patient's physician and other professionals familiar with the patient's condition.

(e) *All other covered medical and other health services furnished by providers*—(1) *Content of certification.* The services were medically necessary.

(2) *Signature.* The certificate must be signed by a physician who has knowledge of the case.

(3) *Timing.* The physician may provide certification at the time the services are furnished or, if services are provided on a continuing basis, either at the beginning or at the end of a series of visits.

(4) *Recertification.* Recertification of continued need for services is not required.

**§ 424.25 Plan of treatment requirements for outpatient physician therapy and speech pathology services.**

(a) *Basic requirement.* Outpatient physical therapy services (including services furnished by a qualified

physical therapist in independent practice), and outpatient speech pathology services must be furnished under a written plan of treatment that meets the requirements of paragraphs (b) through (e) of this section.

(b) *Establishment of the plan.* The plan is established before treatment is begun by one of the following: [1]

(1) A physician.

(2) A physical therapist who will furnish the physical therapy services.

(3) A speech pathologist who will furnish the speech pathology services.

(c) *Content of the plan.* The plan prescribes the type, amount, frequency, and duration of the physical therapy or speech pathology services to be furnished to the individual, and indicates the diagnosis and anticipated goals.

(d) *Changes in the plan.* Any changes in the plan—

(1) Are made in writing and signed by one of the following:

(i) The physician or the physical therapist or speech pathologist who furnishes the services.

(ii) A registered professional nurse or a staff physician, in accordance with oral orders from the physician, physical therapist, or speech pathologist who furnishes the services.

(2) The changes are incorporated in the plan immediately.

(e) *Review of the plan.* (1) The physician reviews the plan as often as the individual's condition requires, but at least as often as the physician recertifies the continued need for services.

(2) Each review is dated and signed by the physician who performs it.

**§ 424.27 Requirements for comprehensive outpatient rehabilitation facility (CORF) services.**

Medicare Part B pays for CORF services only if a physician certifies, and the facility physician recertifies, the content specified in paragraphs (a) and (b)(2) of this section, as appropriate.

(a) *Certification: Content.* (1) The services were required because the individual needed skilled rehabilitation services;

(2) The services were furnished while the individual was under the care of a physician; and

(3) A written plan of treatment has been established and is reviewed periodically by a physician.

[1] Before January 1981, only a physician could establish a plan of treatment for physical therapy or speech pathology services. Speech pathologists were authorized to establish a plan effective January 1, 1981; physical therapists, effective July 18, 1984.

(b) *Recertification*—(1) *Timing.* Recertification is required at least every 60 days, based on review by a facility physician who, when appropriate, consults with the professional personnel who furnish the services.

(2) *Content.* (i) The plan is being followed;

(ii) The patient is making progress in attaining the rehabilitation goals; and

(iii) The treatment is not having any harmful effect on the patient.

## Subpart C—Claims for Payment

**§ 424.30 Scope.**

This subpart sets forth the requirements, procedures, and time limits for claiming Medicare payments. Claims must be filed in all cases except when services are furnished on a prepaid capitation basis by the health maintenance organization (HMO), a competitive medical plan (CMP), or a heatlth care prepayment plan (HCPP). Special procedures for claiming payment after the beneficiary has died and for certain bills paid by organizations are set forth in Subpart E of this part.

**§ 424.32 Basic requirements for all claims.**

(a) All claims must be—

(1) Filed with the appropriate intermediary or carrier on a form prescribed by HCFA and in accordance with HCFA instructions;

(2) Signed by the beneficiary or the beneficiary's representative (in accordance with § 424.36(b)) unless the beneficiary has died; and

(3) Filed within the time limits specified in § 424.44.

(b) The prescribed forms for claims are the following:

HCFA–1450—Uniform Institutional Provider Bill. (This form is for institutional provider billing for Medicare inpatient, outpatient and home health services.)

HCFA–1490S—Request for Medicare payment. (For use by a patient to request payment for medical expenses.)

HCFA–1490U—Request for Medicare Payment by Organization. (For use by an organization requesting payment for medical services.)

HCFA–1491—Request for Medicare Payment-Ambulance. (For use by an organization requesting payment for ambulance services.)

HCFA–1500—Health Insurance Claim Form. (For use by physicians and suppliers to request payment for medical services.)

HCFA–1660—Request for Information-Medicare Payment for Services to a Patient now Deceased. (For use in requesting amounts payable under title XVIII to a deceased beneficiary.)

(c) *Where claims forms are available.* Excluding forms HCFA–1450 and HCFA–1500, all claims forms prescribed for use in the Medicare program are distributed free-of-charge to the public, institutions, or organizations. The HCFA–1450 and HCFA–1500 may be obtained only by commercial purchase. All other claims forms can be obtained upon request from HCFA or any Social Security branch or district office, or from Medicare intermediaries or carriers. The HCFA–1490S is also available at local Social Security Offices.

**§ 424.33 Additional requirements: Claims for services of providers and claims by suppliers and nonparticipating hospitals.**

All claims for services of providers and all claims by suppliers and nonparticipating hospitals must be—

(a) Filed by the provider, supplier, or hospital; and

(b) Signed by the provider, supplier, or hospital unless HCFA instructions waive this requirement.

**§ 424.34 Additional requirements: Beneficiary's claim for direct payment.**

(a) *Basic rule.* A beneficiary's claim for direct payment for services furnished by a supplier, or by a nonparticipating hospital that has not elected to claim payment for emergency services, must include an itemized bill or a "report of services", as specified in paragraphs (b) and (c) of this section.

(b) *Itemized bill from the hospital or supplier.* The itemized bill for the services, which may be receipted or unpaid, must include all of the following information:

(1) The name and address of—

(i) The beneficiary;

(ii) The supplier or nonparticipating hospital that furnished the services; and

(iii) The physician who prescribed the services if they were furnished by a supplier other than the physician.

(2) The place where each service was furnished, e.g., home, office, independent laboratory, hospital.

(3) The date each service was furnished.

(4) A listing of the services in sufficient detail to permit determination of reasonable charges. (For example, a bill for ambulance service must specify the pick-up and delivery points.)

(5) The charges for each service.

(c) *Report of services furnished by a supplier.* For Medicare Part B services furnished by a supplier, the beneficiary claims may include the "Report of Services" portion of the appropriate claims form, completed by the supplier in accordance with HCFA instructions, in lieu of an itemized bill.

**§ 424.36 Signature requirements.**

(a) *General rule.* The beneficiary's own signature is required on the claim

unless the beneficiary has died or the provisions of paragraph (b), (c), or (d) of this section apply.

(b) *Who may sign when the beneficiary is incapable.* If the beneficiary is physically or mentally incapable of signing the claim, the claim may be signed on his or her behalf by one of the following:

(1) The beneficiary's legal guardian.

(2) A relative or other person who receives social security or other governmental benefits on the beneficiary's behalf.

(3) A relative or other person who arranges for the beneficiary's treatment or exercises other responsibility for his or her affairs.

(4) A representative of an agency or institution that did not furnish the services for which payment is claimed but furnished other care, services, or assistance to the beneficiary.

(5) A representative of the provider or of the nonparticipating hospital claiming payment for services in has furnished if the provider or nonparticipating hospital is unable to have the claim signed in accordance with paragraph (b) (1), (2), (3), or (4) of the this section.

(c) *Who may sign if the beneficiary was not present for the service.* If a provider, nonparticipating hospital, or supplier files a claim for services that involved no personal contact between the provider, hospital, or supplier and the beneficiary (for example, a physician sent a blood sample to the provider for diagnostic tests), a representative of the provider, hospital, or supplier may sign the claim on the beneficiary's behalf.

(d) *Acceptance of other signatures for good cause.* If good cause is shown, HCFA may honor a claim signed by a party other than those specified in paragraphs (a) through (c) of this section.

**§ 424.37 Evidence of authority to sign on behalf of the beneficiary.**

(a) *Beneficiary incapable.* When a party specified in § 424.36(b) signs a claim or request for payment statement, he or she must also submit a brief statement that—

(1) Describes his or her relationship to the beneficiary; and

(2) Explains the circumstances that make it impractical for the beneficiary to sign the claim or statement.

(b) *Beneficiary not present for services.* When a representative of the provider, nonparticipating hospital, or supplier signs a claim' or request for payment statement under § 424.36(c), he or she must explain why it was not possible to obtain the beneficiary's signature. (For example: "Patient not physically present for test.")

**§ 424.40 Request for payment effective for more than one claim.**

(a) *Basic procedure.* A separate request for payment statement prescribed by HCFA and signed by the beneficiary (or by his or her representative) may be included in claims by reference, in the circumstances specified in paragraphs (b) through (d) of this section.

(b) *Claims filed by a provider or nonparticipating hospital.*—(1) *Inpatient services.* A signed request for payment statement, included in the first claim for Part A services furnished by a facility (a participating hospital or SNF, or a nonparticipating hospital that has elected to claim payment) during a beneficiary's period of confinement, may be effective for all claims for Part A services the facility furnishes that beneficiary during that confinement.

(2) *Home health services and outpatient physical therapy or speech pathology services.* A signed request for payment statement, included in the first claim for home health services or outpatient physical therapy or speech pathology services furnished by a provider under a plan of treatment, may be effective for all claims for home health services or outpatient physical therapy or speech pathology services furnished by the provider under that plan of treatment.

(c) *Signed statement in the provider record.*—(1) *Services to inpatients.* A signed request for payment statement in the files of a participating hospital or SNF may be effective for all claims for services furnished to the beneficiary during a single inpatient stay in that facility—

(i) By the hospital or SNF;

(ii) By physicians, if their services are billed by the hospital or SNF in its name; or

(iii) By physicians who bill separately, if the services were furnished in the hospital or SNF.

(2) *Services to outpatients: Providers and renal dialysis facilities.* A signed request for payment statement retained in the provider's or facility's files may be effective indefinitely, for all claims for services furnished to that beneficiary on an outpatient basis—

(i) By the provider or facility;

(ii) By physicians whose services are billed by the provider or facility in its name; or

(iii) By physicians who bill separately, if the services were furnished in the provider or facility.

(3) *Services to outpatients: Independent rural health clinics.* A signed request for payment statement retained in the clinic's files may be effective indefinitely for all claims for services furnished to that beneficiary by the clinic.

(d) *Signed statement in the supplier's record.* A signed request for payment statement retained in the supplier's file may be effective indefinitely subject to the following restrictions:

(1) This policy does not apply to unassigned claims for rental of durable medical equipment (DME).

(2) With respect to assigned claims for rental or purchase of DME, a new statement is required if another item of equipment is rented or purchased.

**§ 424.44 Time limits for filing claims.**

(a) *Basic limits.* Except as provided in paragraph (b) of this section, the claim must be mailed or delivered to the intermediary or carrier, as appropriate—

(1) On or before December 31 of the following year for services that were furnished during the first 9 months of a calendar year; and

(2) On or before December 31 of the second following year for services that were furnished during the last 3 months of the calendar year.

(b) *Extension of filing time because of error or misrepresentation.* (1) The time for filing a claim will be extended if failure to meet the deadline in paragraph (a) of this section was caused by error or misrepresentation of an employee, intermediary, carrier, or agent of the Department that was performing Medicare functions and acting within the scope of its authority.

(2) The time will be extended through the last day of the 6th calendar month following the month in which the error or misrepresentation is corrected.

(c) *Extension of period ending on a nonworkday.* If the last day of the period allowed under paragraph (a) or (b) of this section falls on a Federal nonworkday (a Saturday, Sunday, legal holiday, or a day which by statute or Executive Order is declared to be a nonworkday for Federal employees), the time is extended to the next succeeding workday.

**§ 424.45 What constitutes a claim for purposes of meeting the time limits.**

A written statement of intent to claim Medicare benefits constitutes a claim if—

(a) The statement is filed with HCFA or any carrier or intermediary within the time limits specified in § 424.44;

(b) The statement indicates the intent to claim Medicare payment for specified services furnished to an identified beneficiary; and

(c) A claim that meets the requirements of § 424.32(a) is filed within 6 months after the month in which the intermediary or carrier, as appropriate, advises the claimant to file that claim.

## Subpart D—To Whom Payment Is Ordinarily Made

### § 424.50 Scope.

(a) This subpart specifies to whom Medicare payment is ordinarily made for different kinds of services.

(b) Subpart E of this part sets forth provisions applicable in special situations.

(c) Subpart F of this part specifies the exceptional circumstances under which payment may be made to an assignee or reassignee.

### § 424.51 Payment to the provider.

(a) *Basic rule.* Except as specified in paragraph (b) of this section, Medicare pays the provider for services furnished by a provider.

(b) *Exception.* Medicare pays the beneficiary for outpatient hospital services if the hospital has collected an amount in excess of the unmet deductible and coinsurance, as specified in § 489.30(b)(4) of this chapter,

### § 424.52 Payment to a nonparticipating hospital.

Medicare pays a nonparticipating hospital for the following services, if covered, in the specified circumstances:

(a) Emergency inpatient and outpatient services furnished by a U.S. hospital, if the hospital has in effect an election to claim payment in accordance with Subpart G of this part.

(b) Certain medical and other health services covered under Medicare Part B and furnished by a U.S. hospital, if the hospital meets the requirements of § 424.55 for payment as a supplier.

(c) Emergency or nonemergency inpatient services furnished by a foreign hospital if the hospital has in effect an election to claim payment in accordance with Subpart G of this part.

### § 424.53 Payment to the beneficiary.

Medicare pays the beneficiary for the following services, if covered, in the specified circumstances:

(a) Emergency inpatient and outpatient services furnished by a nonparticipating U.S. hospital that has not elected to claim payment in accordance with Subpart G of this part.

(b) Certain medical and other health services covered under Medicare Part B and furnished by a nonparticipating U.S. hospital, if the hospital does not receive assigned payment as a supplier under § 424.55

(c) Emergency or nonemergency services furnished by a foreign hospital if the hospital does not have in effect an election to claim payment in accordance with Subpart H of this part.

(d) Physician and ambulance services furnished outside the United States.

(e) Services furnished by a supplier if the claim has not been assigned to the supplier.

### § 424.54 Payment to the beneficiary's legal guardian or representative payee.

Medicare may pay amounts due a beneficiary to the beneficiary's legal guardian or representative payee.

### § 424.55 Payment to the supplier

(a) Medicare pays the supplier for covered services if the beneficiary (or the person authorized to request payment on the beneficiary s behalf) assigns the claim to the supplier and the supplier accepts assignment.

(b) In accepting assignment, the supplier agrees to the following:

(1) To accept, as full charge for the service, the amount the carrier determines to be the reasonable charge.

(2) To limit charges to the beneficiary or any other source as follows:

(i) To collect nothing for those services for which Medicare pays 100 percent of the reasonable charge.

(ii) To collect only the amount of the unmet deductible, plus 20 percent of the difference between the reasonable charge and the unmet deductible for those services for which Medicare pays 80 percent of that difference.

(3) Not to charge the beneficiary when Medicare paid for services determined to be "not reasonable or necessary" if—

(i) The beneficiary was without fault in the overpayment; and

(ii) The determination that the payment was incorrect was made by the carrier after the third year following the year in which the carrier sent notice to the beneficiary that it approved the payment.

### § 424.56 Payment to a beneficiary and to a supplier.

(a) *Conditions for split payment.* If the beneficiary assigns the claim after paying part of the bill, payment may be made partly to the beneficiary and partly to the supplier.

(b) *Payment to the supplier.* Payment to the supplier who submits the assigned claim is for whichever of the following amounts is less:

(1) The reasonable charge minus the amount the beneficiary had already paid to the supplier; or

(2) The full Part B benefit due for the services furnished.

(c) *Payment to the beneficiary.* Any part of the Part B benefit which, on the basis of paragraph (b) of this section, is not payable to the supplier, is paid to the beneficiary.

(d) *Examples.*

*Example 1.* An assigned bill of $300 on which partial payment of $100 has been paid is submitted to the carrier. The carrier determines that $300 is the reasonable charge for the services furnished, and $50 of the supplementary medical insurance benefits deductible has previously been met. Total payment due is 80 percent of $275 ($300 minus the remaining $25 of the deductible), or $220. Of this amount, $200 will be paid to the person or organization that furnished the services (the difference between the $100 partial payment which the person or organization has already received, and the $300 amount of the reasonable charge). The $20 will be paid to the beneficiary

*Example 2.* An assigned bill of $325 on which partial payment of $275 has been paid is submitted to the carrier. The carrier determines that $275 is the reasonable charge for the services furnished, and no part of the supplementary medical insurance benefits deductible has been previously met. Total payment due is 80 percent of $200 ($275 reasonable charge minus $75 deductible) deductible, or $160. The $160 is payable to the beneficiary, since any payment to the supplier, when added to the amount of the partial payment, will exceed the reasonable charge for the services furnished.

## Subpart E—To Whom Payment is Made in Special Situations

### § 424.60 Scope.

(a) This subpart contains provisions applicable to payment after the beneficiary's death and payment to certain organizations.

(b) The provisions applicable to payment for services excluded as custodial care or services not reasonable and necessary are set forth in §§ 405.332 through 405.336 of this chapter.

### § 424.62 Payment after beneficiary's death: Bill has been paid.

(a) *Scope.* This section specifies the persons whom Medicare pays, and the conditions for payments, when the beneficiary has died and the bill has been paid.

(b) *Situation.*

(1) The beneficiary has received covered services for which he could receive direct payment under § 424.53.

(2) The beneficiary died without receiving Medicare payment.

(3) The bill has been paid.

(c) *Persons whom Medicare pays.* In the situation described in paragraph (b) of this section, Medicare pays the following persons in the specified circumstances:

(1) The person or persons who, without a legal obligation to do so, paid

for the services with their own funds, before or after the beneficiary's death.

(2) The legal representative of the beneficiary's estate if the services were paid for by the beneficiary before he or she died, or with funds from the estate.

(3) If the deceased beneficiary or his or her estate paid for the services and no legal representative of the estate has been appointed, the survivors, in the following order of priority:

(i) The person found by SSA to be the surviving spouse, if he or she was either living in the same household with the deceased at the time of death, or was, for the month of death, entitled to monthly social security or railroad retirement benefits on the basis of the same earnings record as the deceased beneficiary;

(ii) The child or children, who were, for the month of death, entitled to monthly social security or railroad retirement benefits on the basis of the same earnings record as the deceased (and, if there is more than one child, in equal parts to each child);

(iii) The parent or parents, who were, for the month of death, entitled to monthly social security or railroad retirement benefits on the basis of the same earnings record as the deceased (and, if there is more than one parent, in equal parts to each parent);

(iv) The person found by SSA to be the surviving spouse who was not living in the same household with the deceased at the time of death and was not, for the month of death, entitled to monthly social security or railroad retirement benefits on the basis of the same earnings record as the deceased beneficiary;

(v) The child or children who were not entitled to monthly social security or railroad retirement benefits on the basis of the same earnings record as the deceased (and, if there is more than one child, in equal parts to each child);

(vi) The parent or parents who were not entitled to monthly social security or railroad retirement benefits on the basis of the same earnings record as the deceased (and, if there is more than one parent, in equal parts to each parent).

(4) If none of the listed relatives survive, no payment is made.

(5) If the services were paid for by a person other than the deceased beneficiary, and that person died before payment was completed, Medicare does not pay that person's estate. Medicare pays a surviving relative of the deceased beneficiary in accordance with the priorities in paragraph (c)(3) of this section. If none of those relatives survive. Medicare pays the legal representative of the deceased beneficiary's estate. If there is no legal representative of the estate, no payment is made.

(d) *Amount of payment.* The amount of payment is the amount due, including unnegotiated checks issued for the purpose of making direct payment to the beneficiary.

(e) *Conditions for payment.* For payment to be made under this section—

(1) The person who claims payment must meet the following requirements:

(i) Submit a claim on a HCFA-prescribed form and an itemized bill in accordance with the requirements of this subpart. (See paragraph (g) of this section for an exception.)

(ii) Provide evidence that the services were furnished if the intermediary or carrier requests it.

(iii) Provide evidence of payment of the bill and of the identity of the person who paid it.

(2) If a person claims payment as the legal representative of the deceased beneficiary's estate, he or she must also submit a copy of the papers showing appointment as legal representative.

(3) If a person claims payment as a survivor of the beneficiary, he or she must also submit evidence, if the intermediary or carrier requests it, that he or she is highest on the priority list of paragraph (c)(3) of this section.

(f) *Evidence of payment.* Evidence of payment may be—

(1) A receipted bill, or a properly completed "Report of Services" section of a claim form, showing who paid the bill;

(2) A cancelled check;

(3) A written statement from the provider or supplier or an authorized staff member; or

(4) Other probative evidence.

(g) *Exception: Claim submitted before beneficiary died.* If a claim and itemized bill has been submitted by or on behalf of the beneficiary before he or she died, submission of another claim form and itemized bill is not required; any written request by the person seeking payment is sufficient.

**§ 424.64 Payment after beneficiary's death: Bill has not been paid.**

(a) *Scope.* This section specifies whom Medicare pays, and the conditions for payment when the beneficiary has died and the bill has not been paid.

(b) *Situation.* (1) The beneficiary has received covered Part B services furnished by a physician or other supplier.

(2) The beneficiary died without making an assignment to the physician or other supplier or receiving Medicare payment.

(3) The bill has not been paid.

(c) *To whom payment is made.* In the situation described in paragraph (b) of this section, Medicare pays as follows:

(1) *Payment to the supplier.* Medicare pays the physician or other supplier if he or she—

(1) Files a claim on a HCFA-prescribed form in accordance with the applicable requirements of this subpart;

(ii) Upon request from the carrier, provides evidence that the services for which it claims payment were, in fact, furnished; and

(iii) Agrees in writing to accept the reasonable charge as the full charge for the services.

(2) *Payment to a person who assumes legal obligation to pay for the services.* If the physician or other supplier does not agree to accept the reasonable charge as full charge for the service, Medicare pays any person who submits to the carrier all of the following:

(1) A statement indicating that he or she has assumed legal obligation to pay for the services.

(ii) A claim on a HCFA-prescribed form in accordance with the requirements of this subpart. (If a claim had been submitted by or on behalf of the beneficiary before he or she died, submission of another claim form is not required; a written request by the person seeking payment meets the requirement for a claim.)

(iii) An itemized bill that identifies the claimant as the person to whom the physician or other supplier holds responsible for payment. (If such an itemized bill had been submitted by or on behalf of the beneficiary before he or she died, submission of another itemized bill is not required.)

(iv) If the intermediary or carrier requests it, evidence that the services were actually furnished.

**§ 424.66 Payment to organizations.**

(a) *Qualified organizations.* The following organizations may receive payment under this section for Medicare Part B services furnished by a supplier:

(1) Employers, unions, employer-employee organizations, and insurers for such entities; and

(2) Prepaid health plans.

(b) *Qualified services.* The following Medicare Part B services furnished by a supplier qualify for payment under this section.

(1) Services covered under an employment-related group health insurance plan of an organization specified in paragraph (a)(1) of this section.

(2) Services that are covered under a prepaid health plan but are not reimbursed under regular procedures for

payment to a prepayment plan because they were furnished by a supplier from which the plan has not arranged to obtain services. An example would be services furnished to a prepayment plan member while he or she is traveling.

(c) *Conditions for payment.* Medicare reimburses an organization identified in paragraph (a) of this section for its payment for Medicare Part B services furnished by suppliers, if the following conditions are met:

(1) The organization has paid in full the charges for the services for which it claims reimbursement.

(2) The organization has written authorization to request payment on the beneficiary's behalf, and to receive reimbursement for charges that the organization has paid in full.

(3) The organization relieves the beneficiary of liability for payment for the services specified in the claim and agrees not to seek any payment from the beneficiary or the beneficiary's survivors or estate if Medicare pays the organization for those services.

(4) The organization establishes to the satisfaction of HCFA or the carrier that it is one of the organizations specified in paragraph (a) of this section, and that the services are among those specified in paragraph (b) of this section.

(5) The organization files a claim for the services in accordance with § 424.32.

(6) The organization includes with the claim an itemized bill or the Report of Services of the supplier in accordance with § 424.34.

(7) The organization submits any other information that HCFA or the carrier requests in order to apply the requirements for payment for the services

(d) *Organization's discretion to limit claims.* An organization is not required to pay and claim reimbursement for all Medicare Part B services furnished to a beneficiary. The organization may, on the basis of established criteria, select the Part B services for which it will pay.

## Subpart F—Limitations on Assignment and Reassignment of Claims

### § 424.70 Basis and scope.

(a) *Statutory basis.* This subpart implements sections 1815(c) and 1842(b)(6) of the Act, which establish limitations on who may receive payments due a provider or supplier of services or a beneficiary.

(b) *Scope.* This subpart—

(1) Prohibits the assignment, reassignment, or other transfer of the right to Medicare payments except under specified conditions;

(2) Sets forth the sanctions that HCFA may impose on a provider or supplier that violates this prohibition, or on a supplier that violates the conditions to which it agreed in accepting assignment from the individual; and

(3) Specifies the conditions for payment under court-ordered assignments or reassignments.

### § 424.71 Definitions.

As used in this subpart, unless the context indicates otherwise—

*"Court of competent jurisdiction"* means a court that has jurisdiction over the subject matter and the parties before it.

*"Facility"* means a hospital or other institution that furnishes health care services to inpatients.

*"Health care delivery system"* or *"system"* means a public or private organization for delivering health services. The term includes, but is not limited to, clinics and health care prepayment plans.

*"Power of attorney"* means any written documents by which a principal authorizes an agent to—

(1) Receive, in the agent's name, any payments due the principal;

(2) Negotiate checks payable to the principal; or

(3) Receive, in any other manner, direct payment of amounts due the principal.

### § 424.73 Prohibition of assignment of claims by providers.

(a) *Basic prohibition.* Except as specified in paragraph (b) of this section, Medicare does not pay amounts that are due a provider to any other person under assignment, or power of attorney, or any other direct payment arrangement.

(b) *Exceptions to the prohibition.*—(1) *Payment to a government agency or entity.* Subject to the requirements of the Assignment of Claims Act (31 U.S.C. 3727), Medicare may pay a government agency or entity under an assignment by the provider.

(2) *Payment under assignment established by court order.* Medicare may pay under an assignment established by, or in accordance with, the order of a court of competent jurisdiction if the assignment meets the conditions set forth in § 424.90.

(3) *Payment to an agent.* Medicare may pay an agent who furnishes billing and collection services to the provider if the following conditions are met:

(i) The agent receives the payment under an agency agreement with the provider;

(ii) The agent's compensation is not related in any way to the dollar amounts billed or collected;

(iii) The agent's compensation is not dependent upon the actual collection of payment;

(iv) The agent acts under payment disposition instructions that the provider may modify or revoke at any time; and

(v) The agent, in receiving the payment, acts only on behalf of the provider.

Payment to an agent will always be made in the name of the provider.

### § 424.74 Termination of provider agreement.

HCFA may terminate a provider agreement, in accordance with § 489.53(a)(1) of this chapter, if the provider—

(a) Executes or continues a power of attorney, or enters into or continues any other arrangement, that authorizes or permits payment contrary to the provisions of this subpart; or

(b) Fails to furnish, upon request by HCFA or the intermediary, evidence necessary to establish compliance with the requirements of this subpart.

### § 424.80 Prohibition of reassignment of claims by suppliers.

(a) *Basic prohibition.* Except as specified in paragraph (b) of this section, Medicare does not pay amounts that are due a supplier under an assignment to any other person under reassignment, power of attorney, or any other direct arrangement.

(b) *Exceptions to the basic rule.*—(1) *Payment to employer.* Medicare may pay the supplier's employer if the supplier is required, as a condition of employment, to turn over to the employer the fees for his or her services.

(2) *Payment to a facility.* Medicare may pay the facility in which the services were furnished if there is a contractual arrangement between the facility and the supplier under which the facility bills for the supplier's services.

(3) *Payment to health care delivery system.* Medicare may pay a health care delivery system if there is a contractual arrangement between the system and the supplier under which the system bills for the supplier's services.

(4) *Payment to a government agency or entity.* Subject to the requirements of the Assignment of Claims Act (31 U.S.C. 3727), Medicare may pay a government agency or entity under a reassignment by the supplier.

(5) *Payment under a reassignment established by court order.* Medicare may pay under a reassignment established by, or in accordance with, the order of a court competent jurisdiction, if the reassignment meets the conditions set forth in § 424.90.

(6) *Payment to an agent.* Medicare may pay an agent who furnishes billing and collection services to the supplier, or to the employer, facility, or system specified in paragraphs (b) (1), (2) and (3) of this section, if the conditions of § 411.73(b)(3) for payment to a provider's agent are met by the agent of the supplier or of the employer, facility, or system. Payment to an agent will always be made in the name of the supplier or the employer, facility, or system.

(c) *Rules applicable to an employer, facility, or system.* An employer, facility, or system that may receive payment under paragraph (b)(1), (b)(2), or (b)(3) of this section will itself be considered the supplier of those services for purposes of the rules of Subparts C, D, and E of this part.

**§ 424.82 Revocation of right to receive assigned benefits.**

(a) *Scope.* This section sets forth the conditions and procedures for revocation of the right of a supplier or other party to receive Medicare payments.

(b) *Definition.* As used in this section, *"other party"* means an employer, facility, or health care delivery system to which Medicare may make payment under § 424.80(b) (1), (2), or (3).

(c) *Basis for revocation.* HCFA may revoke the right of a supplier or other party to receive Medicare payments if the supplier or other party, after warning by HCFA or the carrier—

(1) Violates the terms of assignment in § 424.55(b).

(2) Continues collection efforts or fails to refund moneys incorrectly collected, in violation of the terms of assignment in § 424.55(b).

(3) Executes or continues in effect a reassignment0 or power of attorney or any other arrangement that seeks to obtain payment to the provisions of § 424.80; or

(4) Fails to furnish evidence necessary to establish its compliance with the requirements of § 424.80.

(d) *Proposed revocation: Notice and opportunity for review.* If HCFA proposes to revoke the right to payment in accordance with paragraph (c) of this section, it will send the supplier or other party a written notice that—

(1) States the reasons for the proposed revocation; and

(2) Provides an opportunity for the supplier or other party to submit written argument and evidence against the proposed revocation. HCFA usually allows 15 days from the date on the notice, but.may extend or reduce the time as circumstances require

(e) *Actual revocation: Timing, notice, and opportunity for hearing*—(1) *Timing.* HCFA determines whether to revoke after considering any written argument or evidence submitted by the supplier or other party or, if none is submitted, at the expiration of the period specified in the notice of proposed revocation.

(2) *Notice and opportunity for hearing.* The notice of revocation specifies—

(i) The reasons for the revocation;

(ii) That the revocation is effective as of the date on the notice;

(iii) That the supplier or other party may, within 60 days from the date on the notice (or a longer period if the notice so specifies), request an administrative hearing and may be represented by counsel or other qualified representative.

(iv) That the carrier will withhold payment on any claims submitted by the supplier or other party until the period for requesting a hearing expires or, if a hearing is requested, until the hearing officer issues a decision;

(v) That if the hearing decision reverses the revocation, the carrier will pay the supplier's or other party's claims; and

(vi) That if a hearing is not requested or the hearing decision upholds the revocation, payment will be made to the beneficiary or to another person or agency authorized to receive payment on his or her behalf.

**§ 424.83 Hearings on revocation of right to receive assigned benefits.**

If the supplier or other party requests a hearing under § 424.82(e)(2)—

(a) The hearing is conducted—

(1) By a HCFA hearing official who was not involved in the decision to revoke; and

(2) In accordance with the procedures set forth in §§ 405.824 through 405.833 (but excepting § 405.832(d)) and 405.860 through 405.872 of this chapter. In applying those procedures, "HCFA" is substituted for "carrier"; and "hearing official", for "hearing officer".

(b) As soon as practicable after the close of the hearing, the official who conducted it issues a hearing decision that—

(1) Is based on all the evidence presented at the hearing and included in the hearing record; and

(2) Contains findings of fact and a statement of reasons.

**§ 424.84 Final determination on revocation of right to receive assigned benefits.**

(a) *Basis of final determination.*—(1) *Final determination without a hearing.* If the supplier or other party does not request a hearing, HCFA's revocation determination becomes final at the end of the period specified in the notice of revocation.

(2) *Final determination following a hearing.* If there is a hearing, the hearing decision constitutes HCFA s final determination.

(b) *Notice of final determination.* HCFA sends the supplier or other party a written notice of the final determination and, if there was a hearing, includes a copy of the hearing decision.

(c) *Application of the final determination.*—(1) A final determination not to revoke is the final administrative decision by HCFA on the matter.

(2) A final determination to revoke remains in effect until HCFA finds that the reason for the revocation has been removed and that there is reasonable assurance that it will not recur.

(3) A final determination to revoke also applies to any corporation, partnership, or other entity in which the supplier or other party directly or indirectly has obtained or obtains all, or all but a nominal part, of the financial interest.

**§ 424.86 Prohibition of assignment of claims by beneficiaries.**

(a) *Basic prohibition.* Except as specified in paragraph (b) of this section, Medicare does not pay amounts that are due a beneficiary under § 424.53 to any other person under assignment, power of attorney, or any other direct payment arrangement.

(b) *Exceptions.*—(1) *Payment to a government agency or entity.* Subject to the requirements of the Assignment of Claims Act (31 U.S.C. 3727), Medicare may pay a government agency or entity under an assignment by a beneficiary (or by the beneficiary's legal guardian or representative payee).

(2) *Payment under an assignment established by court order.* Medicare may pay under an assignment established by, or in accordance with, a court order if the assignment meets the conditions set forth in § 424.90.

**§ 424.90 Court ordered assignments: Conditions and limitations.**

(a) *Conditions for acceptance.* An assignment or reassignment established by or in accordance with a court order is effective for Medicare payments only if—

(1) Someone files a certified copy of the court order and of the executed assignment or reassignment (if it was necessary to execute one) with the intermediary or carrier responsible for processing the claim; and

(2) The assignment or reassignment—

(i) Applies to all Medicare benefits payable to a particular person or entity during a specified or indefinite time period; or

(ii) Specifies a particular amount of money, payable to a particular person or entity by a particular intermediary or carrier.

(b) *Retention of authority to reduce interim payments to providers.* A court-ordered assignment does not preclude the intermediary or carrier from reducing interim payments, as set forth in § 413.64(i) of this chapter, if the provider or assignee is in imminent danger of insolvency or bankruptcy.

(c) *Liability of the parties.* The party that receives payments under a court-ordered assignment or reassignment that meets the conditions of paragraph (a) of this section and the party that would have received payment if the court order had not been issued are jointly and . severally responsible for any Medicare overpayment to the former.

## Subpart G—Special Conditions: Emergency Services Furnished by a Nonparticipating Hospital

### § 424.100 Scope.

This subpart sets forth procedures and criteria that are followed in determining whether Medicare will pay for emergency services furnished by a hospital that is located in the United States and does not have in effect a provider agreement, that is, an agreement to participate in Medicare.

### § 424.101 Definitions.

As used in this subpart, unless the context indicates otherwise—

*"Emergency services"* means inpatient or outpatient hospital services that are necessary to prevent death or serious impairment of health and, because of the danger to life or health, require use of the most accessible hospital available and equipped to furnish those services.

*"Hospital"* means a facility that—

(1) Is primarily engaged in providing, by or under the supervision of doctors of medicine or osteopathy, inpatient services for the diagnosis, treatment, and care or rehabilitation of persons who are sick, injured, or disabled;

(2) Is not primarily engaged in providing skilled nursing care and related services for patients who require medical or nursing care, as described in section 1861(j)(1)(A) of the Act;

(3) Provides 24-hour nursing service in accordance with section 1861(e)(5) of the Act; and

(4) Is licensed, or is approved as meeting the standards for licensing, by the State or local licensing agency.

*"Reasonable charges"* means customary charges insofar as they are reasonable.

### § 424.102 Situations that do not constitute an emergency.

Without additional evidence of a threat to life or health, the following situations do not in themselves indicate a need for emergency services:

(a) Lack of care at home.

(b) Lack of transportation to a participating hospital.

(c) Death of the patient in the hospital.

### § 424.103 Conditions for payment for emergency services.

Medicare pays for emergency services furnished to a beneficiary by a nonparticipating hospital or under arrangements made by such a hospital if the conditions of this section are met.

(a) *General requirements.* (1) The services are of the type that Medicare would pay for if they were furnished by a participating hospital.

(2) The hospital has in effect an election to claim payment for all emergency services furnished in a calendar year in accordance with § 424.104.

(3) The need for emergency services arose while the beneficiary was not an inpatient in a hospital.

(4) In the case of inpatient hospital services, the services are furnished during a period in which the beneficiary could not be safely discharged or transferred to a participating hospital or other institution.

(5) The determination that the hospital was the most accessible hospital available and equipped to furnish the services is made in accordance with § 424.106.

(b) *Medical information requirements.* A physician (or, if appropriate, the hospital) submits medical information that—

(1) Describes the nature of the emergency and specifies why it required that the beneficiary be treated in the most accessible hospital;

(2) Establishes that all the conditions in paragraph (a) of this section are met; and

(3) Indicates when the emergency ended, which, for inpatient hospital services, is the earliest date on which the beneficiary could be safely discharged or transferred to a participating hospital or other institution.

### § 424.104 Election to claim payment for emergency services furnished during a calendar year.

(a) *Terms of the election.* The hospital agrees to the following:

(1) To comply with the provisions of Subpart C of Part 489 of this chapter relating to charges for items and services the hospital may make to the beneficiary, or any other person on his or her behalf.

(2) To comply with the provisions of Subpart D of Part 489 of this chapter relating to proper disposition of monies incorrectly collected from, or on behalf of a beneficiary.

(3) To request payment under the Medicare program based on amounts specified in § 413.74 of this chapter.

(b) *Filing of election statement.* An election statement must be filed on a form designated by HCFA, signed by an authorized official of the hospital, and either received by HCFA, or postmarked, before the close of the calendar year of election.

(c) *Acceptance and effective date of election.* If HCFA accepts the election statement, the election is effective as of the earliest day of the calendar year of election from which HCFA determines the hospital has been in continuous compliance with the requirements of section 1814(d) of the Act.

(d) *Appeal by hospital.* Any hospital dissatisfied with a determination that it does not qualify to claim reimbursement shall be entitled to appeal the determination as provided in Part 498 of this chapter.

(e) *Conditions for reinstatement after notice of failure to continue to qualify.* If HCFA has notified a hospital that it no longer qualifies to receive reimbursement for a calendar year, HCFA will not accept another election statement from that hospital until HCFA finds that—

(1) The reason for its failure to qualify has been removed; and

(2) There is reasonable assurance that it will not recur.

### § 424.106 Criteria for determining whether the hospital was the most accessible.

(a) *Basic requirement.* (1) The hospital must be the most accessible one available and equipped to furnish the services.

(2) HCFA determines accessibility based on the factors specified in paragraphs (b) and (c) of this section and the conditions set forth in paragraph (d) of this section.

(b) *Factors that are considered.* HCFA considers the following factors in determining whether a nonparticipating

hospital in a rural area meets the accessibility requirements:

(1) The relative distances of participating and nonparticipating hospitals in the area.

(2) The transportation facilities available to these hospitals.

(3) The quality of the roads to each hospital.

(4) The availability of beds at each hospital.

(5) Any other factors that bear on whether or not the services could be provided sooner in the nonparticipating hospitals than in a participating hospital in the general area.

In urban and suburban areas where both participating and nonparticipating hospitals are similarly available, HCFA presumes that the services could have been provided in a participating hospital unless clear and convincing evidence shows that there was a medical or practical need to use the nonparticipating hospital.

(c) *Factors that are not considered.* HCFA gives no consideration to the following factors in determining whether the nonparticipating hospital was the most accessible hospital:

(1) The personal preference of the beneficiary, the physician, or members of the family.

(2) The fact that the attending physician did not have staff privileges in a participating hospital which was available and the most accessible to the beneficiary.

(3) The location of previous medical records.

(d) *Conditions under which the accessibility requirement is met.* If a beneficiary must be taken to a hospital immediately for required diagnosis and treatment, the nonparticipating hospital meets the accessibility requirement if—

(1) It was the nearest hospital to the point where the emergency occurred, it was medically equipped to handle the type of emergency, and it was the most accessible, on the basis of the factors specified in paragraph (b) of this section; or

(2) There was a closer participating hospital equipped to handle the emergency, but the participating hospital did not have a bed available or would not accept the individual.

**§ 424.108 Payment to a hospital.**

(a) *Conditions for payment.* Medicare pays the hospital for emergency services if the hospital—

(1) Has in effect a statement of election to claim payment for all covered emergency services furnished during a calendar year, in accordance with § 424.104;

(2) Claims payment in accordance with § 424.32; and

(3) Submits evidence requested by HCFA to establish that the services meet the requirements of this subpart.

(b) *Subsequent claims.* If the hospital files subsequent claims because the initial claim did not include all the services furnished, those claims must include physicians' statements that—

(1) Contain sufficient information to clearly establish that, when the additional services were furnished, the emergency still existed; and

(2) Indicate when the emergency ended, which, for inpatient hospital services, is the earliest date on which the beneficiary could be safely discharged or transferred to a participating hospital or other institution.

**§ 424.109 Payment to the beneficiary.**

Medicare pays the beneficiary for emergency services if the following conditions are met:

(a) The hospital does not have in effect an election to claim payment.

(b) The beneficiary, or someone on his or her behalf, submits—

(1) A claim that meets the requirements of § 424.32;

(2) An itemized hospital bill; and

(3) Evidence requested by HCFA to establish that the services meet the requirements of this subpart.

## Subpart H—Special Conditions: Services Furnished in a Foreign Country

**§ 424.120 Scope.**

This subpart sets forth the conditions for payment for services furnished in a foreign country.

**§ 424.121 Scope of payments.**

Subject to the conditions set forth in this subpart—

(a) Medicare Part A pays, in the amounts specified in § 413.74 of this chapter, for emergency and nonemergency inpatient hospital services furnished by a foreign hospital.

(b) Medicare Part B pays for certain physicians' services and ambulance services furnished in connection with covered inpatient care in a foreign hospital, as specified in § 424.124.

(c) All other services furnished outside the United States are excluded from Medicare coverage, as specified in § 405.313 of this chapter.

**§ 424.122 Conditions for payment for emergency inpatient hospital services.**

Medicare Part A pays for emergency inpatient hospital services furnished by a foreign hospital if the following conditions are met:

(a) At the time of the emergency that required the inpatient hospital services, the beneficiary was—

(1) In the United States; or

(2) In Canada traveling between Alaska and another State without unreasonable delay and by the most direct route.

(b) The foreign hospital was closer to, or more accessible from, the site of the emergency than the nearest United States hospital equipped to deal with, and available to treat, the individual's illness or injury.

(c) The conditions for payment for emergency services set forth in § 424.103 are met.

(d) The hospital is a hospital as defined in § 424.101, and is licensed, or approved as meeting the conditions for licensing, by the appropriate agency of the country in which it is located.

(e) The determination of whether the hospital was more accessible is made in accordance with § 424.106.

**§ 424.123 Conditions for payment for nonemergency inpatient services furnished by a hospital closer to the individual's residence.**

Medicare Part A pays for inpatient hospital services furnished by a foreign hospital if the following conditions are met:

(a) The beneficiary is a resident of the United States.

(b) The foreign hospital is closer or more accessible to the beneficiary's residence than the nearest United States hospital equipped to deal with, and available to treat, the individual's illness or injury.

(c) The foreign hospital is—

(1) A hospital as defined in § 424.101 and, it is licensed, or approved as meeting the conditions for licensing, by the appropriate agency of the country in which it is located; and

(2) Accredited by the Joint Commission on Accreditation of Hospitals (JCAH) or accredited or approved by a program of the country where it is located under standards that HCFA finds to be essentially equivalent to those of the JCAH.

(d) The services are covered services that Medicare would pay for if they were furnished by a participating hospital.

**§ 424.124 Conditions for payment for physician services and ambulance services.**

(a) *Basic rules.* Medicare Part B pays for physicians and ambulance services if—

(1) They are furnished—

(i) To an individual who is entitled to Part B benefits; and

(ii) In connection with covered inpatient hospital services; and

(2) They meet the conditions set forth in paragraphs (b) and (c) of this section

(b) *Physicians' services.* (1) The physicians' services are services covered under Medicare Part B and are furnished—

(i) In the hospital, during a period of covered inpatient services; or

(ii) Outside the hospital, on the day of admission and for the same condition that required inpatient admission; and

(2) The physician is legally authorized to practice in the country where he or she furnishes the services.

(c) *Ambulance services.* The ambulance services are—

(1) Necessary because the use of other means of transportation is contraindicated by the beneficiary's condition; and

(2) Furnished by an ambulance that meets the definition in § 410.140 of this chapter.

**§ 424.126 Payment to the hospital.**

(a) *Conditions for payment.* Medicare pays the hospital if it—

(1) Has in effect an election that—

(i) Meets the requirements set forth in § 424.104; and

(ii) Reflects the hospital's intent to claim for all covered services furnished during a calendar year.

(2) Claims payment in accordance with §§ 424.32 and 413.74 of this chapter; and

(3) Submits evidence requested by HCFA to establish that the services meet the requirements of this subpart.

(b) *Amount of payment.* Payment is made (in accordance with § 413.74 of this chapter) on the basis of 100 percent of the hospital's customary charges, subject to the applicable deductible and coinsurance provisions set forth elsewhere in this chapter.

**§ 424.127 Payment to the beneficiary.**

(a) *Conditions for payment of inpatient hospital services.* Medicare pays the beneficiary if—

(1) The hospital does not have in effect an election to claim payment; and

(2) The beneficiary, or someone on his or her behalf, submits—

(i) A claim in accordance with § 424.32;

(ii) An itemized hospital bill; and

(iii) Evidence requested by HCFA to establish that the services meet the requirements of this subpart.

(b) *Amount payable for inpatient hospital services.* The amount payable to the beneficiary is determined in accordance with § 424.109(b).

(c) *Conditions for payment for Part B services.* Medicare pays the beneficiary for physicians' services and ambulance service as specified in § 424.121, if an itemized bill for the services is submitted by the beneficiary or someone on his or her behalf and the conditions of § 424.126(a) (2) and (3) are met.

(d) The amount payable to the beneficiary is determined in accordance with § 410.152 of this chapter.

**Subpart I–L [Reserved]**

**Subpart M—Replacement and Reclamation of Medicare Payments**

**§ 424.350 Replacement of U.S. Government checks that are lost, stolen, defaced, mutilated, destroyed, or paid on forged endorsements.**

(a) *Responsibility.* The Treasury Department is responsible for the investigation and settlement of claims in connection with Treasury checks issued on behalf of HCFA.

(b) *Action by HCFA.* HCFA forwards reports of lost, stolen, defaced, mutilated, destroyed, or forged Treasury checks to the Treasury Department disbursing center responsible for issuance of the check.

(c) *Action by the Treasury Department.* The Treasury Department will replace and begin reclamation of Treasury checks in accordance with Treasury Department regulations (31 CFR Parts 235, 240 and 245).

**§ 424.352 Replacement of intermediary and carrier checks that are lost, stolen, defaced, mutilated, destroyed, or paid on forged endorsements.**

(a) *HCFA's responsibility.* HCFA is responsible for coordinating the investigation and settlement of claims in connection with intermediary and carrier checks, including the determination that a check endorsement has been forged.

(b) *Action by HCFA.* HCFA:

(1) Analyzes each check suspected of having a forged endorsement to determine the authenticity of the endorsement;

(2) Grants an independent administrative review, upon request, to any payee dissatisfied with its determination; and

(3) Forwards reports concerning lost, stolen, defaced, mutilated, destroyed, or forged checks to the issuing office of the appropriate intermediary or carrier.

(c) *Action by carrier or intermediary: Outstanding check that is lost, stolen, defaced, mutilated, or destroyed.* (1) If the check has been lost or stolen and has not been paid, the carrier or intermediary must stop payment on the check and issue another check.

(2) If the check has been defaced, mutilated, or destroyed, the carrier or intermediary must recover any available remains of the check and issue a substitute check.

(d) *Action by carrier or intermediary: Forged endorsement.* The carrier or intermediary must make settlement in favor of the payee before recovering the amount of the check if—

(1) The facts show that the check was paid on a forged endorsement and the payee did not participate, directly or indirectly, in the proceeds of that payment; and

(2) The payee, or the payee's authorized representative, after examining the check or a copy of it, states in writing that to the best of his or her knowledge or belief the endorsement is not the payee's.

**§ 424.354 Reclamation proceedings: Checks issued by carriers or intermediaries.**

Checks issued by carriers and intermediaries are drawn on commercial banks and are not subject to the Federal laws and Treasury Department regulations that govern Treasury checks. Accordingly, when HCFA determines that a check has been paid on a forged endorsement, the carrier or intermediary must take appropriate action to recover the amount of the check, in accordance with applicable State law.

F. Technical and Conforming Amendments.

**§ 400.310 [Amended]**

1. In the table,

a. "405.165, 405.170" is changed to "424.5, 424.7".

b. "405.1627, 405.1629" is changed to "423.13, 424.14".

c. "405.1632" is changed to "424.20".

**§ 405.311a [Amended]**

2. In paragraph (a), "§ 405.152 or § 410.168" is changed to "§ 410.168 or § 424.103".

**§ 405.313 [Amended]**

3. In paragraph (a), "§ 405.153 (a) and (b)," is changed to "Subpart H of Part 424 of this chapter,".

**§ 405.370 [Amended]**

4. a. The section heading is revised to read: "§ 405.370 Suspension of Medicare payments to providers and suppliers."

b. The introductory text of paragraph (a) is revised to read:

"(a) Medicare payments to providers and suppliers, as authorized under this chapter (excluding payments to beneficiaries), may be suspended, in whole or in part, by an intermediary or a carrier when—".

**§ 405.504 [Amended]**

5. In paragraph (a)(1), "(see §§ 405.1684, 405.1685, and 405.1675)" is changed to "(in accordance with § 424.55 of this chapter)".

**§ 405.702 [Amended]**

6. In the first sentence, "(see §§ 405.1660 through 405.1674)" is removed.

**§ 405.740 [Amended]**

7. In paragraph (b), "§ 405.1672(a)" is changed to § 424.53 of this chapter".

**§ 405.803 [Amended]**

8. In paragraph (b), "405.1675" is changed to "§ 424.55 of this chapter".

**§ 408.24 [Amended]**

9. (Published on December 18, 1987 at 48118.)

a. In paragraph (a)(6)(ii), "section 9319(c) of Pub. L. 99–509" is changed to "section 2338(b) of Pub. L. 98–369".

b. In paragraph (a)(7)(ii), "section 9319(c) of Pub. L. 99–509" is changed to "section 2338 of Pub. L. 98–369, or section 9219(b) of Pub. L. 99–272".

**§ 409.5 [Amended]**

10. Reference to "Part 405, Subpart A" is changed to "Subpart H of Part 424".

**§ 409.69 [Amended]**

11. a. "Part 405, Subpart D" is changed to "Part 413".

b. The parenthetical statement at the end of the section is revised to read: "Rules for payment of services furnished by nonparticipating U.S. hospitals or by Canadian or Mexican hospitals are set forth in Subparts G and H of Part 424 of this chapter".

**§ 410.1 [Amended]**

12. In paragraph (b)—

a. In the heading and the first sentence, "subpart" is changed to "part".

b. The following is added at the end, within the parentheses:

"General conditions for Medicare payment are set forth in Part 424 of this chapter.")

**§ 410.12 [Amended]**

13. In paragraph (a)(3), "Subpart P of Part 405" is changed to "Subpart B of Part 424".

**§ 410.14 [Amended]**

14. Reference to "§ 405.153" is changed to "Subpart H of Part 424".

**§ 410.40 [Amended]**

15. In paragraph (d), "§ 405.153" is changed to "Subpart H of Part 424".

**§ 410.60 [Amended]**

16. In paragraph (a)(2), "§ 405.1634(b)(2)" is changed to "Subpart B of Part 424".

**§ 410.62 [Amended]**

17. In paragraph (a)(2)(iii), "§ 405.1634(b)(2)" is changed to "Subpart B of Part 424".

**§ 410.150 [Amended]**

18. a. In paragraph (a)(1), "Parts 405 and 416" is changed to "Parts 405, 416, and 424".

b. In paragraphs (b)(3) and (b)(4), "§ 405.1672(b)" is changed to "§ 424.53".

**§ 410.152 [Amended]**

19. a. In paragraph (a)(2)(i), "Parts 405 (Subpart E, P, and X) and 413 of this chapter" is changed to "Parts 405 (Subparts E and X), 413, and 424 of this chapter".

b. In paragraph (b)(3), "§ 410.168(c)" is changed to " Subpart G of Part 424 of this chapter".

c. In paragraph (i)(1)(ii), "§ 405.1675" is changed to "§ 424.55 or § 424.56"; "405.1680" is changed to "Subpart F of Part 424"; and "§ 405.1684" is changed to "§ 424.64".

**§ 410.161 [Amended]**

20. In paragraph (b)(3), reference to "§ 405.1684" is changed to "§ 424.64".

**§ 410.168 [Amended]**

21. a. In paragraph (b)(6), reference to "§ 405.191" is changed to "§ 424.103".

b. In paragraph (b)(7), reference to "§ 405.192" is changed to "§ 424.106".

c. In paragraph (c)(1), reference to "§ 405.152" is changed to "§ 424.103".

**§ 410.170 [Amended]**

22. a. In paragraph (b)(1), "§ 405.1633" is changed to "§ 424.22".

b. In paragraph (b)(2), "§ 405.1634" is changed to "§ 424.24".

c. In paragraph (b)(3), "§ 405.1635" is changed to "§ 424.27".

**§ 410.175 [Amended]**

23. In paragraph (b), "Subpart P of Part 405" is changed to "Part 424".

**§ 412.20 [Amended]**

24. In paragraph (b)(2), "§ 405.152" is changed to "§ 424.103".

**§ 413.35 [Amended]**

25. In paragraph (d) (see "§ 405.192 of this chapter)" is changed to "(as determined under § 424.106 of this chapter)".

**§ 413.40 [Amended]**

26. In paragraph (c)(1)(ii) "(as described in "§ 405.158(c) of this chapter)" is changed to "(as described in "§ 413.53(b))".

**§ 413.74 [Amended]**

27. a. In paragraph (a), "Section 405.153" is changed to " Subpart G of Part 424".

b. In paragraph (c), "§ 405.152" is changed to "§ 424.104".

**§ 416.3 [Amended]**

28. In paragraph (a) "§ 405.1675" is changed to "§§ 424.55 and 424.56".

**§ 416.30 [Amended]**

29. In paragraph (e), reference to "§ 405.1675" is changed to "§ 424.55 of this chapter", and reference to "§ 405.1684" is changed to "§ 425.64 of this chapter".

**§ 416.110 [Amended]**

30. In paragraph (c), "§ 405.1675" is changed to "§§ 424.55 and 424.56".

**§ 417.237 [Amended]**

31. In paragraph (a)(2)(iii), "Subpart P of Part 405" is changed to "Subpart B of Part 424".

**§ 417.532 [Amended]**

32. a. In paragraph (a)(2), "§ 405.402(a)" is changed to "§ 413.5".

b. In paragraph (e)(3), Subpart P of part 405" is changed to "Subpart B of Part 424".

**§ 417.800 [Amended]**

33. In paragraph (e), "§ 405.1675 of this subchapter" is changed to "§ 424.55 of this chapter".

**§ 421.200 [Amended]**

34. In paragraph (c)(2)(ii), "§ 405. 1675" is changed to "§ 424.55".

b. In paragraph (c)(2)(iii), §§ 405.1683 and 405.1684" is changed to "§§ 424.62 and 424.64".

**§ 435.952 [Amended]**

35. In paragraph (g), "Subpart P of this chapter" is changed to "Subpart P of Part 431 of this chapter".

**§ 466.86 [Amended]**

36. In paragraph (a)(1)(i), the words "or tuberculosis" are removed, and "§ 405.1629" is changed to "§ 424.14".

**§ 482.2 [Amended]**

37. In paragraph (a)(2), the last sentence is revised to read:

"Rules applicable to emergency services furnished by nonparticipating hospitals are set forth in Subapart G of Part 424 of this chapter."

**§ 489.30 [Amended]**

38. In paragraph (a)(4), the following is added at the end:

"with the following exception: if the DME is used DME purchased by or on behalf of the beneficiary at a price at least 25 percent less than the reasonable charge for comparable new DME, no coinsurance is required."

**§ 498.3 [Amended]**

39. In paragraph (b)(4), reference to "§ 405.152" is removed.

(Catalog of Federal Domestic Assistance Programs No. 13.773 Medicare—Hospital Insurance; and 13.774 Medicare—Supplementary Medical Insurance)

Dated: October 15, 1987.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

Approved: December 18, 1987.

**Otis R. Bowen,**

*Secretary.*

[FR Doc. 88-4352 Filed 3-1-88; 8:45 am]

BILLING CODE 4120-01-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 10

### Law Enforcement; Addresses of District Offices

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service amends 50 CFR 10.22 to update the list of addresses of its law enforcement district offices. The title "Special Agent in Charge" has been changed to "Assistant Regional Director, Division of Law Enforcement," and the mailing address of the Washington office has a new zip code. The Service also amends the citations of the legal authority for Part 10. This rule reflects those changes.

**EFFECTIVE DATE:** This rule is effective on March 2, 1988.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Striegler, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, P.O. Box 28006, Washington, DC 20038-8006, (202) 343-9242.

**SUPPLEMENTARY INFORMATION:** The Department of the Interior has determined that Executive Order 12291 and the Regulatory Flexibility Act do not apply to this action, since only titles and addresses of the Service's law enforcement offices are being changed.

Also, since this amendment's effect is purely administrative in nature and does not change agency procedure, the "notice" requirements of 5 U.S.C. 553(b) are not applicable. In addition, it is not a substantive rule requiring a delayed effective date under 5 U.S.C. 553(d).

This amendment was prepared by Margaret Culbreath Cash, Regulations Coordinator, Division of Law Enforcement.

**List of Subjects in 50 CFR Part 10**

Exports, Fish, Imports, Law enforcement officers, Wildlife.

**PART 10—[AMENDED]**

Accordingly, Part 10 of Subchapter B, Chapter I of Title 50, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 10 is revised to read as follows:

**Authority:** 18 U.S.C. 42; 16 U.S.C. 703-712; 16 U.S.C. 668a-d; 19 U.S.C. 1202, 16 U.S.C. 1531-1543; 16 U.S.C. 1361-1384, 1401-1407; 16 U.S.C. 742a-742j-l; 16 U.S.C. 3371-3378.

2. Section 10.1 is amended by revising the statutes listed to read as follows:

**§ 10.1 Purpose of regulations.**

* * * * *

Lacey Act, 18 U.S.C. 42.
Lacey Act Amendments of 1981, 16 U.S.C. 3371-3378.
Migratory Bird Treaty Act, 16 U.S.C. 703-712.
Bald and Golden Eagle Protection Act, 16 U.S.C. 668a-668d.
Endangered Species Act of 1973, 16 U.S.C. 1531-1543.
Tariff Classification Act of 1962, 19 U.S.C. 1202, [Schedule 1, Part 15D, Headnote 2(d), T.S.U.S.].
Fish and Wildlife Act of 1956, 16 U.S.C. 742a-742j-l.
Marine Mammal Protection Act of 1972, 16 U.S.C. 1361-1384, 1401-1407.

3. Section 10.22 is amended by revising the introductory text and to read as follows: the mailing address for the Washington, DC, office to read as follows:

**§ 10.22 Law enforcement officers.**

Service law enforcement offices and their areas of responsibility follow. Mail should be addressed: "Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, (appropriate address below)": "P.O. Box 28006, Washington, DC 20038-8006, Telephone: 202-343-9242."

* * * * *

Dated: February 19, 1988.

**Susan Recce,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 88-4438 Filed 3-1-88; 8:45 am]

BILLING CODE 4310-55-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 672

[Docket No. 71271-8020]

### Groundfish of the Gulf of Alaska

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

**ACTION:** Final rule.

**SUMMARY:** NOAA issues a final rule that amends current fishing regulations implementing the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This rule allows fishing in the Gulf of Alaska with pot gear for all groundfish species except sablefish. This rule is necessary to relieve an overly burdensome gear restriction of U.S. fishermen. This is a conservation and management measure intended to facilitate an orderly fishery while carrying out the Council's recommended allocation objectives in the sablefish fishery.

**EFFECTIVE DATE:** February 26, 1988.

**ADDRESS:** Copies of documents supporting this rule may be obtained from Robert W. McVey, Director, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802-1668.

**FOR FURTHER INFORMATION CONTACT:** Ronald J. Berg (Fishery Biologist NMFS), 907-586-7230.

**SUPPLEMENTARY INFORMATION:**

**Background**

The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ or 3-200 miles offshore) of the Gulf of Alaska are managed under the FMP. The FMP was developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations for the foreign fishery at 50 CFR Part 611 and for the U.S. fishery at 50 CFR Part 672.

This final rule amends a current regulation that had prohibited the use of pot gear in the Eastern and Central Regulatory Areas, and in the Western Regulatory Area after 1988, of the Gulf of Alaska while fishing for any groundfish species. Fishing with pot gear is now allowed, under this final rule, in the Eastern and Central Regulatory Areas for all groundfish species, except sablefish. Sablefish continues to be a prohibited species if caught with pot gear in these two regulatory areas. In the Western Regulatory Area, fishing

with pot gear for sablefish is allowed through 1988 or until the quota for pot gear is reached, as well as for all other groundfish species. After 1988, pot gear may be used in the Western Regulatory Area to fish for groundfish species other than sablefish; the latter will be a prohibited species if caught with gear other than hook-and-line or trawl gear.

NOAA published a proposed rule for this action (53 FR 627, January 11, 1988). Publich comments were invited until January 26, 1988. No comments were received.

On September 26, 1985, the Secretary approved Amendment 14 to the FMP, which the Council had adopted at its May 21–24, 1985, meeting. One of the parts of Amendment 14 to the FMP concerned allocation of sablefish among hook-and-line, trawl, and pot gear types. The specific language of Amendment 14 to the FMP shows that the Council intended to restrict gear in the sablefish fishery only. However, the regulation adopted by the Council at its May 21–24, 1985, meeting varied from the FMP text. The current regulation, at § 672.24(b) (1) and (2), which was approved by the Secretary implementing Amendment 14 (50 FR 43193, October 24, 1985) and Amendment 15 (52 FR 7868, March 13, 1987), plus a correction at 52 FR 12183 (April 15, 1987), prohibits the use of gear other than hook-and-line and trawl gear in the Eastern and Central Regulatory Areas and hook-and-line, trawl, and pot gear in the Western Regulatory Area, respectively, when fishing for all species of groundfish.

The use of the word "groundfish" instead of "sablefish" in § 672.24(b) (1) and (2) is more restrictive than the FMP text adopted by the Council and approved by the Secretrary. The effect of the current regulation at § 672.24(b) (1) and (2) is to limit legal gear types in the Eastern and Central Areas of the Gulf of Alaska to hook-and-line and trawl gear when fishing for any groundfish species, and to completely prohibit pot gear after 1988 when fishing for all groundfish, not just sablefish.

The discrepancy between the FMP and the current regulations has come to light. The Regional Director, Council members, and other interested individuals and organizations have received complaints from fishermen who want to use pots when fishing for certain groundfish species, especially Pacific cod, but are prohibited from doing so. Council staff has reviewed the administrative record, including recorded oral testimony underlying Amendment 14, and affirms that nothing in the record requires the Secretary to interpret the FMP to prohibit the use of pot gear for fishing for any groundfish species except sablefish.

To review options for resolving this issue, the Council's Interim Action Committee conducted a teleconference on November 16, 1987. Participating Council and Advisory Panel members and fishing industry representatives in Kodiak, Sitka, and Seattle reviewed the current regulation during the teleconference and confirmed their understanding that the Council has confirmed that it meant to prohibit the use of gear other than hook-and-line and trawl gear in the Eastern and Central Regulatory Areas, and hook-and-line, trawl, and pot gear during 1988 in the Western Regulatory Area, only when fishing for sablefish. The Council meant to continue to allow these three gear types when fishing for other groundfish species. Council members, by teleconference on November 16, 1987, voted unanimously with one abstention to recommend that the Secretary correct this error as expeditiously as possible by amending the regulations. At its meeting on December 8–11, 1987, the Council voted unanimously that it intended to allow the use of pot gear for groundfish other than sablefish.

The Secretary has concurred that the regulation as first promulgated under Amendment 14 is not required by the FMP and is overly burdensome on fishermen who might wish to fish with pots. It is especially burdensome to fishermen who harvest crabs in the Central Regulatory Area with pot gear and who wish to use this gear for groundfish other than sablefish. This rule corrects the erroneous regulation.

### Public Comments

No public comments were received in response to the proposed rule.

### Classification

For reasons stated above, the Assistant Administrator of Fisheries, NOAA, has determined that this rule is necessary for the conservation and management of the groundfish fisheries in the Gulf of Alaska and that it is consistent with the Magnuson Act and other applicable law.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

The Assistant Secretary, NOAA has determined that this action is not a major action requiring a regulatory impact analysis under Executive Order 12291.

The General Counsel of the Department of Commerce certified that this rule will not have a significant economic impact on a substantial number of small business entities.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

NOAA has determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under Section 307 of the Coastal Zone Management Act.

The Assistant Secretary, NOAA has determined that this final rule relieves a restriction on the use of pot gear to harvest groundfish species other than sablefish. Therefore, pursuant to 5 U.S.C. 553(d)(1), the effective date of this rule need not be delayed.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

### List of Subjects in 50 CFR Part 672

Fisheries.

Dated: February 26, 1988.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, Part 672 is amended as follows:

## PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for Part 672 continues to read as follows:

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

2. In § 672.24, paragraphs (b) (1) and (2) are revised to read as follows:

**§ 672.24 Gear limitations.**

* * * * *

(b) * * *

(1) *Eastern Area.* No person may use any gear other than hook-and-line and trawl gear when fishing for sablefish in the Eastern Area. No person may use any gear other than hook-and-line gear to engage in directed fishing for sablefish. When vessels using trawl gear have harvested 5 percent of the TAC for sablefish during any year, further trawl catches of sablefish must be treated as prohibited species as provided by paragraph (b)(3)(ii) of this section. Vessels using gear types other than those specified above in the Eastern Regulatory Area must treat any catch of sablefish as a prohibited species.

(2) *Central and Western Areas.* In the Western Area during 1988, hook-and-

line gear may be used to take up to 55 percent of the TAC for sablefish; pot gear may be used to take up to 25 percent of that TAC; and trawl gear may be used to take up to 20 percent of that TAC. In the Central Area and beginning with 1989 in the Western Area, hook-and-line gear may be used to take up to 80 percent of the stablefish TAC in each area and trawl gear may be used to take up to 20 percent of that TAC. Vessels using gear types other than hook-and-line and trawl in the Central Regulatory Area, and vessels using gear types other than hook-and-line and trawl gear in the Western Regulatory Area after 1988, must treat any catch of sablefish in these areas as a prohibited species.

* * * * *

[FR Doc. 88-4485 Filed 2-26-88; 3:08 pm]
BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 53, No. 41
Wednesday, March 2, 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

### Federal Crop Insurance Corporation

### 7 CFR Part 401

[Amd. No. 16; Doc. No. 4998S]

### General Crop Insurance Regulations; Fig Endorsement

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section, 7 CFR 401.125, to be known as the Fig Endorsement. The intended effect of this rule is to provide the regulations for crop insurance protection on figs in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops.

**DATE:** Written comments, data, and opinions on this proposed rule must be submitted not later than April 1, 1988, to be sure of consideration.

**ADDRESS:** Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as January 1, 1993.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.125, the Fig Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring figs.

FCIC is soliciting public comments on this proposed rule for 30 days after publication in the **Federal Register.** Written comments should be sent to Peter F. Cole, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. Any comments received as a result of this notice will be available for public inspection at the above address during regular business hours, Monday through Friday.

### List of Subjects in 7 CFR Part 401

General Crop Insurance Regulations, Fig endorsement.

### Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), proposed to be effective for the 1988 and succeeding crop years, as follows:

### PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

**Authority:** Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.125 Fig Endorsement, effective for the 1988 and Succeeding Crop Years, to read as follows:

**§ 401.125 Fig endorsement.**

The provisions of the Fig Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

**Federal Crop Insurance Corporation Fig Endorsement**

1. Insured Crop.

a. The crop insured will be commercially grown dried figs.

b. In addition to the figs not insurable in section 2 of the general crop insurance policy, we do not insure any figs:

(1) Which are not irrigated;

(2) Which have not reached the seventh growing season after being set out;

(3) Grown for purposes other than for dried figs;

(4) Grown with another crop;

(5) Unless acceptable production records for at least the previous crop year are provided;

(6) With less than 90 percent of a stand based on the original planting pattern unless we agree, in writing, to insure such acreage;

(7) Which we inspect and consider not acceptable; or

(8) For the crop year the application is filed or acquired for the crop year unless such acreage has been inspected and accepted by us.

2. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather;

(2) Earthquake;

(3) Fire;

(4) Volcanic eruption;

(5) Wildlife; and

(6) Failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against in section 1 of the general crop insurance policy, we will not insure against:

(1) Any loss of production due to fire, where weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the grove; or

(2) The inability to market the fruit as a direct result of quarantine, boycott, or refusal of any entity to accept production.

3. Report of acreage, share, type and practice (Acreage Report).

a. In addition to the information required in section 3 of the general crop insurance policy, you must report the crop type.

b. You must submit the acreage report described in section 3 of the general crop insurance policy by March 1.

c. By applying for fig crop insurance, you authorize us to determine or verify your production and acreage from records maintained by the California Fig Advisory Board or fig packer.

4. Annual premium.

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

5. Insurance period.

In addition to the provisions in section 7 of the general crop insurance policy, the following will apply:

a. Insurance attaches on each unit on March 1.

b. Insurance ends at the earliest of:

(1) Total destruction of the fig crop;

(2) The date harvest of the figs (by type) should have started on any acreage that will not be harvested;

(3) Harvest of the figs;

(4) Final adjustment of a loss; or

(5) October 31.

6. Unit division.

a. In addition to the provisions in subsection 17.q. of the general crop insurance policy, a unit will be all insurable acreage of an insurable type of fig in the country.

b. Fig acreage that would otherwise be one unit may be divided into more than one unit if you agree to pay additional premium as provided for by the actuarial table and if for each proposed unit:

(1) You maintain written, verifiable records of acreage and harvested production for at least the previous crop year, and production reports based on those records are filed to obtain an insurance guarantee; and

(2) The acreage of insured figs is located on noncontiguous land.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

7. Claim for indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of figs to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

b. The total production (pounds) to be counted for a unit will include all harvested and appraised marketable figs, as defined by the Marketing Order for Dried Figs, as amended.

(1) All substandard production must be inspected by us and we must give written consent to you prior to delivery to the substandard pool. If the substandard production is not inspected or we do not give written consent prior to the delivery to the substandard pool, all production will be counted as marketable production.

(2) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good fig farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninusred cause, or destroyed by you without our consent; and

(c) Any unharvested production.

(3) Any appraisal we have made on insured acreage will be considered production to count unless such acreage is:

(a) Not harvested before the harvest of figs becomes general in the county;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

8. Cancellation and termination dates.

The cancellation and termination dates are February 28.

9. Contract changes

The date on which contract changes will be available in your service office is October 31 preceding the cancellation date.

10. Meaning of terms.

a. *"Harvest"* means the picking of the figs from the trees or ground by hand or machine for the purpose of removal from the orchard.

b. *"Non-contiguous land"* means land which is not touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

c. *"Substandard production"* means production that does not mean minimum grade standards and is defined as "substandard" by the Marketing Order for Dried Figs, which is in effect on the date insurance attaches.

Done in Washington, DC, on February 11, 1988.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 88-4538 Filed 3-1-88; 8:45 am]

BILLING CODE 3410-08-M

## 7 CFR Part 401

**[Amdt. No. 17; Doc. No. 5040S]**

## General Crop Insurance Regulations; Hybrid Corn Seed Endorsement

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Withrawal of notice of proposed rulemaking.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby publishes this notice for the purpose of withdrawing a Notice of Proposed Rulemaking (NPRM) amending the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 crop year. FCIC has determined that the proposed rule as published was incorrect in several instances and that insufficient time remains before the changes must be filed in the service offices in which to correct the document. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** On Friday, October 30, 1987, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 52 FR 41726, proposing to amend the General Crop Insurance Regulations (7 CFR Part 401), effective with the 1988 and succeeding crop years, to issue a new Part 401.126, to be known as the Hybrid Corn Seed Endorsement. The intended effect of the NPRM was to provide the regulations for insuring hybrid seed in an endorsement to the general crop insurance policy.

In reviewing the document for preparation as final rule, FCIC became aware of several discrepancies which would require publication of a notice of additional proposed rulemaking and extended comment period because correcting such disrepancies would constitute substantive changes in the rule.

It was been determined that insufficient time remained before the filing date of November 30, 1987, to publish such a notice. For this reason, the Notice of Proposed Rulemaking published on Friday, October 30, 1987 (52 FR 41726), is hereby withdrawn.

Done in Washington, DC, on February 24, 1988.

John Marshall,

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 88-4539 Filed 3-1-88; 8:45 am]

BILLING CODE 3410-08-M

## 7 CFR Part 401

**[Amdt. No. 17; Doc. No. 5118S]**

## General Crop Insurance Regulations; Onion Endorsement

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section, 7 CFR 401.126, to be known as the Onion Endorsement. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection on onions in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops.

**DATE:** Written comments, data, and opinions on this proposed rule must be submitted not later than April 1, 1988, to be sure of consideration.

**ADDRESS:** Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as December 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.126, the Onion Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring onions.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register.** Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

### List of Subjects in 7 CFR Part 401

General Crop Insurance Regulations, Onion endorsement.

### Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), proposed to be effective for the 1988 and succeeding crop years, as follows:

### PART 401—[Amended]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.126 Onion Endorsement, effective for the 1988 and succeeding crop years, to read as follows:

### § 401.126 Onion Endorsement

The provisions of the Onion Endorsement for the 1988 and subsequent crop years are as follows:

**UNITED STATES DEPARTMENT OF AGRICULTURE**

**Federal Crop Insurance Corporation Onion Endorsement**

1. Crop Insured.

a. The crop insured will be onions planted for harvest as dry onions (bulb onions).

b. In addition to the onions not insurable under section 2 of the general crop insurance policy, we do not insure any onions planted for green (bunch) or seed onions, including chives, garlic, leek, or scallions.

c. A later planting agreement will be available.

2. Causes of loss.

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;

b. Fire;

c. Insects;

d. Plant disease;

e. Wildlife;

f. Earthquake;

g. Volcanic eruption; or

h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are expected, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual premium

The annual premium is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

4. Insurance period.

The calendar dates for the end of the insurance period are the following dates for the calendar year in which the onions are normally harvested:

| | |
|---|---|
| Washington—Walla Walla Sweets and any other non storage type onion | July 31 |
| Colorado | Sept. 30 |
| All other Washington onions and all other states | Oct. 15 |

5. Unit division.

Onion acreage that would otherwise be one unit, as defined in the general policy, may be divided into units by onion type (Red, Yellow, or White) if you agree to pay additional premium as provided for by the actuarial table and if for each proposed unit by type:

a. You maintain written verifiable records of planted acreage and harvested production for at least the previous crop year and production reports by type based on those

records are filed to obtain an insurance guarantee.

b. The acreage boundaries between onion types is clearly identifiable, and the insured acreage is easily determined and the onions are planted in such a manner that the planting pattern does not continue into the adjacent field of different type; or

c. The acreage planted to onions consists of acreage on which both irrigated and nonirrigated practices are carried out, provided:

(1) Onions planted on irrigated acreage do not continue into nonirrigated acreage in the same rows and/or planting pattern (Nonirrigated corners of a center pivot Irrigation system are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine the unit yield for the purpose of determining the guarantee for the unit); and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized irrigated and nonirrigated farming practices for the area.

6. Notice of damage or loss.

In addition to the notices required in the general crop insurance policy and in case of damage or probable loss:

a. You must give us written notice if you want to harvest the onions (after such notice is given, we will appraise the potential production. If we are unable to do so before harvest, you may harvest the crop, provided representative samples are left for appraisal purposes.); and

b. Any representative sample must be at least 10 feet wide and the entire length of the field.

7. Claim for indemnity.

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Multiplying the result by the price election;

(3) Subtracting therefrom the dollar amount obtained by multiplying the total production of onions to be counted (see subsection 7b.) by the larger of the highest price election available or the local market price at the time the onions are appraised; and

(4) Multiplying this result by your share.

b. The total production (in hundredweight) to be counted for a unit will include all harvested and appraised production.

(1) The extent of any loss may be determined no later than the date onions are placed in storage or delivered to a packer or processor.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Not less than the guarantee for any acreage from which the harvested production is disposed of without our prior written consent and such disposition prevents accurate determination of production; and

(d) Any appraised production on unharvested acreage

(3) Any appraisal we have made on insured acreage for which we have given written consent for another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of onions becomes general in the county for the planting period and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

8. Cancellation and termination dates.

The cancellation and termination dates are March 1st.

9. Contract changes.

The contract change date is December 31 preceding the cancellation date.

10. Meaning of terms.

"Harvest". means the digging of onions and placement of the onions into a container.

Done in Washington, DC, on February 11, 1988.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 88-4540 Filed 3-1-88; 8:45 am]

BILLING CODE 3410-08-M

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## 7 CFR Part 449

**[Amdt. No. 1; Doc. No. 5242S]**

## Fresh Market Sweet Corn Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Fresh Market Sweet Corn Crop Insurance Regulations (7 CFR Part 449, effective for the 1988 crop year only, by extending the date for filing contract changes specified in the policy for insuring fresh market sweet corn. The intended effect of this rule is to: (1) Allow additional time for FCIC to complete studies of this program prior to issuing the provisions of crop insurance policy protection on fresh market sweet corn as an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops; and, (2) adapt the provisions to the needs of approved additional counties.

**DATE:** Written comments, data, and opinions on this proposed rule must be submitted not later than April 1, 1988.

**ADDRESS:** Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations remains unchanged.

John Marshall, Manager FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environment Assessment nor an Environmental Impact Statement is needed.

Section 16 of the policy for insuring fresh market sweet corn (7 CFR Part 449) provides that any changes in the contract must be placed on file in the service office by April 30. The contract consists of the application, the policy, and the actuarial table. FCIC is reviewing the fresh market sweet corn crop insurance regulations (7 CFR Part 449), with a view toward making necessary changes in the policy for insurance according to the needs of approved additional counties, and issuing the program as an endorsement to the General Crop Insurance Policy (7 CFR Part 401), beginning with the 1989 crop year.

In order to allow time for completion of this review and the transition of the program to an endorsement format, FCIC has determined that the date by which such changes are required to be placed on file in the service office shall be extended from April 30, 1988 to May 31, 1988, and made effective for the 1988 crop year only for Fresh Market Sweet Corn.

FCIC is soliticing public comment on this proposed rule for 30 days after publication in the **Federal Register.** Written comments on this proposed rule should be sent to the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

Any written comments received pursuant to this rule will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular businesss hours, Monday through Friday.

**List of Subjects in 7 CFR Part 449**

Crop insurance; Fresh market sweet corn.

**Proposed Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the Fresh Market Sweet Corn Crop Insurance Regulations (7 CFR Part 449), effective for the 1988 calendar year only in the following instances;

**PART 449—[AMENDED]**

1. The Authority citation for 7 CFR Part 449, continues to read as follows:

**Authority:** Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR 449.7(d)16 is revised to read as follows:

**§ 449.7 Application and policy.**

* * * * *

(d) * * *

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your amount of insurance at which indemnities are computed is no longer offered, the actuarial table will provide the amount of insurance which you are deemed to have elected. All contract changes will be available at your service office by April 30 (May 31, effective for the 1988 crop year only), preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

Done in Washington, DC, on February 11, 1988.

**John Marshall,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 88–4541 Filed 3–1–88; 8:45 am]

BILLING CODE 3410–08–M

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**Animal and Plant Health Inspection Service**

**9 CFR Part 92**

**[Docket No. 88–009]**

**Importation of Sheep**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule and notice of public hearings.

**SUMMARY:** We propose to amend the regulations concerning the importation of sheep into the United States. This appears necessary because there is considerable interest in importing large numbers of sheep into the United States from New Zealand. These anticipated importations of sheep would create a demand for quarantine services for sheep in excess of the services available at existing federal facilities.

First, we propose to add requirements for approval of privately operated quarantine facilities for sheep imported into the United States from countries free of foot-and-mouth disease and rinderpest. These amendments are needed to ensure that private facilities meet minimum standards for disease control. Second, we propose to indicate the ports of entry for sheep intended for quarantine at a privately operated quarantine facility. This amendment is needed to ensure that these sheep are entered into the United States only at ports at which the appropriate federal personnel are available to provide services. Third, we propose health certification requirements and other requirements concerning quarantine upon arrival in the United States for sheep from New Zealand. These amendments are needed to ensure protection against the introduction into the United States of communicable livestock diseases.

**DATE:** Consideration will be given only to comments postmarked or received on or before April 1, 1988.

**ADDRESSES:** Send an original and two copies of written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 88–009. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

The public hearings will be held at the following locations: (1) On March 15, 1988, at the City Hall, City Council Chambers, 1220 Southwest Fifth, Portland, Oregon, 97204; and (2) on March 17, 1988, at the U.S. Department of Agriculture, South Building, Room 1605, 14th and Independence Avenue SW., Washington, DC 20250.

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

**SUPPLEMENTARY INFORMATION:**

**Public Hearings**

A represenative of the Animal and Plant Health Inspection Service will preside at the hearings. Any interested person may appear and be heard in person, by attorney, or by other representative.

The hearings will begin at 10 a.m. and end at 5 p.m. However, the hearings may be ended at any time after they begin if all persons desiring to speak have been heard. Anyone wishing to speak at a hearing should register with the presiding officer on the morning of the hearing between 9 a.m. and 10 a.m. at the hearing room. Those registered will be heard in the order of their registration. Anyone else who wishes to speak at the hearing will be heard after the registered speakers. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing.

If the number of registered speakers and other participants at a hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

**Background**

The regulations in 9 CFR Part 92 (referred to below as the regulations), among other things, regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various livestock diseases.

**Privately Operated Quarantine Facilities**

With certain exceptions, the regulations require quarantine upon arrival in the United States as a condition of importing animals, including sheep. There are two types of quarantine facilities for animals being imported into the United States: Government operated facilities and privately operated facilities. Currently, the regulations do not contain requirements for approval of privately operated quarantine facilities for sheep. Prospective importers of sheep from New Zealand have indicated an interest in importing these animals into the United States through privately operated quarantine facilities. These anticipated importations of sheep would create a demand for quarantine services for sheep in excess of the services available at existing federal facilities. It has been determined that, if privately operated quarantine facilities meet certain standards, sheep otherwise eligible for entry into the United States could be quarantined in privately operated quarantine facilities and then entered into the United States without presenting a significant risk of introducing communicable livestock diseases.

Therefore, it is proposed to add a new § 92.45 containing requirements for approval of privately operated quarantine facilities for sheep from countries free of rinderpest and foot-and-mouth disease (FMD). (The importation of certain animals, including sheep, from countries not declared free of rinderpest and FMD is prohibited except for specially authorized importations through the Harry S Truman Animal Import Center, a maximum security quarantine facility in Fleming Key, Florida.) Specifically, it is proposed to add requirements concerning cooperative agreements; responsibility for costs of operating facilities; supervision of facilities; physical plant requirements, including location, construction, and sanitation and security; and operating procedures for personnel, handling of sheep, cleaning and disinfecting, and recordkeeping; and environmental requirements. Provisions would also be added to the regulations concerning requests for approval of privately operated quarantine facilities for sheep, and denial and withdrawal of such approval.

Proposed § 92.45(a) requires that no facility shall operate as a privately operated quarantine facility for sheep unless it is operated in accordance with a cooperative agreement executed by the operator or other representative of the facility and by the Administrator, Animal and Plant Health Inspection Service (referred to in this document as the "Administrator"), and unless the cooperative agreement includes all the requirements of proposed § 92.45. This provision would be necessary to provide assurances that privately operated quarantine facilities for sheep operate only in accordance with the regulations. Proposed § 92.45(a) also provides that the cost of the facility and all costs associated with its maintenance and operation must be borne by the operator of the facility in accordance with § 92.12 of the regulations. This requirement would be necessary to ensure that all costs associated with the facility, which is a private enterprise, are borne by the responsible individuals. Section 92.12(a) would be amended by replacing all references to the "Deputy Administrator, Veterinary Services," with "Administrator." This reflects internal agency policy.

Proposed § 92.45(b) provides that facilities must meet the minimum requirements detailed in that section in order to be approved. Minimum standards would be necessary to ensure that animals in the facility do not present a risk of spreading communicable livestock diseases. The section further provides that approval of any privately operated quarantine facility for sheep is contingent upon a determination by the Administrator that adequate Veterinary Services (VS) personnel are available to provide services at the facility. This provision would be necessary to ensure that applicants would be aware that, each time a request for approval of a facility is received, the Administrator must determine whether personnel are available to provide the inspection, testing, and other services that the regulations require for sheep in quarantine. If adequate personnel are not available, the request would be refused.

Proposed § 92.45(b)(1) requires that the facility be maintained under the supervision of a VS veterinarian. This proposed requirement for supervision is intended to ensure that the facility operates in accordance with all applicable rules and regulations.

Proposed § 92.45(b)(2) details the physical plant requirements necessary for approval of a privately operated quarantine facility for sheep. These requirements appear to be adequate to ensure that the facility is capable of operating in accordance with the regulations. The proposed requirements (§ 92.45(b)(2)(i)) include locating the facility in the immediate area of the port of entry at one of the ports listed in § 92.3(j) of the regulations. (Proposed § 92.3(j) is explained under the heading "Ports of Entry" below.) Locating the facility in the immediate area of the port of entry would minimize the distance animals must be transported from the port of entry to the facility and would thereby minimize the risk that animals could spread disease while moving between the port and the facility.

The proposed requirements for these facilities also include construction requirements (proposed § 92.45(b)(2)(ii)). These provisions would require the facility to be constructed with walls, floors, and ceilings made of materials that are substantially impervious to moisture and that can withstand the repeated cleaning and disinfecting required by the regulations. Under this proposed section, the facility would have to be constructed with each entry way equipped with a series of two solid doors, and with other openings covered with screening 16 mesh or finer; unless the Administrator specifically approves other types of doors and openings as adequate to prevent the entry of insects. The proposed regulations would also require that the facility have a ventilation capacity sufficient to control moisture and odor at levels that are not injurious to the health of the sheep in quarantine. In addition, the proposed construction requirements contain provisions to ensure that disease agents would not be spread among different lots of sheep within the same facility.

The proposed standards for approval would also require that the facility contain certain areas and equipment necessary to conduct quarantine operations, to maintain the facility, and to keep it clean. These include a feed storage area, office space available for use by VS personnel providing services at the facility, a necropsy area with facilities adequate for specimen preparation and with a refrigerator-freezer for storage of laboratory specimens, a storage area for equipment used in the facility, a separate area for washing this equipment, and shower and clothes storage and changing areas for individuals entering and leaving the sheep-holding area within the facility. These requirements would be necessary to ensure that the facility is operated in a manner that would not allow the spread of disease into or out of the facility.

The proposed regulations include other specific requirements (§ 92.45(b)(2)(iii)) concerning sanitation and security at privately operated quarantine facilities for sheep. These provisions include requirements that

adequate equipment and supplies for cleaning, disinfecting, and maintaining each separate lot of sheep in the facility, and for controlling pests, be available; that there be an adequate supply of potable water; that wastes be disposed of by incineration or in a public sewer system; and that carcasses be disposed of by incineration or burial. The proposed provisions also include requirements that surface drainage into and out of the facility be controlled and that clean protective clothing and footwear and receptacles for soiled and contaminated clothing be provided by the operator of the facility. There is also a proposed requirement that feed and bedding for sheep in quarantine must originate in an area not under quarantine for cattle fever ticks and must be stored in the facility in a manner which adequately protects these supplies against infestation by vermin and against spoilage. Also included is a proposed provision that a security system be in place at the facility which prevents unauthorized persons, and animals outside the facility, from having contact with sheep quarantined in the facility. The system would include maintaining a log of all persons entering and leaving the facility. These proposed requirements are all designed to ensure that disease is not spread into or out of an approved quarantine facility.

Paragraphs (b)(3)(i) and (b)(3)(ii) of proposed § 92.45 contain specific requirements concerning personnel and access to the sheep-holding area at privately operated quarantine facilities for sheep. These requirements would restrict access to the facility to authorized individuals. They would also require that all individuals entering the sheep-holding area within the facility wear clean protective clothing and footwear, change the clothing and footwear when they become soiled or contaminated, and shower when entering and leaving the sheep-holding area and when leaving the necropsy area after conducting a necropsy. The operator of the facility would be required to handle soiled and contaminated clothing and footwear in a manner approved by the VS veterinarian who supervises the facility as adequate to preclude transmission of any animal disease agent from the facility. Persons authorized to enter the sheep-holding area would be prohibited from having contact with any sheep other than the lot of sheep to which the person is assigned and would be prohibited from having contact with any ruminants or swine outside the quarantine facility. Similarly, any other person who, for any reason, enters the sheep-holding area would be prohibited from having contact with other lots of sheep within the facility and with ruminants and swine outside the facility for a period of time determined by the supervising veterinarian as necessary to prevent a risk of spreading communicable livestock diseases. These requirements would be necessary to preclude transmission of any animal disease agent into the facility, from the facility, and from one lot of sheep to another within the facility.

Proposed requirements concerning handling of sheep in the facility are contained in § 92.45(b)(3)(iii) of the proposed regulations. These provisions would require that sheep be handled by lot, and that each lot of sheep be quaranteed on an "all in, all-out" basis, with adding or removing animals from the lot after the start of the quarantine period prohibited except for diagnostic purposes. The proposed provisions would also require that the portion of the facilities where a lot of sheep has been quarantined must be cleaned and disinfected under VS supervision after the animals are released from quarantine, so that newly arriving sheep would not be exposed to any diseases carried by the previous lot of sheep. These requirements would help ensure that sheep would be released into the United States only if they have met quarantine requirements. These requirements would also simplify management of sheep in the facility and would minimize possible disease spread.

The proposed regulations (§ 92.45(b)(3)(iv) also require that the operator of the quarantine facility maintain a daily log. Basically, the log would be a health record of the sheep during quarantine. Maintaining this log would help ensure that all sheep are accounted for, properly quarantined, and not released unless they comply fully with all regulations; and would provide information needed to trace animal diseases to their country of origin. Information required for the daily log for each lot of sheep would include: individual identification of the sheep, source of origin of the sheep in the lot, total number of sheep in the lot when imported, number of dead or injured sheep when the lot arrived, the date the lot was placed into the facility, the general condition of the sheep each day, a record of any medications administered into the sheep, number of deaths each day in the lot of sheep during the quarantine period, necropsy results and laboratory findings on sheep that died during the quarantine period, the dates of prescribed tests and the test results, Department import permit numbers for each lot, the date the lot was removed from the facility, and any other observations pertinent to the general health of the sheep in the lot. The operator would be required to hold this log for 12 months after the date the sheep are released from quarantine, and to make it available to VS personnel on request.

It is also proposed to require that the operator of the privately operated quarantine facility for sheep obtain and provide a certification executed by an appropriate government official indicating that the facility is in compliance with all applicable environmental regulations. This proposed requirement (§ 92.45(b)(4)) would be necessary to ensure that all environmental requirements are met.

In order to allow adjustments for unanticipated circumstances, the proposed regulations (§ 92.45(b)(5)) would provide that additional requirements could be imposed by the Administrator in specific cases in order to ensure that the quarantine of sheep in privately operated quarantine facilities would be adequate "to enable determination of their health status, prevent spread of disease among sheep in quarantine, and prevent escape of animal disease agents from the facility."

The proposed regulations (§ 92.45(c)) also include procedures to request approval of privately operated quarantine facilities for sheep. One of the proposed requirements for approval of privately operated quarantine facilities is that applications for approval be submitted in writing to the Administrator at least 90 days prior to the proposed date of entry of the first lot of sheep in the facility. This period of time would be needed to inspect and approve the facility, and to arrange for personnel to provide services at the facility.

Proposed procedures for denying or withdrawing approval of privately operated quarantine facilities for sheep are also included. These provisions (§ 92.45(d)) appear necessary to provide a mechanism to help ensure that all approved facilities actually meet the requirements set forth for approved facilities. The proposed amendment would also contain provisions to ensure that approval of a facility would not be denied or withdrawn without affording a person due process rights.

### Ports of Entry

Section 92.3 of the regulations lists the ports designated for the importation of animals and birds. That section provides, with certain exceptions, that sheep may be entered into the United States at Los Angeles, California; Miami,

Florida; Honolulu, Hawaii; and Newburgh, New York. Veterinary Services operates quarantine facilities in these cities. We propose to amend § 92.3 to provide that sheep may also be entered into the United States at any other port designated as an international port or airport by the U.S. Customs Service and quarantined at privately operated quarantine facilities provided the animals meet the other requirements for importation in Part 92. Privately operated quarantine facilities operate under the supervision of a VS veterinarian. As explained above, approval of any privately operated quarantine facility would be contingent upon a determination by the Administrator that adequate personnel are available to provide services required by the facility if approved.

**Health Certification Requirements**

Other requirements in Part 92 applicable to the importation into the United States of sheep concern import permits, health certification, declaration upon arrival, inspection at the port of entry, movement from conveyances at the port of entry to the quarantine station, and quarantine upon arrival in the United States. The regulations currently do not contain all of the criteria concerning the health certification and quarantine upon arrival requirements believed necessary for sheep offered for importation into the United States from New Zealand. This document proposes to add these criteria. The other requirements that are applicable to sheep from countries declared free of rinderpest and FMD would also be applicable to sheep imported from New Zealand.

The certification requirements currently applicable to the importation of sheep from rinderpest- and FMD-free countries (§ 92.5(a)) provide, in relevant part, that all ruminants and swine offered for importation into the United States:

[a] * * * shall be accompanied by a certificate of a salaried veterinary officer of the national government of the country of origin stating that such animals have been kept in said country at least 60 days immediately preceding the date of movement therefrom and that said country during such period has been entirely free from foot-and-mouth disease, rinderpest, contagious pleuropneumonia, and surra * * * *And provided further*, That in the case of sheep, goats, and swine the certificate, as far as it relates to contagious pleuropneumonia, may specify freedom from such disease of the district of orgin only * * *.

(2) The certificate accompanying sheep and goats offered for importation from any part of the world, except as provided in §§ 92.21 [sheep and goats from Canada], 92.28 [sheep and goats from Central America and the West Indies], and 92.36 [sheep and goats from Mexico], shall in addition to the statements required by paragraph (a)(1) of this section, state: (i) That the said salaried veterinary officer has inspected such sheep and goats on the premises of origin and found them free of evidence of the disease known as scrapie, and of any other communicable disease; (ii) that, as far as it has been possible to determine, such animals have not been exposed to any such disease during the preceding 60 days; (iii) that, as far as can be determined, the disease known as scrapie has not existed in any district in which such sheep or goats were located during the three years immediately prior to shipment to the United States; and

(iv) that each of such animals is not the progeny of a sire or dam that has been affected with scrapie.

(3) If ruminants or swine are unaccompanied by the certificate * * *, or if such animals are found upon inspection at the port of entry to be affected with a communicable disease or to have been exposed thereto, they shall be refused entry and shall be handled thereafter in accordance with the provisions of section 8 of the Act of August 30, 1890 (26 Stat. 416; 21 U.S.C. 103), or quarantined, or otherwise disposed of as the Deputy Administrator, Veterinary Services may direct.

This document proposes to amend the health certification requirements applicable to the importation into the United States of sheep from New Zealand by adding a new § 92.44 as follows:

*Section 92.44 Sheep from New Zealand.*

No sheep from New Zealand shall be imported or entered into the United States in accordance with paragraphs (a) and (b) of this section.

(a) *Health certification requirements.* No sheep shall be imported into the United States from New Zealand unless accompanied by a health certificate. The certificate shall be either signed by a salaried veterinarian of the national veterinary services of New Zealand or signed by a veterinarian authorized by the national veterinary services of New Zealand and endorsed by a salaried veterinarian of the national veterinary services of New Zealand (the endorsement represents that the veterinarian signing the certificate was authorized to do so). The certificate shall certify that:

(1) New Zealand is free from rinderpest, foot-and-mouth disease, contagious pleuropneumonia, surra, and scrapie.

(2) The sheep was born in New Zealand and has never been in any country other than New Zealand.

(3) The sheep is not the first generation progeny of a sire or dam imported into New Zealand from a country specified in § 94.1 of this chapter as having rinderpest or foot-and-mouth disease.

(4) The sheep is not the first generation progeny of a sire or dam that has been affected with scrapie.

(5) If the sheep is a spayed female, the spaying operation was conducted under the direct supervision of a salaried veterinarian of the national veterinary services of New Zealand.

(6) The sheep was inspected by the certifying veterinarian and found free of evidence of communicable disease within seven days prior to movement to an isolation area (for the purpose of this section an "isolation area" means an area in which sheep intended for export are held and have no physical contact with other sheep except sheep scheduled for the same shipment).

(7) Any premises on which the sheep had been at any time during the 12-month period prior to moving to the isolation area, had been free of any evidence of tuberculosis, bluetongue, and brucellosis for the 12-month period immediately preceding the date of movement of the sheep from that premises, and had been free of outbreaks of any other communicable disease of livestock for the 6-month period immediately preceding the date of movement of the sheep from the premises. This certification shall be made insofar as can be determined by the certifying veterinarian, based on information available from the owners of the premises, the owners of the sheep, and other sources.

(8) Prior to moving the sheep to the isolation area, the sheep was individually identified using an identification eartag or bangle tag meeting the following specifications:

(i) The eartag or bangle tag is approved by the Administrator as being tamper-resistant; and

(ii) The eartag or bangle conforms to an alpha-numeric system which uses the letters "NZ" followed by no more than 6 numbers and provides unique identification for each sheep.

(9) If moved to the isolation area from another premises, (i) the sheep was moved in a means of conveyance which, immediately prior to loading the animal, was cleaned and disinfected with a disinfectant specified in § 71.10 of this chapter under the direct supervision of an official designated by the national veterinary services of New Zealand; and

(ii) The sheep had no physical contact with other animals (except sheep scheduled for the same shipment) during transit to the isolation area.

(10) The sheep was kept in the isolation area for a period of at least 60 days immediately prior to export, under the supervision of a full-time salaried veterinarian of the national veterinary services of New Zealand, and has remained free from evidence of communicable diseases and exposure to communicable diseases during the 60-day period immediately prior to export.

(11) All sheep which entered the isolation area were handled on an "all-in, all-out" basis, except for sheep removed in accordance with this section.

(12) *Testing.* All sheep were tested during the period of isolation as follows:

(i) *Tuberculosis.* All sheep in the isolation area, except both wethers and spayed females intended for slaughter, were

subjected to an intradermal tuberculin test utilizing mammalian Purified Protein Derivative (PPD) tuberculin and tested negative within 60 days prior to export. If any sheep tested positive, they were removed from the isolation area, slaughtered, examined, and found to have no tubercular lesions, and after no less than 60 days, the remainder of the sheep in the isolation area were retested and found negative to such test. Negative test results mean that the supervisory veterinarian detected no response using both visual examination and manual palpation techniques at the site of the injection 72 hours after the injection.

(ii) *Brucellosis.* All sheep in the isolation area, except wethers and spayed females, were subjected to the standard direct complement-fixation test for brucellosis variety ovis and tested negative within 30 days prior to export. Negative test results mean less than fifty percent fixation (2 plus) in a serum dilution of 1:10. If any sheep tested positive, they were removed from the isolation area, and after no less than 30 days, the remainder of the sheep in the isolation area were retested and found negative to the test.[1]

(iii) *Akabane.* All sheep in the isolation area were subjected to the virus neutralization test for Akabane and tested negative at a serum dilution of 1:4 within 30 days prior to export. If any sheep tested positive, they were removed from the isolation area, and after no less than 30 days, the remainder of the sheep in the isolation area were retested and found negative to the test.[1]

(iv) *Bluetongue.* All sheep in the isolation area were required to be tested for bluetongue only if, during the 12-month period prior to movement to the isolation area, any sheep in the isolation area had been on a premises that, at any time during the time the sheep was on the premises or at any time during the 2-year period prior to the movement of such sheep to that premises, had contained sheep from a country not free of bluetongue. If testing was required, all sheep in the isolation area tested negative to the agar gel immunodiffusion (AGID) serological test for bluetongue. If any sheep tested positive, they were removed from the isolation area and after no less than 30 days, the remainder of the sheep in the isolation area were retested and found negative to the test.[1]

(v) *Epizootic hemorrahagic disease.* All sheep in the isolation area were required to be tested for epizootic hemorrahagic disease only if, during the 12-month period prior to movement to the isolation area, any sheep in the isolation area had been on a premises that, at any time during the time the sheep was on the premises or at any time during the 2-year period prior to the movement of such sheep to that premises, had contained sheep from a country not free of epizootic hemorrahagic disease. If testing was required, all sheep in the isolation area tested negative to the agar gel immunodiffusion (AGID) serological test for epizootic hemorrhagic disease. If any sheep tested positive, they were removed from isolation area and after no less than 30 days, the remainder of the sheep in the isolation area were retested and found negative to the test.[1]

(13) *Ectoparasites.* (i) Within 10 days prior to export, all sheep were treated for ticks by being dipped once in a .125 per cent concentration of the pesticide coumaphos.

(ii) Within 10 days prior to export, but at least 3 days after the treatment referred to in paragraph (a)(13)(i) of this section, all sheep were treated once for psorergates mites by being dipped in a 2 per cent lime sulfur dip. To ensure efficacy of the treatment, either a wetting agent shall be added to the dip prior to dipping the sheep, or the dip shall be heated to maintain a temperature of 95–105 degrees F. throughout the dipping process.

(iii) The name of the pesticide, the concentration used to treat the sheep, and the dates of treatment.

(iv) The sheep was inspected by the veterinarian signing the health certificate and was found free of any ectoparasites within 72 hours prior to being loaded on the means of conveyance which transported the sheep to the United States.

(14) *Movement from the isolation area to the port of embarkation.* The sheep was moved from the isolation area to the port of embarkation in a means of conveyance which, immediately prior to loading the sheep, was cleaned and disinfected under the direct supervision of an official designated by the national veterinary services of New Zealand with a disinfectant specified in § 71.10 of this chapter. Such movement was by the most expeditious route that would prevent possible exposure to disease in transit. From the time of cleaning and disinfecting the means of conveyance through the unloading of the sheep for export to the United States, there have been no other sheep aboard the means of conveyance.

These health certificate provisions appear necessary to help Veterinary Services personnel at the port of entry determine if sheep offered for entry into the United States meet the requirements for importation.

The provision in paragraph (a)(1) above would provide confirmation from within the country of New Zealand's freedom from certain diseases immediately prior to any shipments of sheep. It appears that this certification would help ensure that sheep intended for importation into the United States would come from a country free of the listed diseases. Assurance that sheep intended for shipment to the United States have not had opportunity for exposure to these diseases appears necessary because of the rapidity of spread of these diseases, the difficulty of diagnosing and treating them, and their potential adverse effects if introduced into the United States. By virtue of their positions, the certifying and endorsing veterinarians would be aware of any outbreaks of these diseases.

As noted above, the current regulations allow the importation of sheep from countries not free of contagious pleuropneumonia and scrapie, provided, among other things, the sheep are from a district that has been certified free of these diseases. New Zealand is free of these diseases and certifies its freedom from these diseases on a "whole-country" basis. Although certification of freedom from these diseases on a national basis is not currently required by the regulations, we recognize New Zealand's "free" status with respect to these diseases, and, for administrative ease, we propose to require certification that the entire country is free of these diseases.

Paragraph (a)(2) above would require that the sheep have been born in New Zealand and have never been in any country other than New Zealand. This appears necessary as a precautionary measure to help reduce the risk of sheep intended for importation into the United States having been exposed to FMD or other diseases exotic to the United States.

The requirement in paragraph (a)(3) that the sire and dam have not been imported into New Zealand from a country not declared free of rinderpest and foot-and-mouth disease appears necessary to help ensure that sheep intended for importation into the United States have not been exposed to rinderpest or FMD. The requirement in paragraph (a)(4) that neither the sire nor dam have been affected with scrapie is intended as a precautionary measure to minimize the risk of any offspring offered for importation into the United States being affected with that disease. There is scientific evidence of genetic susceptibility to scrapie among sheep.

The provision in paragraph (a)(5) above concerning supervision of the spaying operation for any spayed females in the importation appears necessary to ensure that female sheep have been spayed and, therefore, would not present a risk of spreading sexually transmitted diseases. Spayed females would be exempt from certain testing requirements, as explained below. "Direct" supervision means that the supervising person would be physically present during the operation. The supervising veterinarian can determine by visual examination whether a male sheep has been castrated. However, it is impossible to tell by visual examination whether a female sheep has been spayed. Requiring supervision of the spaying operation would provide that confirmation.

The provisions in paragraph (a)(7) above concerning a determination of

[1] The importation of sheep which have been exposed to any disease within 60 days prior to their exportation is prohibited by 21 U.S.C. 104.

freedom from certain diseases on any premises on which the sheep had been at any time during the 12-month period prior to moving to the isolation area would be included as a precautionary measure. A 12-month period of freedom from tuberculosis, bluetongue, and brucellosis is specified to help ensure that no sheep are convalescent carriers of these diseases. Similarly, a 6-month period of freedom from other diseases of livestock is specified.

The individual identification requirements in paragraph (a)(8) above appear necessary to provide a semipermanent mechanism for identifying individual sheep. Section 92.4 of the current regulations requires that individual identification be recorded on the application for an import permit. This information is also recorded on the import permit prepared by Veterinary Services. Being able to verify the identification recorded on the permit with the identification on the sheep itself would help ensure that a sheep presented at the port of entry is, in fact, the sheep referred to in the documents accompanying it.

The requirements in paragraphs (a)(9) and (a)(15) above for cleaning and disinfection of the means of conveyance used to transport the sheep appear necessary to help ensure that the means of conveyance would not be contaminated with disease agents, and thereby further minimize any risk of the sheep being exposed to disease. "Direct" supervision of these activities means that the person supervising the cleaning and disinfection would be physically present during the procedure.

The inspection, isolation, handling, testing, and treatment provisions in paragraphs (a)(6) and (a)(10) through (a)(14) above appear necessary to help ensure that the sheep are free from disease when imported into the United States. An isolation period of at least 60 days is proposed. Sixty days should be a reasonable time for conducting all of the prescribed tests and treatments, and an adequate time within which a disease that a sheep might be harboring would manifest itself. The isolation provisions are designed to help ensure freedom from exposure to disease agents. The testing requirements in paragraph (a)(12) above are designed to help ensure the detection of any of the specified diseases which the sheep might be harboring. Both wethers and spayed female sheep would be exempt from the brucellosis test, since, even if these animals contracted the disease, they would not present a risk of spreading it. Only breeding sheep present a risk of spreading brucellosis. Both wethers and spayed female sheep intended for slaughter would also be exempt from the tuberculosis test. The disease does not develop among feedlot lambs because of the short fattening period and young-age slaughter. It is believed that wethers and spayed female sheep would only be imported into the United States at a young age for slaughter since there is no market in the United States for meat from such older sheep.

The inspection and treatment provisions in paragraph (a)(13) above are intended to help ensure that the sheep are free of ectoparasites when they are shipped to the United States. The efficacy of the prescribed dosage of coumaphos has been established as adequate to kill ticks. Also, the prescribed lime sulfur treatment has been established as adequate to kill mites. These are the types of ectoparasites likely to infest sheep in New Zealand. Even though the coumaphos treatment is effective upon contact, a 3-day period between the treatments is proposed to allow time for elimination of residues that might interfere with the effectiveness of the lime sulfur treatment.

It appears that the determinations necessary to issue the certificate could be adequately made by any veterinarian who is authorized by the Government of New Zealand to do so. However, if the certificate were issued by a veterinarian who is not a salaried veterinarian of the Government of New Zealand, it would be necessary for the certificate to be endorsed by a salaried veterinarian of the national veterinary services of the Government of New Zealand in order to ensure that the veterinarian issuing the certificate was authorized to do so. It appears that such certification would be adequate to ensure that the sheep were free from communicable diseases and exposure to communicable diseases at the time of the issuance of the certificate without imposing an unwarranted burden on the national veterinary services of New Zealand.

**Quarantine Upon Arrival Requirements**

Currently, the regulations applicable to the arrival in the United States of sheep imported from countries free of rinderpest and FMD require, among other things, a quarantine for not less than 15 days, counting from the date of arrival at the port of entry (§ 92.11). It is proposed to add the following provisions concerning quarantine and testing of sheep from New Zealand upon arrival at the United States port of entry:

(b) *Quarantine upon arrival.* (1) As a condition of entry into the United States, upon arrival at the port of entry, sheep from New Zealand shall be quarantined for not less than 30 days, counting from the date of entry into the approved quarantine facility.

(2) In order to qualify for release from quarantine, the sheep shall be tested as follows:

(i) All sheep, except wethers and spayed females, shall be subjected twice, with an interval of at least 15 days between tests, to the standard direct complement-fixation test for brucellosis variety ovis and receive negative test results (less than fifty percent fixation, 2 plus) in a serum dilution of 1:10; and

(ii) All sheep shall test negative to any other test duplicative of the tests required under paragraph (a) of this section and any additional tests as may be determined necessary by the Administrator to determine their freedom from communicable diseases.

The quarantine and testing requirements in paragraph (b) above are intended as an additional precautionary measure to ensure that the sheep have remained negative for the diseases referred to above. A quarantine period of not less than 30 days, counting from the date of entry into the approved quarantine facility, is proposed because this appears to be an adequate time for conducting any tests that may be determined necessary for the sheep to qualify for release from quarantine. This quarantine period would also provide a reasonable time within which a disease that a sheep might be harboring would manifest itself.

**Miscellaneous**

It is proposed to amend the regulations in § 92.12 to clarify that "non-Governmental" quarantine facilities are the same as "privately operated" quarantine facilities.

Also, a definition of the term "Administrator" would be added to Part 92 to indicate that the term refers to the Administrator of the Animal and Plant Health Inspection Service (APHIS) or to any other employee in APHIS to whom authority has been or may be delegated to act in the Administrator's stead.

Nonsubstantive changes would also be made for purposes of clarity.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse

effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

If the proposed rule is adopted as a final rule, it is anticipated that approximately 162,000 sheep that might not otherwise be imported into the United States would be imported annually. It is expected that all of these animals would be slaughtered within two to three months after importation. This would add approximately 3 percent to the amount of lamb available for marketing in the United States, and could decrease the price of lamb slightly, probably no more than one cent per pound. The importation of sheep through privately operated quarantine facilities would have a negligible effect on the wool supply in the United States. This is because the sheep will have been shorn shortly before entering the United States. Also, it should be noted that raising sheep for slaughter is not the sole source of business income for most United States sheep producers. The importation would generate additional business for the importer, the feedlot operator that feeds the lambs, the feed mill that supplies the feed, the meat packing plant that slaughters the lambs, and the wholesale and retail distributor of the finished product.

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

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), we have submitted the information collection provisions in this proposed rule to the Office of Management and Budget (OMB) for approval. You may send written comments on these provisions to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

**Executive Order 12372**

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

**List of Subjects in 9 CFR Part 92**

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

Accordingly, it is proposed to amend 9 CFR Part 92 as follows:

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

1. The authority citation for Part 92 would continue to read as set forth below:

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

2. Section 92.1 would be amended by adding, in alphabetical order, the following:

**§ 92.1 Definitions.**

* * * * *

*Administrator.* The Administrator of the Animal and Plant Health Inspection Service or any other employee of the Animal and Plant Health Inspection Service, United States Department of Agriculture, to whom authority has been or may be delegated to act in the Administrator's stead.

* * * * *

3. In § 92.3, a new paragraph (j) would be added to read as follows:

**§ 92.3 Ports designated for the importation of animals and birds.**

* * * * *

(j) *Ports and privately operated quarantine facilities for sheep.* Sheep may be entered into the United States at any port specified in paragraph (a) of this section, or at any other port designated as an international port or airport by the U.S. Customs Service and quarantined at privately operated quarantine facilities provided the applicable provisions of §§ 92.2, 92.4(a), 92.7, 92.8, 92.44, and 92.45 are met.

**§ 92.5 [Amended]**

4. In paragraph (a)(1) of § 92.5, "and 92.40" would be changed to "92.40, and 92.44."

5. In paragraph (a)(2) of § 92.5, "and 92.36," would be changed to "92.36, and 92.44,"

6. In the first sentence of paragraph (b)(1) of § 92.11, "other than sheep from New Zealand and" would be inserted after "Swine and ruminants".

7. In paragraph (b)(2) of § 92.11, the following sentence would be added at the end of the paragraph:

**§ 92.11 Quarantine requirements.**

* * * * *

(b * * *

(2) * * * Sheep imported from New Zealand shall be subject to § 92.44 of this part.

* * * * *

8. In § 92.12, the heading for the section and the heading for paragraph (a) would be revised to read as follows:

**§ 92.12 Animal quarantine facilities.**

(*a*) Privately operated quarantine facilities * * *

* * * * *

9. In § 92.12, paragraph (a) would be amended by removing the words "non-Governmental quarantine facility" and adding "privately operated quarantine facility" in their place.

10. In the second, fourth, sixth, eighth, and eleventh sentences of paragraph (a) of § 92.12, the words "Deputy Administrator, Veterinary Services," would be removed and "Administrator" would be added in their place.

11. In §92.12, the heading for paragraph (b) would be revised to read:

* * * * *

(b) *Quarantine facilities maintained by Veterinary Services.* * * *

* * * * *

12. In § 92.12, the third sentence in paragraph (b) would be amended by replacing "Veterinarian Services" with "Veterinary Services".

13. New §§ 92.44 and 92.45 would be added to read as follows:

**§ 92.44 Sheep from New Zealand.**

No sheep from New Zealand shall be imported or entered into the United States unless in accordance with paragraphs (a) and (b) of this section.

(a) *Health certification requirements.* No sheep shall be imported into the United States from New Zealand unless accompanied by a health certificate. The certificate shall be either signed by a salaried veterinarian of the national veterinary services of New Zealand or signed by a veterinarian authorized by the national veterinary services of New Zealand and endorsed by a salaried veterinarian of the national veterinary services of New Zealand (the endorsement represents that the veterinarian signing the certificate was authorized to do so). The certificate shall certify that:

(1) New Zealand is free from rinderpest, foot-and-mouth disease,

contagious pleuropneumonia, surra, and scrapie.

(2) The sheep was born in New Zealand and has never been in any country other than New Zealand.

(3) The sheep is not the first generation progeny of sire or dam imported into New Zealand from a country specified in § 94.1 of this chapter as having rinderpest or foot-and-mouth disease.

(4) The sheep is not the first generation progeny of a sire or dam that has been affected with scrapie.

(5) The sheep is a spayed female, the spaying operation was conducted under the direct supervision of a salaried veterinarian of the national veterinary services of New Zealand.

(6) The sheep was inspected by the certifying veterinarian and found free of evidence of communicable disease within seven days prior to movement to an isolation area (for the purposes of this section an "isolation area" shall mean an area in which sheep intended for export are held and have no physical contact with other sheep except sheep scheduled for the same shipment).

(7) Any premises on which the sheep had been at any time during the 12-month period prior to moving to the isolation area, had been free of any evidence of tuberculosis, bluetongue, and brucellosis for the 12-month period immediately proceding the date of movement of the sheep from that premises, and had been free of outbreaks of any other communicable disease of livestock for the 6-month period immediately preceding the date of movement of the sheep from the premises. This certification shall be made insofar as can be determined by the certifying veterinarian, based on information available from the owners of the premises, the owners of the sheep, and other sources.

(8) Prior to moving the sheep to the isolation area, the sheep was individually identified using an identification eartag or bangle tag meeting the following specifications:

(i) The eartag or bangle tag is approved by the Administrator as being tamper-resistant; and

(ii) The eartag or bangle tag conforms to an alpha-numeric system which uses the letters "NZ" followed by no more than 6 numbers and provides unique identification for each sheep.

(9) If moved to the isolation area from another premises, (i) the sheep was moved in a means of conveyance which, immediately prior to loading the animal, was cleaned and disinfected with a disinfectant specified in § 71.10 of this chapter under the direct supervision of an official designated by the national veterinary services of New Zealand; and

(ii) The sheep had no physical contact with other animals (except sheep scheduled for the same shipment) during transit to the isolation area.

(10) The sheep was kept in the isolation area for a period of at least 60 days immediately prior to export, under the supervision of a full-time salaried veterinarian of the national veterinary services of New Zealand, and has remained free from evidence of communicable diseases and exposure to communicable diseases during the 60-day period immediately prior to export.

(12) All sheep which entered the isolation area were handled on an "all-in, all-out" basis, except for sheep removed in accordance with this section.

(13) *Testing.* All sheep were tested during the period of isolation as follows:

(i) *Tuberculosis.* All sheep in the isolation area, except both wethers and spayed females intended for slaughter, were subjected to an intradermal tuberculin test utilizing mammalian Purified Protein Derivative (PPD) tuberculin and tested negative within 60 days prior to export. If any sheep tested positive, they were removed from the isolation area, slaughtered, examined, and found to have no tubercular lesions, and after no less than 60 days, the remainder of the sheep in the isolation area were retested and found negative to such test. Negative test results mean that the supervisory veterinarian detected no response using both visual examination and manual palpation techniques at the site of the injection 72 hours after the injection.

(ii) *Brucellosis.* All sheep in the isolation area, except wethers and spayed females, were subjected to the standard direct complement-fixation test for brucellosis variety ovis and tested negative within 30 days prior to export. Negative test results mean less than fifty percent fixation (2 plus) in a serum dilution of 1:10. If any sheep tested positive, they were removed from the isolation area, and after no less than 30 days, the remainder of the sheep in the isolation area were retested and found negative to the test.[1]

(iii) *Akabane.* All sheep in the isolation area were subjected to the virus neutralization test for Akabane and tested negative at a serum dilution of 1:4 within 30 days prior to export. If any sheep tested positive, they were removed from the isolation area, and after no less than 30 days, the remainder of the sheep in the isolation area were retested and found negative to the test.[1]

(iv) *Bluetongue.* All sheep in the isolation area were required to be tested for bluetongue only if, during the 12-month period prior to movement to the isolation area, any sheep in the isolation area had been on a premises that, at any time during the time the sheep was on that premises or at any time during the 2-year period prior to the movement of such sheep to that premises, had contained sheep from a country not free of bluetongue. If testing was required, all sheep in the isolation area tested negative to the agar gel immunodiffusion (AGID) serological test for bluetongue. If any sheep tested positive, they were removed from the isolation area and after no less than 30 days, the remainder of the sheep in the isolation area were retested and found negative to the test.[1]

(v) *Epizootic hemorrhagic disease.* All sheep in the isolation area were required to be tested for epizootic hemorrhagic disease only if, during the 12-month period prior to movement to the isolation area, any sheep in the isolation area had been on a premises that, at any time during the time the sheep was on that premises or at any time during the 2-year period prior to the movement of such sheep to that premises, had contained sheep from a country not free of epizootic hemorrhagic disease. If testing was required, all sheep in the isolation area tested negative to the agar gel immunodiffusion (AGID) serological test for epizootic hemorrhagic disease. If any sheep tested positive, they were removed from the isolation area and after no less than 30 days, the remainder of the sheep in the isolation area were retested and found negative to the test.[1]

(14) *Ectoparasites.* (i) Within 10 days prior to export, all sheep were treated for ticks by being dipped once in a .125 per cent concentration of the pesticide coumaphos.

(ii) Within 10 days prior to export, but at least 3 days after the treatment referred to in paragraph (a)(13)(i) of this section, all sheep were treated once for psorergates mites by being dipped in a 2 per cent lime sulfur dip. To ensure efficacy of the treatment, either a wetting agent shall be added to the dip prior to dipping the sheep, or the dip shall be heated to maintain a temperature of 95–105 degrees F. throughout the dipping process.

(iii) The name of the pesticide, the concentration used to treat the sheep, and the dates of treatment.

(iv) The sheep was inspected by the veterinarian signing the health certificate and was found free of any ectoparasites within 72 hours prior to being loaded on the means of conveyance which transported the sheep to the United States.

[1] The importation of sheep which have been exposed to any disease within 60 days prior to their exportation is prohibited by 21 U.S.C. 104.

(15) *Movement from the isolation area to the port of embarkation.* The sheep was moved from the isolation area to the port of embarkation in a means of conveyance which, immediately prior to loading the sheep, was cleaned and disinfected under the direct supervision of an official designated by the national veterinary services of New Zealand with a disinfectant specified in § 71.10 of this chapter. Such movement was by the most expeditious route that would prevent possible exposure to disease in transit. From the time of cleaning and disinfecting the means of conveyance through the unloading of the sheep for export to the United States, there have been no other sheep aboard the means of conveyance.

(b) *Quarantine upon arrival.* (1) As a condition of entry into the United States, upon arrival at the port of entry, sheep from New Zealand shall be quarantined for not less than 30 days, counting from the date of entry into the approved quarantine facility.

(2) In order to qualify for release from quarantine, the sheep shall be tested as follows:

(i) All sheep, except wethers and spayed females, shall be subjected twice, with an interval of at least 15 days between tests, to the standard direct complement-fixation test for brucellosis variety ovis and receive negative test results (less than fifty percent fixation, 2 plus) in a serum dilution of 1:10; and

(ii) All sheep shall test negative to any other test duplicative of the tests required under paragraph (a) of this section and any additional tests as may be determined necessary by the Administrator to determine their freedom from communicable diseases.

(c) *Sheep refused entry.* A sheep imported or offered for entry into the United States that is not accompanied by a health certificate as required by paragraph (a) of this section or that is found upon inspection at the port of entry to be affected with a communicable disease or to have been exposed to a communicable disease, shall be refused entry and shall be handled thereafter in accordance with 21 U.S.C. 103 or quarantined, or otherwise disposed of as the Administrator may direct.

**§ 92.45 Standards for approval of privately operated quarantine facilities for sheep, and handling procedures for the importation of sheep.**

(a) *Cooperative agreement.* No facility shall operate as a privately operated quarantine facility for sheep unless it is operated in accordance with a cooperative agreement executed by the operator or other designated representative of the facility and by the Administrator, and unless such cooperative agreement includes all the requirements of this section and includes a requirement that the cost of the facility and all costs associated with the maintenance and operation of the facility shall be borne by the operator in accordance with the provisions of § 92.12 of this part.

(b) *Approval of facilities.* To qualify for designation as an approved privately operated quarantine facility [1] and to retain such approval, the facility and its maintenance and operation must meet the minimum requirements of this section. Approval of any quarantine facility shall be contingent upon a determination by the Administrator that adequate personnel are available to provide services required by the facility if approved. The cost of the facility and all costs associated with the maintenance and operation of the facility shall be borne by the operator in accordance with the provisions of § 92.12 of this part.

(1) *Supervision of the facility.* The facility shall be maintained under the supervision of a Veterinary Services veterinarian.

(2) *Physical plant requirements.* The facility shall comply with the following requirements:

(i) *Location.* The quarantine facility shall:

(A) Be located at one of the ports listed in § 92.3(j) of this part; and

(B) Be located within the immediate area of the port of entry to minimize the possibility of introduction and dissemination of diseases by the imported sheep while in transit from the point of entry to the quarantine facility.

(ii) *Construction.* The quarantine facility building shall:

(A) Be constructed so that all solid walls, floors, and ceilings are constructed of materials that are substantially impervious to moisture and that can withstand continued cleaning and disinfection;

(B) Be constructed with each entry way equipped with a series of two solid doors, and with other openings covered with screening 16 mesh or finer; unless the Administrator specifically approves other types of doors and openings as adequate to prevent the entry of insects;

(C) Be constructed so that different lots of sheep in the facility at the same time are separated by physical barriers in such a manner that sheep in a given lot do not have physical contact with sheep in another lot, or with their excrement, or discharges;

(D) Have a ventilation capacity sufficient to control moisture and odor at levels that are not injurious to the health of the sheep in quarantine;

(E) Have a separate ventilation system for each lot of sheep that is housed in the facility;

(F) Have a separate feed storage area;

(G) Have office space for recordkeeping available for us by Veterinary Services personnel;

(H) Have a necropsy area with facilities adequate for specimen preparation and equipped with a refrigerator-freezer for storing specimens for laboratory examination;

(I) Have a separate area for washing equipment used in the facility;

(J) Have a shower at the entrance to the sheep-holding area and the necropsy area and a clothes storage and change area at each end of the shower area; and

(K) Have a storage area for equipment necessary for quarantine operations.

(iii) *Sanitation and security.* Arrangements shall exist for:

(A) Equipment and supplies necessary to maintain the facility in clean and sanitary condition, including insect and pest control equipment and supplies;

(B) Separately maintained equipment and supplies for each lot of animals;

(C) A supply of potable water adequate to meet all watering and cleaning needs;

(D) Power cleaning and disinfecting equipment with adequate capacity to disinfect the facility and equipment;

(E) Sufficient stocks of a disinfectant authorized in § 71.10 of this chapter;

(F) Disposal of wastes by incineration or a public sewer system which meets all applicable environmental quality control standards;

(G) Upon the death or destruction of any sheep, disposal of the carcass by incineration or burial, in conformance with all applicable environmental quality control standards;

(H) Control of surface drainage into or from the facility in a manner adequate to prevent any significant risk of livestock diseases being spread into or from the facility;

(I) Protective clothing and footwear adequate in quantity to ensure that workers at the facility have clean clothing and footwear at the start of each workday and at any time such articles become soiled or contaminated;

(J) A receptacle for soiled and contaminated clothing in the clothes change area located nearest the entrance to the sheep-holding area;

[1] Information as to the identity of such facilities may be obtained from the Administrator, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

(K) A security system which prevents persons not authorized entry to the facility and animals outside the facility from having contact with sheep in quarantine. Such a system shall include a daily log to record the entry and exit of all persons entering the facility; and

(L) Feed and bedding for sheep in quarantine must originate in an area not under quarantine because of cattle fever ticks (see Part 72 of this chapter) and must be stored in the facility in a manner which adequately protects these supplies against infestation by vermin and against spoilage.

(3) *Operating procedures.* To retain designation as an approved quarantine facility, the following procedures shall be observed at the facility at all times:

(i) *Personnel.* Access to the facility shall be granted only to persons working at the facility or to persons specifically granted such access by the Veterinary Services veterinarian.

(A) All personnel granted access to the sheep-holding area shall:

(*1*) Wear clean protective clothing and footwear upon entering the sheep-holding area;

(*2*) Change protective clothing and footwear when they become soiled or contaminated;

(*3*) Shower when entering and leaving the sheep-holding area;

(*4*) Shower when leaving the necropsy area after conducting a necropsy; and

(*5*) Be prohibited from having contact with any sheep other than the lot of sheep to which the person is assigned and be prohibited from having contact with ruminants or swine outside the quarantine facility.

(B) The operator of the facility shall handle soiled and contaminated clothing worn within the quarantine facility in a manner approved by the Veterinary Services veterinarian as adequate to preclude transmission of any animal disease agent from the facility.

(ii) Any other person who enters the sheep-holding area, in addition to those persons granted access in paragraph (b)(3)(i) of this section, shall be prohibited from having contact with other lots of sheep within the facility and with ruminants and swine outside the facility for a period of time determined by the supervising veterinarian as necessary to prevent a risk of spreading communicable livestock diseases.

(iii) *Handling of the sheep in quarantine.* The sheep in the quarantine facility shall be handled in compliance with the following requirements:

(A) Each lot of sheep to be quarantined shall be placed in the facility on an "all-in, all-out" basis. No sheep shall be taken out of the lot while it is in quarantine except for diagnostic purposes and no sheep shall be added to a lot while the lot is in quarantine.

(B) The portion of the quarantine facility from which a lot of sheep has been released shall be thoroughly cleaned and disinfected under supervision of a Veterinary Services inspector with a disinfectant authorized in § 71.10 of this chapter, before a new lot is placed in that portion of the facility.

(iv) *Records.* It shall be the responsibility of the operator of the facility to maintain a current daily log for each lot of sheep, recording such information as the individual identification of the sheep, source or origin of the sheep in the lot, total number of sheep in the lot when imported, number of dead or injured sheep when lot arrived, the date the lot was placed into the facility, the general condition of the sheep each day, record of any medications administered to the sheep, number of deaths each day in the lot during the quarantine period, necropsy results, laboratory findings on sheep that died during the quarantine period, date of prescribed tests and results, Department import permit numbers of each lot, the date the lot was removed from the facility, and any other observations pertinent to the general health of the sheep in the lot. The operator of the facility shall hold the log for 12 months following the date of release of the sheep from quarantine and shall make it available to Veterinary Services personnel upon request.

(4) *Environmental requirements.* It shall be the responsibility of the operator of the facility to provide a certification executed by an appropriate government official indicating compliance with the applicable laws for environmental protection.

(5) *Additional requirements.* Additional requirements as to location, security, physical plant and facilities, sanitation, and other items may be imposed by the Administrator in each specific case in order to assure that the quarantine of the sheep in such facility will be adequate to enable determination of their health status, prevent spread of disease among sheep in quarantine, and prevent escape of animal disease agents from the facility.

(c) *Request for approval.* Requests for approval of a privately operated quarantine facility shall be made by writing to the Administrator, APHIS, USDA, 6505 Belcrest Road, Hyattsville, MD 20782. The request should include the full name and mailing address of the applicant and the location and street address of the facility for which approval is sought. Requests for approval and plans for proposed facilities shall be submitted no less than 90 days before the proposed date of entry of the first lot of sheep into the quarantine facility.

(d) *Withdrawal or denial of approval.* (1) Approval of any facility may be refused and approval of any approved quarantine facility may be withdrawn at any time by the Administrator, for any of the reasons provided in paragraph (d)(2) of this section. Before such action is taken, the operator of the facility will be informed of the reasons for the proposed action and, upon request, shall be afforded an opportunity for a hearing with respect to the merits or validity of such action, in accordance with rules of practice which shall be adopted for the proceeding. However, such withdrawal shall become effective pending final determination in the proceeding when the Administrator determines that such action is necessary to protect the public health, interest, or safety. Such withdrawal shall be effective upon oral or written notification, whichever is earlier, to the operator of the facility. In the event of oral notification, written confirmation shall be given to the operator of the facility as promptly as circumstances allow. This withdrawal shall continue in effect pending the completion of the proceeding and any judicial review, unless otherwise ordered by the Administrator. In addition to withdrawal or denial of approval when the requirements for approval are not complied with, approval will be automatically withdrawn by the Administrator when the operator of any approved facility notifies the Area Veterinarian in Charge for the State in which the facility is located, in writing, that the facility is no longer in operation.[2]

(2) Except as provided in the paragraph (d)(4) of this section, the approval of a privately operated quarantine facility for sheep may be denied or withdrawn if:

(i) Any requirement of this section is not complied with; or

(ii) The operator or a person responsibly connected with the business of the quarantine facility is or has been convicted of any crime under any law

[2]The name and address of the Veterinarian in Charge of any State are available from the Administrator, APHIS, USDA, 6505 Belcrest Road, Hyattsville, MD 20782.

regarding the importation or quarantine of any animal or bird; or

(iii) The operator or a person responsibly connected with the business of the quarantine facility is or has been convicted of any crime involving fraud, bribery, or extortion or any other crime involving a lack of integrity needed for the conduct of operations affecting the importation of animals; or

(iv) The approved quarantine facility has not been used to quarantine sheep for a period of one year.

(3) For the purposes of this section, a person shall be deemed to be responsibly connected with the business of the quarantine facility if such person has an ownership, mortgage, or lease interest in the facility's physical plant, or if such person is a partner, officer, director, holder or owner of 10 percent or more of its voting stock, or an employee in a managerial or executive capacity.

(4) The denial or withdrawal referred to in paragraph (d)(2) of this section shall not be solely based upon the convictions of those persons responsibly connected with an approved privately operated quarantine facility for sheep if, after issuance of a complaint and upon receipt of notification from the Administrator of the denial or withdrawal, the operator of the approved quarantine facility enters into a consent agreement with the Administrator, in which it is agreed that the responsibly connected person identified in the notification shall not ever be associated with the approved quarantine facility and the operator complies with the provisions of the agreement. Violation of the consent agreement shall constitute independent grounds for withdrawal of approval of an approved quarantine facility.

Done in Washington, DC, this 25th day of February, 1988.

**James W. Glosser,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 88-4395 Filed 3-1-88; 8:45 am]

BILLING CODE 3410-34-M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 2

### High-Level Waste Licensing Support System Advisory Committee (Negotiated Rulemaking); Fifth Meeting

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of fifth meeting.

**SUMMARY:** The Nuclear Regulatory Commission will hold the fifth meeting of the High-Level Waste Licensing Support System Advisory Committee on March 22–24, 1988. The Committee, established under authority of the Federal Advisory Committee Act (FACA), is tasked with developing recommendations for revision of the Commission's Rules of Practice in 10 CFR Part 2 related to the adjudicatory proceeding for the issuance of a license for a geologic repository for the disposal of high-level waste (HLW). The Committee is attempting to negotiate a consensus on proposed revisions related to the submission and management of records and documents for the HLW licensing proceeding.

**DATE:** The fifth meeting of the HLW Licensing Support System Advisory Committee will be held March 22–24, 1988, beginning at 9:30 a.m. (PST) on March 22, and 8:30 a.m. (PST) on March 23 and 24.

**ADDRESS:** The location of the March 22–24, 1988, meeting of the HLW Licensing Support System Advisory Committee is the Best Western Airport Plaza Hotel, 1981 Terminal Way, Reno, Nevada 89502.

**FOR FURTHER INFORMATION CONTACT:** Donnie H. Grimsley, Director, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7211.

**SUPPLEMENTARY INFORMATION:** The fifth meeting of the HLW Licensing Support System Advisory Committee ("negotiating committee") is scheduled to include continued discussion of substantive issues related to a high-level waste licensing support system.

The following are the remaining meetings of the negotiating committee that are scheduled as of the date of this notice.

April 18–19, 1988—The Conservation Foundation, Washington, DC

May 18–19, 1988—The Conservation Foundation, Washington, DC

June 15–16, 1988—Reno, Nevada (location to be announced)

Dated at Bethesda, Maryland, this 25th day of February 1988.

For the Nuclear Regulatory Commission.

**Donnie H. Grimsley,**

*Director, Division of Rules and Records, Office of Administration and Resources Management.*

[FR Doc. 88-4457 Filed 3-1-88; 8:45 am]

BILLING CODE 7590-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 87-ACE-15]**

### Proposed Revocation of VOR Federal Airway V-426, Missouri

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to revoke Federal Airway V–426 located between St. Louis, MO, and Decatur, IL. FAA records indicate V–426 is rarely requested or utilized and FAA proposes to revoke the entire segment of V–426. This action would remove that airway from the National Airspace System thereby reducing chart clutter.

**DATE:** Comments must be received on or before April 18, 1988.

**ADDRESSES:** Send comments on the proposal in triplicate to: Director, FAA, Central Region, Attention: Manager, Air Traffic Division, Docket No. 87–ACE–15, Federal Aviation Administration, 601 East 12th Street, Federal Building, Kansas City, MO 64106.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should

identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–ACE–15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

### The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke VOR Federal Airway V–426 located between St. Louis, MO, and Decatur, IL. FAA has documentation that indicates V–426 is rarely used or requested by pilots and FAA proposes to revoke this VOR Federal Airway. This reduces chart clutter. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in handbook 7400.6C dated January 2, 1987.

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

### List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

### The Proposed Amendment

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

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

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

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

### § 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–426 [Removed]

Issued in Washington, DC, on February 23, 1988.

**Daniel J. Peterson,**

*Manager, Airspace—Rules and Aeronautical Information Division.*

[FR Doc. 88–4412 Filed 3–1–88; 8:45 am]

BILLING CODE 4910–13–M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 13

[File No. 852 3001]

### NEC Home Electronics (U.S.A.), Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Delaware computer corporation with its principal office in Wood Dale, Ill. to pay $15,000 in consumer redress within 13 months after the consent agreement becomes final and would require them to contact each consumer who purchased a 32K board, within 90 days after the consent agreement is accepted in final. In addition, the consent agreement would prohibit respondent from falsely claiming that any of its computer hardware products currently has a stated memory capacity or other capability and from claiming purchasers of its products have have access to a stated memory capacity or other capability unless the respondent has substantiation for the claim.

**DATE:** Comments must be received on or before May 2, 1988.

**ADDRESS:** Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave, NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT.** Richard C. Donohue, FTC/H–238A, Washington, DC 20580. (202) 326–3112.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

### List of Subjects in 16 CFR Part 13

Computer products and equipment, Trade practices.

### Agreement Containing Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of NEH Home Electronics (U.S.A.), Inc., a corporation (sometimes referred to as "proposed respondent") and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between NEC Home Electronics (U.S.A.), Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. NEC Home Electronics (U.S.A.), Inc., is a Delaware corporation with its principal office or place of business at

1255 Michael Drive, Wood Dale, Illinois 60191.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, the agreement, together with the draft of complaint contemplated thereby and related material pursuant to rule 2.34, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

*Order*

1. For the purposes of this order, all references to the "memory capacity" of a computer product shall include both its random access memory ("RAM") and its read only memory ("ROM").

I

*It is ordered* that respondent NEC Home Electronics (U.S.A.), Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the importation, manufacture, advertising, offering for sale, sale, or distribution of the PC–8000 Series microcomputer system, or any other computer hardware product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

a. That any such product has a stated memory capacity, or has any other directly related capacity or capability, unless such representation is true.

b. That it is possible for a purchaser of any of respondent's products to use or access any stated memory capacity or capability or perform any stated directly related function, unless, at the time such representation is made, respondent possesses and relies upon a reasonable basis for such representation.

c. That any such product will, in the future, have a stated memory capacity or any other directly related capacity or capability, unless at the time such representation is made respondent possesses and relies upon a reasonable basis for said representation.

II

It is further ordered that:

(a) Within ninety (90) days of the date of service on respondent of this order, respondent shall compile from its own records and those of its current and past distributors, dealerships and users' groups a current up-to-date mailing list of each retail customer who purchased a PC–8012A–02 32K RAM Board(s) during the time period January 1, 1981 to December 31, 1984. If respondent does not possess or have access to the required customer records, then it shall, within a reasonable period of time, mail a letter to each current and past distributor or dealership and each company-sanctioned NECHE users' group at their present or last known business address requesting these records and shall compile a mailing list of retail customers based on the information received.

(b) Within thirty (30) days of compiling the mailing list mentioned above, respondent shall send by first class mail to each customer named on the mailing list compiled in accordance with the requirements of Paragraph II. (a), above, a dated letter, plus an enclosed postcard, in the form prescribed in Appendix A to this order. The letter shall bear the customer's name and address, as identified on the mailing list, and no information, other than that required by this paragraph shall be included in or added to the letter or postcard, nor shall any other material be transmitted with the letter or postcard without the express written approval of Commission staff. In addition, the envelope shall state the customer's name and address and shall include the following statement, printed clearly and conspicuously in the lower, left-hand corner of the envelope: IMPORTANT INFORMATION INSIDE: REFUND OFFER

The required postcard shall be in the form and approximate same size as the one prescribed in Appendix A to this Order. The postcard shall be postage-paid and contain respondent's address.

In the event that any of the above-mentioned letters are returned due to the inability of the post office to deliver or forward to the addressee, the respondent is ordered to compile a list of the names of all these addressees. If the respondent receives a 32K RAM board refund request from any customer whose name was on the mailing list but whose letter was returned as undelivered by the Post Office, then the respondent is ordered to complete a new mailing, in accordance with the provisions of this order, to the return

address shown on the customer's purchase order or other correspondence. Respondent's obligation under this paragraph to complete a new mailing shall expire one year after service upon respondent of this order.

Pursuant to the requirements contained in the letter attached as Appendix A and subject to any limitations listed below, respondent shall offer each customer named on the mailing list compiled in accordance with the requirements of Paragraph II. (a) above the following:

1. Respondent will remit to each customer who purchased PC–8012A–02 32K RAM board(s), a check calculated according to the following formula: If refund requests to NECHE for less than 100 RAM boards are made, then the customer will be given $150 per RAM board. If refund requests for more than 100 RAM boards are made, then the amount to be refunded will be calculated as follows:

$$\frac{\$15{,}000}{\text{number of RAM board refund requests received within one year of service of this order}} = \text{amount of refund per RAM board}$$

2. Respondent shall send out all checks within thirteen (13) months after service upon respondent of this order. For each customer whose initial mailing was returned by the post office, but to whom respondent makes a subsequent mailing within one year after service upon respondent of this order, the redress check must be sent within thirty (30) days of respondent's receipt of the return postcard sent to that customer.

III

*It is further ordered* that respondent, its successors and assigns shall maintain accurate records of all materials that were relied upon by respondent in disseminating any representation covered by this order, as well as all materials and information used or relied upon in performing the redress obligations under Part II. of this order. With regard to the records used in performing the redress obligations, said records shall be retained for three years after service upon respondent of this order. With regard to the records relied upon in disseminating any representation covered by this order, such records shall be retained for three years from the date of respondent's last use of such representation. All of the above-mentioned records shall be made available to the Commission upon reasonable notice for inspection and copying.

IV

*It is further ordered* that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

V

*It is further ordered* that respondent shall distribute a copy of this order to each of its operating divisions.

VI

*It is further ordered* that respondent shall, within one hundred and twenty (120) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with all requirements of this order except Paragraph II hereof. On or before eighteen months after service upon respondent of this order, respondent shall file with the Commission a report, in writing, setting forth in detail the manner and form of its compliance with Paragraph II of this order, said report to include, among other things, the number of purchasers to whom refund notices were delivered, the number of purchasers to whom refund checks were mailed, and the amount of each such refund check.

APPENDIX A

Dear [————]:

This letter is to inform you of your eligibility to participate in a redress program. Our records show that you purchased PC–8012A–02 32K RAM board(s) sometime after January 1, 1981. As a result, you are covered by a redress agreement we recently entered into with the Federal Trade Commission. The terms of this redress program are as follows:

If you purchased one or more 32K RAM boards, you are entitled to a refund of $150 per board. (If more than 100 refund requests are received, then the amount of refund per board will be calculated as follows: $15,000/number of refund requests = refund amount per board). Simply fill out, sign and date the enclosed postcard, verifying your purchase and address, and mail it back to us within 30 days. Postage is prepaid. We'll mail your refund check as soon as the refund amount is determined, but in any event no later than (13 months from date of service of the order).

(Date)

Sincerely yours,

NEC Home Electronics,

*1255 Michael Drive, Wood Dale, Illinois 60191.*

The postcard shall be in the following form:

I purchased _____ 32K RAM board(s) on (Date) _____, 198__

(Name: Please Print)

(Address)

(City, State, Zip Code)

I state under penalty of perjury that the foregoing information is true.

(Signed)

(Date)

**Analysis of Proposed Consent Order to Aid Public Comment**

The Federal Trade Commission has accepted an agreement to a proposed consent order from NEC Home Electronics (U.S.A.), ("NECHE") Incorporated, a corporation, with its principal place of business at 1255 Michael Drive, Wooddale, Illinois 60191.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The proposed complaint alleges that NECHE has represented, through advertisements and other promotional material, in connection with the offering for sale and sale of the PC–8000 Series microcomputer system, that the average person, without any special expertise, could expand the RAM capacity of the PC–8001A microcomputer to 160K RAM with the addition of an I/O Unit and memory insert boards, when, in fact, only a highly skilled programmer or

individual who had access to a sophisticated operating system (never made available in the U.S.) could accomplish this expansion. This representation, the complaint finally alleges, was and is false and misleading, and is therefore unfair and deceptive in violation of Section 5 of the Federal Trade Commission Act.

Part I of the agreement containing a proposed order to cease and desist, in settlement of this matter, prohibits NECHE from the following:

1. Representing that any product has a stated memory capacity, or has any other directly related capacity or capability, unless such representation is true.

2. Representing that any products have any stated capacity or capability or can perform any stated directly related function, unless, at the time such representation is made, NECHE possesses and relies upon a reasonable basis for said representation.

3. Representing that any product will, in the future, have a stated memory capacity, or any other directly related capacity or capability, unless, at the time of such representation, NECHE possesses and relies upon a reasonable basis for said representation.

In addition to the above prohibitions, Part II of the consent order also requires that NECHE implement a redress program. NECHE is ordered to contact and offer all 32K RAM board purchasers the following:

1. To each customer who purchased a 32K RAM board, a cash refund of $150 per board. If more than 100 refunds are requested, then the amount of refund per board will be determined on the basis of the following formula:

$$\frac{\$15,000}{\text{number of refund requests}} = \text{amount of refund per board}$$

All refund checks will be mailed out within thirteen months after the end of the public comment period and service on NECHE of this final order.

Part III of the order requires NEC Home Electronics (U.S.A.), Inc. to maintain records of material it relied on in making representations covered by the order for three years. Part IV requires the company to notify the Commission of any change in its corporate structure that may affect its compliance with the order. Part V provides that the company must distribute a copy of the order to its operating divisions. Part VI requires the filing of a compliance report within one hundred and twenty (120) days.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 88-4452 Filed 3-1-88; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[LR-29-87]**

## Requirement for Certain Partnerships and S Corporations to Separately State Meal, Travel, and Entertainment Expenses; Proposed Rulemaking

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

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the requirement for certain partnerships and S corporations to separately state certain meal, travel, and entertainment expenses. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

**DATES:** Written comments and requests for a public hearing must be delivered or mailed by May 2, 1988. The regulations are proposed to be effective for taxable years beginning on or after January 1, 1987.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-29-87) Washington, DC. 20224.

**FOR FURTHER INFORMATION CONTACT:** David R. Haglund of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T (202-566-3297, not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Background

The temporary regulations in the Rules and Regulations portion of the **Federal Register** amend 26 CFR Part 1. For the text of the temporary regulations see F.R. Doc. 88-4449 (T.D. 8182) published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the addition to the regulations.

### Special Analyses

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is therefore not required.

### Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request of any person who has submitted written comments. If a public hearing is held, notice of time and place will be published in the **Federal Register**.

### Drafting Information

The principal author of these proposed regulations is David R. Haglund of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substances and style.

List of Subjects

*26 CFR 1.701–1 through 1.771–1 Part 1*

Income taxes, Partnerships.

*26 CFR 1.1361–0A through 1.1388–1*

Income taxes, Small business, Subchapter S corporation, Cooperatives.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

[FR Doc. 88–4450 Filed 3–1–88; 8:45 am]

BILLING CODE 4830-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[PP 6E3409/P444; FRL–3337–1]**

### Terbufos; Proposed Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes that a tolerance be established for combined residues of the insecticide/nematicide terbufos and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity (RAC) bananas. This regulation to establish the maximum permissible level for residues of the insecticide/nematicide was requested by the American Cyanamid Co.

**DATE:** Comments, identified by the document control number [PP 6E3409/P444], should be received by April 1, 1988.

**ADDRESS:** By mail, submit written comments to:

Information Services Branch, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidental 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 the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail:

William H. Miller, Product Manager (PM) 16, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 222, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2600.

**SUPPLEMENTARY INFORMATION:** The American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, has submitted Pesticide Petition No. 6E3409, requesting that EPA pursuant to section 408(d)(1) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the insecticide/nematicide terbufos (S-[[(1,1-dimethylethyl)thio]methyl]-O,O-diethyl phosphorodithioate) and its cholinesterase-inhibiting metabolites in or on the RAC bananas at 0.025 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 1-year dog feeding study with a lowest-observable-effect level (LOEL) of 0.015 milligram/kilogram/day (mg/kg/day) based on the inhibition of plasma cholinesterase activity.

2. A 4-week dog plasma cholinesterase study with a no-observable-effect level (NOEL) of 0.00125 mg/kg/day based on the inhibition of plasma cholinesterase activity.

3. A 1-year rat feeding study with a no-observable-effect level (NOEL) of 0.5 ppm (0.025 mg/kg) based on the inhibition of plasma and brain cholinesterase activity.

4. An 18-month mouse oncogenicity study with no oncogenic effects observed at dosage levels up to and including 12.0 ppm (1.8 mg/kg/day), which was the highest level tested.

5. A 2-year rat oncogenicity study with no oncogenic effects observed at doses up to and including 2.0 ppm (0.10 mg/kg/day).

6. A three-generation rat reproduction study with a NOEL a 0.25 ppm (0.0125 mg/kg) for reproductive effects.

7. A rat teratology study with a NOEL of 0.1 mg/kg/day for developmental toxicity.

8. An acute delayed neurotoxicity study in chickens, which was negative for neurotoxic effects under the conditions of the study (highest dose tested was 40 mg/kg).

9. Several mutagenicity tests which were all negative. These include a dominant lethal study in rats; an acute *in vivo* cytogenetic assay in rats; an Ames test including metabolic activation; a DNA repair chromosomal aberration (CHO cells); CHO/HGPRT mutation assay; and a rat heptocyte primary culture/DNA repair test.

A rabbit teratology study was submitted but was classified as supplementary. Although supplementary, the study results did not show any evidence of developmental toxicity. A new rabbit teratology study is needed to fulfill the regulatory requirements.

Based on the plasma cholinesterase inhibition (ChE) NOEL as defined in a 4-week dog study (0.00125 mg/kg/day) and using a safety factor of 10, the acceptable daily intake (ADI) for humans is 0.000125 mg/kg/day.

The current established tolerances for residues of terbufos and its cholinesterase-inhibiting metabolites result in theoretical maximum residue contribution (TMRC) of 0.000047 mg/kg/day and utilize 37.332 percent of the ADI. As a result of this proposed regulation, the TMRC will be increased to 0.000052 mg/kg/day and 41.9464 percent of the ADI will be utilized. No feed items are involved; therefore, it is expected that no secondary residues in meat, milk, poultry, and eggs will result from the use of the pesticide on bananas.

The metabolism of the insecticide/nematicide is adequately understood, and an analytical method, gas chromatography with a flame photometric detector, is available in the Pesticide Analytical Manual, Vol. II, for enforcement purposes.

Because of the lack of a teratology study in a second species, the Agency is limiting the period of time that the proposed regulation is to be in effect. Should the Agency find that the new rabbit teratology study is acceptable, it will reassess the tolerance for bananas and, if appropriate, will establish a permanent tolerance for this commodity. There are no regulatory actions pending against continued registration of the insecticide, and no other considerations are involved in establishing the tolerance.

The pesticide is considered useful for the purpose for which the tolerance is sought. Based on the above information and data, the Agency concludes that the establishment of the regulation would protect the public health. Therefore, it is

proposed that 40 CFR 180.352 be amended as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 6E3409/P444]. All written comments filed in response to this petition will be available in the Program Management and Support Division, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this regulation from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives or raising such food or feed additive levels, do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: February 18, 1988.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

1. The authority citation for Part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a.

2. Section 180.352 is amended by designating the existing text as paragraph (a) and by adding new paragraph (b), to read as follows:

**§ 180.352. Terbufos; tolerances for residues.**

(a) * * *

(b) A temporary tolerance to expire [date 24 months after effective date of final rule] is established for combined residues of the insecticide/nematicide terbufos (S-[[(1,1-dimethylethyl)thio]methyl]-O,O-diethyl phosphorodithioate) and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity as follows:

| Commodity | Parts per million |
|---|---|
| Bananas | 0.025 |

[FR Doc. 88–4612 Filed 3–1–88; 8:45 am]

BILLING CODE 6560–50–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Part 413

**[BERC–408–P]**

## Medicare Program; Payment for Kidneys Sent to Foreign Countries or Transplanted in Non-Medicare Beneficiaries

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

**ACTION:** Proposed rule.

**SUMMARY:** These proposed regulations would exclude the costs associated with kidneys sent to foreign countries or transplanted in non-Medicare recipients from Medicare payments made to organ procurement agencies.

In addition to reducing Medicare expenditures by eliminating Medicare subsidization of the costs of kidneys sent to foreign countries or transplanted in non-Medicare recipients, we intend these regulations to increase the availability of kidneys to Medicare beneficiaries who are suitable transplant candidates. This could result in medical and social benefits for transplanted patients, and reductions in Medicare expenditures because kidney transplantation is more cost-effective than maintaining beneficiaries on kidney dialysis.

**DATE:** Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on May 2, 1988.

**ADDRESS:** Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–408–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC–408–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p m. (phone: 202–245–7890).

**FOR FURTHER INFORMATION CONTACT:** Mark Horney, (301) 597–6939.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Social Security Amendments of 1972 (Pub. L. 92–603) extended Medicare coverage to individuals with end stage renal disease (ESRD) who require dialysis or transplantation. Section 1881 of the Social Security Act (the Act) provides for Medicare payment for kidney transplantation. One of the major components of kidney transplantation is the retrieval of organs through an organ procurement agency (OPA). An OPA, whether independent or hospital-based, is defined in Medicare regulations (42 CFR 405.2102) as an organization that performs or coordinates the performance of all the following services: (1) Harvesting of donated kidneys; (2) preservation of donated kidneys; (3) transportation of donated kidneys; and (4) maintenance of a system to locate prospective recipients for harvested organs.

Since the inception of the ESRD program, OPAs have harvested kidneys from donors. Once kidneys are retrieved, the OPA searches for and identifies acceptable recipients and coordinates transporting these kidneys to other OPAs, transplant centers or foreign countries. The OPA places kidneys with a transplant organization based on the best possible match of tissue type, blood type, etc., as well as consideration for cold ischaemic time (the amount of time a kidney has been outside the body and packed on ice), transportation distance, etc.

The Medicare program pays separately for kidney acquisition services and kidney transplantations. The OPA bills each of the organizations that receive kidneys a standard acquisition charge for each kidney. The standard acquisition charge reflects the cost of removing, preserving, and transporting a kidney, etc., and does not include a charge for purchasing the kidney. While a hospital-based OPA develops its own charge, an independent OPA's charge is developed by its Medicare fiscal intermediary based on

the OPA's costs of operating. These standard acquisition charges become the interim payment for each OPA. The OPA submits its costs of operating on a cost report at the end of its fiscal year. The cost report details both the costs of procuring kidneys and the amounts received from the shipment of kidneys to other OPAs, transplant centers, military hospitals, veterans hospitals, and foreign countries. The net difference between the total cost and the total amount received represents the amount due to or from the intermediary.

The Medicare program has always paid the total costs of OPAs because we assumed that all kidneys procured were for Medicare beneficiaries. However, we now realize that this assumption is incorrect and that technology has allowed a significant number of kidneys to be shipped overseas. Since the Medicare program has been paying the cost of procuring kidneys shipped overseas or transplanted into non-Medicare beneficiaries, we believe that some action needs to be taken. It is now necessary to amend the regulations in order to effectuate the statutory principles embodied in section 1861(v)(1)(A) of the Act. Section 1861(v)(1)(A) of the Act requires that the cost of services be borne by the appropriate payor. Accordingly, the cost associated with the kidneys not used by Medicare beneficiaries must be borne by the responsible individual or third party payor. Medicare is precluded from paying any costs associated with kidneys not used by Medicare beneficiaries.

## II. Current Transplantation Practices

Recent advances in transplantation technology and immunotherapy are increasing the use and success rates of kidney transplants. With respect to cadaveric kidney transplants, the improvements in patient outcomes have been striking. One-year patient survival rates are now averaging about 95 percent. One-year graft survival rates are averaging between 70 and 80 percent, with some transplant centers reporting results well above 80 percent. In contrast, in the late 1970s one-year cadaveric kidney graft survival rates were averaging only a little over 50 percent.

A major factor behind these gains has been the widespread introduction in November 1983 of cyclosporine, a powerful immunosuppressive drug. Studies have shown that the use of cyclosporine has been responsible for increasing one-year graft survival rates by anywhere from 8 to 12 percent and has been particularly valuable for patients who are highly-sensitized (that is, have a high level of preformed antibodies) and who have received a kidney with a low antigen match.

Accordingly, there has been a considerable increase in the number of kidney transplants occurring in the U.S. From 1980 to 1985, the number of transplants increased from 4,697 to 7,695, an increase of 63.8 percent. During this period, cadaveric transplants increased from 72.9 percent of the total to 75.6 percent. The following table shows the number of transplants for each year since 1980.

KIDNEY TRANSPLANTS

| Year | Living | Cadaveric | Total | Percent cadaveric | Annual increase in transplants (percent) |
|---|---|---|---|---|---|
| 1980 | 1,275 | 3,422 | 4,697 | 72.8 | |
| 1981 | 1,458 | 3,425 | 4,883 | 70.2 | 4.0 |
| 1982 | 1,677 | 3,681 | 5,358 | 68.7 | 9.7 |
| 1983 | 1,784 | 4,328 | 6,112 | 70.8 | 14.1 |
| 1984 | 1,704 | 5,264 | 6,968 | 75.5 | 14.0 |
| 1985 | 1,876 | 5,819 | 7,695 | 75.6 | 10.4 |

While the number of transplants rose, the demand for transplants increased even faster. From 1980 to 1985, the number of individuals awaiting kidney transplants across the country jumped from 5,072 to 9,791, an increase of 93 percent. As of December 31, 1985, there were 9,791 individuals awaiting kidney transplants. We estimate that over 8,000 individuals will receive kidney transplants in 1986. However, even with 8,000 transplants, the waiting list will increase to near 10,000 individuals.

The Department's Office of the Inspector General (OIG) undertook a comprehensive study to help the Department and other interested parties gain a better understanding of the effectiveness, efficiency, and equity of organ acquisition practices in this country. OIG released its first report in August 1986 (Control No. P-01-86-00074). The findings detailed in these proposed regulations are in agreement with the OIG report. One of the recommendations contained in the OIG report was that—

> HCFA should undertake efforts to help ensure that kidneys are not exported to other countries unless it has been determined that no suitable U.S. recipient can be found. Further, when kidneys are sent to other countries, HCFA should prohibit Medicare reimbursement for any of the acquisition costs of those kidneys. (Page 16)

OIG estimated that 200 to 250 kidneys were exported from the United States in 1985. In these instances, U.S. transplant centers or independent OPAs send kidneys to other countries for transplantation. OPAs have regularly sent kidneys overseas when they could not place kidneys among their member organizations. In addition, kidneys are exported by individual transplant centers that have developed working relationships with foreign surgeons interested in U.S. cadaveric kidneys.

Typically, the exported kidneys have been older ones that have been removed from cadaveric donors and that, after 40 or more hours cold ischaemic time, still have not been matched with an appropriate recipient in this country. (Reasons for the excessive time could be a large number of highly sensitized patients, inability to obtain an acceptable match, or excessive transportation times.) Many foreign surgeons have been eager to receive and transplant such kidneys. Foreign transplant centers have had good success rates with kidneys averaging 60 to 70 hours cold ischaemic time. As a result, exportation of these kidneys has often been viewed as a way to use a kidney that would otherwise be discarded. Nonetheless, the practice of exporting kidneys has become increasingly visible and controversial as the demand for kidneys in this country has intensified

## III. Rationale for Program Change

The estimated 200 to 250 cadaveric kidneys that were exported in 1985 were

equivalent to 3.4 to 4.3 percent of all cadaveric kidneys transplanted in this country. If these kidneys were not exported, some, given their advanced age, would have been wasted. However, we assume that with effective pooling and sharing of cadaveric kidneys, it would have been feasible to use a number of these kidneys for transplantation in this country. Therefore, exporting cadaveric kidneys is likely to lessen the opportunity for beneficiaries to receive available kidneys and benefit medically and socially from transplantation. Transplantation affords the recipient the likelihood of a healthier and more independent life. Most importantly, transplantation may save or prolong the life of the recipient. In the current environment, when the demand for kidneys is greater than the supply, any exported kidney may potentially result in a beneficiary being denied that kidney and may increase the waiting time for all U.S. citizens awaiting transplantation.

To the extent exported kidneys could have been transplanted in Medicare beneficiaries, exportation also results in increased Medicare costs. Over time, transplantation costs less than maintaining a patient on dialysis. Thus, based on 1985 data for each transplant opportunity lost to a Medicare beneficiary on a transplant waiting list in 1985, the Medicare program would spend an estimated $62,000 for the marginal cost of dialysis over a five-year period.

Kidneys sent to military institutions have been paid for by those institutions. Kidneys transplanted into other non-Medicare beneficiaries have been paid for by those individuals or their third-party payors. The Medicare program has always assumed that the remaining kidneys were for Medicare beneficiaries. However, we now realize that this assumption is incorrect and that technology has allowed a significant number of kidneys to be shipped overseas. Since the Medicare program has been paying the cost of procuring kidneys shipped overseas, we believe that some action needs to be taken. It is now necessary to amend the regulations in order to effectuate the statutory principles embodied in section 1861(v)(1)(A) of the Act. In accordance with section 1861(v)(1)(A) of the Act, the cost associated with kidneys not used by Medicare beneficiaries should be borne by the recipient of the organ or the insurer. Kidneys sent overseas should be paid for by the foreign transplant center. Section 1861(v)(1)(A) precludes Medicare from paying any costs associated with kidneys not used by Medicare beneficiaries.

Currently, the Medicare program reimburses OPAs for the net reasonable costs associated with procuring all kidneys including those sent to foreign countries. For those kidneys sent overseas, transportation costs are not paid by Medicare even if such costs are not paid for by the foreign receiving center. If a foreign country pays the cost of kidney acquisition, these payments are offset against the total costs and Medicare payment is reduced; however, in the great majority of cases, kidney acquisition costs have not been paid by the foreign center. In the past there has not been an incentive for foreign centers to reimburse OPAs for the cost of U.S. organs shipped overseas.

## IV. Proposed Regulation Changes

We would add a new regulation section (42 CFR 413.179) that would apply to all OPAs and any transplant center that claims kidney acquisition costs on worksheet D–6 of the Hospital Cost Report (HCFA–2552). (42 CFR Part 413 was established on September 30, 1986 at 51 FR 34790.) We would require that kidneys sent to foreign transplant centers or transplanted in non Medicare recipients be excluded from Medicare payments to OPAs. OPAs that send kidneys to foreign countries would have to ensure that they receive the full amount from the foreign transplant centers for procurement and transportation of the kidneys. We would require OPAs to separate costs associated with kidneys that are sent to foreign countries or transplanted in non-Medicare recipients from Medicare allowable costs prior to final settlement by the Medicare fiscal intermediary. The fiscal intermediary would compute the ratio of the number of kidneys used for Medicare beneficiaries to the total number of kidneys used and adjust the costs for kidneys sent to foreign countries or transplanted in non-Medicare recipients. For this purpose, kidneys furnished to other OPAs or transplant centers in the United States would be assumed to be used for transplants in Medicare beneficiaries. However, any costs associated with kidney transplants for non-Medicare recipients that are performed in transplant centers would be excluded from total costs of the transplant centers, thereby excluding them from Medicare reimbursement. (The Medicare program will continue to pay for its proportionate share of costs incurred in procuring kidneys that were not transplanted.)

We issued contractor operating manual instructions in January of this year that require all OPAs to maintain a log detailing placement efforts. This is intended to document the efforts that OPAs are making to place kidneys in beneficiaries before shipping kidneys overseas.

We have detailed below two examples using identical data that show the method of reimbursing OPAs for kidney acquisition costs under the current and proposed methodologies.

DATA

| | |
|---|---|
| Total Usable Kidneys | 120 |
| Total Foreign Kidneys | 20 |
| Total Military Kidneys | 20 |
| Total Cost | $1,200,000 |
| Foreign Revenue | $25,000 |
| Military Revenue | $200,000 |
| Payments from Other OPAs or Transplant Centers | $850,000 |

**Note.**—Included in the $1,200,000 total cost are costs associated with nonviable (unusable) kidneys. The Medicare program will continue to pay for its proportionate share of costs incurred in procuring kidneys that were not transplanted.

### Current Methodology

Under the current methodology, the total cost of procuring kidneys is reduced by the revenue received and the balance is the amount due to or from the Medicare fiscal intermediary. Using the above data in the computation below, the amount the Medicare fiscal intermediary would pay the OPA would be $125,000 on final settlement.

| | |
|---|---|
| Total Cost | $1,200,000 |
| Less Military and Foreign Revenue | −225,000 |
| Subtotal | 975,000 |
| Less Payments from Medicare OPAs and Transplant Centers | −850,000 |
| Balance Due OPA from Intermediary | $125,000 |

### Proposed Methodology

Under the proposed methodology, an OPA's total cost for all kidneys would be reduced by the costs associated with kidneys transplanted in non-Medicare beneficiaries or sent to foreign countries regardless of income received from these sources. Using the above data in the computation below, the amount the OPA would pay the Medicare program at the end of the OPA's fiscal year is $46,000.

*Step 1—Compute the Medicare Ratio*

(Medicare Usable Kidneys) = (Total Usable Kidneys) — (Total Foreign & Military Kidneys)

80 = 120 — 40

$$\text{Medicare Ratio} = \frac{\text{Medicare Usable Kidneys}}{\text{Total Usable Kidneys}}$$

$$.67 = \frac{80}{120}$$

*Step 2—Compute Medicare Allowable Costs*

| | | |
|---|---|---|
| Total Cost (Net of transportation costs for exported kidneys | | $1,200,000 |
| Multiplied by Medicare Ratio (.67) | X | .67 |
| Medicare Costs | | 804,000 |
| Less Payments from OPAs and Transplant Centers for Medicare Kidneys | | −850,000 |
| Balance Due Medicare Program from OPA | | $(46,000) |

The revised system would result in reduced payments to OPAs since the Medicare program would no longer subsidize the costs of kidneys that are sent to foreign countries or transplanted in non-Medicare beneficiaries. In the above example, Medicare payments would decrease from $975,000 under the current system to $804,000 under the proposed system. OPAs would have to recoup costs of kidneys from the receiving non-Medicare beneficiaries or foreign countries. Accordingly, despite the reduction in Medicare expenditures, there should be only a minimal effect on any OPA.

## V. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed regulations that are likely to meet criteria for a "major rule." A major rule is one that would result in:

(1) An annual effect on the economy of $100 million or more;

(2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographic regions; or

(3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant impact on a substantial number of small entities. For purposes of the RFA, we consider OPAs to be small entities.

Currently, there are approximately 120 OPAs, slightly more than half of which are independent (that is, not hospital-based). We expect that the revised system will result in reduced payments to some OPAs and result in some program savings, estimated to be approximately $1 million for the first full year of implementation of this regulation. We expect that most OPAs would experience some reductions in Medicare revenues, but that these reductions would not be substantial unless an OPA were providing a disproportionately large number of kidneys to foreign countries. This proposal would have an adverse effect on total revenue only if an OPA were unable to obtain payment for the costs associated with kidneys transplanted into non-Medicare beneficiaries or sent to foreign countries. However, we do not believe this would be likely. Ordinarily, OPAs would be able to recover their costs not reimbursed by Medicare from non-Medicare beneficiaries and foreign transplant centers.

As discussed above, one potential consequence of this change would be an increase in the number of kidneys available for Medicare beneficiaries who need transplants. To the extent that this potential is realized, there would be resulting reductions in Medicare expenditures since patients could be transferred from more costly dialysis to less costly transplantation. These savings would be contingent on matching kidneys with appropriate recipients within a time period considered acceptable. To some extent this may depend on whether U.S. surgeons accept kidneys with a longer cold ischaemic time for transplantation. Thus, the savings are not estimable.

We have determined that this regulation does not meet the criteria of E.O. 12291 and does not require an initial regulatory impact analysis. Also, we have determined, and the Secretary certifies, that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis has not been prepared

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this proposed regulation would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

## VI. Information Collection Requirements

These regulations do not contain information collection requirements that are subject to approval by the Executive Office of Management and Budget under the Paperwork Reduction Act of 1980.

## VII. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received timely and respond to the major issues in the preamble to that rule.

## VIII. List of Subjects in 42 CFR Part 413

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons set out in the preamble, Title 42, Part 413 is proposed to be amended as follows:

## PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

1. The authority citation for Part 413 continues to read as follows:

**Authority:** Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, and 1395ww).

2. Section 413.179 is added to Subpart H to read as follows:

**§ 413.179 Organ procurement agencies' (OPAs') or transplant centers' costs for kidneys sent to foreign countries or transplanted in non-Medicare beneficiaries.**

An OPA's or transplant center's total costs for all kidneys will be reduced by the costs associated with procuring kidneys sent to foreign transplant centers or transplanted in non-Medicare beneficiaries. Both independent and hospital-based OPAs, as defined in § 405.2102 of this title, must separate costs for procuring kidneys that are sent to foreign transplant centers and kidneys transplanted in non-Medicare beneficiaries from Medicare allowable costs prior to final settlement by the Medicare fiscal intermediaries. Medicare costs will be based on the ratio of the number of usable kidneys transplanted into Medicare beneficiaries to the total number of usable kidneys applied to reasonable costs.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance and No. 13.774, Supplementary Medical Insurance)

Dated: April 22, 1987.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

Approved: June 11, 1987.

**Otis R. Bowen,**

*Secretary.*

**Editorial Note.**—This document was received at the Office of the Federal Register February 25, 1988.

[FR Doc. 88–4383 Filed 3–1–88; 8:45 am]

BILLING CODE 4120–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

**[Docket No. FEMA–6920]**

### Proposed Flood Elevation Determinations, Correction

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Proposed rule; correction.

**SUMMARY:** This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 52 FR 46789 on December 10, 1987. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Unicorporated Areas of Dickinson County, Kansas.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–2767.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Unincorporated Areas of Dickinson County, Kansas, previously published at 52 FR 46789 of December 10, 1987, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

### List of Subjects in 44 CFR Part 67

Flood Insurance, Floodplains.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

| Source of Flooding and Location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| *Smoky Hill River:* | |
| About 1.44 miles downstream of State Highway 206 | *1110 |
| About 2.6 miles upstream of County Highway 186 | *1173 |
| *Chapman Creek:* | |
| At mouth | *1110 |
| About 3.3 miles upstream of Union Pacific railroad | *1116 |
| *Mud Creek:* | |
| At mouth | *1148 |
| Just downstream of U.S. Highway 40 and Interstate 70 | *1167 |
| *Mud Creek Tributary #1:* | |
| At mouth | *1159 |
| About 0.4 mile upstream of Atchison, Topeka and Santa Fe Railway | *1176 |
| *Solomon River:* | |
| At mouth | *1170 |
| About 700 feet upstream of confluence of Solomon River Tributary | *1171 |
| *Solomon River Tributary:* | |
| At mouth | *1171 |
| About 0.78 mile upstream of 7th Street | *1189 |

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of Flooding and Location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| *Lyon Creek:* | |
| At county boundary | *1147 |
| Just downstream of Lyon Creek Dam No. 6 | *1306 |
| Just upstream of Lyon Creek Dam No. 6 | *1344 |
| About 0.27 mile upstream of Oklahoma, Kansas, and Texas Railroad | *1344 |
| *Carry Creek:* | |
| Just upstream of mouth | *1148 |
| About 4.07 miles upstream of State Highway 209 | *1293 |
| *West Branch Lyon Creek:* | |
| At mouth | *1222 |
| About 11.08 miles upstream of State Highway 218 | *1313 |
| *Lime Creek:* | |
| At mouth | *1253 |
| About 1.15 miles upstream of U.S. Highway 77 and 56 | *1363 |
| *Lime Creek Tributary No. 2:* | |
| At mouth | *1315 |
| Just downstream of U.S. Highway 77 | *1344 |
| Just upstream of U.S. Highway 77 | *1351 |
| *Lime Creek Tributary No. 4:* | |
| At mouth | *1325 |
| Just downstream of Oklahoma, Kansas, and Texas Railroad | *1341 |
| *Turkey Creek:* | |
| At mouth | *1143 |
| At confluence of East and West Turkey Creeks | *1257 |
| *West Branch Turkey Creek:* | |
| At mouth | *1180 |
| About 2.36 miles upstream of State Highway 15 | *1253 |
| *Turkey Creek Tributary No. 1:* | |
| At mouth | *1240 |
| At State Highway 4 | *1282 |
| *Turkey Creek Tributary No. 2:* | |
| At mouth | *1244 |
| About 0.45 mile upstream of Union Pacific railroad | *1263 |
| *West Turkey Creek:* | |
| At mouth | *1257 |
| About 1.97 miles upstream of confluence of Middle Branch Turkey Creek | *1337 |
| *East Turkey Creek:* | |
| At mouth | *1257 |
| About 2.0 miles upstream of confluence of East Turkey Creek Tributary No. 5 | *1316 |
| *Middle Branch Turkey Creek:* | |
| At mouth | *1318 |
| At county boundary | *1324 |
| *East Turkey Creek Tributary No. 1:* | |
| At mouth | *1278 |
| About 2.97 miles upstream of confluence of East Turkey Creek Tributary No. 2 | *1324 |
| *East Turkey Creek Tributary No. 2:* | |
| At mouth | *1286 |
| Just downstream of Turkey Creek Dam No. 8 | *1297 |
| *East Turkey Reservoir No. 6:* Along Shoreline | *1343 |
| *East Turkey Reservoir No. 5:* Along Shoreline | *1339 |
| *East Turkey Reservoir No. 4:* Along Shoreline | *1301 |
| *Turkey Reservoir No. 3:* Along Shoreline | *1296 |
| *Turkey Reservoir No. 8:* Along Shoreline | *1318 |
| *Turkey Reservoir No. 11:* Along Shoreline | *1384 |
| *Turkey Reservoir No. 13:* Along Shoreline | *1305 |
| *Turkey Reservoir No. 12:* Along Shoreline | *1314 |
| *Turkey Reservoir No. 1:* Along Shoreline | *1259 |
| *Turkey Reservoir No. 14:* Along Shoreline | *1259 |
| *Turkey Reservoir No. 2:* Along Shoreline | *1236 |
| *Lime Reservoir No. 3:* Along Shoreline | *1401 |
| *Lyon Reservoir No. 6:* Along Shoreline | *1344 |
| *Lyon Reservoir No. 12:* Along Shoreline | *1300 |
| *Lyon Reservoir No. 13:* Along Shoreline | *1282 |
| *Lime Reservoir No. 11:* Along Shoreline | *1301 |
| *Lime Reservoir No. 10:* Along Shoreline | *1308 |
| *Lyon Reservoir No. 7:* Along Shoreline | *1314 |
| *Lyon Reservoir No. 14:* Along Shoreline | *1285 |
| *Carry Reservoir No. 16:* Along Shoreline | *1253 |
| *Lime Reservoir No. 4:* Along Shoreline | *1346 |

Issued: February 25, 1988.

Harold T. Duryee,

*Administrator, Federal Insurance Administration.*

[FR Doc. 88-4430 Filed 3-1-88; 8:45 am]

BILLING CODE 6718-03-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 73 and 74

**[MM Docket No. 88-56; FCC 88-41]**

### Broadcast Services; Designation of a Standard Computer Algorithm for Propagation Prediction in the FM and TV Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission's rules governing FM and TV Broadcast stations contain several propagation data graphs comprising families of curves used to predict signal strength and coverage. Because of the advantages of using computers to perform propagation calculations, the Commission and many applicants and their consultants rarely use the graphs in the rules. Instead, a number of different computer algorithms are used, and these algorithms do not always produce the same results. The Commission is proposing to designate a standard algorithm that would be used to resolve close cases instead of the curves.

**DATES:** Comments due April 18, 1988 and reply comments due May 3, 1988.

**ADDRESS:** Federal Communications Commission Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** B. C. "Jay" Jackson, Jr., Mass Media Bureau, (202) 632-9660.

**SUPPLEMENTARY INFORMATION:** This is a summary of Commission's Notice of Proposed Rule Making, MM Docket 88-56, adopted January 29, 1988 and released February 24, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this notice may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

#### Initial Regulatory Flexibility Analysis

In accordance with section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), an Initial Regulatory Flexibility Analysis has been prepared:

*I. Reason for Action*

Advancement in computer technology has changed many of the procedures used in the practice of broadcast engineering. One such procedure, the visual reading of curves plotted on graph paper, was widely used in the past to perform radio wave propagation calculations and predict probable signal strengths for FM and TV broadcast facilities. Today this procedure has largely given way to the use of computers to perform the same function more rapidly and precisely. Recent actions affecting the FM and TV broadcast services have increased the importance of precision and repeatibility in propagation calculations. Recognizing this, the Commission is proposing to designate a standard computer algorithm that will be used to resolve discrepancies that may occasionally arise from the use of the older graphical method or other computer methods.

*II. Objective*

The action proposed is intended to facilitate allotment and assignment procedures in the FM and TV broadcast services, and thus further the Commission's objective of providing efficient, expeditious service to the public.

*III. Legal Basis*

The legal basis for the proposed action is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

*IV. Description, Potential Impact, and Number of Small Entities Affected*

There are approximately 200 small entities (consulting businesses) and a few larger entities that provide engineering services to broadcasters on a contract basis. Some of the small entities already use the Commission's algorithm—however, many do not. Although the proposed rules would designate the Commission's algorithm as the official computational standard, these rules would not mandate use of the designated algorithm by the aforementioned small entities. Nevertheless, if the Commission ultimately adopts its proposal to designate its algorithm as the official computational standard, some of these small entities may feel compelled for competitive or other reasons to obtain the capability to perform propagation calculations using the designated algorithm. This could involve the purchase of additional computer hardware and software, depending on the small entity's current computer facilities.

*V. Recording, Record Keeping, and Other Compliance Requirements*

The subject proposal does not entail any recording, record keeping, or other compliance requirements.

*VI. Federal rules that Overlap, Duplicate, or Conflict with the Proposed Rules*

The proposed rules would replace existing rules that specify procedures for visual reading of propagation curves as the computational standard. Consequently, no federal rules would overlap, duplicate, or conflict with the proposed rules.

*VII. Any Significant Alternatives Minimizing Impact on Small Entities and Consistent with Stated Objective*

A few of the small entities have developed and are using various algorithms other than the Commission's algorithm for propagation calculations in the FM and TV services. Any one of these might be suitable to accomplish the stated objective and could be designated as the computational standard instead of the Commission's algorithm. However, no matter which algorithm is designated, many of the small entities will not be using that algorithm and some may feel compelled to change to it although the proposed rule would not mandate such a changeover. Furthermore, because the Commission has been using the same algorithm for more than ten years and has made the algorithm available to the small entities and others during this time, it is quite possible that more small entities are already using the Commission's algorithm than any other single algorithm. If this is the case, the Commission's proposal is the course of action having the minimum impact on the small entities.

#### Summary of the Notice of Proposed Rule Making

1. The Commission, on its own motion, proposes to designate the algorithm employed in its computer programs as the standard it will use for propagation calculations in the FM and TV broadcast services. No changes to the predicted signal strength values represented by the curves will result. Establishing the Commission's algorithm as the official standard for FM and TV propagation calculations will facilitate the resolution of discrepancies that occur when visual readings or other algorithms are used to determine field strength values. Thus, it will further the

Commission's objective of providing efficient, expenditious service to the public.

2. Visually reading values from the Commission's propagation curves has always been a laborious task. The curves suffer from a relative lack of precision and speed when compared to computer programs. Consequently, the Commission's staff and many broadcast engineering consultants use computer programs that employ propagation data tables and interpolation algorithms to perform the curve reading function. Unfortunately, the various computer programs in use by the consultants do not always agree with each other or with the Commission's program. This happens because they are based on slightly different algorithms, and thus vary with respect to the data values, the number of data points, and the interpolation method employed. Because the curves in the rules currently constitute the standard, the Commission has accepted some deviation in submissions based on values taken from the curves. However, in recent actions, the Commission has enacted or proposed changes that will place additional importance on the precision of propagation and coverage prediction calculations. Therefore, the Commission believes that a more precise method is needed, and is proposing to designate its algorithm as the computation standard upon which all proposals in the FM and TV broadcast services will be evaluated. Copies of a comprehensive description of the Commission's algorithm, including the relevant data tables, boundary conditions, methodology, and mathematical formulas may be obtained from the Commission's copy contractor. (See proposed § 73.4240.)

3. The Commission's proposal would allow applicants and their consultants to continue to use methods other than the proposed standard algorithm for propagation calculations. However, in any case where a discrepancy arises, it is proposed that the determinations of the Commission's computer programs using the designated algorithm would be deciding.

4. It is not the Commission's intent to reclassify or modify any existing station if the proposal herein is ultimately adopted. Rather, the Commission is seeking only to codify the more consistent method for propagation prediction calculations that it has been using for more than a decade. The Commission proposes to use "grandfather" provisions to prevent hardships to any stations that would otherwise be adversely affected, and requests comment addressing whether such provisions are needed, and if so, what form they should take.

5. Under procedures set out in § 1.415 of the rules and regulations, 47 CFR 1.415, interested persons may file comments on or before April 18, 1988, and reply comments on or before May 3, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in Report and Order.

6. In accordance with the provisions of § 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, DC.

7. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* § 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda, and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, which occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 11.1203.

8. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of same to the Commission's Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a memorandum to the Secretary (with a copy to the Commission or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. § 1.1206.

9. The proposal contained herein has 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.

10. It is proposed, pursuant to authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303, That Parts 73 and 74 of the Commission's Rules be amended as set forth below.

**H. Walker Feaster III,**

*Acting Secretary.*

**List of Subjects**

*47 CFR Part 73*

Radio broadcasting.

*47 CFR Part 74*

Television broadcasting.

## PART 73—[AMENDED]

It is proposed to amend 47 CFR Part 73 as follows:

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

**Authority:** 47 U.S.C. 154 and 303.

2. 47 CFR would be amended by adding an introductory text to read as follows:

**§ 73.313 Prediction of coverage.**

For evaluation of FM propagation calculations based on the field strength

curves contained in §73.333, Figures 1 and 1a, values produced by the Commission's computer algorithm (*see* §73.4240) shall be considered definitive.

* * * * *

3. 47 CFR 73.333 would be amended by revising the introductory text, as follows:

**§73.333 Engineering charts.**

This section consists of the following Figures 1 (with sliding scale), 1a, 2, 4 and 5. For evaluation of FM propagation calculations based on the field strength curves contained in 1 and 1a, values produced by the Commission's computer algorithm (*see* §73.4240) shall be considered definitive.

* * * * *

4. 47 CFR 73.509 would be amended by adding a new paragraph (c)(4), to read as follows:

**§73.509 Prohibited overlap**

* * * * *

(c) * * *

4. For evaluation of FM propagation calculations based on the field strength curves contained in §73.333, Figures 1 and 1a, values produced by the Commission's computer algorithm (*see* §73.4240) shall be considered definitive.

* * * * *

5. 47 CFR 73.684 would be amended by adding an introductory text, to read as follows:

**§73.684 Prediction of coverage.**

For evaluation of TV propagation calculations based on the field strength curves contained in §73.699, Figures 9, 9a, 10, 10a, 10b and 10c, values produced by the Commission's computer algorithm (*see* §73.4240) shall be considered definitive.

* * * * *

6. 47 CFR 73.699 would be amended by revising the introductory text, as follows:

**§73.699 TV engineering charts.**

This section consists of the following Figures 1–5, 5a, 6–10, 10a–e, 11–12 and 13–16. For evaluation of TV propagation calculations based on the field strength curves contained in §73.699, Figures 9, 9a, 10, 10a, 10b and 10c, values produced by the Commission's computer algorithm (*see* §73.4240) shall be considered definitive.

* * * * *

7. A new section, 47 CFR 73.4240 would be added:

**§73.4240 Field strength computer algorithm.**

See paper entitled "Algorithm for Computing Field Strength for FM and TV Broadcast Stations", available from the Commission's copy contractor.

## PART 74—[AMENDED]

It is proposed to amend 47 CFR Part 74 as follows:

1. The authority citation for Part 74 would continue to read as follows:

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

2. 47 CFR 74.705 would be amended by adding an introductory text to read as follows:

**§74.705 TV broadcast station protection.**

For evaluation of TV, low power TV and TV translator propagation calculations based on the field strength curves contained in §73.699, Figures 9, 9a, 10, 10a, 10b and 10c, values produced by the Commission's computer algorithm (*see* §73.4240) shall be considered definitive.

* * * * *

3. 47 CFR 74.707 would be amended by adding an introductory text to read as follows:

**§74.707 Low power TV and TV translator station protection.**

For evaluation of low power TV and TV translator propagation calculations based on the field strength curves contained in §73.699, Figures 9, 9a, 10, 10a, 10b and 10c, values produced by the Commission's computer algorithm (*see* §73.4240) shall be considered definitive.

* * * * *

4. 47 CFR 74.709 would be amended by adding an introductory text to read as follows:

**§74.709 Land mobile station protection.**

For evaluation of low power TV and FM translator propagation calculations based on the field strength curves contained in §73.699, Figures 9, 9a, 10, 10a, 10b and 10c, values produced by the Commission's computer algorithm (*see* §73.4240) shall be considered definitive.

* * * * *

[FR Doc. 88–4492 Filed 3–1–88; 8:45 am]
BILLING CODE 6712–01–M

# Notices

Federal Register
Vol. 53, No. 41
Wednesday, March 2, 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

### Forms Under Review by the Office of Management and Budget

February 26, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

**Extension**

• Agricultural Marketing Service
Limes Grown in Florida under Marketing Order No. 911
Recordkeeping; On occasion; Annually
Farms; Businesses or other for-profit; Small businesses or orgaizations;
14,168 responses; 1,665 hours; not applicable under 3504(h)
Gary D. Rasmussen (202) 475–3918

**New**

• Forest Service
Visitor Profile and Recreation Use Study
On occasion
Individuals or households; 2,100 responses; 693 hours; not applicable under 3504(h)
Roger N. Clark (206) 442–7817

**Reinstatement**

• Soil Conservation Service
Public Response Form for USDA National Conservation Program Update
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 80,000 responses; 20,000 hours; not applicable under 3504(h), Liu Chuang (202) 447–8388.

**Larry K. Roberson,**

*Acting Departmental Clearance Officer.*

[FR Doc. 88–4520 Filed 3–1–88; 8:45 am]

BILLING CODE 3410-01-M

## Forest Service

### Cemetery Tract Land Exchange; Santa Fe National Forest, Los Alamos and Sandoval Counties, NM; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to exchange approximately 140 acres of land, referred to as the Cemetery Tract, north of the community of Los Alamos on the Espanola Ranger District of the Santa Fe National Forest. The Forest Service would acquire the Trail Canyon Tract of 589 acres in size and the Parker Tract of 50 acres in size.

The County of Los Alamos, New Mexico, requested that the Forest Service consider the disposal of this land to allow for community expansion and residential development. The environmental analysis was started in July, 1987. It was determined, as part of the public involvement (scoping) process, that the analysis should be documented as an environmental impact statement.

A range of alternatives for this site will be considered. One of these will be the no action alternative, not exchanging the Cemetery Tract. Other alternatives will consider exchanging 20 percent of the lands under study with and without greenbelts and buffers, 65 percent of the lands with and without greenbelts and buffers, and the entire study area with some greenbelts and buffers, with more greenbelts and buffers, and without greenbelts and buffers.

Many people have been invited to participate in the scoping process: residents of the adjacent neighborhood; other individuals and organizations who may be interested in or affected by the decision; local, state, and Federal agencies; Indian Pueblos; and potential developers. This process included:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth, and
3. Elimination of insignificant issues.

The Forest Supervisor has held public meetings in Los Almos on July 14, 1987, and September 23, 1987, and in Jemez Springs on July 21, 1987.

Sotero Muniz, Regional Forester, Southwestern Region, Albuquerque, New Mexico, is the responsible official.

The analysis is expected to take about four months. The draft environmental impact statement should be available for public review by June 1988. The final environmental impact statement is scheduled to be completed by October, 1988.

Written comments and suggestions concerning the analysis should be sent to Maynard T. Rost, Forest Supervisor, Santa Fe National Forest, P.O. Box 1689, Santa Fe, NM 87504.

Questions about the proposed action and environmental impact statement should be directed to Jim Reid, Recreation Staff Officer, Santa Fe National Forest, phone 505–988–6952.

**Maynard T. Rost,**

*Forest Supervisor.*

Dated: February 18, 1988.

[FR Doc. 88–4415 Filed 3–1–88; 8:45am]

BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Initiation of Antidumping and Countervailing Duty Administrative Reviews

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

**SUMMARY:** The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

**EFFECTIVE DATE:** March 2, 1988.

**FOR FURTHER INFORMATION CONTACT:** William L. Matthews or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5253/2786.

**SUPPLEMENTARY INFORMATION:**

#### Background

On August 13, 1985, the Department of Commerce ("the Department" published in the Federal Register (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a(a)(1), (a)(2), (a)(3), and 355.10(a)(1) of the Commerce Regulations, for administrative reveiws of various antidumping and countervailing duty orders, finding and suspension agreements.

#### Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than February 28, 1989.

| | Periods to be Reviewed |
|---|---|
| Antidumping Duty Proceedings and Firms | |
| Brass Sheet and Strip from Canada: | |
| Arowhead | 08/22/86–12/31/87 |
| Noranda | 08/22/86–12/31/87 |
| Ratcliffs Canada | 08/22/86–12/31/87 |
| Anhydrous Sodium Metasilicate from France: Rhone Poulenc | 01/01/87–12/31/87 |
| Cell-site Transceivers and Related Subassemblies from Japan: Kokusai Electric | 01/01/87–12/31/87 |
| Brass Sheet and Strip from The Republic of Korea: Poongsan Metal | 08/22/86–12/31/87 |
| Certain Stainless Steel Cooking Ware from The Republic of Korea: | |
| Dae Sung | 07/07/86–12/31/87 |
| Kyung Dong | 07/07/86–12/31/87 |
| Namil Metal | 07/07/86–12/31/87 |
| Certain Stainless Steel Cooking Ware from Taiwan: Big Time Auto Part Mfg. Co. Ltd. | 07/07/86–12/31/87 |
| Countervailing Duty Proceedings | |
| Miniature Carnations from Columbia | 01/13/87–12/31/87 |
| Roses and Other Cut Flowers from Columbia | 01/01/87–12/31/87 |
| Fresh Cut Flowers from Costa Rica | 01/13/87–12/31/87 |
| Fresh Cut Flowers from Ecuador | 10/27/86–12/31/87 |
| Fabricated Automotive Glass from Mexico | 01/01/87–12/31/87 |
| Stainless Steel Wire Rod from Spain | 01/01/87–12/31/87 |

Interested parties are encouraged to submit applications for administrative protection orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.53a(c) and 355.10(c).

Date: February 16, 1988.

**Gilbert B. Kaplan,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 88–44–98 Filed 3–1–88; 8:45 am]

BILLING CODE 3510–DS–M

**[A–588–703]**

### Rescheduling of Public Hearing; Certain Internal-Combustion, Industrial Forklift Trucks From Japan

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce is rescheduling the public hearing in the antidumping duty investigation of certain internal-combustion, industrial forklift trucks from Japan. The hearing will now be held at 10:30 a.m. on March 10, 1988, at the U.S. Department of Commerce, Room 3407, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Individuals who have requested the opportunity to participate in the hearing must submit at least 15 copies of the proprietary version and five copies of the nonproprietary version of the pre-hearing briefs to the Acting Assistant Secretary for Import Administration, Room B–099, at the above address by 12:00 noon on March 7, 1988. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 353.46, additional written views will be considered for the final determination only if received within seven days after the hearing transcript becomes available.

**FOR FURTHER INFORMATION CONTACT:** Rick Herring or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 telephone: 202/377–0187 or 202/377–0161.

Dated: February 23, 1988.

**Gilbert B. Kaplan,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 88–4495 Filed 3–1–88; 8:45 am]

BILLING CODE 3510–DS–M

### Short-Supply Review on Certain Tubing; Request for Comments

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice of request for comments.

**SUMMARY:** The Department of Commerce hereby announces its review of a request for a short-supply determination under Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to certain tubing.

**EFFECTIVE DATE:** Comments must be submitted no later than March 14, 1988.

**ADDRESS:** Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–0159.

**SUPPLEMENTARY INFORMATION:** Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provides that if

the U.S. "* * * determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular category or sub-category (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such category or sub-category * * *."

We have received a short-supply request for steel tubing meeting ASME specifications SA 178 Grade C, SA 209 Grade T1, SA 210 Grade A-1, SA 210 Grade C, SA 213 Grade T2, SA 213 Grade T11, and SA 213 Grade T22. This tubing ranges from 1.75 to 5.563 inches in diameter and 0.165 to 0.560 inch in wall thickness.

Any party interested in commenting on this request should send written comments as soon as possible, but no later than March 14, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099, at the above address.

**Gilbert B. Kaplan,**

*Acting Assistant Secretary for Import Administration.*

February 24, 1988.

[FR Doc. 88-4497 Filed 3-1-88; 8:45 am]

BILLING CODE 3510-DS-M

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## University of Colorado; Decision on Application for Duty-Free Entry of Scientific Instruments; Correction

In FR Doc. 88-2235 at page 3062 in the **Federal Register** of February 3, 1988, the final paragraph of notice should read:

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 88-4494 Filed 3-1-88; 8:45 am]

BILLING CODE 3510-DS-M

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## University of Oklahoma-Norman; Withdrawal of Applicaiton for Duty-Free Entry of Scientific Instruments

The University of Oklahoma-Norman has withdrawn Docket Number 88-036, an application for duty-free entry of a scanning electron microscope. We have discontinued processing in accordance with § 301.5(g) of 15 CFR Part 301.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 88-4496 Filed 3-1-88; 8:45 am]

BILLING CODE 3510-DS-M

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## National Oceanic and Atmospheric Administration

## National Ocean Service; Office of Ocean and Coastal Resource Management; Preliminary Approval of Amendment; the State of Florida

**SUMMARY:** The Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA) received a request from the State of Florida to amend the Florida Coastal Management Program (FCMP) to incorporate legislative changes to three Chapters of Florida Statutes: creation of the Marine Fisheries Commission, Chapter 370 F.S.; measures to protect surface and ground water, Chapter 376 F.S.; and, the Warren S. Henderson Wetlands Protection Act of 1984, and related changes to Chapter 403 F.S. The State's request was made pursuant to section 306(g) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 14559(g) and implementing regulations at 15 CFR 923.81. These amendments to the FCMP provide new policy for, and a new entity to promulgate regulations dealing with living marine resources (Chapter 370 F.S.); provide additional regulatory authority and funds to protect Florida's ground water resources (Chapter 376 F.S.); and, update and clarify the State regulatory policies and procedures for protecting wetlands (Chapter 403 F.S.).

The Director of the Office of Ocean and Coastal Resource Management has reviewed the amendment request and has made a preliminary determination that the FCMP as amended will still constitute an approvable program and that the procedural requirements of Section 306(c) of the CZMA have been met.

The Director also determined that approval of the proposed change does not constitute a major Federal action having a significant effect on the environment. Therefore, an environmental impact statement on the approval of the amendment under the National Environmental Policy Act of 1969, as amended, is not required. Copies of the Finding of No Significant Impact (FONSI), including the supporting Environmental Assessment (EA) and the Director's preliminary determination of approvability, are available at the address below.

Comments on the Preliminary Determination to approve the Florida amendment request and on the EA and FONSI should be made within 30 days from the date of this notice. Address comments to: Peter L. Tweedt, Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235, (202) 673-5181.

(Federal Domestic Assistance Catalog 11.429 Coastal Zone Management Program Administration)

Date: February 25, 1988.

**James P. Blizzard,**

*Acting Director, Office of Ocean and Coastal Resource Management.*

[FR Doc. 88-4426 Filed 3-1-88; 8:45 am]

BILLING CODE 3510-08-M

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## Marine Mammals; Issuance of Permit: The Cousteau Society (P392)

On April 2, 1987, notice was published in the **Federal Register** (52 FR 10604) that an application had been filed by the Cousteau Society to potentially harass, while filming for a commercial documentary, killer whales (*Orcinus orca*), beluga whales (*Delphinapterus leucas*), northern sea lions (*Eumetopias jubatus*), harbor seals (*Phoca vitulina*) and norther fur seals (*Callorhinus ursinus*).

Notice is hereby given that on February 23, 1988, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for that portion of the above requested taking not involving fur seals, subject to certain conditions set forth therein.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine

Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115;

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33720; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: February 24, 1988.

**Nancy Foster,**

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 88–4486 Filed 3–1–88; 8:45 am]

BILLING CODE 3510-22-M

## Marine Mammals; Permit Modification; Brent S. Stewart (P278C), Modification No. 1 to Permit No. 579

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 579 issued to Mr. Brent S. Stewart, Hubbs Marine Research Center, 1700 South Shores Road, San Diego, California 92109, on January 10, 1987 (52 FR 3037), is modified in the following manner and as described in the Modification request dated November 19, 1987.

Section A.1 is changed to read:

A.1. Up to 3,417 northern elephant seals (*Mirounga angustirostris*) may be captured annually and tagged with numbered plastic cattle-ear tags, and released.

Sections A.1.e., A.2.b., A.3.a., and A.5. are added:

A.1.e. Of the above up to 1,417 elephant seal pups may be tagged annually using hot or cold brands (angles or numbers).

A.2.b. Of the 3,000 California sea lions authorized in A.2 up to 2,992 may be marked with hot or cold brands (angles or numbers) over a 4-year period with no more than 1000 taken in any one year.

A.3.a. Of the 60 harbor seals authorized in A.3, up to 59 may be marked annually with hot or cold brands (angles or numbers).

A.5. Up to 440 adult male seals may be harassed during the course of conducting behavioral responses to seismic impulses.

*Special Conditions*

Section B.9 should include—

B.9. A detailed analysis of all attempts to hot or cold brand animals, as well as the results of post branding, healing and resighting studies.

This modification becomes effective on February 23, 1988.

Documents pertaining to this modification are available in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Ave., NW., Suite 805, Washington, DC 20235; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: February 24, 1988.

**Nancy Foster,**

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 88–4487 Filed 3–1–88; 8:45 am]

BILLING CODE 3510-22-M

## National Technical Information Service

### Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151. Please cite the number and title of inventions of interest.

**Douglas J. Campion,**

*Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.*

**Department of Agriculture**

SN 7–114,952
Control of Undesirable Vegetation

SN 7–123,411
Moisture-Shrinkable Films from Starch Graft Copolymers

SN 7–123,451
Process for Preserving Raw Fruits and Vegetables Using Ascorbic Acid Esters and Compositions Thereof

**Department of Commerce**

SN 6–868,485 (4,707,013)
Split Rail Parallel Gripper

SN 7–117,259
Method for Making Low Resistivity Contacts to High-Tc Superconductors

**Department of Health and Human Services**

SN 6–725,021
Acquired Immune Deficiency Syndrome (AIDS) Viral Envelope Protein and Method of Testing for AIDS

SN 6–790,261
Immunometric Assay for High Molecular Weight Carcinoembryonic Antigen

SN 6–947,935
Synthetic Peptides Which Induce Cellular Immunity to the AIDS Virus and AIDS Viral Protein

SN 7–005,885
Method to Predict Antigenic Sites Recognized by T Lymphocytes Such as for Design of Vaccines

SN 7–085,707
Method for Treating Malignancy and Autoimmune Disorders in Humans

SN 7–122,379
New-Inflammatory Agents

SN 7–130,515
A Method for Replicating Human B-Lymphotropic Virus in Human Cell Lines

[FR Doc. 88–4416 Filed 3–1–88; 8:45 am]

BILLING CODE 3510-04-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Cancelling Staged Entry for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

February 25, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 3, 1988. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and

Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On December 29, 1987, a notice was published in the **Federal Register** (52 FR 49060), which established staged entry periods for imports of certain cotton and man-made fiber textile products, including Categories 334 and 648, produced or manufactured in the People's Republic of China and exported during the period which began on January 1, 1987 and extended through December 31, 1987. Inasmuch as it has been determined that these staged entry periods are no longer needed, they are being canceled.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

February 25, 1988.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated February 2, 1988, between the Governments of the United States and the People's Republic of China, I request that, effective on March 3, 1988, you cancel the staged entry periods established in the directive of December 21, 1987 for cotton and man-made fiber textile products in Categories 334 and 648, produced or manufactured in the People's Republic of China and exported during 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 88–4423 Filed 3–1–88; 8:45 am]

BILLING CODE 3510-DR-M

## Rescission of Call on Certain Cotton Textile products in Categories 347/348 Produced or Manufactured in Costa Rica

February 26, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 3, 1988. For further information contact Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to cancel the import restraint limit previously established for Categories 347/348 for the period August 27, 1987 through August 26, 1988.

Background

On June 18, 1987, a notice was published in the **Federal Register** (52 FR 23198) announcing that the Government of the United States had requested the Government of Costa Rica to enter into consultations concerning exports to the United States of cotton trousers, slacks and shorts in Categories 347/348, produced or manufactured in Costa Rica. A subsequent notice was published on September 17, 1987 (52 FR 35124) which established a restraint limit for Categories 347/348 for the period which began on August 27, 1987 and extends through August 26, 1988.

The purpose of this notice is to announce that, pursuant to consultations with the Government of Costa Rica, the United States Government has decided to withdraw the limit on Categories 347/348. Should it become necessary to discuss these categories with the Government of Costa Rica at a later date, further notice will be published in the **Federal Register**.

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

February 26, 1988.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229*

Dear Mr. Commissioner: Effective on March 3, 1988 this directive cancels the directive of September 14, 1987 which established a restraint limit for cotton textile products in Categories 347/348, produced or manufactured in Costa Rica and exported during the period which began on August 27, 1987 and extends through August 26, 1988.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 88–4468 Filed 3–1–88; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Naval Research Advisory Committee; Meeting

Notice was published February 18, 1988, at 53 FR 4873 that the Naval Research Advisory Committee Panel on Laser Weapons will meet on March 1–2, 1988. The meeting location has been changed. All sessions of the meeting will be held at the Pentagon, Room 5B725, Washington, DC. All other information in the previous notice remains effective. In accordance with 5 U.S.C. section 552b(e)(2) the place of meeting change is publicly announced at the earliest practical time.

Date: February 26, 1988.

**W.R. Babington, Jr.,**

*Commander, JAGC, U.S. Navy Federal Register Liaison Officer.*

[FR Doc. 88–4519 Filed 3–1–88; 8:45 am]

BILLING CODE 3810-AE-M

## DEPARTMENT OF EDUCATION

**[CFDA No. 84.077A]**

### Notice Inviting Applications for New Awards Under the Program for Bilingual Vocational Training for Fiscal Year 1988

*Purpose:* To provide financial assistance for bilingual vocational education and training for individuals with limited English proficiency to prepare these individuals for jobs in recognized occupations and new and emerging occupations consistent with the Carl D. Perkins Vocational Education Act (20 U.S.C. 2441(a)).

*Deadline for Transmittal of Applications:* June 29, 1988.

*Deadline for Intergovernmental Review Comments:* August 29, 1988.

*Applications Available:* March 4, 1988.

*Funds Available:* $2,800,500.

*Estimated Average Size of Awards:* $255,000.

*Estimated Number of Awards:* 11.

*Project Period:* Up to 24 months.

*Criteria for Evaluating Applications:* The Secretary assigns the fifteen points, reserved in 34 CFR 407.30(b), to the Selection Criterion (c)—Program

Factors—in 34 CFR 407.31(c) for a total of 25 points for that criterion.

*Applicable Regulations:* (a) The Bilingual Vocational Training Program Regulations in 34 CFR Part 407; and (b) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74 (Administration of Grants), 75 (Direct Grant Programs), 77 (Definitions that Apply to Department Regulations), 78 (Education Appeal Board), and 79 (Intergovernmental Review).

*For Applications or Information Contact:* Laura Karl, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 519, Reporters Building, Washington, DC 20202–5516. Telephone: (202) 732–2359.

Program Authority: 20 U.S.C. 2441(a).

Dated: February 19, 1988.

Bonnie Guiton,

*Assistant Secretary for Vocational and Adult Education.*

[FR Doc. 88–4542 Filed 3–1–88; 8:45 am]

BILLING CODE 4000–01–M

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[CFDA No. 84.101A]

## Notice Inviting Applications for New Awards Under the Vocational Education Indian and Hawaiian Natives Program for Fiscal Year 1988

This application notice is for Indian tribes only and does not apply to organizations for Hawaiian natives.

*Purpose:* Provides financial support to Indian tribes to plan, conduct, and administer projects or portions of projects that are authorized by and consistent with the Carl D. Perkins Vocational Education Act (20 U.S.C. 2301 *et seq.*).

*Deadline for Transmittal of Applications:* June 29, 1988.

*Applications Available:* March 31, 1988.

*Available Funds Anticipated:* For fiscal year 1988, the Congress appropriated $10,462,777 for Indian vocational education programs for use in fiscal year 1989. Of that amount, approximately $2,995,781 is for new awards.

*Estimated Range of Awards:* $50,000 to $500,000.

*Estimated Average size of Awards:* $250,000.

*Estimated Number of Awards:* 12.

*Project Period:* Up to 36 months.

*Applicable Regulations:* (a) The regulations in 34 CFR Parts 400 and 410 and (b) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

*Criteria for Evaluating Applications:* The Secretary assigns the fifteen points, reserved in 34 CFR 410.30(b), as follows: five points to the Selection Criteria (a)—Need—in 34 CFR 410.31(a) for a total of 20 points for that criterion; five points to the Selection Criterion (b)—Plan of Operation—in 34 CFR 410.31(b) for a total of 25 points for that criterion; and five points to the Selection Criterion (c)—Quality of Key Personnel—in 34 CFR 410.31(c) for a total of 15 points for that criterion.

*For Applications or Information Contact:* Harvey Thiel or Timothy Halnon, Special Programs Branch, Division of Innovation and Development, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 519, Reporters Building, Washington, D.C. 20202–5516. Telephone (202) 732–2380 or 732–2379.

*Program Authority:* 20 U.S.C. 2313.

Dated: February 19, 1988.

Bonnie Guiton,

*Assistant Secretary, Office of Vocational and Adult Education.*

[FR Doc. 88–4543 Filed 3–1–88; 8:45 am]

BILLING CODE 4000–01–M

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## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

[ERA Docket No. 88–02–NG]

## Northern Minnesota Utilities; Application To Import and Export Natural Gas From and to Canada

**AGENCY:** Department of Energy Economic Regulatory Administration, DOE.

**ACTION:** Notice of application for blanket authorization to import and export natural gas from and to Canada.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on January 6, 1988, of an application from Northern Minnesota Utilities (NMU) for blanket authorization to import gas purchased from various Canadian sources for its system supply or spot market sales to particular end-users. Authorization is requested to import up to 91,000 Mcf per day, and up to a total of 66.43 Bcf over a two-year term beginning on the date of the first delivery, and to export some of this gas for transportation in Canada and re-import to that portion of its service area that is contiguous with Ft. Francis, Ontario. NMU, with its principal place of business in Cloquet, Minnesota, is a division of Utilicorp United, Inc., a Delaware corporation. NMU intends to use existing pipeline facilities for the transportation of the proposed imports. NMU will be required to advise the ERA of the date of first delivery of the import.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, requests for additional procedures and written comments are invited.

**DATE:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than April 1, 1988.

**FOR FURTHER INFORMATION CONTACT:**

Robert M. Stronach, Natural Gas Division, Economic Regulatory Administation, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9622

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

**SUPPLEMENTARY INFORMATION:** The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the ERA approves this requested blanket import, it may designate a total amount of authorized volumes for the term rather than a daily or annual limit, in order to provide the applicant with maximum flexibility of operation. ERA will also condition the authorization on the filing of quarterly reports to facilitate ERA monitoring of the operation and effectiveness of the blanket program.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.s.t., April 1, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of NMU's application is available for inspection and copying in, the Natural Gas Division Docket Room, GA–076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 23, 1988.

**Constance L. Buckley,**

*Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 88–4510 Filed 3–1–88; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Project No. 6863–001]**

### Grisdale Hill Co.; Availability of Environmental Assessment and Request for Comments

March 1, 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 Gibson Dam Hydroelectric Project on the Sun River in Teton and Lewis and Clark Counties, Montana, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has determined the potential adverse impacts of the proposed project. The staff is requesting comments on the EA and any additional information on the expected impacts of the project.

Interested persons and agencies are invited to identify and submit substantive evidence regarding study results, natural resource management policies, and reports from state and local resource agencies. The evidence should be limited to the Gibson Dam Hydroelectric Project and its expected environmental effects.

After evaluating the comments, the staff will determine if preparation of an Environmental Impact Statement is necessary.

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.

Comments should be filed by the close of business, April 6, 1988, and should be addressed to Lois D. Cashell, Acting Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 6863–001 to all comments.

For further information please contact Gary Nelson, Environmental Assessment Coordinator at (202) 376–9789.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–4513 Filed 3–1–88; 8:45 am]

BILLING CODE 6717–01–M

**[Docket Nos. ER88–257–000 et al.]**

### Connecticut Light and Power Co., et al.; Electric Rate and Corporate Regulation Filings

February 25, 1988.

Take notice that the following filings have been made with the Commission:

**1. Connecticut Light and Power Co.**

[Docket No. ER88–257–000]

Take notice that on February 19, 1988, Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule pertaining to a Purchase Agreement with Respect to Various Gas Turbine Units between CL&P and Central Vermont Public Service Corporation (CVPS) dated as of November 1, 1986.

CL&P states that the Purchase Agreement provides for a sale to CVPS of a specified percentage of capacity and energy from CL&P's various gas turbine units during the period November 1, 1986 until 30 days written notice by either party to the other party.

CL&P requests that the Commission permit the rate schedule filed to become effective on November 1, 1986.

CL&P states that the capacity charge rate for the one month that business was transacted is a negotiated rate, based on the market price for this capacity charge, and less than the cost-of-service rate. The maximum capacity for the remainder of the term was determined on a cost-of-service basis at the time that the Purchase Agreement was executed. The monthly transmission charge rate is equal to one-twelfth of the annual average cost of transmission service on the transmission systems of CL&P and its affiliated Northeast Utilities companies at the time that the Purchase Agreement was executed and is determined in accordance with Section 13.9 of the New England Power

Pool (NEPOOL) Agreement and the uniform rules adopted by the NEPOOL Executive Committee. The monthly Transmission Charge is determined by the product of: (i) The appropriate monthly transmission charge rate ($/kW-month) and (ii) the number of kilowatts of winter capability which CVPS is entitled to receive during such month. The Energy Charge, Variable, and Additional Maintenance Charges are based on CVPS' portion of the applicable fuel expenses and hours of operation related to the Units and no special cost-of-service studies were made to derive these charges.

CL&P states that the services to be provided under the Purchase Agreement are the same as services provided by CL&P pursuant to purchase agreements with Commonwealth Electric Company (FERC Rate Schedule No. CL&P 357).

CL&P states that a copy of the rate schedule has been mailed or delivered to CVPS, Rutland, VT.

*Comment date:* March 10, 1988, in accordance with Standard Paragraph E at the end of this notice.

**2. Cleveland Electric Illuminating Co., Duquesne Light Co., Ohio Edison Co., Pennsylvania Power Co., Toledo Edison Co. (CAPCO Group)**

Docket No. ER88-123-000]

Take notice that on February 19, 1988, the CAPCO Group tendered for filing an amendment to the filing of its Appendix 7 supplement to Schedule E of the CAPCO Basic Operating Agreement, as amended September 1, 1980, which is on file with the Commission and identified by the Rate Schedule numbers shown for each listed company:

| Company | FERC rate schedule no. |
|---|---|
| Cleveland Electric Illuminating Co | 15 |
| Duquesne Light Co | 15 |
| Ohio Edison Co | 144 |
| Pennsylvania Power Co | 35 |
| Toledo Edison Co | 27 |

Appendix 7 to Schedule E of the CAPCO Basic Operating Agreement provides the basis for the determination of charges applicable to Unit Capacity and Energy transactions by the CAPCO member companies from Perry Plant Unit No. 1. The services and compensation for Unit Capacity and Enrgy transactions from base load CAPCO Units are set forth generally in Schedule E, with specific charges from particular CAPCO Units being set forth in Appendices to Schedule E as the particular Unit comes into commercial operation. It is requested that Appendix 7 become effective on November 18, 1987.

The amendment to the filing amends Appendix 7 to Schedule E by revising the income tax rate to reflect the 34% federal statutory tax rate for the time period from November 18, 1987 to December 31, 1987 as required by Commission order; by revising the rate of return from 11.70% per year to 11.61% per year pursuant to a cost of money study in support of Appendix 7; and by revising the flow-through factor for tax depreciation from 34.30% to 32.80% pursuant to further review of the appropriate level of normalization versus flow-through of depreciation. The amendment to the filing also includes the submission of the decommissioning study in support of the $259 million in nuclear decommissioning costs of Perry Plant Unit No. 1.

*Comment date:* March 10, 1988, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraph**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-4440 Filed 3-1-88; 8:45 am]

BILLING CODE 6717-01-M

**[Docket Nos. CP88-223-000 et al.]**

## Kentucky West Virginia Gas Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

**1. Kentucky West Virginia Gas Co.**

[Docket No. CP88-223-000]

February 22, 1988.

Take notice that on February 3, 1988, Kentucky West Virginia Gas Company (Kentucky West Virginia), P.O. Box 1388, Ashland, Kentucky 41104-1388, filed in Docket No. CP88-223-000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct 25.22 miles of 12-inch pipeline extending from its Perry Station in Perry County, Kentucky to an interconnection with its 20-inch Line No. 10 north of its Right Beaver Compressor Station in Knott County, Kentucky, all as more fully set forth in the request on file with the Commission and open to public inspection.

Kentucky West Virginia states that the proposed pipeline facility is estimated to cost $6,600,000 and would be constructed parallel to, and for the most part on the same right-of-way as, Kentucky West Virginia's 8-inch Line No. 51 extending between the same two points as the proposed line. Kentucky West Virginia further states that existing Line No. 51 was constructed 28 years ago and consists of bare, uncoated pipe which is subject to corrosion because of the acidic nature of the soil it traverses resulting from run-off due to coal mining in the area. It is indicated that although cathodic protection has been installed at spots on the line, in spite of this protection, it has been necessary to replace portions of the line over the past several years, and Kentucky West Virginia states it plans to lower the pressure on this line to 300 psig. It is further indicated that the operation of Line No. 51 at this pressure provides insufficient capacity to move the gas presently flowing into that line from Kentucky West Virginia's Perry, Maces Creek and Line Fork Stations. Kentucky West Virginia states that it must rely on the gas supplies available in the area of these stations to replace depleting gas supplies from other areas and maintain its ability to meet existing service obligations. Kentucky West Virginia further states that there are additional gas supplies available to Kentucky West Virginia from this area and this availability is expected to grow as the area is developed.

Kentucky West Virginia states that it proposes no new sales and further states that the proposed pipeline facilities are required solely to enable it to maintain its gas supply at a level required to meet its existing service obligations to its customers and to provide continuity of service in the event of an outrage on the existing Line No. 51.

*Comment date:* April 7, 1988, in accordance with Standard Paragraph G at the end of this notice.

**2. Northern Border Pipeline Co.**

[Docket No. CP88-232-000]

February 24, 1988.

Take notice that on February 17, 1988,[1] Northern Border Pipeline Company (Northern Border), 2223 Dodge Street, Omaha Nebraska 68102, filed in Docket No. CP88-232-000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) for authorization to provide a transportation service for Hadson Gas Systems, Inc. (Hadson), a marketer, under the certificate issued in Docket Nos. CP86-395-000 and CP86-395-001, pursuant to section 7 of the NGA, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern Border states that pursuant to an IT Transportation Agreement dated December 1, 1987, as amended, it proposed to transport natural gas for Hadson from a point of receipt located near Port of Morgan, Montana, to delivery points interconnecting Northern Border and Natural Gas Company, the intermediate downstream transporter.

Northern Border further states that the maximum daily and annual quantities would be 21,500 MMBtu and 7,847,000 MMBtu, respectively. It is asserted that service under § 284.223(a) commenced January 1, 1988, as reported in Docket No. ST88-1923-000.

*Comment date:* April 11, 1988, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraph**

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-4441 Filed 3-1-88; 8:45 am]

BILLING CODE 6717-01-M

[1] The application was tendered for filing on February 12, 1988; however, the fee required by § 381.104 of the Commission's Rules was not paid until February 17, 1988. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

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**[Docket Nos. CI87-115-002 and CI87-121-002]**

## Colorado Interstate Gas Co.; Applications for Extension of Blanket Limited-Term Abandonment and Blanket Limited-Term Certificate With Pregranted Abandonment on Behalf of Producer-Suppliers

February 24, 1988.

Take notice that on February 1, 1988, Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944 (Applicant), filed applications pursuant to sections 7(b) and 7(c) of the Natural Gas Act requesting on behalf of producer-suppliers currently selling natural gas to Applicant pursuant to certificates of public convenience and necessity a three-year extension of that authorization previously granted by the Commission which (1) permits the blanket limited-term abandonment by Applicant's producer-suppliers of certain sales for resale of natural gas in interstate commerce; and (2) issues a blanket limited-term certificate of public convenience and necessity with pregranted abandonment authorizing the sale for resale of such natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission in the subject dockets, and open for public inspection.

Applicant states that market demand for its system supply continues to restrict Applicant's ability to purchase available natural gas supplies from producer-suppliers. The authorizations requested in this proceeding are necessary for Applicant's producer-suppliers to participate in the current market for natural gas, as well as to permit Applicant (and thereby its resale customers) to address its take-or-pay problem. Applicant states it requests the extension of its authorization for a three-year term although it will accept such shorter term as the Commission deems appropriate.

Since the issuance of its LTA on May 29, 1987, 39 FERC ¶ 61,235, Applicant states it has released and transported significant volumes of gas covered by its LTA, and that such releases have eased the potential take-or-pay burden facing Applicant and its customers. However, the problems that forced Applicant to seek an LTA initially have not disappeared and will not in the near future. Applicant states that the surplus of supply above demand has gotten worse from that referenced in its initial application. The one-year term of Applicant's LTA thus stands as a barrier to the continued improvement of Applicant's supply vs. demand problem. Applicant believes that the market as a whole has been aided by LTA's such as its own and thus these programs should be continued into the future. For these reasons, Applicant states it is seeking a three-year extension of its LTA, while preserving those conditions established by the Commission in its initial order. If the term proposed by Applicant herein is considered too long by the Commission, then Applicant states it would request such shorter term as the Commission deems appropriate. According to Applicant, the public convenience and necessity will clearly be served by the continuance of the LTA both to Applicant, its producer-suppliers, its customers, and the competitive national market for natural gas.

Additionally, because Applicant's current authorization was limited to a one-year term ending April 27, 1988, Applicant requests that the Commission act on its applications herein on an expedited basis, because this will avoid the disruption of services for its producer-suppliers.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 9, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-4512 Filed 3-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI88-255-000 and CI88-280-000]

## Exxon Corp.; Application for Permanent Abandonment, Permanent Blanket Certificate With Pregranted Abandonment and Request for Clarification

February 24, 1988.

Take notice that on January 21, 1988, Exxon Corporation (Exxon), P. O. Box 2180, Houston 77252-2180 filed applications pursuant to section 7(b) of the Natural Gas Act and §§ 2.76, 2.77(a), 2.77(b) and 157.30 of the Commission's Regulations requesting authorization to abandon permanently gas sales to United Gas Pipe Line Company (United) under a certificate issued in Docket No. G-17349 and covered under Exxon's FERC Gas Rate Schedule No. 148, and requesting issuance of a permanent blanket certificate with pregranted abandonment. In this connection Exxon requests waiver of filing requirements under Parts 154 and 271 of the Commission's Regulations for the gas for which abandonment is sought. Exxon further requests clarification that the gas for which abandonment is sought will not, upon abandonment, become subject to Exxon's Rate Schedule No. 357 and the certificate issued in Docket No. CI64-5, covering the sale of gas to Columbia Gas Transmission Corporation (Columbia) under a contract dated June 28, 1963. Should the Commission find that the subject gas will become subject to Exxon's Rate Schedule No. 357 and the service obligation under the certificate issued in Docket No. CI64-5, Exxon requests that the Commission abandon as to Rate Schedule No. 357 and the corresponding service obligation, the gas being abandoned under Rate Schedule No. 148. The reasons for the proposed abandonment, clarification and blanket certificate are more fully set forth in the applications, which are on file with the Commission and open to public inspection.

Exxon states that it seeks to permanently abandon sales of gas to United from the Garden City Field, St. Mary Parish, Louisiana, pursuant to a settlement agreement between Exxon and United. Exxon states that under the settlement, Exxon agreed to waive all claims against United for take-or-pay and minimum take obligations accrued through November 10, 1987, to reduce contractural minimum take and take-or-pay quantities, and to lower the contract price for gas taken effective November 10, 1987

Exxon submits that abandonment and certificate authority is in the public interest and is consistent with the Commission's general policies as contained in §§ 2.76 and 2.77 of the Regulations. Exxon states that under § 2.77(a), expedited consideration of abandonment and certificate applications is appropriate where the parties have entered into a take-or-pay buy-out pursuant to § 2.76, and that Exxon and United have engaged in a take-or-pay buy-out as contemplated by § 2.76 of the Commission's Regulations. Exxon further states that United has made a one-time non-recoupable payment in lieu of accrued take-or-pay and minimum take obligations, and that as a part of this settlement, United and Exxon agreed to terminate the gas sales contract, effective upon the granting of abandonment authorization. Exxon states that in Order No. 436, the Commission reiterated its intention to expeditiously grant abandonment authorizations required to implement agreements made pursuant to take-or-pay buy-out agreements. In accordance with Order No. 436, Exxon requests expedited consideration of its applications under the procedures of § 2.77(b).

Exxon states that it requests clarification that the subject gas, upon abandonment of sales to United, will not become subject to Exxon's sale to Columbia under Exxon's Rate Schedule No. 357 due to the uncertainty arising out of the Commission's May 7, 1980, order issued in Docket No. CI78-742 regarding the gas at issue. Exxon states that in that order, the Commission approved an offer of settlement tendered by Columbia and United which provided for a sharing of the gas purchase rights between the two parties. Exxon states that specifically, paragraph 2 of the approved settlement provides for such sharing in the following manner:

2. From January 1, 1981, or from the earlier date that United received 41,800,000 Mcf of gas from the reserves at issue, whichever is the applicable date (hereinafter the applicable date) Columbia and United shall each be entitled to receive on a daily basis fifty percent (50%) of the gas to be delivered from the reserves at issue.

Exxon states that this language could be construed to mean that each purchaser was given a permanent entitlement of 50% of the gas at issue, and that if this was the intent of the Commission, Exxon requests that the Commission remove the uncertainty arising out of its May 7, 1980, order by declaring that United's 50% entitlement, for which abandonment is sought, will not, upon abandonment, become subject to the certificate and rate schedule covering the sale of gas to Columbia.

Exxon further states that should the Commission disagree with the above construction of its May 7, 1980, order and declare that United's 50% entitlement will, upon abandonment, become subject to Exxon's certificate and rate schedule covering the sale of gas to Columbia, Exxon also requests the Commission to grant partial, permanent abandonment of Exxon's Rate Schedule No. 357 and the service obligation under the certificate issued in Docket No. CI64-5 with respect to the gas which becomes committed to Columbia as a result of abandonment of Exxon's sale to United. Exxon states that Columbia has agreed to release and support abandonment of such gas.

Finally, Exxon states that the estimated deliverability is approximately 9,000 Mcf/d and the gas is NGPA section 106(a) rollover gas.

Since Exxon states it has entered into a take-or-pay buy-our and therefore requests that its applications be considered on an expedited basis, all as more fully described in the applications which are on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said applications should, on or before 15 days after the date of publications of this notice in the Federal Register, file with the Federal Energy Regulation Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Exxon to appear or to be represented at the hearing.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-4442 Filed 3-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-641-002]

## Northwest Pipeline Corp. and Northwest Marketing Co., Application To Amend Existing Blanket Limited-Term Certificates With Pregranted Abandonment

February 24, 1988.

Take notice that on January 26, 1988, Northwest Pipeline Corporation (Northwest) and Northwest Marketing Company (NW Marketing), 295 Chipeta Way, Slat Lake City, Utah 84108, filed their joint petition to amend the limited-term certificates issued in the subject docket requesting authorization for Northwest to sell for resale certain released gas to any purchaser, not just NW Marketing, and to provide NW Marketing with an extension of term for its related blanket sale for resale authority; all as more fully hereinafter set forth.

Applicants state the Commission's January 21, 1987, order in Docket Nos. CI86-641-000 and CI86-642-000 authorized, in Docket No. CI86-642-000, the partial abandonment for a two year term of Northwest's intracompany sale for resale of natural gas produced from certain leasehold wells which were owned and operated by Northwest. Applicants also state that order also issued, in Docket No. CI86-641-000, a two-year limited-term certificate with pregranted abandonment authorizing the sale for resale by Northwest to NW Marketing of the gas production abandoned in Docket No. CI86-642-000. Northwest states it has been selling the subject abandoned gas to NW Marketing since September 1987, but now desires the flexibility to sell to various spot-market purchasers in addition to NW Marketing.

Applicants state that NW Marketing was issued a blanket limited-term certificate with pregranted abandonment in Docket No. CI86-641-000 on May 1, 1987, authorizing NW Marketing to make sales for resale in interstate commerce of the gas abandoned in Docket No. CI86-642-000 and purchased from Northwest for a term through March 31, 1988. NW Marketing requests an extension of its sales authorization for a term to coincide with the termination of Northwest's underlying abandonment authority in Docket No. CI86-642-000, on January 21, 1989.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 9, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not service to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

**Lois D. Cashell**

*Acting Secretary.*

[FR Doc. 88-4514 Filed 3-1-88; 8:45 am]

BILLING CODE 6717-01-M

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[Docket Nos. CI88-232-000 and CI88-254-000]

## Pogo Producing Co.; Applications for Permanent Abandonment and for Blanket Limited-Term Certificate With Pregranted Abandonment

February 24, 1988.

Take notice that on January 11, 1988, Pogo Producing Company (Pogo), P.O. Box 61289, Houston, Texas 77208, filed applications pursuant to sections 7(b) and 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations requesting: (1) Authority in Docket No. CI88-254-000 to abandon permanently the obligation to make sales for resale of natural gas in interstate commerce to Southern Natural Gas Company (Southern) from West Cameron Blocks 352 and 586, Eugene Island Block 256 and Vermilion Block 228, which are located in Offshore Louisiana and had been certificated by the Commission in Docket Nos. CI79-430-000 and CI84-126-000; and (2) a three-year blanket limited-term certificate of public convenience and necessity with pregranted abandonment in Docket No. CI88-232-000 to make sales for resale in interstate commerce of gas previously sold to Southern from West Cameron Blocks 352 and 586, and Eugene Island Block 256. Pogo states that no certificate authority is necessary for Vermilion Block 228, because that property is no longer producible. With regard to sales from West Cameron Block 352 authorized by the Commission in Docket No. CI79-430-000, Pogo states it is obligated to sell 50 percent of its production to Southern and 50 percent to United Gas Pipe Line Company. Pogo requests authority to abandon only its certificate obligation with respect to sales to Southern but not with respect to sales to United. The sale from West Cameron Blocks 352 and 586 are covered under Pogo's FERC Gas Rate Schedule Nos. 43 and 67, respectively. The sale from Eugene Island Block 256 is covered under Pogo's FERC Gas Rate Schedule No. 75, and the sale from Vermilion Block 228 is covered under Pogo's FERC Gas Rate Schedule No. 70. Pogo states that the deliverability is 9,387 Mcf/d. The gas is NGPA section 104 post 1974 gas (83%) and section 102(d) gas (17%).

Pogo and Southern have agreed to terminate their contractual relationship regarding sales of Pogo production to Southern and, in connection with that agreement, Pogo requests authority to abandon permanently its sales to Southern from the above-enumerated properties.

Consistent with the Commission's current policy regarding blanket certificates for producer sales, Pogo has requested blanket limited-term certificate sales authority with pregranted abandonment for a period of three years from the date of issuance of such certificate. However, in the event that during the pendency of Pogo's applications, the Commission revises its policy to authorize permanent blanket sales certificates or limited-term blanket sales certificates for a period in excess of three years, Pogo requests that the Commission issue Pogo such a blanket sales certificate.

Pogo states that Pogo and Southern have agreed to terminate their contractual relationship regarding sales of Pogo production from these properties and, in connection with that agreement, Pogo hereby seeks authority to permanently abandon its obligation to make such sales to Southern. To the extent necessary, Pogo also applies on behalf of Southern for authority to abandon Southern's obligation to purchase such production from Pogo.

Pending permanent abandonment and the issuance of blanket sales authority, Pogo states it will make spot market sales of production from the subject blocks pursuant to Southern's LTA on behalf of its producer-suppliers which the Commission recently extended until December 31, 1988, in Docket Nos. CI86-371-002 and CI86-392-002. (41 FERC ¶ 61,365 (1987)).

Pogo requests that its certificate authority be conditioned so that the rates charged for the authorized sales for resale shall be the lesser of the new purchaser's contract rates or the otherwise applicable maximum lawful prices prescribed by the NGPA. Pogo requests that automatic collection of the appropriate monthly adjustments be permitted from the date that the Commission issues a certificate in this proceeding and that the Commission waive the requirement under § 154.94(h) that Pogo file a blanket affidavit to cover such sales. Also, Pogo requests

that, to the extent Pogo qualifies for the collection of any applicable allowance under section 110 of the NGPA, the Commission waive the requirement that Pogo comply with § 154.94(k) and Part 271 of its Regulations.

Pogo requests that the Commission grant Pogo waiver of the Commission's Regulations under the Natural Gas Act as to the establishment and maintenance of rate schedules under Part 154 of the Commission's Regulations. In lieu of such obligations, Pogo agrees to file quarterly reports in the instant docket consistent with reporting obligations of other producers making sales for resale under limited-term blanket certificates.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 9, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Pogo to appear or to be represented at the hearing.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-4515 Filed 3-1-88; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP-42028D; FRL-3334-8]**

### Delaware State Plan for Certification of Applicators of Peticides Classified for Restricted Use

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Intent To Approve Amendment of Plan.

**SUMMARY:** The State of Delaware has submitted to EPA proposed amendments to Delaware's State Plan for Certification of Applicators of Pesticides Classified for Restricted Use. Delaware is proposing to upgrade its recertification requirements and to add three new commercial sub-catergories. Notice is given of the intention of the Regional Administrator, Region III, to approve the proposed amendments. EPA is soliciting comments on the proposed amendments.

**DATE:** Comments must be received by April 1, 1988.

**ADDRESSES:** Send comments, identified by the document control number "OPP-42028D", to: Ann DeLong, Pesticide Certification and Training Officer, Toxics and Pesticides Branch (3HW40), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107.

Copies of the Delaware State Plan and the proposed amendments are available for review at the following locations:

1. Toxics and Pesticides Branch (3HW40), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107.
2. Pesticide Compliance Supervisor, 2320 S. DuPont Highway, Dover, DE 19901.

**FOR FURTHER INFORMATION CONTACT:** Ann DeLong, (215-597-8067, or Mr. Grier Stayton, Pesticide Compliance Supervisor, 2320 S. DuPont Highway, Dover, DE 19901, (302-736-4811).

**SUPPLEMENTARY INFORMATION:** The Delaware State Plan for Certification of Applicators of Pesticides Classified for Restricted Use was approved on January 31, 1978, and notice of the approval appeared in the **Federal Register** of February 14, 1978 (43 FR 6320). Delaware is now requesting to amend its Plan by establishing additional requirements for the training and recertification of pesticide applicators.

In addition, Delaware proposes the subdivision of the category Industrial, Institutional, Structural and Health Related Pest Control to include the sub-categories "Fumigation", "Wood Preservative Treatments" and "Miscellaneous Pest Control".

Copies of the Plan and the proposed amendments are available at the addresses given above. EPA solicits comments on these amendments.

Dated: February 12, 1988.

**James M. Seif,**

*Regional Administrator, Region III.*

[FR Doc. 88-4125 Filed 3-1-88; 8:45 am]

BILLING CODE 6560-50-M

**[OPP-42027D; FRL-3334-7]**

### District of Columbia State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice Of Intent To Approve Amendment Of Plan.

**SUMMARY:** The District of Columbia has submitted to EPA proposed amendments to the District of Columbia's State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides. The District of Columbia is proposing to upgrade its certification and recertification requirements and to add a new commercial subcategory. Notice is given of the intentions of the Regional Administrator, Region III, to approve the proposed amendments. EPA is soliciting comments on the proposed amendments.

**DATE:** Comments must be received by April 1, 1988.

**ADDRESSES:** Send comments, identified by the document control number "OPP-42027D", to: Ann DeLong, Pesticide Certification and Training Officer, Toxics and Pesticides Branch (3HW40), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107.

Copies of the District of Columbia State Plan and the proposed amendments are available for review at the following locations:

1. Toxics and Pesticides Branch (3HW40), Environmental Protection Agency, Region III, 841 Chestnut St., Philadelphia, PA 19107
2. Department of Consumer & Regulatory Affairs, Pesticides and Hazardous Waste Management Branch, Pesticides Section, 5010 Overlook Ave, SW., Suite 114, Washington, DC 20032-5397.

**FOR FURTHER INFORMATION CONTACT:** Ann DeLong, (215-597-8067), or Angelo Tompros, Department of Consumer & Regulatory Affairs, Pesticides and Hazardous Waste Management Branch, Pesticides Section, 5010 Overlook Ave., SW., Suite 114, Washington, DC 20032-5397, (202) 783-3194.

**SUPPLEMENTARY INFORMATION:** The District of Columbia State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides was approved November 24, 1978 and notice of approval appeared in the **Federal Register** of December 8, 1978 (43 FR 57656). The District of Columbia is now requesting to amend its Plan by updating the requirements for pesticide applicator certification and recertificaiton and updating the penalties for civil infractions.

In addition, the District of Columbia proposes to further subdivide Category 3 to include a new subcategory, "Interior Plantscapes".

Copies of the Plan and the proposed amendments are available at the addressed given above. EPA solicits comments on these amendments.

Dated: February 12, 1988.

**James M. Seif,**

*Regional Administrator, Region III.*

[FR Doc. 88-4126 Filed 3-1-88; 8:45 am]

BILLING CODE 6560-50-M

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**[OPP-42023C; FRL-3334-6]**

## Maryland State Plan for Certification of Pesticide Applicators

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of intention to approve amendment of plan.

**SUMMARY:** The State of Maryland has submitted to EPA certain amendments to Maryland's State Plan for Certification of Pesticide Applicators. Maryland is proposing to upgrade its certification requirements and to add two new commercial categories. Notice is given of the intention of the Regional Administrator, Region III, to approve the proposed amendments. EPA is soliciting comments on the proposed amendments.

**DATE:** Comments must be received by April 1, 1988.

**ADDRESSES:** Send comments, identified by the document control number "OPP-42023C", to: Ann DeLong, Pesticide Certification and Training Officer, Toxics and Pesticides Branch (3HW40), Environment Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107.

Copies of the Maryland State Plan and the proposed amendments are available for review at the following locations:

1. Toxics and Pesticides Branch (3HW40), Environmental Protection Agency, Region III, 841 Chestnut St., Philadephia, PA 19107.
2. Pesticide Applicators Law Section, Maryland Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, MD 21401.

**FOR FURTHER INFORMATION CONTACT:** Ann DeLong, (215-597-8067), or Mr. David Shriver, Pesticide Applicator Law Section, Maryland Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, MD 21401, (301-841-5710).

**SUPPLEMENTARY INFORMATION:** The Maryland State Plan for Certification of Pesticide Applicators was approved April 25, 1977, and notice of the approval appeared in the **Federal Register** of May 18, 1977 (42 FR 25521). Maryland is now requesting to amend its plan by updating the requirements for pesticide applicator certification and recertification. In addition, Maryland proposes the addition of two new commercial applicator categories, Category 11, Miscellaneous (Wood Treatment) and Category 12, Consulting.

Copies of the Plan and the proposed amendments are available at the addresses given above. EPA solicits comments on these amendments.

Dated: February 12, 1988.

**James M. Seif,**

*Regional Administrator, Region III.*

[FR Doc. 88-4127 Filed 3-1-88; 8:45 am]

BILLING CODE 6560-50-M

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**[OPP-42011D; FRL-3335-2]**

## Pennsylvania State Plan for Certification of Pesticide Applicators

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Intent to approve amendment of plan.

**SUMMARY:** The Commonwealth of Pennsylvania has submitted to EPA certain amendments to the State Plan for Certification of Pesticide Applicators. Pennsylvania is proposing to establish new requirements for the certification and recertification of pesticide applicators, and to add several new commercial categories. Notice is given of the intention of the Regional Administrator, Region III, to approve the amendments. EPA is soliciting comments on the proposed amendments.

**DATE:** Comments must be received by April 1, 1988.

**ADDRESSES:** Send comments, identified by the document control number "OPP-42011D"; to: Ann Delong, Pesticide Certification and Training Officer, Toxics and Pesticides Branch (3HW40), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107.

Copies of the Pennsylvania State Plan and the amendments are available for review at the following locations during normal business hours:

1. Toxics and Pesticides Branch (3HW40), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107.
2. Pesticide Operations Coordinator, Bureau of Plant Industry, Pennsylvania Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17120.

**FOR FURTHER INFORMATION CONTACT:** Ann Delong, (215-597-8067), or John Longenecker, Pesticide Operations Coordinator, Bureau of Plant Industry, Pennsylvania Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17120, (717-787-4843).

**SUPPLEMENTARY INFORMATION:** The Pennsylvania State Plan for Certification of Pesticide Applicators was approved August 8, 1977, and notice of the approval appeared in the **Federal Register** of August 19, 1977 (42 FR 41907). Pennsylvania is now requesting to amend its Plan by establishing additional requirements for the certification and recertification of pesticide applicators.

In addition, Pennsylvania is proposing the addition of several new commercial categories including wood preservation technology, commodity fumigation, soil fumigation, interior plantscapes, and park pest control, with specific update training requirements for each. Prior notification will be required of pesticide applicators using restricted use pesticides as well.

Copies of the Plan and the proposed amendments are available at the addresses given above. EPA solicits comments on these amendments.

Date: February 12, 1988.

**James M. Seif,**

*Regional Administrator, Region III.*

[FR Doc. 88-4128 Filed 3-1-88; 8:45 am]

BILLING CODE 6560-50-M

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**[OPP-42017B; FRL-3334-9]**

## Virginia State Plan for Certification of Pesticide Applicators

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of intent to approve amendment of plan.

**SUMMARY:** The State of Virginia has submitted to EPA certain amendments to the State Plan For Certification of Pesticide Applicators. Virginia is proposing to upgrade its certification requirements and to subdivide commercial Category 7. Notice is given that the Regional Administrator, Region III, intends to approve the proposed amendments. EPA is soliciting comments on the proposed amendments.

**DATE:** Comments must be received by April 1, 1988.

**ADDRESSES:** Send comments, identified by the document control number "OPP-*42017b*", to: Ann DeLong, Pesticide Certification and Training Officer, Toxics and Pesticides Branch (3HW40), Enviornmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107.

Copies of the Virginia State Plan and the proposed amendments are available for review at the following locations:

1. Toxics and Pesticides Branch (3HW40), Enviornmental Protection Agency, Region III, 841 Chestnut St., Philadelphia, PA 19107
2. Virginia Department of Agriculture and Consumer Services, Division of PAIR, Rm. 403, or Pesticide, Paint & Hazardous Substances Section, P.O. Box 1163, Rm. 403, Richmond, VA 23209.

**FOR FURTHER INFORMATION CONTACT:** Ann DeLong, (215–597–8067), or Mr. Billy Walls, Virginia Department of Agriculture and Consumer Services, Division of PAIR, Rm. 403, or Pesticide, Paint & Hazardous Substances Section, P.O. Box 1163, Richmond, VA 23209, (804–786–3162).

**SUPPLEMENTARY INFORMATION:** The Virginia State Plan for Certification of Pesticide Applicators was approved on June 14, 1976. Virginia is now requesting to amend its Plan by updating the requirements for pesticide applicator certification and recertification and adding reciprocal certification for government employees.

In addition, Virginia proposes the future subdivision of commercial category 7, Industrial, Institutional, Structural and Health Related Pest Control to include sub-category 7A, "General Pest Control"; sub-category 7B, "Wood Infesting Organisms"; sub-category 7B–1 "Wood Preservation and Wood Product Treatment"; sub-category 7C, "Food Processing Pest Control" and sub-category 7D, "Fumigation".

Copies of the Plan and the proposed amendments are available at the addresses given above. EPA solicits comments on these amendments.

Dated: February 12, 1988.

**James M. Seif,**

*Regional Administrator, Region III.*

[FR Doc. 88–4129 Filed 3–1–88; 8:45 am]

BILLING CODE 6560–50–M

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**[OPP–42006D; FRL–3335–1]**

## West Virginia State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of intent to approve amendment of plan.

**SUMMARY:** The State of West Virginia has submitted to EPA certain amendments to West Virginia's State Plan for certification of Commercial and Private Applicators of Restricted Use Pesticides. West Virginia is proposing to update its certification requirements and to add several subdivisions in Category 8. Notice is given that the Regional Administrator, Region III, intends to approve the amendments to the State Plan. EPA is soliciting comments on the proposed amendments.

**DATE:** Comments must be received by April 1, 1988.

**ADDRESSES:** Send comments, identified by the document control number "OPP–*42006D*", to: Ann DeLong, Pesticide Certification and Training Officer, Toxics and Pesticides Branch (3HW40), Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, PA 19107.

Copies of the West Virginia State Plan and the proposed amendments are available for review at the following locations:

1. Toxics and Pesticides Branch (3HW40), Environmental Protection Agency, Region III, 841 Chestnut St., Philadelphia, PA 19107.
2. Plant Pest Division, Capitol Building, West Virginia Department of Agriculture, Charleston, WV 25305.

**FOR FURTHER INFORMATION CONTACT:** Ann DeLong (215–597–8067), or Robert Frame, Plant Pest Division, Capitol Building, West Virginia Department of Agriculture, Charleston, WV 25305, (304–348–2212).

**SUPPLEMENTARY INFORMATION:** The West Virginia State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides was approved May 26, 1976 and notice of the approval was published in the **Federal Register** of June 24, 1976 (41 FR 26068). West Virginia is now requesting to amend its Plan by updating the requirements for pesticide applicator certification and recertification and updating the citations concerning civil penalties.

In addition, West Virginia proposes the further subdivision of commercial Category 8, Industrial, Institutional, Structural and Health Related Pest Control, to include sub-category 8B–WP, "Wood Preservation Only"; sub-category 8D, "Industrial, Institutional Vegetation Management"; and sub-category 8E, "Health Related Pest Control". Copies of the Plan and the proposed amendments are available at the addresses given above. EPA solicits comments on these amendments.

Dated: February 12, 1988.

**James M. Seif,**

*Regional Administrator, Region III.*

[FR Doc. 88–4130 Filed 3–1–88; 8:45 am]

BILLING CODE 6560–50–M

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**[OOP–180760; FRL–3335–9]**

## Receipt of Applications for Emergency Exemptions From Washington and Oregon to Use Dinoseb; Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of receipt.

**SUMMARY:** EPA has received specific exemption requests from the Washington and Oregon Departments of Agriculture (hereafter referred to as "Washington," "Oregon," or collectively as "Applicants") to use dinoseb (CAS 88–85–7). Washington proposes to use dinoseb on cucumbers and snap beans to control broadleaf weeds and on raspberries to control excess vegetation. Oregon proposes to use dinoseb on snap beans, squash, pumpkins, and cucumbers to control broadleaf weeds and on caneberries for chemical pruning. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and, time permitting, to solicit public comment before making the decision whether to grant the exemptions.

**DATE:** Comments must be received on or before March 17, 1988.

**ADDRESS:** Three copies of written comments, bearing the indentification notation "OPP–180760," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 246, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail:

Donald R. Stubbs, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–7700).

**SUPPLEMENTARY INFORMATION:**

## I. Background

Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State or Federal agency from any provision of FIFRA if he determines that emergency conditions exist which require such exemption. The applicable EPA regulations for emergency exemptions are set forth at 40 CFR Part 166.

The Department of Agriculture for the State of Oregon, by letters received January 7, 1988, has requested the Administrator to issue specific exemptions for the use of dinoseb on snap beans, squash, pumpkins, and cucumbers to control broadleaf weeds and for basal burning of caneberry cane. The Department of Agriculture for the State of Washington, by letters received February 8 and 16, 1988, has requested the Administrator to issue specific exemptions for the use of dinoseb on cucumbers and snap beans to control broadleaf weeds and on raspberries to control excess vegetation.

On October 7, 1986, EPA suspended all registrations of dinoseb products (51 FR 36634, October 14, 1986). The basis for the suspension of all dinoseb registrations was significant risk of developmental toxicity and other adverse health effects to applicators and other populations exposed to dinoseb.

Subsequently four registrants submitted requests for an expedited suspension hearing on the question of whether or not sale, distribution, or use of dinoseb would pose an imminent hazard during the time required to conduct a cancellation hearing. These registrants withdrew their expedited hearing requests on the question of imminent hazard on October 30, 1986, resulting in the immediate entry, pursuant to the terms of the Agency's October 7 decision, of a final order suspending the registrations of their dinoseb products during the pendency of the cancellation hearing. The Applicants' specific exemption requests are, therefore, subject to EPA's Subpart D regulations, 40 CFR 164.130 to 164.133, in addition to the regulations at 40 CFR Part 166 governing the issuance of exemptions under section 18. Subpart D provides that any application for a registration of a pesticide use that has been suspended or cancelled shall be considered a petition for reconsideration of the prior suspension or cancellation order. The Administrator will determine that reconsideration is warranted if, among other things, he finds that the Applicant has presented substantial new evidence which may materially affect the prior suspension or cancellation order (40 CFR 164.131(c)). If the Administrator finds that the substantial new evidence test in 40 CFR 164.131 is met, the Subpart D rules require a formal hearing to determine whether a modification of the suspension or cancellation order is justified (40 CFR 164.131(c)).

Should the Administrator decide to lift the suspension of certain dinoseb registrations, the Agency would then determine whether and under what terms and conditions dinoseb products might be used in accordance with the terms of the Administrator's order and 40 CFR Part 166.

## II. Emergency Condition

### *A. Oregon's Requests*

Oregon states that there are a number of broadleaf herbicides registered for use in squash, pumpkins and cucumbers. Oregon has found these pesticides to be unsatisfactory for a number of reasons: Injury has occurred to crops, especially in early season plantings when there are cool, wet conditions; herbicides which require incorporation are difficult to apply and incorporate in western Oregon due to high soil water content in the spring; reduced yields occur due to environmental plus herbicidal effects; most alternatives provide poor control of black nightshade (*Solanium nigrum*) and hairy nightshade (*Solanium sarachoides*). Nightshade is difficult to remove from the fields by cultivation and hoeing. Pigweed, smartweed, and wild proso millet are also problem weeds according to Oregon. The registered herbicides Prefar, Amiben, Treflan, and Dacthal are not effective control for these weeds. To obtain effective control growers have used a combination of Amiben and Dinoseb.

According to Oregon, shifts to alternative crops or different cultural practices are impractical, extremely costly and would have a profound economic and social effect upon area growers, processors and economies. New mechanical weed control equipment is prohibitively expensive. Hand weeding is not practical because labor is scarce and expensive; timing is critical.

The loss of dinoseb according to Oregon, is a serious concern for the Oregon caneberry industry because of the important role in the production of caneberries.

(1) Mechanical harvest, which accounts for well over half of the harvested fruit, requires the removal of growth at the plant base (caneburning) for proper operation of the harvester catch plates which "catch" the falling fruit. Dinoseb is used routinely and exclusively for cleaning plant bases before harvest.

(2) The trellis system required for supporting caneberries makes mechanical weed control difficult. If field conditions (e.g., fall rains) prevent growers from applying fall herbicides, major in-row weed problems result by spring. Knock-down with a contact herbicide such as dinoseb is used to control winter weeds unaffected by spring-applied pre-emergence materials.

(3) The alternate-year management system increasingly common in blackberries requires the removal of basal vegetation in the fruiting acreage (normally half). Basal growth is sprayed with dinoseb to prevent competition between fruiting canes and vegetative growth. The economies of this method are achieved by allowing growers to manage the phases (vegetative and fruiting) of the biennial cropping cycle separately.

(4) Red raspberry yield has been increased through the use of dinoseb to retard early season vegetative growth, diverting nutrition to fruit buds. Studies indicated yield increases of 1.2 tons per acre and 1.9 tons per acre with one and two dinitro cane burnings, respectively. Similar yield increases have been reported in blackberries. The inability to basal-burn canes will reduce economic returns by as much as $2,850 per acre.

(5) Eighty percent of red raspberries and sixty-five to seventy percent of the blackberries in Oregon are chemically pruned at least once and up to four times annually with dinoseb. The loss of dinoseb could result in a loss of over $7.2 million for Oregon caneberry growers (estimated on 3,000 acres of red raspberries and 4,500 acres of blackberries at an average price of 40 cents per pound reduced by 1.2 tons per acre).

Hand pruning is not a realistic alternative. Crews are not generally available in April and May. Removal of new vegetative canes would cost approximately $300 per acre. The further cost of removing shoots up to 1.5 feet long at the bases of fruiting canes

(custom pruning) cannot be accurately estimated.

Oregon claims that there are no acceptable alternatives that are adequately efficacious and economical for weed control in squash, pumpkins and cucumbers or for basal burning of caneberries.

*B. Washington's Requests*

Washington states there are several herbicides registered for use on broadleaf weeds in cucumbers: Chloramben (Amiben), naptalam (Alanap), and DCPA (Dacthal). Bensulide (Prefar) and trifluralin (Treflan) are registered grass herbicides. According to Washington, experience has shown that chloramben and naptalam will perform somewhat acceptably if adequate moisture is present; however, adequate moisture is uncommon in non-irrigated western Washington fields in May and June. This may be overcome to some extent by mechanical incorporation 1 to 2 inches deep; however, the incorporation is likely to damage the cucumbers, which are planted to fairly shallow depths. In addition, several broadleaf weed species are naptalam-resistant. DCPA is registered; however, its performance is not adequate or consistent in western Washington in any field crop.

Washington states the following herbicides are registered for use in snap beans, several of which are for grass control: EPTC (Eptam), trifluralin (Treflan), chlorpropham (IPC), dalapon, fluchloralin (Basalin), and pendimethalin (Prowl). Metolachlor (Dual) is primarily useful in controlling grasses with little residual control of broadleaves, possesses potential for crop damage, and is dependent on moisture level for performance, making it undesirable on non-irrigated fields. Bentazon (Basagran) does not perform acceptably in colder temperatures of Washington spring. DCPA (Dacthal) has been shown to be inconsistent and generally inadequate in performance. Chloramben (Amiben) performance is dependent on moisture, making it unsuitable for non-irrigated fields. Glyphosate (Roundup) and paraquate are contact herbicides with no residual activity.

Washington indicates that the Washington and Oregon raspberry growing areas are contiguous, and their request is intended to be companion to the Oregon request. Washington states there are no alternative pesticides registered for use to control primo canes and foliage on raspberries. Paraquat is registered for use in caneberries, but only in the dormant crop.

**III. Proposed Use**

Oregon requested emergency exemptions for use of dinoseb on caneberries, squash, pumpkins, and cucumbers between March 1 to June 15, 1988. Washington requested emergency exemptions for use of dinoseb between April 15 and June 15, 1987, for raspberries (April 5 to May 20), snap beans (May 1 to June 15), and cucumbers (May 15 to June 15).

Oregon's proposed specific exemption programs involve use of any formulation of dinoseb or its salts registered prior to the October 1986 suspension for the crops listed. Use would be in accordance with the formerly labeled rates and use directions. A total of 186,250 pounds active ingredient to treat 22,500 acres of snap beans, 7,500 acres of caneberries, and 4,000 acres of cucurbits (squash, cucumbers and Pumpkins) has been requested. Other conditions of use include: (1) All applications would be performed by certified applicators who have been specifically trained regarding the toxicity of dinoseb and appropriate application methods for dinoseb products; (2) all persons involved in mixing or applying dinoseb would be required to wear hazardous chemical protective clothing, including mask, hood, face protection, and chemically resistant gloves; (3) closed mixing systems would be required; (4) applications would be made statewide using ground equipment with an enclosed tractor cab; (5) hand-held spray applications would be prohibited; and (6) dinoseb will be applied to a maximum of 80 acres per day per applicator.

Washington's proposed specific exemption programs involve ground application of dinoseb or its salts. A single pre-emergence use at 1.5 pounds active ingredient per acre in cucumbers for broadleaf weed control; a pre-emergence or early post emergent use at 4.5 pounds active ingredient per acre in snap beans for broadleaf weed control; and two applications at 2.5 pounds active ingredient on raspberries for control of excessive vegetation. Washington is requesting the use of any formulation of dinoseb or its salts registered prior to October 1986 for use on snap beans, cucumbers and/or raspberries. A total of 26,650 pounds active ingredient to treat 3,300 acres of raspberries west of the crest of the Cascade Mountains; 775 acres of snap beans in Walla Walla, Skagit and Whatcom counties, and 1,500 acres of cucumbers in Whatcom, Skagit, Pierce and Clark counties has been requested. Other conditions of use include: (1) All applications would be by certified applicators only; (2) product would remain enclosed during mixing; and (3) all use and exposure restrictions specified in the 1987 section 18 for dinoseb will be followed (52 FR 12594).

**IV. Notification and Comment**

This notice does not constitute a decision by the Agency on the applications submitted. The Agency's final decision on the specific exemption requests from Washington and Oregon will be based on whether or not there is sufficient new information to open Subpart D hearings and, if so, the outcome of the Subpart D hearings and compliance with the regulations governing section 18.

The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application that proposes any emergency use of a pesticide if such pesticide was the subject of a suspension notice under section 6(c) of FIFRA. The regulations also provide for the opportunity for public comment on the applications (40 CFR 166.24).

Interested persons may submit written views on the applications for emergency exemption to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period.

Dated: February 17, 1988.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 88-4463 Filed 3-1-88; 8:45 am]

BILLING CODE 6560-50-M

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**[OPP-180759; FRL-3336-1]**

## Receipt of Applications for Emergency Exemptions From Pennsylvania To Use Dinoseb; Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of receipt.

**SUMMARY:** EPA has received specific exemption requests from the Pennsylvania Department of Agriculture (hereafter referred to as Pennsylvania," or "Applicant") to use the pesticide dinoseb (CAS 88-85-7). Pennsylvania proposes to use dinoseb on peas, snap beans, and lima beans to control broadleaf weeds. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and, time permitting, to solicit public comment before making

the decision whether to grant the exemptions.

**DATE:** Comments must be received on or before March 17, 1988.

**ADDRESS:** Three copies of written comments, bearing the identification notation "OPP–180759," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SE., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 246, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail:

Donald R. Stubbs, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–7700).

**SUPPLEMENTARY INFORMATION:**

## I. Background

Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State or Federal agency from any provision of FIFRA if he determines that emergency conditions exist which require such exemption. The applicable EPA regulations for emergency exemptions are set forth at 40 CFR Part 166.

The Department of Agriculture for the state of Pennsylvania by letter received February 12, 1988, has requested the Administrator to issue specific exemptions for the use of dinoseb on peas, snap beans, and lima beans to control broadleaf weeds.

On October 7, 1986, EPA suspended all registrations of dinoseb products (51 FR 36634, October 14, 1986). The basis for the suspension of all dinoseb registrations was significant risk of developmental toxicity and other adverse health effects to applicators and other populations exposed to dinoseb.

Subsequently four registrants submitted requests for an expedited suspension hearing on the question of whether or not sale, distribution, or use of dinoseb would pose an imminent hazard during the time required to conduct a cancellation hearing. These registrants withdrew their expedited hearing requests on the question of imminent hazard on October 30, 1986, resulting in the immediate entry, pursuant to the terms of the Agency's October 7 decision, of a final order suspending the registrations of their dinoseb products during the pendency of the cancellation hearing. The Applicant's specific exemption requests are, therefore, subject to EPA's Subpart D regulations, 40 CFR 164.130 to 164.133, in addition to the regulations at 40 CFR Part 166 governing the issuance of exemptions under section 18. Subpart D provides that any application for an emergency exemption under section 18 for a pesticide use that has been suspended or cancelled shall be considered a petition for reconsideration of the prior suspension or cancellation order. The Administrator will determine that reconsideration is warranted if, among other things, he finds that the Applicant has presented substantial new evidence which may materially affect the prior suspension or cancellation order [40 CFR 164.131(c)]. If the Administrator finds that the substantial new evidence test in 40 CFR 164.131 is met, the Subpart D rules require a formal hearing to determine whether a modifidation of the suspension or cancellation order is justified [40 CFR 164.131(c)].

Should the Administrator decide to lift the suspension of certain dinoseb registrations, the Agency would then determine whether and under what terms and conditions dinoseb products might be used in accordance with the terms of the Administrator's order and 40 CFR Part 166.

## II. Emergency Condition

The Applicant states that there are a number of herbicides registered for use in peas, snap beans, and lima beans. According to the Applicant, trifluralin (Triflan), pendimethalin (Prowl), and metolachlor (Dual) are mainly for control of annual grasses, and provide only fair to good control of a few broadleaf weeds. According to the Applicant, chloramben (Amiben) has a high water solubility which results in rapid leaching in coarse-textured soils low in organic matter, common in Pennsylvania. Rapid leaching results in poor crop tolerance and short-term, erratic weed control. The Applicant states that bentazon (Basagran) controls only certain seedling broadleaf weeds and frequently causes crop injury which reduces yield and/or delays harvest. Harvest delays are not tolerable because planting is rigidly scheduled to stagger harvest.

According to the Applicant, NCBP gives postemergence control of Canada thistle and controls or suppresses lambsquarters, pigweed, smartweed, sowthistle, fanweed, annual morningglory and nightshade. However, the Applicant points out that this compound is in the phenoxy family of herbicides, so some temporary twisting of some pea varieties may occur. In addition, spray drift has to be avoided as it may injure other broadleaf crops and ornamentals. The Applicant points out that use of MCPB at temperatures above 80 °F can cause crop injury. The Applicant also states that MCPB works best early in the season when weeds are small and application use parameters described limit its use in peas in Pennsylvania.

EPTC (Eptam) and DCPA (Dacthal), labeled for use in snap beans, are primarily for control of annual grasses and control few broadleaf weeds according to the Applicant.

According to the Applicant, mechanical cultivation only controls weeds between the rows and weeds in the row can significantly reduce yields and results in fields that cannot be harvested. Cultivation cannot be done late in the season after the crop reaches a certain height, further limiting its effectiveness. According to the Applicant, mechanical cultivation cannot be used in peas because the rows are narrow.

Pennsylvania claims that without the use of dinoseb, peas growers will lose $440,000, lima bean growers $85,500, and snap beans growers $669,600 in yield losses and an additional $100,000 in peas, $90,000 in snap beans, and $11,250 in lima beans due to increased herbicide costs. Total loss to pea, snap bean and lima bean growers without the use of dinoseb, according to Pennsylvania, is $1,396,350.

### III. Proposed Use

Pennsylvania requested emergency exemptions for use of dinoseb on peas, snap beans and lima beans between March 1, and August 1, 1988. The Applicant's proposed specific exemption programs involve use of the following dinoseb products: Basanite, Caldon, Chemox General, Chemox PE, Chemsect DNBP, Dinitro, Dinitro-3, Dinitro General, Dynamyte, Elgetrol 318, Gebutox, Hel-Fire, Kiloseb, Nitropone C, Premerge 3, Sinox General, Subitex, Unicrop DNBP, Vertac Dinitro Weed Killer 5, Vertac General Weed Killer, and Vertac Selective Weed Killer.

Pennsylvania proposes to use a total of 56,295 pounds of active ingredient to treat 10,750 acres of crops. The proposed uses involve use of 25,500 pounds active ingredient to treat 4,000 acres of peas, 3,795 pounds active ingredient to treat 750 acres of lima beans, and 27,000 pounds of active ingredient to treat 6,000 acres of snap beans.

Dinoseb would be applied at a rate of 0.75 to 3 pounds active ingredient per acre to peas; 0.56 to 4.5 pounds active ingredient per acre to lima beans; and 3 to 4.5 pounds of active ingredient to snap beans. A maximum of 2 applications would be made; one preemergence and the other postemergence to peas and lima beans. A single preemergence application will be made to snap beans. Other restrictions to be imposed by the state of Pennsylvania include: (1) Dinoseb may only be sold to growers of green peas, snap beans, and lima beans in Pennsylvania in a quantity not to exceed that required to treat his acreage for those crops at the maximum application rates and that dealers must maintain records of sales to growers; (2) only certified applicators may apply dinoseb, other persons, even if they are operating under the direct supervision of a certified applicator, may not use dinoseb; (3) women of childbearing age, i.e., under the age 45, may not be involved in mixing, loading, or any aspect of dinoseb application; (4) a label warning which states: Women of childbearing age may not use the product; all reasonable efforts should be made to minimize indirect exposures to women of child-bearing age; the product also poses risks to male reproduction; is acutely toxic and the product may be applied only by certified applicators; (5) aerial spraying is prohibited; (6) mixing and loading of dinoseb is prohibited except from closed systems; (7) ground application is prohibited except by the "barrel sucker"/ground boom/tractor system; (8) mixer/loaders and applicators must wear chemical resistant disposable coveralls (Tyvek® suits), rubber boots, and chemically resistant gloves when mixing or loading dinoseb (Applicators or other personnel may remove such protective clothing immediately before entering the tractor cab to avoid cab contamination, but must carry an unused set of gloves and coveralls in their cabs, to be used in the event of spraying equipment malfunction and repair during application); (9) that dinoseb be applied to a maximum of 80 acres per day per applicator; (10) ground application is prohibited when wind conditions exceed ten miles per hour; and (11) tractor cabs must be closed and equipped with positive pressure ventilation systems.

### IV. Notification and Comment

This notice does not constitute a decision by the Agency on the applications submitted. The Agency's final decision on the specific exemption requests from Pennsylvania will be based on whether or not there is sufficient new information to open Subpart D hearings and, if so, the outcome of the Subpart D hearings and compliance with the regulations governing section 18.

The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application that proposes any emergency use of a pesticide if such pesticide were the subject of a suspension notice under section 6(c) of FIFRA. The regulations also provide for the opportunity for public comment on the applications (40 CFR 166.24).

Interested persons may submit written views on the applications for emergency exemption to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period.

Dated: February 17, 1988.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 88-4464 Filed 3-1-88; 8:45 am]

BILLING CODE 6560-50-M

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**[FIFRA Docket No. 624; FRL-3336-2]**

## Pesticide Products Containing Cyanazine

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of objections and request for hearing.

EPA announced its final decision to cancel registrations and deny applications of all pesticide products containing cyanazine unless registrants made specified modifications to the terms and conditions of their registration. (53 FR 795 (January 13, 1988)). Concerning EPA's decision, notice is hereby given, pursuant to the appropriate section of the Rules of Practice, 40 CFR 164.8, promulgated under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq., that objections and request for a hearing were filed by registrant, E.I. Du Pont De Nemours & Company, regarding certain of its enumerated and registered products containing cyanazine as an active ingredient.

For information concerning the issues involved and other details of this proceeding, interested persons are referred to the docket in this matter on file with the Hearing Clerk, Environmental Protection Agency, (Mail Code A-110) Room 3708, Waterside Mall, 401 M Street, SW., Washington, DC 20460. (202-382-4865).

Dated: February 24, 1988.

**Frank W. Vanderheyden,**

*Administrative Law Judge.*

[FR Doc. 88-4462 Filed 3-1-88; 8:45 am]

BILLING CODE 6560-50-M

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## FEDERAL COMMUNICATIONS COMMISSION

**[MM Docket No. 86-484; FCC 88-17]**

## Broadcast Services; Comparative Licensing, Distress Sales and Tax Certificate Policies Premised on Racial, Ethnic or Gender Classifications

**AGENCY:** Federal Communications Commission.

**ACTION:** Order closing docket and terminating proceeding.

**SUMMARY:** This *Order* closes the Commission's review of its comparative licensing, distress sale, and tax certificate policies designed to further minority and female ownership of broadcast properties and instructs the staff to implement these policies in effect prior to September 12, 1986. This action is taken in compliance with appropriations legislation, Pub. L. No. 100-202 (signed December 22, 1987).

**EFFECTIVE DATE:** March 2, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Mohrman-Gillis, Policy and

Rules Division, Mass Media Bureau, (202) 632-7792.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Order* in MM Docket No. 86-484, adopted January 14, 1988, and released January 14, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857-3800, 1919 M Street NW., Room 246, Washington, DC.

**Summary of Order**

1. This decision ends the Commission's reexamination of certain policies based on racial, ethnic, or gender classifications. The proceeding was initiated by *Notice of Inquiry* (*Notice*), at 52 FR 596 (January 7, 1987). The specific policies under review were:

1. The application of racial, ethnic, and gender preferences in comparative licensing proceedings for broadcast stations;

2. The administration of the Commission's distress sale policy to permit minority acquisition of broadcast stations designated for hearing on basic qualifications issues;

3. The issuance of tax certificates for sales of broadcast properties to minorities.

2. The review was prompted by questions raised by an order of the United States Court of Appeals for the District of Columbia Circuit in *Steele v. FCC* (Case No. 84-1176, D.C. Cir. *motion for remand granted* October 9, 1986). The *Notice* ordered the presiding administrative law judges, the Review Board, and the Office of the General Counsel, to hold in abeyance all decisions in comparative licensing proceedings in which the award of a racial/gender preference was dispositive, pending resolution of this proceeding. The Commission further orders the Mass Media Bureau to hold in abeyance all pending or future applications for distress sale authority pursuant to the minority ownership policy statement (*Statement of Policy on Minority Ownership of Broadcast Facilities*, 68 FCC 2d 979 (1978)), until the court reached a final determination in *Shurberg Broadcasting of Hartford, Inc. v FCC* (Case No. 84-1600, D.C. Cir. *motion for remand granted* June 35, 1987), or until the Commission resolved this proceeding.

3. On December 22, 1987, the President signed into law House Joint Resolution 395, which contains the appropriations legislation for the Commission for fiscal year 1988 (*Making Further Continuing Appropriations for Fiscal Year 1988 and for Other Purposes*, Pub. L. No. 100-202 (signed December 22, 1987)). This legislation contained the following pertinent provision:

That none of the funds appropriated by this Act shall be used to repeal, to retroactively apply changes in, or to continue a reexamination of, the policies of the Federal Communications Commission with respect to comparative licensing, distress sales and tax certificates granted under 26 U.S.C. 1071, to expand minority and women ownership of broadcasting licenses, including those established in *Statement of Policy on Minority Ownership of Broadcast Facilities*, 68 F.C.C. 2d 979 and 69 F.C.C. 2d 1591, *as amended* 52 R.R. 2d [1301] (1982) [sic] and Mid-Florida Television Corp., [69] F.C.C. 2d 607 Rev. Bd. (1978) [sic], which were effective prior to September 12, 1986, other than to close MM Docket No. 86-484 with a reinstatement of prior policy and a lifting of suspension of any sales, licenses, applications, or proceedings, which were suspended pending the conclusion of the inquiry.

4. Thus, the Commission closes the above captioned proceeding and will continue to implement the comparative licensing, distress sale and tax certificate policies based on racial, ethnic or gender classifications that were in effect prior to September 12, 1987. The Commission also rescinds its orders: (1) To hold in abeyance decisions in comparative licensing proceedings in which the award of a racial/gender preference is dispositive; and (2) to hold in abeyance all pending or future applications for preferential treatment under our distress sale policy. All cases held in abeyance pursuant to the *Notice* will be processed in accordance with Commission policies and standards in effect prior to September 12, 1986.

**Ordering Clauses**

5. Accordingly, it is ordered that MM Docket No. 86-484 is hereby closed and terminated, and that the Commission staff shall cease all actions to repeal, retroactively apply changes in, or reexamine its comparative licensing, distress sale and tax certificate policies designed to expand minority and female broadcast station ownership.

6. It is further ordered that the Commission staff continue to implement its comparative licensing, distress sale, and tax certificate policies designed to further minority and female ownership of broadcast properties in effect prior to September 12, 1986.

7. It is further ordered that (1) the presiding administrative law judges, the Review Board, and the Office of the General Counsel process all comparative licensing cases in a manner consistent with Commission policy in effect prior to September 12, 1986; and (2) the Mass Media Bureau process all applications for distress sale authority pursuant to the minority ownership policy statement in a manner consistent with prior Commission policy.

8. Pursuant to section 553 of the Administrative Procedure Act, the Commission finds for good cause that the *Order* adopted herein may be promulgated without prior public notice and comment thereon because the Commission's action is mandated by Pub. L. No. 100-202.

9. It is further ordered that this *Order* shall become effective upon adoption. Good cause exists for such action. *See* para. 8 *supra*.

10. Authority for the action taken herein is contained in section 4(i) of the Communications Act of 1934, as amended, and Pub. L. No. 100-202.

Federal Communications Commission.

**H. Walker Feaster III,**

*Acting Secretary.*

[FR Doc. 88-4493 Filed 3-1-88; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL HOME LOAN BANK BOARD

### Ramona Savings and Loan Association, a Federal Savings and Loan Association, Fillmore, CA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Ramona Savings and Loan Association, a Federal Savings and Loan Association, Fillmore, California, on February 25, 1988.

Dated: February 25, 1988.

By the Federal Home Loan Bank Board.

**John M. Buckley, Jr.,**

*Secretary.*

[FR Doc. 88-4474 Filed 3-1-88; 8:45 am]

BILLING CODE 6720-01-M

### Mt. Whitney Savings and Loan Association, Exeter, CA; Replacement of Conservator With a Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board on February 25, 1988, duly replaced the Federal Savings and Loan Insurance Corporation as conservator for Mt. Whitney Savings and Loan Association, Exeter, California by the Federal Savings and Loan Insurance Corporation as sole receiver for the Association.

Dated: February 25, 1988.

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

*Secretary.*

[FR Doc. 88-4475 Filed 3-1-88; 8:45 am]

BILLING CODE 6720-01-M

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[No. AC-701; FHLBB No. 7346]

### Caribbean Federal Savings and Loan Association of Puerto Rico, Carolina, PR; Final Action; Approval of Conversion Application

Date: February 23, 1988.

Notice is hereby given that on February 12, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Caribbean Federal Savings and Loan Association of Puerto Rico, Carolina, Puerto Rico, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

*Assistant Secretary.*

[FR Doc. 88-4476 Filed 3-1-88; 8:45 am]

BILLING CODE 6720-01-M

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[No. AC-696; FHLBB No. 6591]

### Commonwealth Bank, F.S.B., Mt. Sterling, KY; Final Action Approval of Conversion Application

Date: February 23, 1988.

Notice is hereby given that on February 10, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Commonwealth Bank, F.S.B., Mt. Sterling, Kentucky, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 ATRIUM II, 221 E. 4th Street, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

*Assistant Secretary.*

[FR Doc. 88-4477 Filed 3-1-88; 8:45 am]

BILLING CODE 6720-01-M

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[No. AC-694; FHLBB No. 5307]

### Community Federal Savings Bank, Staunton, VA; Final Action, Approval of Conversion Application

Date: February 23, 1988.

Notice is hereby given that on February 8, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Commonwealth Bank, Staunton, Virginia, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, N.E., Atlanta, Georgia 30348.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

*Assistant Secretary.*

[FR Doc. 88-4469 Filed 3-1-88; 8:45 am]

BILLING CODE 6720-01-M

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[No. AC-691; FHLBB No. 6069]

### Delaware Savings Bank, F.S.B. Wilmington, DE; Final Action; Approval of Conversion Application

Date: February 23, 1988.

Notice is hereby given that on February 8, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Delaware Savings Bank, F.S.B., Wilmington, Delaware, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, Twenty Stanwix Street, Pittsburgh, Pennsylvania 15222-4893.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

*Assistant Secretary.*

[FR Doc. 88-4470 Filed 3-1-88; 8:45 am]

BILLING CODE 6720-01-M

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[No. AC-700; FHLBB No. 6965]

### First Federal Savings and Loan Association of De Funiak Springs, FL; Final Action; Approval of Conversion Application

Date: February 23, 1988.

Notice is hereby given that on February 11, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of De Funiak Springs, De Funiak Springs, Florida, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, N.E., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

*Assistant Secretary.*

[FR Doc. 88-4478 Filed 3-1-88; 8:45 am]

BILLING CODE 6720-01-M

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[No. AC-695; FHLBB No. 2836]

### First Federal Savings Bank of LaFollette, TN; Final Action; Approval of Conversion Application

Date: February 23, 1988.

Notice is hereby given that on February 10, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings Bank of LaFollette, LaFollette, Tennessee, for permission to convert to the stock form of organization. Copies of

the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 ATRIUM II, 221 E. 4th Street, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.
**John F. Ghizzoni,**
*Assistant Secretary.*
[FR Doc. 88-4471 Filed 3-1-88; 8:45 am]
BILLING CODE 6720-01-M

**[No. AC-693; FHLBB No. 4519]**

### Mutual Federal Savings and Loan Association, Sidney, OH; Final Action; Approval of Conversion Application

Date: February 23, 1988.

Notice is hereby given that on February 10, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Mutual Federal Savings and Loan Association, Sidney, Ohio for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 ATRIUM II, 221 E. 4th Street, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.
**John F. Ghizzoni,**
*Assistant Secretary.*
[FR Doc. 88-4472 Filed 3-1-88; 8:45 am]
BILLING CODE 6720-01-M

**[No. AC-692; FHLBB No. 1503]**

### Polifly Savings and Loan Association, Hasbrouck Heights, NJ; Final Action; Approval of Conversion Application

Date: February 23, 1988.

Notice is hereby given that on February 10, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Polifly Savings and Loan Association, Hasbrouck, New Jersey, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

By the Federal Home Loan Bank Board.
**John F. Ghizzoni,**
*Assistant Secretary.*
[FR Doc. 88-4473 Filed 3-1-88; 8:45 am]
BILLING CODE 6720-01-M

**[No. AC-698; FHLBB No. 6514]**

### First Federal Savings and loan Association of Perry, FL; Final Action Approval of Conversion Application

Dated: February 23, 1988.

Notice is hereby given that on February 11, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Perry, Perry, Florida, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.
**John F. Ghizzoni,**
*Assistant Secretary.*
[FR Doc. 88-4479 Filed 3-1-88; 8:45 am]
BILLING CODE 6720-01-M

**[No. AC-697; FHLBB No. 3688]**

### Mutual Federal Savings and Loan Association, Zanesville, OH; Final Action Approval of Conversion Application

Date: February 23, 1988.

Notice is hereby given that on February 10, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Mutual Federal Savings and Loan Association, Zanesville, Ohio for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium II, 221 E. 4th Street, Cincinnati, Ohio 45201.

By the Federal Home Loan Bank Board.
**John F. Ghizzoni,**
*Assistant Secretary.*
[FR Doc. 88-4480 Filed 3-1-88; 8:45 am]
BILLING CODE 6720-01-M

**[No. AC-699; FHLBB No. 6359]**

### Pickens Savings and Loan Association, F.A., Pickens, SC; Final Action Approval of Conversion Application

Date: February 23, 1988.

Notice is hereby given that on February 11, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Pickens Savings and Loan Association, F.A., Pickens, South Carolina, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, N.E., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.
**John F. Ghizzoni,**
*Assistant Secretary.*
[FR Doc. 88-4481 Filed 3-1-88; 8:45 am]
BILLING CODE 6720-01-M

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the

premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 020888 AND 021988

| | Name of acquiring person/name of acquired person/name of acquired entity | PMN number | Date terminated |
|---|---|---|---|
| 1 | National Car Rental System, Inc./David S. DeLuz, Sr./Taylor Transportation Co., Ltd | 88-0798 | 02/08/88 |
| 2 | Anna M. Waugh Living Trust/SGI Acquisition Corporation/SGI Acquisition Corporation | 88-0852 | 02/08/88 |
| 3 | CoreStates Financial Corp/First Interstate Bancorp/First Interstate Commercial Corporation | 88-0864 | 02/08/88 |
| 4 | Daniel J. Sullivan/Compact Video, Inc./Image Transform, Inc | 88-0735 | 02/10/88 |
| 5 | Wihuri Oy/David E. Johnson/Flex-On Inc | 88-0754 | 02/10/88 |
| 6 | Eastman Kodak Company/Sterling Drug, Inc./Sterling Drug, Inc | 88-0832 | 02/10/88 |
| 7 | Eastman Kodak Company/Sterling Drug, Inc./Sterling Drug, Inc | 88-0837 | 02/10/88 |
| 8 | Georgette Mosbacher/Societe Nationale Elf Aquitaine/La Prairie, Inc | 88-0842 | 02/10/88 |
| 9 | F.W. Woolworth Co./William C. Robinson/Robby's Sporting Goods, Inc. and Robby's Sports, Inc | 88-0821 | 02/11/88 |
| 10 | First Chicago Corporation/Western Industries, Inc./Western Industries, Inc | 88-0825 | 02/11/88 |
| 11 | Pioneer Concrete Services, Ltd./Floyd R. Ganassi/Davison Sand & Granvel Company and G&S Towing Company | 88-0858 | 02/11/88 |
| 12 | F.W. Woolworth Co./H.L. Robinson, Jr./Robby's Sporting Goods, Inc. and Robby's Sports, Inc | 88-0860 | 02/11/88 |
| 13 | International Proteins Corporation/Quaker Oats Company/Paymaster Holding Corp. and Paymaster Oil Mill Co | 88-0872 | 02/11/88 |
| 14 | First Boston, Inc./Pueblo International, Inc./Pueblo International, Inc | 88-0885 | 02/11/88 |
| 15 | Irving Bank Corporation/NCNB Corporation/NCNB Corporation | 88-0888 | 02/11/88 |
| 16 | Emess Plc/Alsy Corp./Alsy Corp | 88-0899 | 02/11/88 |
| 17 | The Equitable Life Assurance Society of the U.S./BCI Holdings, Inc./BCI Holdings, Inc | 88-0909 | 02/11/88 |
| 18 | The Equitable Life Assurance Society of the U.S./Butterick Company, Inc./Butterick Company, Inc | 88-0910 | 02/11/88 |
| 19 | Southmark Corporation/John Lie-Nielson/Johnstown American Companies | 88-0912 | 02/11/88 |
| 20 | May Petroleum Inc./Craig Hall/Craig Hall | 88-0920 | 02/11/88 |
| 21 | Craig Hall/May Petroleum Inc./May Petroleum Inc | 88-0921 | 02/11/88 |
| 22 | General Electric Company/FGIC Corporation/FGIC Corporation | 88-0791 | 02/12/88 |
| 23 | B.A.T. Industries, p.l.c./Farmers Group, Inc./Farmers Group, Inc | 88-0809 | 02/12/88 |
| 24 | Columbia Pictures Entertainment, Inc./Boston Ventures Limited Partnership/Theater Holdings, Inc | 88-0823 | 02/12/88 |
| 25 | James Thompson/Abraham Schecter/Daviess County Corp | 88-0841 | 02/12/88 |
| 26 | Fox Valley Corporation/Rising Paper Company/Rising Paper Company | 88-0867 | 02/12/88 |
| 27 | Atlantis Group, Inc./Linear Films, Inc./Linear Films, Inc | 88-0871 | 02/12/88 |
| 28 | Lees Holdings Incorporation/Morgan Stanley Group Inc./Burlington Industries, Inc | 88-0748 | 02/13/88 |
| 29 | Howard Kaskel/Kansas City Southern Industries, Inc./Kansas City Southern Industries, Inc | 88-0764 | 02/13/88 |
| 30 | Motorola, Inc./TRW Inc./RF Devices Division & TRW Compsants Electronics, SA | 88-0783 | 02/14/88 |
| 31 | PepsiCo, Inc./Pizza Hut of Titusville, Inc./Pizza Hut of Titusville, Inc | 88-0828 | 02/16/88 |
| 32 | Longview Fibre Company/The Times Mirror Company/Times Mirror Land and Timber Company | 88-0900 | 02/16/88 |
| 33 | BCI Associates, L.P./E-II Holdings Inc./E-II Bakeries Inc | 88-0958 | 02/16/88 |
| 34 | Wang Laboratories, Inc./Convergent, Inc./Informatics Legal Systems | 88-0793 | 02/17/88 |
| 35 | George Banta Company, Inc./Mr. Frank Beddor, Jr. and Mrs. Marilyn Beddor/The Beddor Companies, Inc | 88-0884 | 02/17/88 |
| 36 | Royal Dutch Petroleum Company/Criterion Catalyst Company/Criterion Catalyst Company | 88-0158 | 02/18/88 |
| 37 | Basf Aktiengesellschaft/Polysar Energy and Chemical Corporation/Polysar Inc | 88-0814 | 02/18/88 |
| 38 | Westinghouse Electric Corporation/Gould Inc./Gould Inc | 88-0834 | 02/18/88 |
| 39 | Addington Resources, Inc./Sandy Fork Mining Company, Inc./Sandy Fork Mining Company, Inc | 88-0848 | 02/18/88 |
| 40 | Anwar S. Soliman/Collins Foods International, Inc./Naugles, Inc | 88-0881 | 02/18/88 |
| 41 | Barlow Rand Limited/Richard P. Griot/Melles Griot, Inc | 88-0886 | 02/18/88 |
| 42 | Gaylord Container Corporation/Louisiana-Pacific Corporation/Fibreboard Corporation | 88-0889 | 02/18/88 |
| 43 | Smith New Court PLC/CMCO Inc./SNC Trading Corp | 88-0914 | 02/18/88 |
| 44 | John P. Barclay, Jr., Settlor of the J.P. Barclay Trust/ARMCO Inc./ARMCO Inc | 88-0723 | 02/19/88 |
| 45 | Garden State Newspapers, Inc./The John F. Young Testamentary Trust/The Dispatch Publishing Co | 88-0844 | 02/19/88 |
| 46 | Bruncor Inc./Valmont Industries, Inc./Valmont Financial Corporation | 88-0856 | 02/19/88 |
| 47 | PACCAR Inc./Grand Auto, Inc./Grand Auto, Inc | 88-0873 | 02/19/88 |
| 48 | Anwar S. Soliman/Del Taco, Inc./Del Taco, Inc | 88-0880 | 02/19/88 |
| 49 | William Lee Pryor/James M. Goldsmith/Eczel Corporation | 88-0901 | 02/19/88 |
| 50 | SDC Distributing Corp./McKesson Corporation/McKesson Corporation | 88-0926 | 02/19/88 |
| 51 | McKesson Corporation/SDC Distributing Corp./SDC Distributing Corp | 88-0928 | 02/19/88 |
| 52 | The Home Group, Inc./Cateret Bancorp Inc./Cateret Bancorp Inc | 88-0931 | 02/19/88 |
| 53 | JSJ Corporation/Donald C. Bishop/Penn Lithographics, Inc | 88-0934 | 02/19/88 |
| 54 | John H. Streicker, c/o J.H. Streicker & Co., Inc./Security Capital Corporation/Security Capital Real Estate Corporation | 88-0941 | 02/19/88 |
| 55 | Peter S. Kalikow, c/o H.J. Kalikow & Co., Inc./The News Corporation Limited/News America Publishing, Incorporated | 88-0952 | 02/19/88 |
| 56 | Public Service Enterprise Group Incorporated/Transco Energy Company and Transco Exploration Company/TXP Operating Company | 88-0966 | 02/19/88 |

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Emily H. Rock,

*Secretary.*

[FR Doc. 88-4453 Filed 3-1-88; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Commission on Nursing; Hearing

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made

of hearings scheduled to be conducted during the months of March and April 1988 by the Secretary's Commission on Nursing, a national advisory body:

*San Francisco, California Hearing*

Date: Thrusday, March 24, 1988
Time: 8:00 a.m. to 4:00 p.m.
Place: Room 406, Department of Health and Human Services, 50 United Nations Plaza, San Francisco, California 94102

*New Orleans, Louisiana Hearing*

Date: Tuesday, April 5, 1988
Time: 8:00 a.m. to 4:00 p.m.
Place: 2nd Floor Auditorium (center entrance), Charity Hospital at New Orleans, 1532 Tulane Avenue, New Orleans, Louisiana 70140

*Purpose:* The Secretary's Commission on Nursing will advise the Secretary of Health and Human Services on how the public and private sectors can work together to address problems and implement solutions regarding the supply of active registered nurses. The Commission will also consider the recruitment and retention of nurses in the U.S. Public Health Service, the Veteran's Administration and the Department of Defense. As appropriate for its work, the Commission will consider the findings of studies which are relevant to the development of a multi-year action plan for implementation by the public and private sectors.

*Agenda:* Witnesses representing a variety of organizations interested in issues affecting the demand for, and supply of, nurses will be invited to share their views with the Commission.

Witnesses will be asked to address the following questions in their presentations:

- What is the nature and extent of any nurse shortage in your organization/hospital/provider sector/specialty area/geographic area? What are the practical effects of such shortages?
- Why do these shortages exist? What are the principal factors adversely affecting recruitment and retention in your organization/hospital/provider sector/specialty area/geographic area?
- What actions do you believe ought to be taken in order to ensure an adequate supply of nurses over both the short- and long-term? Which of these actions are the responsibility of the private health sector, of government, and of the nursing profession?
- What examples can you identify of successful efforts to recruit and retain an adequate supply of nurses? What practices and strategies account for success in these examples? How replicable are they?

Witnesses concerned with nursing education will be asked to address the following issues:

- Are student admissions and enrollments in nursing schools in your area declining? If so, why? What has been the response of nursing schools to declines in enrollment? What are nursing school affected by declining enrollments doing to attract students to nursing? How effective are these efforts?

Anyone wishing information regarding the Commission should contact the Secretary's Commission on Nursing, Hubert H. Humphrey Building, Room 616-E, 200 Independence Avenue, SW., Washington, DC 20201, telephone 202/245-0409.

Date: February 26, 1988.

**Lillian K. Gibbons,**

*Executive Director, Secretary's Commission on Nursing.*

[FR Doc. 88-4488 Filed 3-1-88; 8:45 am]

BILLING CODE 4150-04-M

## Office of Human Development Services

**[Program Announcement No. 13632-88-1]**

## Developmental Disabilities: Availability of Financial Assistance for the University Affiliated Program

**AGENCY:** Administration on Developmental Disabilities (ADD), Office of Human Development Services (OHDS).

**ACTION:** Announcement of availability of financial assistance for the university affiliated program.

**SUMMARY:** The Administration on Developmental Disabilities, Office of Human Development Services, announces that applications are being accepted in Fiscal Year 1988 from universities in eligible States, Territories and Insular Areas for the purpose of establishing new university affiliated programs or satellite centers, or for conducting feasibility studies leading to the establishment of university affiliated programs or satellite centers. ADD expects to award grants to new programs to increase and improve services and programs for persons with developmental disabilities who live in geographical areas not now benefiting from professional interdisciplinary and community-based training and services designed specifically to meet their special needs.

**DATE:** Closing date for receipt of applications is: April 15, 1988.

**ADDRESSES:** Applications should be sent to: Office of Human Development Services, Acquisition and Assistance Management Branch, 200 Independence Avenue SW., HHH Building, Room 349F, Washington, DC 20201, Attention: Joel B. Anthony.

**FOR FURTHER INFORMATION CONTACT:** Judy Moore, UAP Coordinator, (202) 245-1961.

**SUPPLEMENTARY INFORMATION:**

### Part I. General Information

*A. Background*

The Developmental Disabilities (DD) program was established by the Developmental Disabilities Services and Facilities Construction Act, the Act (Pub. L. 91-517, as amended). This Act makes funds available to assist States to assure that persons with developmental disabilities receive appropriate care, treatment, habilitation and support services. Programs funded under the Act are:

- Basic State formula grants.
- Systems for protection and advocacy of individual rights.
- Grants to University Affiliated Programs for interdisciplinary training, exemplary services/technical assistance and information dissemination.
- Grants for Projects of National Significance.

*B. Description of University Affiliated Programs*

Under Part D of the Developmental Disabilities Assistance and Bill of Rights Act, as amended by Pub. L. 100-146, grants are awarded to support a national network of university affiliated programs (UAPs) and satellite centers. These programs provide interdisciplinary training, exemplary services, technical assistance and information dissemination for allied health professionals, physicians and parents who provide services to persons with developmental disabilities. The purpose of these grants is to ensure that there is a professional and paraprofessional work force prepared to meet the service needs of persons with developmental disabilities and their families. Pub. L. 100-146 requires the Administration on Developmental Disabilities (ADD), for the first time, to consider new UAP or satellite center applicants each fiscal year beginning in 1988 through 1990. Prior to passage of Pub. L. 100-146, solicitation of new UAP and satellite center applications was done at the discretion of ADD.

This announcement solicits applications from universities to establish new university affiliated programs or satellite centers, or to conduct feasibility studies leading to the establishment of new UAPs or satellite

centers in eligible States, Territories and Insular Areas.

The term "university affiliated program," as defined by section 102(18) of the Act, means a program operated by a public or nonprofit private entity which is associated with, or is an integral part of, a college or university and which must carry out the following activities:

• *Training.* The UAP or satellite center must provide interdisciplinary training for personnel concerned with developmental disabilities, including parents of persons with developmental disabilities, professionals, paraprofessionals, students and volunteers. Training may be conducted at the facility and through outreach activities.

• *Service Demonstration.* The UAP or satellite center must provide a demonstration program of exemplary services relating to persons with developmental disabilities in settings which are integrated in the community.

• *Technical Assistance.* The UAP or satellite center must provide technical assistance to generic and specialized agencies. The purpose of the technical assistance is to assist the agencies to provide services to increase the independence, productivity, and integration into the community of persons with developmental disabilities, such as the development and improvement of quality assurance mechanisms; and

• *Dissemination Activities.* The UAP or satellite center must have a mechanism to disseminate findings relating to the provision of exemplary services as defined above. They must also provide researchers and government agencies sponsoring service-related research with information on the needs for further service-related research which would provide data and information that will assist in increasing the independence, productivity, and integration into the community of persons with developmental disabilities.

A "satellite center" is defined as a public or private nonprofit entity which is affiliated with one or more university affiliated programs, and

—Which functions as a community and regional extension of such a university affiliated program or programs in the delivery of services to persons with developmental disabilities, and their families who reside in geographical areas where adequate services are not otherwise available;

—Which may engage in interdisciplinary training, provision of exemplary services, technical assistance and information dissemination activities as described for a university affiliated program; or

—Which provides for at least interdisciplinary training for personnel concerned with direct or indirect services to persons with developmental disabilities, and dissemination of findings relating to the provision of services to persons with developmental disabilities.

A "feasibility study" is a study to determine the need for and feasibility of establishing a new university affiliated program or new satellite center.

*C. Eligible Applicants*

Any public or non-profit program which is located in a State, Territory or Insular Area not now having an ADD-funded UAP or satellite center is eligible to apply for funding to establish a university affiliated program or a satellite center, or to conduct a feasibility study. Those States, Territories and Insular Areas which have no organized, ADD-sponsored program to provide interdisciplinary training and exemplary services on behalf of persons with developmental disabilities experience greater shortages of properly trained personnel and appropriate services and do not receive the benefits of technical assistance provided by UAPs. There are currently universities in 21 States, Territories and Insular Areas eligible to apply under this announcement:

| | |
|---|---|
| Alaska | Oklahoma |
| Arkansas | Rhode Island |
| Delaware | Texas |
| Hawaii | Wyoming |
| Idaho | American Samoa |
| Illinois | Guam |
| Maine | No. Marianna Islands |
| New Hampshire | Palau |
| New Mexico | Puerto Rico |
| Nevada | Virgin Islands |
| North Dakota | |

*D. Available Funds*

Depending on the availability of funds, ADD anticipates a minimum of $200,000 will be awarded for the establishment of a new UAP; a minimum of $150,000 will be awarded for the establishment of a new satellite center; or, a minimum of $10,000 will be awarded for a grant to conduct a feasibility study.

Grants awarded to new UAPs and satellite centers will be 12-month continuation grants for a period of one to three years. Feasibility study grants will cover a six-month project period, and, upon completion of the study, the grantee must submit a feasibility study report and notify ADD in writing of its intention to apply for funds as a UAP or satellite center.

The 12-month budget period for UAPs and satellite centers begins July 1, 1988 and ends June 30, 1989. The budget period for feasibility study grants begins on October 1, 1988 and ends March 31, 1989.

Prior to this announcement, feasibility studies were funded in 1977 and 1984. Feasibility study grants, at that time, were awarded only to existing ADD-funded UAPs serving as hosts on behalf of prospective new programs. In FY 1984, nine States were eligible; seven feasibility studies were conducted; six programs applied for satellite center funds; and three programs were awarded grants to establish new satellite centers. The 1984 feasibility study grant awards were $7,000 per study.

**Part II. Specific Responsibilities of the Grantee**

*A. Grantee Responsibilities*

ADD is requesting applicants to prepare an application of no more than 60 double-spaced typewritten pages of text for UAPs (40 pages of text for satellite centers) and no more than 50 pages of appendices for UAPs (25 for satellite centers); and no more than 25 pages of text and 35 pages of appendices for feasibility studies.

1. UAP or Satellite Center Applications

Applications must include all of the items below:

(a) A description and explanation of the ways the applicant program meets the legislative mandates for university affiliated programs or satellite centers under Part D of the Act, as appropriate.

(b) A description and explanation of the ways university affiliated program and satellite center applicants meet, or plan to meet, each of the applicable program criteria for UAPs and satellite centers. (See Final Rule for the Developmental Disabilities Program, 45 CFR Part 1388.)

(c) An indication that the requirement to provide an opportunity for comment has been provided to the general public in the State and the DD State Planning Council of the State in which the program will be conducted or the satellite center is located has been met. (See section 153(b)(5) of the Act.)

2. Feasibility Study Applications

Applications to conduct feasibility studies must include all of the items below:

(a) A description of the existing program and a description of the need for the establishment of a new UAP or satellite center.

(b) A description of the activities planned for determining the feasibility of implementing a program to address each of the three major areas of UAP responsibility.

(c) Evidence of commitment of support from the university—resources committed in the current year (1988) and prospectively for 1989 and 1990, as indicated by space allocation, donated staff time or other appropriate measures.

(d) The sources and amount of support, other than ADD, for UAP or satellite center activities projected for 1988–1990.

(e) The responsibilities, extent of participation and qualifications of faculty and staff.

(f) An assurance of cooperation between the feasibility study applicant and the State Developmental Disabilities Council of the State in which the applicant program is located and evidence that the application for a feasibility study grant has been developed in consultation with the Council.

(g) An assurance of affiliation and cooperation with one or more colleges or universities.

*B. Grantee Share of the Project*

1. University affiliated programs and satellite center applicants must provide matching funds of 25% through grantee incurred costs and/or in-kind. (See Section 103 (b) and (c) of the Act.)

2. Feasibility study applicants are required to provide matching funds of 25% through grantee incurred costs and/or in-kind.

**Part III. Criteria for Review and Evaluation of Applications**

In considering how the grantee will carry out the responsibilities under Part II of this announcement, competing applications will be reviewed and evaluated against the following criteria:

*CRITERIA FOR REVIEW AND EVALUATION OF FINANCIAL ASSISTANCE FOR APPLICATIONS FOR UNIVERSITY AFFILIATED PROGRAMS AND SATELLITE CENTERS*

*A. Introduction (10 Points)*

Includes a brief historical perspective and overview of the program and a description of the program in general. Describes the need for the program and the UAP or satellite center mission statement and goals.

*B. Current Year Accomplishments (20 Points)*

Summarizes past and current activities relating to the major areas of UAP or satellite center responsibility, highlighting the most significant achievements:

1. Interdisciplinary training for personnel concerned with developmental disabilities;

2. Demonstration of the provision of exemplary services relating to persons with developmental disabilities; and

3. a. Dissemination of findings relating to the provision of services to persons with developmental disabilities;

b. Providing researchers and government agencies sponsoring service-related research with information on the needs for further service-related research.

*C. Activities Planned for the Next Three Years (30 Points)*

- Describes the activities planned for FY 1988 in each of the three areas of UAP responsibility. This section should be in sufficient detail to provide reviewers with a clear understanding of proposed activities in each of the three major areas of UAP responsibility, as specified in B above.
- Describes the activities proposed by year for both FY 1989 and FY 1990. This section does not require the same level of detail as in the previous description of activities but it should provide a clear understanding of the directions envisioned in each of the three major areas of UAP responsibility. Applicants should justify the need for a longer project period in their discussions of these activities.

*D. Budget and Organizational Support (40 Points)*

- Indicates evidence of commitment of support from the university—resources in the current year (FY 1988) and for FY 1989 and FY 1990, as indicated by space allocation, donated staff time, or other appropriate measures.
- Identifies projected sources and amount of support, other than ADD, for UAP activities in FY 1988–1990. A plan should be included on how grantee would become more self-sufficient beyond 1990.
- Indicates responsibilities, extent of participation, and qualifications of faculty and staff.

*CRITERIA FOR REVIEW AND EVALUATION OF FINANCIAL ASSISTANCE APPLICATIONS FOR FEASIBILITY STUDIES*

*A. Introduction (20 Points)*

Includes a brief historical perspective and overview of the program and a description of the program in general. Describes the need for the program and the UAP or satellite center mission statement and goals.

*B. Current Year Accomplishments (20 Points)*

Summarizes past and current activities relating to the major areas of UAP or satellite center responsibility, highlighting the most significant achievements:

1. Interdisciplinary training for personnel concerned with developmental disabilities;

2. Demonstration of the provision of exemplary services relating to persons with developmental disabilities; and

3. a. Dissemination of findings relating to the provision of services to persons with developmental disabilities;

b. Providing researchers and government agencies sponsoring service-related research with information on the needs for further service-related research.

*C. Activities Planned (30 Points)*

Describes activities planned for determining the feasibility of implementing a program to address each of the three major areas of UAP responsibility. This section should be in sufficient detail to provide reviewers with a clear understanding of proposed activities in each of the three major areas of UAP responsibility, as specified in B above.

*D. Budget and Organizational Support (30 Points)*

- Indicates evidence of commitment of support from the university—resources in the current year (FY 1988) as indicated by space allocation, donated staff time, or other appropriate measures.
- Identifies projected sources and amount of support, other than ADD, for UAP activities in FY 1988–1990.
- Indicates responsibilities, extent of participation, and qualifications of faculty and staff.

**Part IV. The Application Process**

*A. Availability of Forms*

All instructions and forms required for submittal of applications are included in an application kit available upon request from the Administration on Developmental Disabilities. The application kit as well as additional copies of this announcement may be obtained by writing or telephoning:

Judy Moore, Administration on Developmental Disabilities, Program Development Division, 200 Independence Avenue, SW., HHH Building, Room 351D, Washington, DC 20201, Telephone (202) 245–1961

*B. Application Submission*

One signed original and two copies of the grant application must be mailed or hand delivered to:

Office of Human Development Services, Acquisition and Assistance Management Branch, 200 Independence Avenue, SW., HHH Building, Room 349F, Washington, DC 20201, Attn: Joel B. Anthony

The original and the copies must be stapled in the upper left corner.

In order to be considered for a grant under this program announcement, an application must be submitted in accordance with the instructions provided in the application kit and in the manner required by this announcement. The application must be executed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

*C. Application Consideration*

Applications which are complete and conform to the requirements of this program announcement are subject to a competitive peer review and evaluation by qualified individuals. Applicants will be scored against the evaluation criteria listed above. The Commissioner, ADD, determines the final action to be taken with respect to each grant application for this program.

After the Commissioner has made the final selection, unsuccessful applicants will be notified in writing of this final decision. The successful applicants will be notified through the issuance of a Financial Assistance Award which sets forth the amount of funds awarded, the budget period for which support is given, the non-Federal share requirements, and the total period for which project support is contemplated.

*D. Closing Date for Receipt of Application*

The closing date for receipt of all applications under this Program Announcement is April 15, 1988.

1. *Mailed applications:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the HDS Grants Office, or

b. Sent on or before the deadline date, and received in time to be considered during the competitive review and evaluation process. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

2. *Applications submitted by other means:* Applications which are not submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date. Hand delivered applications will be accepted at the HDS Acquisition and Assistance Management Branch Office during the normal working hours of 9:00 a.m. to 5:30 p.m., Monday through Friday.

3. *Late applications:* Applications which do not meet criteria one and two above are considered late applications and will not be considered.

4. *Extension of deadline:* The Administration on Developmental Disabilities may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is widespread disruption of the mail. However, if ADD does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

*E. Paperwork Reduction Act of 1980*

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for HDS grant applications under the Part IV narrative under OMB Control Number 0980–0194.

*F. Notification Under Executive Order 12372*

University Affiliated Programs, Satellite Centers and the relevant feasibility study applicants are exempt from Executive Order 12372 (Form 424, Item 22B).

Catalog of Federal Domestic Assistance Program Number (13.632 Developmental Disabilities—University Affiliated Facilities)

Date: February 5, 1988.

**Carolyn Doppelt Gray,**

*Acting Commissioner, Administration on Developmental Disabilities.*

Approved: February 8, 1988.

**Sydney Olson,**

*Deputy Assistant Secretary for Human Development Services.*

[FR Doc. 88–4444 Filed 3–1–88; 8:45 am]

BILLING CODE 4130–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–88–1771; FR–2444]

### Supportive Housing Demonstration Program; Notice of Fund Availability; Correction

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice of Fund Avilability; correction.

**SUMMARY:** This document corrects the Notice of Fund Availability for the Supportive Housing Demonstration Program that appeared in the Federal Register on February 16, 1988 (53 FR 4458). It corrects errors in the text of the notice.

**FOR FURTHER INFORMATION CONTACT:** Grady J. Norris, Assistant General Counsel for Regulations, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755–7055. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The Department is correcting FR–244—Supportive Housing Demonstration Program; Notice of Fund Availability, published February 16, 1988 (53 FR 4458) as follows:

1. On page 4662, first column, the first full paragraph is corrected to read as follows:

"Accordingly, HUD has revised its procedures. Under the revised procedures, HUD will offer assistance to applicants following the submission of their applications to aid them in meeting the following threshold criteria as described in the June 9, 1987, THDP guidelines (52 FR at 21764–65): (1) leveraging (Section IV.D.2.(iii)); (2) site control (Section IV.D.2.(iv)(d)(1); and (3) zoning (Section IV.D.2.(iv)(d)(2). HUD has found that these threshold criteria are the ones that most often are misunderstood and are most readily correctable during the time period set for threshold review."

2. On page 4462, the second column, second full paragraph, the citation to the proposed rule "published October 26, 1985 (FR 39946)" is revised to refer to the proposed rule "published October 26, 1987 (52 FR 39946)".

Date: February 26, 1988.

Grady J. Norris,

*Assistant General Counsel for Regulations.*

[FR Doc. 88–4517 Filed 3–1–88; 8:45 am]

BILLING CODE 4210–27–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ES–970–08–4121–14–2410; ES 36585]

### Cancellation of Competitive Coal Lease Offering By Sealed Bid, Clay County, KY

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Cancellation of competitive coal lease offering by sealed bid.

**SUMMARY:** Notice is hereby given of the cancellation of Competitive Coal Lease Offering By Sealed Bid, Clay County, Kentucky on March 8, 1988 (Notice 88–2030) published in the **Federal Register** on February 1, 1988 (FR 2792, 27930). Due notice will be given when this coal sale is rescheduled.

**FOR FURTHER INFORMATION CONTACT:** Ms Frances Javes, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, (703) 274–0153.

G. Curtis Jones, Jr.,

*State Director.*

[FR Doc. 88–4425 Filed 3–1–88; 8:45 am]

BILLING CODE 4310–GJ–M

[ID–930–88–4332–08]

### Availability of Draft Environmental Impact Statement; Proposed Plan Amendments; Small Wilderness Study Areas; Idaho

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Addendum to notice of availability of a draft environmental impact statement (EIS) for the Proposed Plan Amendments for Small Wilderness Study Areas Statewide.

**DATE:** Comments will be accepted until April 28, 1988.

**ADDRESS:** Comments should be sent to Gary L. Wyke, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho.

**SUPPLEMENTARY INFORMATION:** The notice of availability of this draft EIS was published in the **Federal Register** on February 5, 1988, Vol. 53, No. 24, 3463–3464. This notice omitted the date that public review comments are due.

Martin J. Zimmer,

*Acting State Director, Bureau of Land Management.*

[FR Doc. 88–4455 Filed 3–1–88; 8:45 am]

BILLING CODE 4310–GG–M

### Idaho Falls District Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior. [ID–030–08–4830–04]

**ACTION:** Meeting of the Idaho Falls District Advisory Council.

**SUMMARY:** The Idaho Falls District Advisory Council will meet April 12, 1988. Notice of this meeting is in accordance with Pub. L. 92–463. The meeting will begin at 9:00 a.m. at the Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho.

The agenda items are: Election of Officers; general briefings on noxious weeds, the Egin-Hamer road right-of-way, unauthorized use, state exchanges, the Pocatello RMP and the City Creek fire rehabilitation; a status report on the Snake River Activity/Operations Plan; Slide show and presentation on riparian management in the District.

The meeting is open to the public; public comments on agenda items will be accepted from 11:00 a.m. to 11:30 a.m.

Summary minutes of the meeting will be kept in the District Office and will be available for public inspection and reproduction during business hours (7:45 a.m. to 4:30 p.m.) within 30 days after the meeting.

**FOR FURTHER INFORMATION CONTACT:** Scott Powers, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401, at (208) 529–1020.

Dated: February 22, 1988.

Lloyd H. Ferguson,

*District Manager.*

[FR Doc. 88–4417 Filed 3–1–88; 8:45 am]

BILLING CODE 4310–GG–M

[WY–920–08–4111–15; W–79061]

### Proposed Reinstatement of Terminated Oil and Gas Lease; Hot Springs County, WY

February 23, 1988.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108–2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–79061 for lands in Hot Springs County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–79061 effective September 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

*Chief, Leasing Section.*

[FR Doc. 88–4418 Filed 3–1–88; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–08–4111–15; W–79063]

### Proposed Reinstatement of Terminated Oil and Gas Lease; Hot Springs County, WY

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–79063 for lands in Hot Springs, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–79063 effective September 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

*Chief, Leasing Section.*

[FR Doc. 88–4419 Filed 3–1–88; 8:45 am]

BILLING CODE 4310–22–M

[ID-060-08-4212-11]

## Lease or Conveyance of Public Lands; Coeur d'Alene District, Kootenai County, ID

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action, clasification for recreation and public purpose lease or conveyance of public land in Kootenai County, Idaho (I-24473).

**TERM AND DATE:** The effective date of this classification will be May 2, 1988.

**SUMMARY:** The following public land has been examined and is hereby classified as suitable for lease or conveyance under the provisions of the Recreation and Public Purposes Act (R&PP), as amended (43 U.S.C. 869 *et seq.*):

Boise Meridian,

T. 52 N., R. 3 W.,
Sec. 6, Segr Survey in SE¼SW¼, SW¼SE¼.

Containing 36.71 acres, more or less.

The proposed lease or conveyance would be issued to Kootenai County, Sheriff's Department, and is for a multi-purpose outdoor training center, the primary use of which will be firearms training.

Through the environmental assessment process, it has been determined that the lease or conveyance of these lands would not affect any BLM programs and would be in the public interest.

The lease or patent would be subject to the following conditions:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. A reservation to the United States of all minerals together with the right to mine and remove the same under applicable laws and regulations to be established by the Secretary of the Interior.

The previously described public land is hereby segregated from appropriation under the public land laws, including the mining laws, except for lease or conveyance under the R&PP Act.

**SUPPLEMENTARY INFORMATION:** For a period of 45 days from the date of publication of this Notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 1808 N. Third St., Coeur d'Alene, Idaho 83814. Any objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior. Further information can be obtained by contacting Mert Lombard, Area Manager, at (208) 765-1511.

Dated: February 19, 1988.

**John B. O'Brien, III,**

*Acting District Manager.*

[FR Doc. 88-4420 Filed 3-1-88; 8:45 am]

BILLING CODE 4310-GG-M

[MT-930-08-4220-10; M-72014]

## Termination of Proposed Withdrawal and Reservation of Lands, Opening Order; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice terminates the segregation from mineral location and entry under mining laws effected by notation of the public land records for a withdrawal application filed by the Department of Agriculture involving 18 Forest Service campgrounds and picnic sites. The withdrawal application has been relinquished and 761.55 acres of forest land in the Bitterroot National Forest is being restored to mineral location and entry.

**EFFECTIVE DATE:** April 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Edward H. Croteau, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, (406) 657-6082.

**SUPPLEMENTARY INFORMATION:** .

1. Notice of the Department of Agriculture's application M 072014 for withdrawal from mineral location and entry under the mining laws, and reservation for campgrounds and picnic sites was published in the **Federal Register** on December 15, 1965 (30 FR 15440).

2. The application has been canceled in its entirety as the result of the relinquishment filed on January 21, 1988. The lands affected are described as follows:

**Principal Meridian**

**Bitterroot National Forest**

*Spring Gulch Campground*

T. 1 N., R. 20 W.,
Sec. 1, SW¼SE¼SE¼; and
Sec. 12, N½NW¼NE¼NE¼.

Total area—15 acres.

*Crazy Creek Campground*

T. 1 N., R. 20 W.,
Sec. 22, W½W½SW¼SE¼; and E½E½ SE¼SW¼; and
Sec. 27, W½NW¼NE¼, and NW¼SW¼ NE¼.

Total area—50 acres.

*Boulder Creek Campground and Road Termini*

T. 1 N., R. 20 W.,
Sec. 18, W½W½SW¼SE¼ and SE¼SW¼ SW¼SE¼; and
Sec. 19, W½SW¼NE¼NE¼, SE¼SW¼ NE¼NE¼, NW¼NE¼NW¼NE¼; N½NW¼NW¼NE¼, S½NE¼NW¼ NE¼, SE¼NW¼NW¼NE¼, SE¼NW¼ NE¼, N½NE¼SW¼NE¼, and N½ NW¼SE¼NE¼.

Total area—55 acres.

*Martin Creek Public Campground*

T. 2 N., R. 17 W.,
Sec. 9, SE¼SE¼SW¼, S½NE¼SE¼SW¼, and SW¼NW¼SW¼SE¼.

Total area—17.5 acres.

*Bertie Lord River Flat Recreation Area*

T. 2 N., R. 18 W.,
Sec. 24, S½SW¼SW¼NE¼, NW¼NW¼ SE¼, E½NE¼NE¼SE¼, and SE¼SE¼ SE¼NW¼.

Total area—22.5 acres.

*Jennings Campground*

T. 2 N., R. 18 W.,
Sec. 26, SW¼NW¼NW¼ and NW¼SE¼ NW¼NW¼; and
Sec. 27, SE¼NE¼NE¼.

Total area—22.5 acres.

*Lost Horse Campground*

T. 4 N., R. 21 W.,
Sec. 18, SW¼NW¼NW¼SE¼, S½NE¼ NE¼SW¼, SE¼NE¼SW¼, and NW¼ SW¼NW¼SE¼.

Total area—20 acres.

*Lake Como Recreation Area*

T. 4 N., R. 21 W.,
Sec. 29, S½SW¼SW¼;
Sec. 31, lot 1; and
Sec. 32, lots 2 and 3.

Total area—80.38 acres.

*Larry Creek Campground*

T. 10 N., R. 20 W.,
Sec. 33, NW¼NW¼.

Total area—40 acres.

*Charles Waters Memorial Campground*

T. 10 N., R. 20 W.,
Sec. 32, S½NW¼SE¼SE¼, SW¼NE¼ SE¼SE¼, N½SW¼SE¼SE¼, NW¼ SE¼SE¼SE¼, S½SW¼SE¼, S½NE¼ SW¼SE¼, NW¼NE¼SW¼SE¼, NE¼ SE¼SW¼, SE¼NW¼SE¼SW¼, N½ SW¼SE¼SW¼, N½SE¼SE¼SW¼, SE¼SE¼SE¼SW¼, NE¼SE¼SW¼ SW½, and NW¼SW¼SE¼.

Total area—80 acres.

*Indian Tree Recreation Area*

T. 1 S., R. 19 W.,
Sec. 9, E½E½SE¼SW¼, SW¼SE¼SE¼ SW¼, E½E½NE¼SW¼, NW¼NE¼ NE¼SW¼, and S½SE¼SE¼NW¼; and
Sec. 16, W½NE¼NW¼, W½NE¼NE¼ NW¼, and N½NW¼SE¼NW¼.

Total area—60 acres.

*Little West Fork Campground*

T. 1 S., R. 22 W.,
Sec. 4, lot 4.
Total area—34.66 acres.

*Rombo Campground*

T. 1 S., R. 22 W.,
Sec. 11, S½SE¼NE¼NW¼, E½SE¼NW¼, E½SW¼SE¼NW¼, E½NW¼NE¼SW¼, and W½NE¼NE¼SW¼.
Total area—40 acres.

*Little Boulder Bay Recreation Area*

T. 1 S., R. 22 W.,
Sec. 26, N½SE¼SW¼SE¼, S½NE¼SW¼SE¼, NW¼NE¼SW¼SE¼, and NE¼NW¼SW¼SE¼.
Total area—15 acres.

*Lost Trail Recreation Area*

T. 2 S., R. 19 W.,
Sec. 4, lots 1, 3, and 4.
Total area—87.67 acres.

*Slate Creek Campground*

T. 2 S., R. 22 W.,
Sec. 2, lot 2.
Total area—47.6 acres.

*Alta Campground*

T. 2 S., R. 22 W.,
Sec. 34, lot 1.
Total area—46.24 acres.

*Overwhich Campground*

T. 2 S., R. 22 W.,
Sec. 14, SW¼NW¼NE¼NW¼, W½SW¼NE¼NW¼, SE¼SW¼NE¼NW¼, S½NE¼NW¼NW¼, N½SE¼NW¼NW¼, SE¼SE¼NW¼NW¼, and N½NW¼SE¼NW¼.
Total area—27.5 acres.

The areas described aggregate 761.55 acres in Ravalli County, Montana.

3. At 9 a.m. on April 1, 1988 the lands will be opened to location and entry under the United States mining laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

**John A. Kwiatkowski,**

*Deputy State Director, Division of Lands and Renewable Resources.*

February 19, 1988.

[FR Doc. 88-4421 Filed 3-1-88; 8:45 am]

BILLING CODE 4310-DN-M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731-TA-387 (Preliminary)]**

### Certain Fabricated Structural Steel From Canada

#### Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] [3] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of certain fabricated structural steel, provided for in items 609.84, 609.86, 652.94, 652.95, 652.96, and 653.00 [4] of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

#### Background

On January 11, 1988, a petition was filed with the Commission and the Department of Commerce by counsel on behalf of the American Institute of Steel Construction (AISC), alleging that an industry in the United States is materially injured by reason of LTFV imports of certain fabricated structural steel from Canada. Accordingly, effective January 11, 1988, the Commission instituted preliminary antidumping investigation No. 731-TA-287 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 20, 1988 (53 FR 1527). The conference was held in Washington, DC, on February 5, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 25, 1988. The views of the Commission are contained in USITC Publication 2062, February 1988, entitled "Certain Fabricated Structural Steel from Canada: Determination of the Commission in Investigation No. 731-TA-387 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By Order of the Commission.

Issued: February 26, 1988.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 88-4504 Filed 3-1-88; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Eckes determines that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of certain fabricated structural steel from Canada, which were allegedly sold in the United States at less than fair value.

[3] Commissioner Cass did not participate in this determination.

[4] Under the proposed Harmonized Tariff Schedule of the United States, this product will be covered by subheadings 7216.90.00, 7222.40.60, 7301.20.10, 7301.20.50, 7308.90.30, 7308.90.60, and 7308.90.90.

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**[Investigation No. 337-TA-276]**

### Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Same, and Processes for Making Such Memories; Commission Determination To Review Initial Determination, Affirming in Part, and Reversing in Part

**AGENCY:** International Trade Commission.

**ACTION:** Review of an initial determination amending the complaint and notice of investigation, affirming the initial determination in part, and reversing it in part.

**SUMMARY:** Notice is hereby given that the Commission has determined to affirm that part of the initial determination (Order No. 37) which amends the notice of investigation to include claims 3-6 of U.S. Letters Patent 4,223,394, and reverse that part of the initial determination which amends the notice of investagation to include claims 7-15 of that patent.

**FOR FURTHER INFORMATION CONTACT:** Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1093.

**SUPPLEMENTARY INFORMATION:** The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C 1337), and in §§ 210.54(a)(1)(ii) and 210.55 of the Commission's Rules of Practice and Procedure (19 CFR 210.54(a)(1)(ii) and 210.55).

On January 15, 1988, complainant Intel Corporation filed a motion for leave to amend the complaint in the investigation by adding allegations of infringement of

claims 3–6 of U.S. Letters Patent 4,223,394 (the '394 patent) which were not previously included in the notice of investigation. On January 27, 1988, the presiding administrative law judge issued an initial determination that granted the motion, allowed filing of Intel's Second Amended Complaint, and amended the notice of investigation to include any claim of the '394 patent. No petitions for review or comments from Government agencies were received.

Notice of this investigation was published in the **Federal Register** of September 16, 1987 (52 FR 35003).

Copies of the Commission's Action and Order, its memorandum opinion, the administrative law judge's initial determination, and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: February 26, 1988.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 88–4503 Filed 3–1–88; 8:45 am]

BILLING CODE 7020-02-M

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**[Investigation No. 337–TA–225]**

## Certain Multi-Level Touch Control Lighting Switches; Commission Decision Not To Review an Initial Advisory Opinion Terminating the Advisory Opinion Proceeding on the Basis of a Settlement Agreement

**AGENCY:** International Trade Commission.

**ACTION:** Termination of the advisory opinion proceeding on the basis of a settlement agreement.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial advisory opinion (IAO) terminating the above-captioned advisory opinion proceeding on the basis of a settlement agreement.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Buchenhorner, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1097.

**SUPPLEMENTARY INFORMATION:** On September 11, 1986, the Commission issued a general exclusion order at the conclusion of Inv. No. 337–TA–225, *Certain Multi-Level Touch Control Lighting Switches.* The exclusion order was not disapproved by the President during the 60-day Presidential review period and thus became final on November 10, 1986. On March 30, 1987, Lustrelon, Inc. (Lustrelon), a non-party to the original investigation, moved for modification or dissolution of the exclusion order or, in the alternative, for issuance of an advisory opinion. On July 16, 1987, the Commission issued an action and order which denied Lustrelon's motion for modification or dissolution of the exclusion order, but instituted an advisory opinion proceeding for the purpose of determining (1) whether Lustrelon's imported articles are distinct from those considered by the Commission in the original investigation, and (2) whether those articles are covered by the exclusion order, *i.e.*, whether they infringe the patent at issue in the investigation.

On January 11, 1988, the presiding administrative law judge (ALJ) issued an IAO (Order No. 39) granting the joint motion of Lustrelon and complainant Southwest Laboratories, Inc. (Southwest) to terminate the advisory opinion proceeding on the basis of a settlement agreement. Southwest filed a petition for partial review, requesting that the Commssion strike paragraphs 3 through 5 (commenting on certain patents proferred by Lustrelon) on the ground that the cited remarks are outside the scope of the ALJ's jurisdiction. The Commission's determination not to review the IAO is not to be interpreted as adopting the dicta in question. The Commission notes in passing that the investigative staff asserts in its Response to Southwest's Petition For Partial Review that it has explored the patent issues in the original investigation and concluded that the patents proferred by Lustrelon were less pertinent than the prior art already of record.

No government agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 211.54(a).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–252–1802.

Hearing-impaired individuals are advised that information on his matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: February 26, 1988.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 88–4502 Filed 3–1–88; 8:45 am]

BILLING CODE 7020-02-M

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**[Investigation No. 337–TA–265]**

## Certain Dental Prophylaxis Methods, Equipment and Components Thereof; Commission Decision Not To Review an Initial Determination Denying Motion To Modify Protective Order

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Nonreview of an initial determination (ID) denying motion to modify protective order.

**SUMMARY:** Notice is hereby given that the Commission has determined not to review an ID denying a motion to modify the protective order in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Laurie B. Horvitz, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 252–1107.

**SUPPLEMENTARY INFORMATION:** This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

On November 2, 1987, after the presiding administrative law judge (ALJ) had issued an initial determination terminating the investigation, three parties to the proceeding, Electro Medical Systems S.A., Dentsply Research and Development Corp., and Dentsply International Inc., filed a motion requesting modification of the protective order previously issued in the investigation. The moving parties sought modification of the protective order in order to permit the use, in a federal district court action, of certain confidential business documents produced pursuant to the Commission's protective order.

On December 15, 1987, the Commission issued an Action and Order referring the motion to the ALJ for issuance of an ID.

The subject ID was issued on January 22, 1988, and denied the requested modification of the protective order. No

petitions for review or agency comments were filed.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: February 25, 1988.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 88–4506 Filed 3–1–88; 8:45 am]

BILLING CODE 7020–02–M

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[Investigation No. 337–TA–253]

## Certain Electrically Resistive Monocomponent Toner and "Black Powder" Preparations Therefor; Determination To Review and Reverse, Affirm, or Modify Certain Issues Contained in the Initial Determination; Reversal of Finding of Violation of Section 337 of the Tariff Act of 1930; Termination of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Determinations to review and reverse, affirm, or modify certain issues contained in the presiding administrative law judge's (ALJ's) final initial determination (ID) in the above-captioned investigation, to reverse the ID's finding of a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), and to terminate the investigation based on a finding of no violation of section 337.

**FOR FURTHER INFORMATION CONTACT:** Edwin J. Madaj, Jr., Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1100.

**SUPPLEMENTARY INFORMATION:** The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.54–.56 of the Commission's Rules of Practice and Procedure (19 CFR 210.54–.56).

On July 15, 1986, complainant Aunyx Corp. (Aunyx) filed a section 337 complaint with the Commission alleging unfair methods of competition and unfair acts in the importation and sale of certain electrically resistive monocomponent toner (ERMT), the particular type of dry "ink" used in models NP 210 through NP 500 photocopy machines manufactured and sold by respondents Canon, Inc. and Canon U.S.A., Inc. (Canon). Based on that complaint, and on an amended complaint filed on July 30, 1986, and supplements filed on July 30 and August 1, 5, and 12, 1986, the Commission instituted this investigation to determine whether there are unfair acts or methods of competition in the importation and sale of such toner with the effect or tendency to restrain or monopolize trade and commerce in the United States, to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry in the United States. The notice of investigation listed the following unfair acts or methods of competition: (1) Monopolization, (2) attempt and (3) conspiracy to monopolize, (4) exclusive dealing, and (5) business torts actionable under the common and statutory law of unfair competition, such as alleged interference with Aunyx's business relations and alleged disparagement of Aunyx's products and reputation. 51 FR 29709 (Aug. 20, 1986).

On November 10, 1987, the presiding ALJ issued an ID that there is a violation of section 337 in this investigation, finding that the Canon respondents had disparaged competitors and competing toners in such a manner as to restrain or monopolize trade and commerce in the United States. The ID found no violation of section 337 with respect to other alleged unfair acts. Petitions for review on certain issues contained in the ID, and responses to those petitions, were filed by Aunyx, Canon, and the Commission investigative attorney. On December 18, 1987, the Commission extended the deadline on whether to review the ID until the statutory deadline, February 22, 1988, and invited briefs from the parties on the issues of remedy, the public interest, and bonding, and on certain specified issues related to the question of violation of section 337. 52 FR 48581 (Dec. 23, 1987).

Copies of the ID, the Commission's Action and Order, its opinions, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: February 22, 1988.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 88–4507 Filed 3–1–88; 8:45 am]

BILLING CODE 7020–02–M

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[Investigation No. 731–TA–384 (Final)]

## Nitrile Rubber From Japan; Import Investigations

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–384 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of nitrile rubber, [1] provided for in item 446.15 of the Tariff Schedules of the United States, that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before April 25, 1988, and the Commission will make its final injury determination by June 10, 1988, (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR Part 207), and part 201, subparts A through E (19 CFR part 201).

**EFFECTIVE DATE:** February 12, 1988.

**FOR FURTHER INFORMATION CONTACT:** Bruce Cates (202–252–1187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-

[1] The product covered by this investigation is nitrile rubber, not containing fillers, pigments, or rubber processing chemicals. For purposes of this investigation, nitrile rubber refers to the synthetic rubber that is made from the polymerization of butadiene and acrylonitrile and that does not contain any type of additive or compounding ingredient having a function in processing, vulcanization, or end use of the product.

impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1759. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

**SUPPLEMENTARY INFORMATION:**

**Background**

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of nitrile rubber from Japan are being sold in the United States at LTFV within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on September 1, 1987, by Uniroyal Chemical Co., Inc., Middlebury, CT. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (52 FR 41514, October 28, 1987).

**Participation in the Investigation**

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

**Service List**

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate for service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

**Staff Report**

A public version of the prehearing staff report in this investigation will be placed in the public record on April 15, 1988, pursuant to section 207.21 of the Commission's rules (19 CFR 207.21).

**Hearing**

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on May 3, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on April 21, 1988. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on April 26, 1988, in the hearing room of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is April 26, 1988.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

**Written Submissions**

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on May 10, 1988. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 10, 1988.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6).

**Authority:** This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

**Kenneth R. Mason**

*Secretary.*

Issued: February 26, 1988.

[FR Doc. 88–4505 Filed 3–1–88; 8:45 am]

BILLING CODE 7020–02–M

## INTERSTATE COMMERCE COMMISSION

### Release of Waybill Data for Use as Input to TRANSEARCH, a Freight Traffic Movement Model Marketed by Reebie Associates

The Commission has received a request from Reebie Associates, Inc. for permission to use certain data from the Commission's 1986 Waybill Sample. Reebie requests permission to use certain data from the 1986 ICC Master Waybill Sample as imput to TRANSEARCH, a freight traffic movement model marketed by Reebie Associates.

The information requested is:

1. Origin State and BEA.
2 Destination State and BEA.
3. STCC—5 digit.
4. ICC Car Type.
5. Expanded Tons.

To avoid comparisons with individual records in the PUWF, they are requesting that only a single record with cumulative tonnage be shown for each Origin—Destination—STCC—Car Type combination.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting

the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party [Ex Parte No. 385 (Sub-No. 2), 52 FR 12415, April 16, 1987].

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. They should also include all grounds for objections to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: James A. Nash, (202) 275–6864.

Noreta R. McGee,

*Secretary.*

[FR Doc. 88–4525 Filed 3–1–88; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; Franklin P. Tyson, et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 19, 1988, a proposed Consent Decree in *United States v. Franklin P. Tyson, et al.*, Civil No. 84–2663, was lodged with the United States District Court for the Eastern District of Pennsylvania. The proposed Consent Decree concerns a lawsuit filed under section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The proposed Consent Decree requires the defendants to implement a remedial action which includes the removal of volatile and semi-violtile chemicals by a vacuum extraction process, maintenance of a leachate collection and treatment system, installation of groundwater recovery wells and removal of contaminated soils and sediments to remedy conditions at the hazardous waste site known as Tyson's Lagoon in Upper Merion Township, Pennsylvania. The defendants are also required to pay response costs to the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Franklin P. Tyson, et al.*, DJ Ref. 90–11–3–27.

The proposed consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 3310 United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania, 19106, and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania, 19107. Copies of the Consent Decreee may be examined at the Envoironmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20503. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $8.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

*Acting Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88–4522 Filed 3–1–88; 8:45 am]

BILLING CODE 4410-01-M

## MERIT SYSTEMS PROTECTION BOARD

### Performance Improvement Periods in Chapter 43 Actions

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Notice of Opportunity to file amicus briefs.

**SUMMARY:** The Merit Systems Protection Board provides an opportunity to file amicus briefs on significant issues concerning the proper interpretation and application of 5 U.S.C. 4302(b)(6), 5 U.S.C. 4303(c)(2)(A), and 5 CFR 432.203(b).

**DATE:** Amicus briefs submitted in response to this notice shall be filed with the Clerk of the Board on or before April 4, 1988.

**ADDRESS:** All briefs shall be captioned "Performance Improvement Periods" and entitled "Amicus Brier." All briefs shall also contain separate, numbered headings for each issue discussed. The original and seven (7) copies of each brief submitted in response to this notice shall be filed with the Office of the Clerk of the Board and addressed to Robert E. Taylor, Clerk of the Board, Merit Systems Protection Board, ATTN: Performance Improvement Periods, 1120 Vermont Avenue, NW., Washington, DC 20419.

**FOR FURTHER INFORMATION CONTACT:** Matthew D. Shannon, Counsel to the Clerk, Merit Systems Protection Board, (202) 653–7200.

**SUPPLEMENTARY INFORMATION:** The Merit Systems Protection Board has before it a number of cases which raise related issues concerning the proper interpretation and application of 5 U.S.C. 4302(b)(6), 5 U.S.C. 4303(c)(2)(A), and 5 CFR 432.203(b) The Office of Personnel Management (OMP) has intervened in one case and expressed its preliminary views concerning the interpretation of the applicable legal standards. The Board is seeking additional briefs from interested parties addressing the issues noted below.

As used in the following questions, the term "performance improvement period" (PIP) refers to that period required by 5 U.S.C. 4302(b)(6) and 5 CFR 432.203(b). Additionally, unless otherwise stated, any instance of unacceptable performance referenced in these questions is assumed to have occurred within the 1-year period specified in 5 U.S.C. 4303(c)(2)(A).

1. OMP has published proposed regulations concerning reductions in grade and removal actions based on unacceptable performance. 52 FR 5463 (February 23, 1987). Paragraph (e) of the proposed regulation to be codified at 5 CFR 432.104 is entitled "Agency decisions based on the results of the opportunity period," and provides in paragraph (e)(1) that:

> If, at the completion of the opportunity period, an agency determines that an employee has demonstrated performance of his or her critical element at the minimally acceptable level or higher, the agency may not propose action under this part to reduce in grade or remove the employee. 52 FR at 5465.

a. If published in final form, would this regulation bar agencies from relying on instances of unacceptable performance which occurred either before or after the PIP if the employee has demonstrated minimally acceptable or better performance during the PIP?

b. Is there any conflict between this proposed regulation and the position taken by OMP in its intervention brief in *Laura P. Brown* v. *Veterans Administration*, Docket Number AT04328610077, that "performance during the opportunity period, while certainly a critical factor, is not the only factor an agency or a third party should consider in determining whether an employee has met his minimum performance standards and should be removed, reduced in grade, or retained in his position?"

2. Under 5 U.S.C. 4303(c)[2][A], an agency may base its decision on instances of unacceptable performance which occurred during the 1-year period preceding the advance notice and which were stated in the notice. Is this provision meaningless unless agencies are permitted to rely on unacceptable performance which occurs before or after the PIP but within the 1-year period?

3. If agencies are not permitted to rely on pre- or post-PIP performance, apportioning a numerical standard during the PIP may not be feasible or may require agencies to lower the performance standards in some cases. For example, if an employee commits one error under a standard which allows only one error per year, construing the standard to allow the employee to commit an additional error during the PIP would be the equivalent of permitting two errors per year. However, if the employee is allowed no errors during the PIP, it could be argued that the agency utilized an absolute performance standard during the PIP which deprived the employee of a bona fide opportunity to improve. In such cases, how can the agency's right to set performance standards be reconciled with the employee's right to an opportunity to improve?

4. If agencies are permitted to consider unacceptable performance that occurs before or after the PIP where the employee's performance during the PIP is minimally acceptable or better, what guidelines should be used in weighing the performance during the various time periods? In addressing this issue, the following questions should be considered:

a. Where a numerical performance standard requires a minimum production or specifies the maximum errors on a yearly basis, can the numerical standard be apportioned over the rating period? For example, if the employee's standard allows a maximum of 12 mistakes per year, should the employee's performance be considered unacceptable if the employee makes two mistakes during the first month of the rating period?

b. At the time an agency places an employee on a PIP, the employee may already have exceeded the number of errors allowed under the applicable performance standard. What criteria should be applied to determine whether or not an employee has demonstrated minimally acceptable performance during the PIP in such cases? If the employee committed no additional errors during the PIP in this example, would be rule which permitted the agency to rely on the employee's pre-PIP errors make the employee's right to an opportunity to improve meaningless?

c. Should there be different guidelines for weighing pre-or post-PIP unacceptable performance against PIP performance which is minimally acceptable or better with respect to standards which do not allow for numerical measurement?

5. If an employee's performance is minimally acceptable or better during the PIP, but then subsequently becomes unacceptable, may the agency take action based on the subsequent performance without informing the employee of the unacceptable performance by providing another PIP? If not, how long a time period must elapse after the initial PIP before a new PIP is required?

Dated: February 25, 1988.

**Robert E. Taylor,**

*Clerk of the Board.*

[FR Doc. 88-4483 Filed 3-1-88; 8:45 am]

BILLING CODE 7400-01-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 88-21]**

### NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Supersonic Cruise Airplane Drag Reduction Technology.

**DATE AND TIME:** March 22, 1988, 8:30 a.m. to 4 p.m.; and March 23, 1988, 8:30 a.m. to 12:15 p.m.

**ADDRESS:** National Aeronautics and Space Administration, Room 625, Federal Office Building 10B, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Dr. Randolph A. Graves, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2828.

**SUPPLEMENTARY INFORMATION:** The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Supersonic Cruise Airplane Drag Reduction Technology, chaired by Professor Dean Chapman, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants).

*Type of Meeting:* Open.

*Agenda*

March 22, 1988

8:30 a.m.—Discuss Organization of Review Team.
10:30 a.m.—Status Brief on High-Speed Civil Transport-Industry Study.
1 p.m.—Status Brief Continued.
3 p.m.—Discuss Team Planning.
4 p.m.—Adjourn.

March 23, 1988

8:30 a.m.—Status of NASA In-House High-Speed Civil Transport Activities.
10:15 a.m.—Team Action Planning and Discussion.
12:15 a.m.—Adjourn.

Dated: February 25, 1988.

**Ann Bradley,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 88-4465 Filed 3-1-88; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Literature Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Professional Development/Overview Section) to the National Council on the Arts will be

held on March 18, 1988 from 9:00 a.m.–5:00 p.m., and on March 19, 1988 from 10:00 a.m.–2:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 19, 1988, from 10:00 a.m.–2:00 p.m. for policy issues and guidelines discussion.

The remaining sessions of this meeting on March 18, 1988 from 9:00 a.m.–5:00 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

**Yvone Sabine,**

*Acting Director, Council and Panel Operations, National Endowment for the Arts.*

February 24, 1988.

[FR Doc. 88–4422 Filed 3–1–88; 8:45 am]

BILLING CODE 7537–01–M

## NUCLEAR REGULATORY COMMISSION

### 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 March 10–12, 1988, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on February 24, 1988.

*Thursday, March 10, 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.–12:00 Noon: NRC Safety Research Program* (Open)—Briefing by representatives of the National Academy of Sciences Panel on Human Factors Research Needs in Regulatory Process.

*1:00 p.m.–2:30 p.m.: Operating Events and Incidents* (Open/Closed)—Briefing and discussion regarding recent operating events and incidents at nuclear power stations.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the project being considered or safeguards information related to the security provisions for a specific nuclear station.

*2:30 p.m.–4:00 p.m.: DOE Advanced Reactor Severe Accident Program* (Open)—Briefing by DOE regarding the nature, objectives, etc. of the Advanced Reactor Severe Accident Program.

*4:15 p.m.–4:45 p.m.: Future Activities* (Open)—Discuss anticipated ACRS subcommittee meetings and items proposed for consideration by the full Committee.

*4:45 p.m.–6:00 p.m.: ACRS Subcommittee Activities* (Open)—Reports and discussion of designated subcommittee activities including activities regarding thermal-hydraulic phenomena, decay heat removal, structural engineering, and core performance.

*Friday, March 11, 1988*

*8:30 a.m.–11:30 a.m.: Tennessee Valley Authority Sequoyah Nuclear Plant* (Open)—Briefing and discussion regarding proposed resolution of deficiencies at the TVA Sequoyah Nuclear Station.

*11:30 a.m.–12:30 p.m.: NRC Regulatory Guide* (Open)—Review proposed NRC Regulatory Guide 1.99, Radiation Damage to Reactor Pressure Vessel Materials.

*1:30 p.m.–2:45 p.m.: Reactor Vessel Structural Supports* (Open)—Briefing and discussion of proposed NRC plan of action to resolve questions regarding radiation embrittlement of reactor pressure vessel structural supports.

*2:45 p.m.–4:15 p.m.: Quantitative Safety Goals* (Open)—Briefing and discussion of NRC Staff efforts to develop an implementation plan for the NRC Quantitative Safety Goals.

*4:15 p.m.–6:00 p.m.: Safety-Related Issues* (Open)—Discuss proposed hierarchical structure for important safety related issues.

*Saturday, March 12, 1988*

*8:30 a.m.–12:30 p.m.: Preparation of ACRS Reports* (Open)—The members will discuss proposed Committee positions and reports to the NRC regarding matters considered during this meeting.

*1:30 p.m.–2:15 p.m.: New ACRS Members and Allocation of Resources* (Closed)—Discuss qualification of candidates proposed for appointment to the Committee and the internal management of resources to support advisory functions.

These sessions will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy and to discuss the internal agency allocation of resources to provide technical advice regarding nuclear waste management and disposal.

*2:15 p.m.–3:00 p.m.: Miscellaneous* (Open)—Complete discussion of issues considered during this meeting.

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 related to the internal personnel rules and practices of the agency (5 U.S.C. 552b(c)(2)), safeguards information related to the security provisions for a specific nuclear station (5 U.S.C. 552b(c)(3)), information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)),

and Proprietary Information applicable to the matter being discussed (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 202/634-3265), between 8:15 a.m. and 5:00 p.m.

Date: February 26, 1988.

John C. Hoyle,

*Advisory Committee Management Officer.*

[FR Doc. 88-4508 Filed 3-1-88; 8:45 am]

BILLING CODE 7590-01-M

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[Docket Nos.: 50-295 and 50-304]

## Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR-39 and DPR-48 issued to Commonwealth Edison Company (the licensee), for operation of Zion Station, Units 1 and 2 located in Waukegan County, Illinois.

The amendment would allow steam generator tubes to be repaired by utilizing Westinghouse mechanical sleeving methodology.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, or amended (the Act) and the Commission's regulations.

By April 1, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amendment petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW, Washington, DC by the above date. Where petitions are filed during the last (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel—Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esquire, Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filing of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 24, 1987 and supplemented by letter dated February 11, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC; and Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 24th day of February 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

*Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.*

[FR Doc. 88-4458 Filed 3-1-88; 8:45 am]

BILLING CODE 7590-01-M

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[Docket No. 50-336]

## Northeast Nuclear Energy Co. et al. (Millstone Nuclear Power Station Unit 2); Exemption

I.

The Northeast Nuclear Energy Company, et al. (the licensee) is the holder of Facility Operating License No. DPR-65, which authorizes operation of the Millstone Nuclear Power Station, Unit 2 (the facility) at steady-state power reactor core power levels not in excess of 2700 megawatts thermal. The license provides, among other things,

that Millstone Unit No. 2 is subject to all the rules, regulations, and Orders of the Commission now or hereafter in effect.

The plant is a pressurized water reactor (PWR) located at the licensee's site in the town of Waterford, Connecticut.

II.

The Code of Federal Regulations, 10 CFR 50.54(o), specifies that primary reactor containments for water-cooled power reactors shall comply with Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." Paragraph III.A.3 of Appendix J incorporates by reference the American National Standard ANSI N45.4–1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." This standard requires that containment leakage calculations for Containment Integrated Leakage Rate Tests (CILRTs) be performed using either the point-to-point method or total time method.

A more recent standard, ANSI/ANS 56.8–1981, "Containment System Leakage Testing Requirements," which was intended to replace ANSI N45.4–1972, specifies the use of the mass point method to the exclusion of the two older methods. The NRC staff anticipates publishing, for comment, a proposed revision to Appendix J that would permit the use of the mass point method. Pending such revision to Appendix J, licensees who wish to use the mass point technique must submit an application for partial exemption from the requirement that Appendix J test calculations for CILRTs will conform with ANSI N45.4–1972.

III.

By letter dated December 23, 1987, the licensee requested a partial exemption from 10 CFR Part 50, Appendix J, Paragraph III.A.3, which requires that all CILRTs be performed in accordance with ANSI N45.4–1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." ANSI N45.4–1972 requires that leakage calculations be performed using either the total time method or the point-to-point method. The licensee has stated in support of the application for exemption from Appendix J that the mass point method is a more accurate method of calculating containment leakage rate.

It has been recognized by the professional community that the mass point method is superior to the two other methods, point-to-point and total time, which are referenced in ANSI N45.4–1972 and endorsed by the present regulations. The mass point method calculates the air mass at each point in time, and plots it against time. A linear regression line is plotted through the mass-time points using a least square fit. The slope of this line is proportional to the leakage rate.

In addition to the method of calculation, consideration of the length of the test should also be included in the overall program. In accordance with Section 7.6 of ANSI N45.4–1972, a test duration less than 24 hours is only allowed if approved by the NRC, and the only currently approved methodology for such a test is contained in Bechtel Topical Report BN–TOP–1, Revision 1, "Testing Criteria for Integrated Leakage Rate Testing of Primary Containment Structures for Nuclear Power Plants," dated November 1, 1972. This approach only allows use of the total time method. Therefore, the staff will condition the exemption to require a minimum test duration of 24 hours when the mass point method is used.

The licensee's letter also submitted information to identify the special circumstances for granting this exemption for Millstone Unit No. 2 pursuant to 10 CFR 50.12. The purpose of Appendix J to 10 CFR Part 50 is to assure that containment leak-tight integrity can be verified periodically throughout the service lifetime so as to maintain containment leakage rate within the limit specified in the plant technical specifications. The underlying purpose of the rule specifying particular methods for calculating leakage rates is to assure that accurate and conservative methods are used to assess the results of containment leakage rate tests. As set forth above, the mass point method has been a widely used method providing accurate results and the staff has determined that this method of calculating leakage rate satisfies the purpose of the rule.

Based on the above discussion, the licensee's proposed partial exemption from paragraph III.A.3 of Appendix J, to allow use of the mass point method as requested in the submittal dated December 23, 1987, is acceptable with the condition of 24 hours minimum test duration. The exemption applies only to the method of calculating leakage rate (by use of the mass point method) and not to any other aspects of the tests.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption, namely that the application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. Accordingly, the Commission hereby grants an exemption as described in Section III above from Paragraph III.A.3 of Appendix J to the extent that the mass point method may be used for containment leakage rate calculations, provided it is used with a minimum test duration of 24 hours. The exemption applies only to the method of calculating leakage rate (by use of the mass point method) and not any other aspects of the tests.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (53 FR 3801).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 11th day of February 1988.

For the Nuclear Regulatory Commission.

**Steven A. Varga,**

*Director, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 88–4459 Filed 3–1–88; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–263, Licensee No. DPR–22, EA 87–147]**

## Northern States Power Co., (Monticello); Order Imposing Civil Monetary Penalty

I

Northern States Power Company (licensee) is the holder of Operating License No. DPR–22 issued by the Nuclear Regulatory Commission (NRC/Commission) on January 19, 1971. The license authorizes the licensee to operate the Monticello plant in accordance with the conditions specified therein.

II

A special inspection of the licensee's activities was conducted during the period June 17–18 and July 6, 1987. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated October 5, 1987. The Notice states the nature of the violation, the provision of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violation. The

licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated November 4, 1987 admitting the violation, but requesting complete mitigation of the proposed civil penalty.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix to this Order that the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil monetary penalty in the amount of Fifty Thousand Dollars ($50,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and should be addressed to the Director of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, Region III, and a copy to the NRC Resident Inspector, Monticello plant.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether the proposed civil penalty should be imposed in whole or in part.

Dated at Bethesda, Maryland, this 19th day of February 1988.

For the Nuclear Regulatory Commission.

**James M. Taylor,**

*Deputy Executive Director for Regional Operations.*

**Appendix—Evaluations and Conclusions**

On October 5, 1987, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation of 10 CFR Part 50, Appendix B, Criterion V. Northern States Power Company responded to the Notice on November 4, 1987. In its response, the licensee agreed that the violation occurred, but stated that it believed total mitigation of the proposed civil penalty was warranted because of its prompt identification and reporting of the violation, prompt and extensive corrective actions, its prior good enforcement history, and other considerations.

**Restatement of Violation**

10 CFR Part 50, Appendix B, Criterion V states, in part, that activities affecting quality be prescribed by documented instruction, procedures, or drawings, of a type appropriate to the circumstances.

Contrary to the above, from August 1986 to July 1987, activities involving the review and performance of electrical coordination to determine the effects of changes to the electrical power system on other portions of the electrical power system were not prescribed by electrical design change control procedures. As a result, when the electrical distribution system was modified by replacing trip devices in load center circuit breakers for essential buses with devices having ground fault protection, the potential of loss of an essential bus due to a fault in a nonsafety-related component was created.

**Summary of Licensee's Response**

The licensee acknowledges the occurrence of the violation, but requests the proposed civil penalty be completely mitigated. The licensee's arguments concerning mitigation are based on the following:

*1. Prompt Identification and Reporting*

The licensee states that the ground fault coordination problem was discovered by plant personnel and promptly reported to the NRC. The licensee further states that even though the problem existed for 11 months, there were only two opportunities to discover the breaker coordination problem prior to its identification by the licensee.

*2. Corrective Action to Prevent Recurrence*

The licensee states that prompt and extensive corrective actions were taken as a result of the event, including consideration of other potential coordination problems in other, unrelated, plant modifications. It is further argued that the corrective actions were on the initiative of plant personnel and were broad in scope.

*3. Past Performance*

The licensee states that only one event involving inadequate design control was identified in the prior two years and that SALP ratings in this area have been consistently above average.

*4. Prior Notice of Similar Events*

The licensee states there was no prior notice of this problem.

*5. Multiple Occurrences*

The licensee states that this is the first occurrence of this type at Monticello.

*6. Other Considerations*

The licensee clarifies a point in the Notice concerning the existence of procedures. The licensee states that procedures did exist for electrical coordination studies for changes to the electrical power system. The licensee acknowledges that a procedure for the review of the coordination of Motor Control Center (MCC) loads did not exist.

The event was considered to be an isolated event. While the licensee admits that the failure to provide adequate ground fault coordination when circuit breaker trip devices were replaced was a serious error, it believes that the impact on plant safety due to this failure was small.

**NRC Evaluation of Licensee's Response**

Regarding prompt identification and reporting, the NRC agrees that the licensee identified the problem, but not until the issue was disclosed by the June 7 and June 14, 1987 events which required the licensee to investigate. The coordination problem occurred when the licensee failed to properly evaluate the effects of replacing existing electrical circuit breakers with solid state trip devices which had ground fault protection not previously provided. An electrical coordination review was not performed at the time of replacement and is considered the first opportunity to identify the problem. Of the next two opportunities to discover the problem, the licensee failed to take advantage of the first chance because the fault was meggered and not continuity tested which would have identified the problem. The fault on June 14 was identified only after the containment fan cooler motor tripped on high current, not as a result of planned testing or maintainence. Overall, the fact that the licensee eventually identified the violation is balanced by the fact that the licensee failed to take advantage of opportunities to identify the problem earlier. Therefore, mitigation was not considered appropriate for this factor.

With respect to corrective actions the NRC acknowledges that the licensee took corrective actions that should prevent recurrence, but does not believe that such actions were unusually prompt and extensive in response to the significance of the event. The NRC staff points out that the corrective actions were necessarily broad in scope and additional electrical coordination problems had been identified which delayed start-up of the plant. The NRC considers that the corrective actions taken were appropriate to the significant nature of the problem identified and therefore considers mitigation for the corrective actions taken unwarranted.

The NRC recognizes the licensee's good enforcement history in the area of

maintenance and modifications and considered mitigation of the base civil penalty for this factor. However, the NRC notes declining performance in the area of engineering which was the cause of the violation cited in this enforcement action and also a violation (Severity Level III) given in December 1986 for deficiencies in the Standby Liquid Control System. The significance of the violation in the current enforcement action is also increased because of the fact that the problem existed for 11 months prior to its discovery. It is considered significant that during this time, under certain conditions, the potential existed for ground faults in nonsafety-related equipment to cause the loss of essential motor control center loads. Consideration of mitigation of the base civil penalty because of the licensee's enforcement history in the area of maintenance and modifications is balanced by the declining performance in the engineering area and the duration for which the violation existed while the plant operated in condition which could have had a significant impact on the availability of safety systems. Therefore, neither mitigation nor escalation is deemed appropriate.

Regarding other considerations, the NRC recognizes that the plant had procedures for electrical coordination studies; however, as the licensee admits, there was no procedure for electrical coordination studies for Motor Control Center (MCC) loads. As discussed earlier, the NRC believes that the event was significant in that various safety systems were affected by the coordination problem.

NRC Conclusion

The NRC has reviewed Northern States Power Company's response to the proposed imposition of civil penalty and arguments for mitigation of the base civil penalty. The NRC concludes that an adequate basis for mitigation of the civil penalty was not provided by the licensee. Consequently, the proposed civil penalty in the amount of $50,000 should be imposed.

[FR Doc. 88-4460 Filed 3-1-88; 8:45 am]

BILLING CODE 7590-01-M

## PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

### Board of Directors Meeting

**AGENCY:** Pennsylvania Avenue Development Corporation.

**ACTION:** The Pennsylvania Avenue Development Corporation announces a forthcoming meeting of the Board of Directors.

**DATE:** The meeting will be held Wednesday, March 16, 1988, at 10:00 a.m.

**SUPPLEMENTARY INFORMATION:** This meeting is held in accordance with 36 CFR Part 901, and is open to the public.

Date: February 24, 1988.

M. J. Brodie,

*Executive Director.*

[FR Doc. 88-4456 Filed 3-1-88; 8:45 am]

BILLING CODE 7630-01-M

## PENSION BENEFIT GUARANTY CORPORATION

### Request for Extension of Approval Under the Paperwork Reduction Act; Notice of Insolvency and Notice of Insolvency Benefit Level

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of request for extension of OMB approval.

**SUMMARY:** The Pension Benefit Guaranty Corporation has requested extension of approval by the Office of Management and Budget for two currently approved information collection requests (1212-0033) contained in its regulation on Notice of Insolvency (29 CFR Part 2674). The information collections involve notices that must be given by the plan sponsor of a multiemployer pension plan under certain adverse financial circumstances described in the regulation. Current approval of the information collections expires on May 31, 1988. The effect of this notice is to advise the public of the PBGC's request for an extension of OMB's approval.

**ADDRESSES:** All written comments (at least three copies) should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 3208 New Executive Office Building, Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, 2020 K Street, NW, Washington, DC 20006, between the hours of 9:00 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW, Washington, DC 20006, 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** The titles of the information collections for which extension of approval is requested are: Notice of Insolvency and Notice of Insolvency Benefit Level (29 CFR Part 2674).

Section 4245(e) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), requires that the sponsor of a multiemployer plan that is in reorganization notify the Secretary of the Treasury, the Pension Benefit Guaranty Corporation (PBGC), contributing employers, employee organizations representing participants, and participants and beneficiaries whenever the plan is or may become "insolvent" (that is, unable to pay full benefits when due during a plan year). Thereafter, the plan sponsor must notify the same parties of the level of benefits that will be paid during that year. Section 4245(e)(4) provides that these notices (except for the notices to the Secretary of the Treasury) are to be given in accordance with rules promulgated by the PBGC. The PBGC's regulation on Notice of Insolvency establishes the procedures for complying with these notice requirements. Based on past experience, the PBGC estimates that two plans per year will be required to issue notices of insolvency and notices of insolvency benefit level, for a total annual burden of 492 hours.

Issued at Washington, DC, this 19th day of February 1988.

Kathleen P. Utgoff,

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 88-4466 Filed 3-1-88; 8:45 am]

BILLING CODE 7708-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC-16287; 812-6937]**

### TCI Portfolios, Inc.; Application for Exemption

Date: February 25, 1988.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

*Applicants:* TCI Portfolios Inc. ("Fund") and Investors Research Corporation ("Investors Research"), collectively referred to as "Applicants."

*Relevant 1940 Act Sections:* Exemptions requested under section 6(c) of the 1940 Act from sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) (including any comparable provisions of a permanent rule that replaces Rule 6e-3 (T)).

*Summary of Application:* Applicants seek an order to the extent necessary to permit shares of the Fund and other similar funds ("Other Funds") which Investors Research may manage in the

future to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies.

*Filing Date:* December 21, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on March 21, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. TCI Portfolios, Inc. and Investors Research Corporation, Suite 310, 605 West 47th Street, Kansas City, MO 64112–1987; Attention: Irving Kuraner, Esquire.

**FOR FURTHER INFORMATION CONTACT:** Staff Attorney Nancy M. Rappa, (202) 272–2058, or Special Counsel Lewis B. Reich, (202) 272–2061 (Office of Insurance Products and Legal Compliance).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the Application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

### Applicants' Representations and Statements

1. The Fund intends to offer shares of its existing and future portfolios to separate accounts of any interested insurance company in order to fund variable annuity contracts and variable life insurance contracts (collectively referred to herein as "variable contracts"). The Fund currently offers shares to separate accounts of any interested insurance company in order to fund variable annuity contracts only. Insurance companies whose separate account(s) owns shares of the Fund are referred to herein as "participating insurance companies." It is anticipated that participating insurance companies will rely on Rules 6e–2 or 6e–3(T) under the Act, although some may rely on individual exemptive orders as well, in connection with variable life insurance contracts. The use of a common management company as the underlying investment medium for both variable annuity and variable life insurance separate accounts is commonly referred to, and is referred to herein, as "mixed funding." The use of a common management company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to herein as "shared funding." Investors Research, a registered investment adviser, is the Fund's investment manager. Investors Research may in the future serve as investment manager for other similar funds ("Other Funds"). Investors Research is also seeking exemptive relief as described below with respect to the Other Funds.

### Disqualifications

2. Section 9(a) of the Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in section 9(a) (1) or (2). Rules 6e–2(b)(15) (i) and (ii) and 6e–3(T)(b)(15) (i) and (ii) provide exemptions from section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

3. The partial relief granted in Rules 6e–2 (b)(15) and 6e–3(T)(b)(15) from the requirements of section 9 in effect limits the amount of monitoring necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Applicants state that those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act to apply the provisions of section 9(a) to the large number of individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. Applicants believe that it is unnecessary to apply section 9(a) to the large number of individuals in various unaffiliated insurance companies (or affiliated companies of participating insurance companies) that may utilize the Fund or the Other Funds as the funding medium for variable contracts, and allege that there is no regulatory purpose in extending the monitoring requirements because of mixed or shared funding. Applicants argue that applying the requirements of section 9(a) because of investment by other insurers' separate accounts would be unjustified and would not serve any regulatory purpose. Applicants state that, on the other hand, the increased monitoring costs would reduce the net rates of return realized by contract owners.

### Voting

4. The language of Rules 6e–2(b)(15)(iii) and 6e–3(T)(15)(iii) assumes the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Applicants anticipate that pass-through voting privileges will be provided with respect to all variable contract owners.

5. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(b)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund or any contract between a fund and its investment adviser when required to do so by an insurance regulatory authority (subject to the provisions of paragraph (b)(5)(i) and (b)(7)(ii)(A) of such Rules).

6. According to the Application, Rule 6e–2 recognizes that a variable life insurance contract is an insurance contract, has important elements unique to insurance contracts, and is subject to extensive state regulation of insurance. Applicants state that in adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers or principal underwriters.

### Lack of Conflicts

7. The Application states that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states and that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies.

8. Applicants also represent that the right under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) of the insurance company to disregard contract owners' voting instructions does not raise any issues

different from those raised by the authority of state insurance administrators over separate accounts and that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners.

9. The Applicants state that the broader base of contract owners can be expected to provide economic justification for the creation of additional portfolios with a greater variety of investment ojbectives and policies.

10. Applicants assert that various factors have kept more insurance companies from offering variable annuities and variable life insurance contracts than currently offer such contracts. Use of the Fund or Other Funds as a common investment medium for variable contracts would, according to Applicants, reduce or eliminate these concerns, and therfore making the Fund and the other Funds available for mixed and shared funding will encourage more insurance companies to offer variable contracts. Applicants believe that this will result in increased competition with respect to both variable contract design and pricing, and that this can be expected to result in more product variation and lower charges. Applicants also believe that mixed and shared funding should benefit variable contract owners by elininating a significant portion of the costs of establishing and administering separate funds and that granting the requested relief should result in an increased amount of assets available for investment by the Fund and the Other Funds which in turn may benefit variable contract owners by promoting economies of scale, by permitting greater safety through greater diversification, or by making the addition of new portfolios of the Fund and the Other Funds more feasible.

11. Applicants have consented to the following conditions:

(a) A majority of the Board of Directors of the Fund and the Other Funds shall consist of persons who are not "interested persons" of the Fund or the Other Funds, as defined by section 2(a)(19) of the Act and the Rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any director or directors, then the operation of this condition shall be suspended (i) for a period of 45 days if the vacancy or vacancies may be filled by the Board of Directors; (ii) for a period of 60 days if a vote of stockholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

(b) The Board will monitor the Fund and the Other Funds for the existence of any material irreconcilable conflict between the interests of the contract owners of all separate accounts investing in the Fund and the Other Funds. An irreconcilable material conflict may arise for a variety of reasons, including: (i) An action by any state insurance regulatory authority; (ii) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (iii) an administrative or judicial decision in any relevant proceeding; (iv) the manner in which the investments of any series are being managed; (v) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners; or (vi) a decision by an insurer to disregard the voting instructions of contract owners.

(c) Participating insurance companies and Investors Research will report any potential or existing conflicts to the Board of Directors of the Fund and the Other Funds. Participating insurance companies and Investors Research will be responsible for assisting the board in carrying out its responsibilities under these conditions, by providing the Board with all information reasonably necessary for the board to consider any issues raised. This includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all insurers investing in the Fund or the Other Funds under their agreements governing participation in the Fund or the Other Funds and such responsibilities will be carried out with a view only to the interests of the contract owners.

(d) If it is determined by a majority of the Board of Directors of the Fund or the Other Funds, or a majority of its disinterested directors, that a material irreconcilible conflict exists, the relevant insurance companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors), take whatever steps are necessary to remedy or eliminate the irreconciliable material conflict, up to and including: (i) Withdrawing the assets allocable to some of all the separate accounts from the Fund or the Other Funds or any portfolio therein and reinvesting such assets in a different investment medium (including another portfolio, if any, of the Fund or the Other Funds) of submitting the question whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., annuity contract owners, life insurance contract owners, or variable contract owners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (ii) establishing a new registered management investment company or managed separate account. If a material irreconciliable conflict arises because of an insurer's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund or the Other Funds' election, to withdraw its separate account's investment in the Fund or the Other Funds and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of an irreconciliable material conflict and to hear the cost of such remedial action shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund or the Other Funds and these responsibilities will be carried out with a view only to the interests of contract owners.

For purposes of this condition (d), a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any irreconciliable material conflict, but in no event will the Fund or the other Funds or Investors Research be required to establish a new funding medium for any variable contract. No participating insurance company shall be required by this condition (d) to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract owners materially adversely affected by the irreconciliable material conflict.

(e) The Board's determination of the existence of an irreconciliable material conflict and its implications shall be made known promptly in writing to all participating insurance companies.

(f) Participating insurance companies will provide pass-through voting privileges to all variable contract owners so long as the Commission continues to interpret the Act as requiring pass-through voting privileges for variable contract owners. Participating insurance companies shall be responsible for assuring that each of their separate accounts participating in the Fund or the other Funds calculates voting privileges in a manner consistent with other participating insurance companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund or the Other Funds shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund or the Other Funds.

(g) The Fund and the Other Funds will notify all participating insurance companies that prospectus disclosure regarding potential risks or mixed and shared funding may be appropriate.

(h) All reports received by the Board of Directors of potential or existing conflicts, and all Board action with regard to determining the existence of a conflict, notifying participating insurance companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board of other appropriate records, and such minutes or other records shall be made available to the Committion upon request.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-4500 Filed 3-1-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 35-24586]**

## Filings Under the Public Utility Holding Company Act of 1935 ("Act")

February 25, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or decarlation(s) for complete statements of the proposed transaction(s) summaried below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 21, 1988 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

### Georgia Power Company (70-7507)

Georgia Power Company ("Georgia"), 333 Piedmont Avenue, N.E., Atlanta, Georgia 30308, an electric utility subsidiary of The Southern Company, a registered holding company, has filed a declaration pursuant to section 12(b) and Rule 44 promulgated thereunder.

Georgia proposes: (1) To sell pursuant to an Agreement of Sale with Oglethorpe Power Corporation, an electric membership generation and transmission corporation ("Oglethorpe"), four of Georgia's substation facilities for an aggregate sales price of approximately $1,247,826.82; (2) to sell to Kimberly Clark Corporation ("Kimberly Clark") the distribution facilities serving Kimberly Clark at 1400 Holcomb Bridge Road in Roswell, Georgia, for a sales price of $521,209.25; and (3) to sell to Florida Power & Light Company a 230 kv 117 MVAR Capacitor Bank currently located in Dade County, Florida and a 230 kV 117 MVAR Capacitor Bank installed on Jacksonville Electric Authority's system and currently located at the Greenland Substation in Jacksonville, Florida for an aggregate sales price of $952,200. Georgia will obtain from its First Mortgage Bond Trustee a release of all such properties from the lien of Georgia's First Mortgage Bond Indenture.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-4432 Filed 3-1-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. IC-16285; (812-6977)]**

## Selected Capital Preservation Trust; Notice of Application

February 25, 1988.

**AGENCY:** Securities and Exchange Commission (SEC).

**ACTION:** Notice of Application for Exemption Under the Investment Company Act of 1940 ("1940 Act").

*Applicant:* Selected Capital Preservation Trust.

*Relevant 1940 Act Sections:* Exemption requested under Section 6(c) from 17(f).

*Summary of Application:* An order is sought to permit a series of Applicant to maintain certain excess variation margin payments with respect to futures contracts and options thereon on deposit with futures commission merchants ("FCMs").

*Filing Date:* The application was filed on February 1, 1988.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on March 18, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

*Addresses:* Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicant, c/o James H. Bodurtha, Esq., Squire, Sanders and Dempsey, 1800 Huntington Building, Cleveland, Ohio 44115.

*For Further Information Contact:* Thomas Mira, Staff Attorney (202) 272-3033, or Brion R. Thompson, Special Counsel (202) 272-3016 (Office of Investment Company Regulation).

*Supplementary Information:* The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

**Applicant's Representations:**

1. Applicant is registered under the 1940 Act as an open-end, management investment company, which currently

offers four series—Selected Daily Income Fund, Selected Daily Government Fund, Selected Daily Tax-Exempt Fund, and Selected Government Total Return Fund ("Fund"). The order sought by Applicant relates only to the Fund.

2. The Fund's investment objective is to seek current return and short-term capital gains consistent with preservation of capital through investing primarily in a professionally managed portfolio of debt obligations of varying maturities issued or guaranteed by the U.S. Government, its agencies or instrumentalities. The Fund may engage in portfolio strategies involving the use of options to seek to enhance its return and/or hedge against changes in interest rates. The Fund may also purchase and sell futures contracts with respect to U.S. Government securities and options on such futures contracts to hedge against changes in interest rates. The Fund will not engage in transactions involving futures contracts for speculation.

3. In connection with transactions in futures contracts and options thereon, the Fund will be required to deposit as "initial margin" the amount of cash or short-term U.S. Government securities established by the futures exchanges and designated as a percentage of the contract amount. Thereafter, subsequent payments ("variation margin") are required to reflect changes in the value of futures contracts in order to maintain the designated percentage of the contract amount. These payments will be made into special segregated accounts with a custodian of the Fund, in the name and for the benefit of the Fund's FCMs in accordance with applicable regulations of the Commodities Futures Trading Commission.

4. A separate custodial account will be established for each FCM with which the Fund enters into futures contracts, and each such account will be maintained apart from the general custodial account of the Fund. The margin amounts held in the custodial accounts will constitute performance bonds, to be returned to the Fund upon termination of the futures positions, assuming that all of the Fund's contractual obligations to the FCM have been satisfied. An FCM will have access to such margin only upon a representation to the custodian that the Fund is in default on its obligations to the FCM, and that all conditions precedent to the FCM's right of access to the custodial account have been satisfied.

5. Applicant proposes that variation margin payments due to the Fund from any FCM will be retained by such FCM until the total amount due exceeds $50,000, at which time the Fund will demand that excess variation margin be paid over to the Fund. In no event, however, will the total amount of such excess variation margin due from all FCMs with which the Fund maintains accounts exceed the greater of $100,000 or 1/8 of one percent of the Fund's net assets in order to minimize any risk or loss of the variation margin to which the Fund is entitled.

6. Without the exemption requested, the Fund would demand that any excess variation margin be remitted to it on the business day next succeeding the business day on which a determination is made by a FCM that there is variation margin due to the Fund. Although the Fund could demand that any excess variation margin be remitted to it as soon as such excess was available, it would be unnecessarily costly and unduly burdensome for the Fund and a FCM if the Fund is required to demand payment of small amounts of variation margin. The Fund's custodial would impose a charge of $25 for each transfer of excess variation margin to the Fund's general custodian account when the Fund's open futures contract positions show a net gain.

7. In support of its requested relief from section 17(f) of the 1940 Act, Applicant undertakes, with respect to futures contracts, that the Fund's custodial agreement will always provide for the transfer of the margin deposit assets maintained for each FCM into a segregated account with its custodian and will provide that (1) the custodian will take instructions with respect to disposition of assets in that account only from that FCM; and (2) in directing the disposition of these assets, the FCM must state that the Fund is in default on an obligation to perform on a futures contract, that all conditions precedent to its right to direct disposition have been satisfied, and that the disposition is for a proper purpose under, and in all other respects complies with, the terms of its agreement with the Fund. The Fund will enter into an agreement with each FCM which will provide that (1) Fund assets which would otherwise be physically held by the FCM will be in the possession of the custodian until released or sold or otherwise disposed of in accordance with or under the terms of that agreement; (2) that those assets would not otherwise be pledged or encumbered by the FCM; (3) that when requested by the Fund the FCM would cause the custodian to release to the Fund's general custodial account any assets to which the Fund is entitled under the terms of such agreement; and (4) that assets in the segregated account shall otherwise be used only to satisfy the Fund's obligations to the FCM under the terms of that agreement. In the prospectus used for the sale of its shares, the Fund will appropriately disclose the risk of loss or delay in recovery of margin deposits in the event of a broker's insolvency or bankruptcy, although the foregoing arrangements are intended to reduce that risk.

8. Applicant states that any variation margin payable to the Fund by FCM will be reflected as net gains, will immediately be shown as increased equity in the Fund's account with the FCM and will immediately be credited to the Fund's net asset value. Conversely, variation margin payments made to an FCM by the Fund will be reflected as net losses. The Fund undertakes to monitor on a daily basis amounts of variation margin due to it and promptly to demand payment and transfer of those amounts from each FCM to the Fund's general custodial account whenever the amount of variation margin owed to the Fund by a given FCM exceeds $50,000. The Fund anticipates that excess margin will be returned to it one business day or less after the $50,000 level is exceeded with respect to a particular FCM.

**Applicant's Legal Conclusion**

1. Applicant believes that the proposed practices in connection with excess variation margin payments is structured to minimize any risk of loss to the Fund, while benefitting the Fund by reducing transactional costs incurred by the Fund in purchasing and selling future contracts. Accordingly, Applicant submits that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 88-4436 Filed 3-1-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-25361; File No. SR-CSE-87-1]**

## Self-Regulatory Organization; Proposed Rule Change; Cincinnati Stock Exchange

In the matter of Self-Regulatory Organizations: proposed rule change by the Cincinnati Stock Exchange relating to the Use of the General Securities Representative

(Series 7) Examination and the Uniform Application for Securities Industry Registration or Transfer (Form U–4).

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 18, 1987, the Cincinnati Stock Exchange ("Exchange" or "CSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The CSE is interpreting Article II, Section 5.1(b) of its Code of Regulations to recognize its use of the General Securities Representative ("Series 7") examination and the Uniform Application for Securities Industry Registration or Transfer ("Form U–4") in fulfilling its self-regulatory organization obligations.

**II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change**

*A. Self-Regulatory Organization's Statement Regarding the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The proposed rule change is being submitted for the purpose of allowing the CSE to use, and continue to use, the Series 7 examination and its study outline to qualify those persons seeking registration as general securities representatives. This will fit in with the Exchange's Rules and its obligation as a self-regulatory organization to insure that persons associated with member organization successfully complete a training course and examination to demonstrate an adequate knowledge of the securities business.

In addition, this proposed rule change is being submitted to allow the CSE to use, and continue to use, Form U–4 as part of its procedure for registration and oversight of member firm personnel. The use of the U–4 form provides, along with NASD's Central Registration Depository (CRD) System, an efficient method of reviewing and tracking the continuous and frequent entry and movement of individuals in the securities industry as well as changes in their employment histories. The Form U–4 used by the Exchange has been amended by adding language to the signature page that would provide for consent to service of process by associated persons.

Use of the Series 7 examination and Form U–4 for the above-described purposes is consistent with Section 6(c)(3)(A) of the Act, which authorizes a national securities exchange to "examine and verify the qualifications of an applicant" to become a member or associated with a member in accordance with procedures established by the Rules of the exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The Exchange has neither solicited nor received any comments on the proposed rule change.

**III. Date of Effectiveness of the proposed rule change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to the file number in the caption above and should be submitted by March 23, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 18, 1988.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88–4433 Filed 3–1–88; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–25387; File No. SR–MSE–87–13]**

## Self-Regulatory Organization; Proposed Rule Change; Midwest Stock Exchange Inc.

In the matter of self-regulatory organizations; proposed rule change by Midwest Stock Exchange, Incorporated relating to the revised Co-Specialist Evaluation Questionnaire.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 5, 1987 the Midwest Stock Exchange, Incorporated ("MSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The MSE is proposing to revise its Co-Specialist Evaluation Questionnaire to be completed periodically by floor brokers to assist in the fair and accurate rating of co-specialist performance.[1]

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below.

[1] In its filing the MSE submitted copies of the revised Co-Specialist Evaluation Questionnaire. Copies of the questionnaire are available and may be obtained from the Commission at the address noted in Item IV or from the Exchange.

The self-regulatory organization 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*

The purpose of the proposed rule change is to revise the current Co-Specialist Evaluation Questionnaire to reflect modifications recently approved by the Exchange's Committee on Floor Procedure, Committee on Specialist Assignment and Evaluation ("CSAE") and Executive Committee. The revisions reflect the continuing commitment of the Exchange to maintaining the quality of its markets.

The Questionnaire is a subjective measure used to recognize good performance and to identify co-specialists functioning at substandard levels. Floor brokers are in a unique position to contribute to the MSE's efforts by providing evaluations of the performance of the specialist units with which they deal. It is necessary that all co-specialists meet certain standards to attract order flow to the Floor and that an accurate method be developed to ensure that all co-specialists are rated fairly.

The revised Questionnaire represents the culmination of an extensive review process involving the efforts of not only floor brokers, co-specialists and other market professionals, but also the efforts of a professional consultant. This review process further utilized information received from an expert panel of key personnel and information obtained from interviews with Exchange staff members as well as other knowledgeable individuals. In addition, a general questionnaire was circulated among the Exchange membership for purposes of soliciting their input in respect to co-specialist duties. This broad ranging input assisted the Exchange in developing a questionnaire that not only reflects more accurately the various co-specialist functions, but at the same time includes questions more easily understood and responded to by floor brokers.

The professional consultant, commissioned by the Exchange, had as its goal the creation of a document that reflected, the objectives of the Exchange, while at the same time accurately identified the current duties of a co-specialist. The consultant pointed out that one problem encountered with performance rating scales such as those used in the current questionnaire, is that the individuals doing the evaluation have varying perceptions as to what constitutes good and poor performance. In recognition of this fact, it was determined that the revised Questionnaire would take the form of a behaviorally anchored rating scale (BARS). These scales identify the duties under evalutation and provide examples of performance ranging from very good to very poor. The consultant then gathered information via interviews with members and through the use of questionnaires, regarding the questions themselves. Based on this information, a general consensus was determined in respect to the eight most important co-specialist duties, the wording used to describe these duties and the wording of the critical incidents which serve as examples of good, average and poor performance. Further, the determination was made that certain co-specialist duties are more important and therefore should be weighted more heavily and that only floor brokers who actually interact with a given co-specialist should be entitled to rate him/her.

The major changes in respect to the revised Questionnaire are as follows:

1. The revised Questionnaire takes into account the frequency with which a given floor broker interacts with a particular co-specialist. This frequency, and therefore, the applicable weighting attributed to a floor broker's response, is arrived at through the use of two questions, one completed by the floor broker that includes the names of all co-specialists and one by the co-specialist that includes the names of all floor brokers. This information is then reconciled by the Exchange staff.

2. Question Number 5 on the current Questionnaire, "Is the Co-Specialist Diligent at Displaying a Representative Market", has been replaced on the new Questionnaire by Question Number 1, "Displays Representative Bids and Offers for Actively Traded Issues". The new question is essence rewords the old question but narrows its focus to actively traded issues.

3. Question Number 2 on the revised Questionnaire, "Accepting and Filing Orders in Thinly Traded Issues", is a new question and has no direct corresponding question on the current Questionnaire. This question is intended to identify whether a co-specialist puts up a meaningful market, or merely quotes an issue automatically, and further recognizes the difficulty in trading thinly traded issues and makes an allowance for that fact.

4. Question Number 3 on the new Questionnaire, "Executes Public Limit Orders on a Timely Basis", like paragraph 3 above, has no equivalent on the current Questionnaire. The intent of this question is to determine whether a co-specialist will fill limit orders in the normal course of business without the necessity of follow-up by the broker.

5. Question Number 4 on the new Questionnaire, "Filling Retail Orders When the Order is Larger than the Best bid or Offer", has to a certain extent replaced Question Number 2 on the current Questionnaire, "To What Extent Does the Co-Specialist Participate as Principal When an Actual or Reasonably Anticipated Imbalance Between Supply and Demand Occurs". The intent of the new question is to determine how frequently a co-specialist is willing to step into the middle when an order imbalance occurs in order to fill retail orders.

6. Question Number 5 on the new Questionnaire, "Dealing with Professional Orders", has no direct counterpart under the current Questionnaire. The intent of this question is to determine the willingness of a co-specialist to handle professional orders and fairly represent them in the marketplace.

7. Question Number 6 on the new Questionnaire, "Dealing with the Block Cross Situation", has no direct counterpart on the current Questionnaire. The intent of this question is to determine whether a given co-specialist will step aside in block cross situations, and where no quote is being disseminated, not interfere with the efforts of a floor broker to cross the block.

8. Question Number 7 on the new Questionnaire, "Providing Information to Brokers," is to some extent a replacement for Question Number 3 on the current Questionnaire, "How Well Does the Co-Specialist Perform All Administrative Duties". The intent of this question is to determine whether a co-specialist cooperates with floor brokers in making available to the floor broker, information which might affect trading in a particular issue.

9. The final question on the new Questionnaire, "Resolution and Adjustment of Errors", has no direct counterpart on the current Questionnaire. The intent of this question is to determine whether a co-specialist is willing to make accommodations in error situations where fault cannot be clearly established.

In respect to the use of weighted questions under revised Questionnaire, it is possible for a co-specialist to receive a maximum score from any one floor broker of 500 points. This figure is arrived at based on a maximum of 5

points awarded for each question, multipled by a 100 point maximum available under the weighting of questions for each broker's rating of a co-specialist, the following formula will be used:

(W1*S1+W2*S2+W3*S3+W4*S4+W5*S5+W6*S6+W7*S7+W8*S8)/5

Where W1—W8 are Table 6 weights and S1—S8 are scores assigned to a co-specialist by a broker

The revised Questionnaire forms a part of what will soon be a total Co-Specialist Evaluation Criteria package. The remaining parts of this will be filed with the Commission upon their completion. The revised Questionnaire is now being submitted to replace the current Questionnaire used by the CSAE to assist it in the ongoing process of allocating stocks.

The Exchange believes that the revised Questionnaire furthers the aforementioned goals of maintaining and improving the quality of MSE markets by providing a more accurate method of rating co-specialists performance.

The proposed rule change is consistent with section 6 of the Act in that the Questionnaire is designed to promote just and equitable principles of trade by assisting in the measurement of co-specialist performance, thereby helping to ensure that co-specialists meet certain minimum standards. The proposed rule change also fosters cooperation between brokers and co-specialists on the MSE floor by permitting brokers to participate in the evaluation of the specialist units with which they deal.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments were solicited and received from various floor members and are reflected in the revised Questionnaire.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve the proposed rule change, or (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to the file number in the caption above and should be submitted by March 23, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 23, 1988.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-4434 Filed 3-1-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-25388; File No. SR-Phlx-87-42]**

## Self-Regulatory Organization; Proposed Rule Change; Philadelphia Stock Exchange

In the matter of self-regulatory organizations: notice of filing and order granting partial accelerated approval to a proposed rule change by the Philadelphia Stock Exchange, Inc., to extend the effectiveness of its rules governing the allocation, reallocation and transfer of exchange-listed securities until such time as the commission approves the rules on a permanent basis.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 20, 1987, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Philadelphia Stock Exchange, Inc. ("Phlx" or the "Exchange") hereby proposes to extend the applicability of its rules governing the allocation, reallocation and transfer of securities listed on the Exchange for an indefinite period to afford the Commission the opportunity to approve them on a permanent basis.[1] The Exchange also requests that the amendment to the Exchange's Options Floor Procedure Advice which fines floor brokers who fail to complete the Options Specialist Performance Evaluation Questionnaire ("SPEQ"), and which was originally approved on a pilot basis along with the allocation rules be extended until final approval.

**II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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*

The purpose of the proposal is to extend the Exchange's Specialist Allocation and Evaluation pilot program until such time as the Commission approves it on a permanent basis. As of March 31, 1987, the rules were approved for an eight-month period by the

[1] The Phlx filed Amendment No. 1 to the proposed rule change on February 8, 1988, requesting permanent approval of its pilot program involving the allocation, reallocation, and transfer of securities listed on the Exchange. The Commission, in this notice, is granting accelerated effectiveness to the portion of the filing specifically requesting an extension of the pilot until such time as the Commission determines whether to approve the specialist allocation and evaluation rules on a permanent basis as requested herein.

Commission.[2] The extension expired on November 30, 1987. The Exchange has been applying these rules without incident and wishes to continue to apply them permanently.

In the approval order, [3] the Commission mentioned that it had some concerns about the pilot program. In order to have the program approved permanently, the Exchange will now address these concerns.

The Commission was concerned that the Committee's discretionary authority in conducting evaluations and making allocation and reallocation decisions might become excessive and dilute the purpose and effectiveness of the new rules. The Exchange believes that this has not occurred. In fact the Committee has always followed the stated guidelines in Rule 511(b) in allocating new equity books and options classes. The Exchange commits to filing as proposed rule changes with the Commission any new guidelines that the Committee is to follow or criteria that it will consider.

With respect to equity specialist evaluations, the Exchange has developed a carefully thought-out objective review that was submitted to the Commission prior to its implementation. Like allocation decisions, the implementation of this review format may be appealed by any aggrieved Exchange member to the Board of Governors.

The Commission's second concern dealt with the Rule 501(c) provision allowing the Committee to require a specialist unit to hire additional staff to retain an allocation. This requirement is intended to allow the Committee the means to take such action if it is in the Exchange's best interest. The Committee has not, however, imposed this requirement or reallocated a book because a unit has not complied with the requirement. Further, as the Commission noted, the specialist may always appeal this decision should the Committee so act.

The Commission was also concerned that the Committee might establish new criteria for use in allocation decisions at any time. As explained when these rules were considered earlier this year, any criteria would only be applied at the beginning of a quarter and after notice to specialists to avoid due process problems. Further, as previously stated, any significant new criteria would be submitted to the Commission as a proposed rule change. Over the past eight months, no additional criteria have been adopted. All allocation decisions were made based on existing criteria so no notices were given to the specialists or the Commission.

Finally, the Commission was concerned with the provision for a special review of a specialist unit at any time. As suggested in the approval order, the Phlx has identified some special situations that may involve a special review. The most probable situation not specifically covered by the Rules would be where customers, floor brokers or market makers lodged valid and substantial complaints against a specialist. Other situations that might prompt a special review are covered expressly under the Rules: within 60 days after a transfer of equity or options books, when there has been a material change in a specialist unit, or, with respect to equity specialists, when their performance evaluations so necessitate under Rule 515. It is important to note that this kind of review will not be conducted unless unusual circumstances dictate.

The proposed rule change is consistent with Section 6(b)(5) of the Act in that the rules will promote just and equitable principles of trade, the facilitation of transactions in securities, the removal of impediments to and the perfection of the mechanism of a free and open market and a national market system.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No comments on this proposed rule change have been solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange requests that the portion of the proposed rule change requesting an extension of the pilot program be granted accelerated effectiveness pursuant to Section 19(b)(2) of the Act. This portion of the filing seeks to extend the pilot program, including the amendment to the Options Floor Procedure Advice, until such time as the Commission makes a determination on whether the pilot should be approved on a permanent basis, disapproved or modified.

**IV. Solicitation**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the file number in the caption above and should be submitted before March 23, 1988.

**V. Conclusion**

The Commission finds that approval of the portion of the proposed rule change that would extend the effectiveness of the Exchange's specialist allocation and evaluation rules, as well as the amendment to the Options Advice, until such time as the Commission takes final action on the Phlx's request for permanent approval of its pilot, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and the requirements of Section 6 and the rules and regulations thereunder. In particular, while the Commission still has concerns over the aspects of the Phlx program as noted above, the Commission believes that the extension of the pilot until final Commission action will enable the Exchange to continue to monitor and evaluate specialist performance, thereby facilitating transactions in securities as well as furthering investor protection and the public interest. In addition, an extension of the Phlx's authority to fine floor brokers who fail to complete the options SEPQ is necessary to facilitate the options portion of the specialist evaluation and allocation program.

The Commission finds good cause for approving the proposed rule change prior to the day after date of publication of notice thereof in that the Commission believes it is appropriate to permit the Exchange to continue to conduct its pilot

[2] See Securities Exchange Act Rel. No. 24496, March 31, 1987, 52 FR 20183.

[3] *ID*

program as well as find floor brokers who fail to complete the options SPEQ until such time as the Commission takes further action on whether to approve, modify, or disapprove the program. Accordingly, the Commission believes that accelerated effectiveness of the extension of the pilot program is appropriate.

It is therefore ordered, pursuant to section (19)(b)(2) of the Act that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[4]

Dated: February 23, 1988.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-4435 Filed 3-1-88; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Radio Technical Commission for Aeronautics (RTCA), Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on March 18, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's remarks and introductions; (2) Approval of minutes of the meeting held on January 15, 1988; (3) Executive Director's Report; (4) Special Committee Activities Report for January-February 1988; (5) Fiscal & Management Subcommittee Report; (6) Approve Test for RTCA Federal Charter Proposal; (7) Consideration of Proposal to Establish New Special Committees; (8) Consideration of approval of Special Committee Reports:

a. SC-135 Proposed Change No. 1 to RTCA/DO-160B, Environmental Conditions and Test Procedures for Airborne Equipment," to add Section 22, "Lighting Induced Transient Susceptibility."

b. SC-147 Proposed Change No. 5 to RTCA/DO-185, Volumes I and II, "Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance System (TCAS) Airborne Equipment."

c. SC-151 Proposed RTCA Document "Minimum Operational Performance Standards for Airborne MLS Area Navigation Equipment."

(9) Approve proposed Response to Megapulse Letter; (10) Other business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 23, 1988.

**Herbert P. Goldstein,**

*Designated Officer.*

[FR Doc. 88-4413 Filed 3-1-88; 8:45 am]

BILLING CODE 4910-13-M

### Maritime Administration

**[Docket No. S-824]**

### American President Lines, Ltd., Application

American President Lines, Ltd. (APL), by application dated February 5, 1988, requests waiver of the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended (Act), for foreign-flag operations of APL, or related companies, under the terms of Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB-417 to continue to own, operate and/or charter three foreign-flag vessels of approximately 350 FEU capacity, said vessels to be operated between a foreign port on Line A or Line B as described in Appendix A of the ODSA including Singapore, Manila, and Thailand until May 22, 1990. Current authority expires on May 22, 1988.

**APL's Existing Services**

APL now performs four subsidized containership services. Its two transpacific services cover the range of former Trade Route (TR) 29 to/from California on up to 108 annual sailings (Line A) and to/from Oregon-Washington on up to 80 annual sailings (Line B). Former TR 29 includes ports in the Far East on the continent of Asia from the U.S.S.R. to Thailand, inclusive, Japan, Taiwan, and the Philippines. APL's two Extension services add authority to serve ports of Southeast and South Asia and the Persian Gulf on up to 28 sailings to/from California (Line A Extension) and up to 80 sailings to/from Oregon-Washington (Line B Extension). APL is permitted by its contract to provide any part of the service by transfer or relay of cargo between subsidized vessels at any foreign port on the authorized services.

APL performs its Line A and Line B services primarily with line-haul vessels making direct calls at most major foreign TR 29 ports, including Yokohama, Kobe, and Okinawa, Japan; Kaohsiung and Chi-lung, Taiwan; and Hong Kong. Korea and the Philippines are served by APL subsidized feeder vessels.

The APL Extension services are currently performed by a feeder network that includes two subsidized U.S.-flag APL owned vessels providing service on a relay basis to Singapore and Colombo via Kaohsiung. The remaining feeder services are on foreign-flag common carriers.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on March 23, 1988. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

By Order of the Maritime Administrator.

Date: February 26, 1988.

**Joel C. Richard,**

*Assistant Secretary, Maritime Administration.*

[FR Doc. 88-4490 Filed 3-1-88; 8:45 am]

BILLING CODE 4910-81-M

### National Highway Traffic Safety Administration

### Highway Safety Program; Amendment of Conforming Products List of Evidential Breath Testing Devices

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice.

[4] 17 CFR 200.30-.3.

**SUMMARY:** This notice amends the Conforming Products List for instruments which have been found to conform to the Model Specifications for Evidential Breath Testing Devices (49 FR 48855).

**EFFECTIVE DATE:** March 2, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ronald E. Engle, Office of Alcohol and State Programs, NTS–23, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; Telephone (202) 366–2717.

**SUPPLEMENTAL INFORMATION:** On November 5, 1973 (38 FR 30459), the National Highway Traffic Safety Administration (NHTSA) published the Standards for Devices to Measure Breath Alcohol. A Qualified Products List of Evidential Breath Measurement Devices, of instruments which met this standard, was first issued on November 21, 1974 (39 FR 41399).

On December 14, 1984 (49 FR 48854), NHTSA converted this standard to Model Specifications for Evidential Breath Testing Devices, and published in Appendix D to that notice (49 FR 48864), a conforming products list (CPL), of instruments which were found to conform to the Model Specifications. An amended CPL was published in the **Federal Register** on April 6, 1986 (51 FR 12258).

Since the publication of the April 1986 conforming products list, a number of devices have been tested in accordance with the Model Specifications. These tests indicate that 11 evidential breath testing devices, not previously on CPL, conform to the Model Specifications. These instruments include: CMI, Inc.'s Intoxilyzer 5000 (w/Cal. Vapor Re-Circ.) and Intoxilyzer 5000 (w/⅜" ID hose option); Intoximeters, Inc.'s Alcosensor IIIA, Intoximeter 3000 (rev B2), and Intoximeter 3000 (rev B2A); Komyo Kitagawa's Breath Alcohol Meter PAM 101B; Lion Laboratories Ltd.'s Alcolmeter EBA; National Draeger, Inc.'s Breathalyzer 900BG; Siemans-Allis' Alcomat F; Stephenson Corp.'s Breathalyzer 900; and Verax Systems, Inc.'s BAC Verifier Datamaster II.

In addition, we are also adding Lion Laboratories' Auto Alcolmeter to the list. This device was tested and found to conform to the agency's criteria in a March 1980 interim report. It had been included on our Qualified Products List until May 1982 when it was deleted on the basis that it had never been marketed in the United States. The manufacturer has requested that the instrument be reinstated on the CPL at this time since Lion Laboratories is marketing the Auto-Alcolmeter with the U.S. Army in Europe.

The Conforming Products List is therefore amended as follows:

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES

| Manufacturer and Model | Mobile | NonMobile |
|---|---|---|
| Alcohol Countermeasures System, Inc., Port Huron, MI: | | |
| Alert J3AD | X | X |
| BAC Systems, Inc., Ontario, Canada: Breath Analysis Computer | | X |
| CAMEC Ltd., North Shields, Tyne and Ware, England: IR breath analyzer | X | X |
| CMI, Inc., Mintum, Co: | | |
| 4011A | X | X |
| 4011AS | X | X |
| 4011AQ-A | X | X |
| 4011AQ-2 | X | X |
| 4011AW | X | X |
| 4011A27-10100 | X | X |
| 4011A27-10100 with filter | X | X |
| 5000 | X | X |
| 5000 (w/Cal. Vapor Re-Circ.) | X | X |
| 5000 (w/3/8" ID hose option) | X | X |
| Decator Electronics, Decator, IL: Alco-Tector model 500 | | X |
| Intoximeters, Inc., St. Louis, MO: | | X |
| Photo Electric Intoximeter | | X |
| GC Intoximeter MK II | X | X |
| GC Intoximeter MK IV | X | X |
| Auto Intoximeter A1-1000 | X | X |
| Intoximeter 3000 | X | X |
| 3000 (rev B2) | X | X |
| 3000 (rev B2A) | X | X |
| Alco-Sensor III | X | X |
| Alco-Sensor III with printer | X | X |
| Alco-Sensor IIIA | X | X |
| Komyo Kitagawa, Kogyo, K.K.: | | |
| Alcolyzer DAP-2 | X | X |
| Breath Alcohol Meter PAM 101B | X | X |
| Lion Laboratories, Ltd., Cardiff, Wales, UK: | | |
| Alcolmeter AE-D1 | X | X |
| Alcolmeter SD-2 | X | X |
| Alcolmeter EBA | X | X |
| Auto-Alcolmeter | | X |
| Luckey Laboratories, San Bernadino, CA: | | |
| Alco-Analyzer 1000 | | X |
| Alco-Analyzer 2000 | | X |
| National Draeger, Inc., Pitisburg, PA: | | |
| Alcotest 7010 | X | X |
| Alcotest 7110 | X | X |
| Breathalyzer 900 | X | X |
| Breathalyzer 900A | X | X |
| Breathalyzer 900BG | X | X |
| Omicron Systems, Palo Alto, CA: | | |
| Intoxilyzer 4011 | X | X |
| Intoxilyzer 4011AW | X | X |
| Siemans-Allis, Cherry Hill, NJ: | | |
| Alcomat | X | X |
| Alcomat F | X | X |
| Smith and Wesson Electronics, Springfield, MA: | | |
| Breathalyzer 900 | X | X |
| 900A | X | X |
| 1000 | X | X |
| 2000 | X | X |
| 200 (Non-Humidity Sensor) | X | X |
| Stephenson, Corp., Breathalyzer 900 | X | X |
| Verax Systems, Inc., Fairport, NY: | | |
| The BAC Verifier | X | X |
| BAC Verifier Datamaster | X | X |
| BAC Verifier Datamaster II | X | X |

(23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and 501.)

**George Reagle,**

*Associate Administrator for Traffic Safety Programs.*

[FR Doc. 88–4414 Filed 3–1–88; 8:45 am]

BILLING CODE 4910-59-M

## VETERANS ADMINISTRATION

### Nondiscrimination in Federally Assisted Programs

**AGENCY:** Veterans Administration.

**ACTION:** Notice of review of age distinctions.

**SUMMARY:** The purpose of this notice is to publish a review of age distinctions contained in VA regulations and administrative issuances, in compliance with the Age Discrimination Act of 1975 (42 U.S.C. 6101). On August 23, 1985, the VA published in the **Federal Register** (50 FR 34130) its final regulations to enforce nondiscrimination on the basis of age. The regulations became effective on September 22, 1985.

**DATES:** Comments must be received on or before April 1, 1988. Comments will be available for public inspection until April 11, 1988.

**ADDRESSES:** Interested persons are invited to submit written comments regarding this review to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments will be available for public inspection only in room 132 of the above address only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until April 11, 1988.

Unabridged copies of this review will be available for public inspection at the above address. A tape recorded copy of this review is available for those unable to read coventionally printed material.

**FOR FURTHER INFORMATION CONTACT:** Rodney J. Cash, Equal Opportunity Specialist, Office of Equal Opportunity, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2150.

**SUPPLEMENTARY INFORMATION:** The Age Discrimination Act of 1975, which prohibits discrimination in programs and activities receiving Federal financial assistance, and the governmentwide regulations published by the Department of Health and Human Services to implement the Act require the VA to conduct a review of age distinctions it imposes on those programs and activities which receive Federal financial assistance from VA. The purpose of the review is to determine how age distinctions are used and whether they are permissible under the requirements of the Act.

The review, which must be published for public comment, must indicate those age distinctions imposed by the VA on its Federal financial assistance programs and activities by regulations, policies and administrative practices which meet the requirements of the Act and will be continued, and those which do not meet the requirements of the Act and will be eliminated. The report must identify, also, those age distinctions not imposed by regulation which meet the requirements of the Act, and subsequently, will be incorporated in the regulations applicable to the particular program or activity.

Age distinctions subject to this review are administered by the Veterans Administration through the Department of Medicine and Surgery, Department of Veterans Benefits, and Department of Memorial Affairs. All age distinctions continued in the regulations or administrative issuances subject to this review were authorized by statutes, consistent with 45 CFR 90.15. There is one VA regulation containing an age distinction to be promulgated at 38 CFR 21.6001 through 21.6420 which administers the Temporary Vocational Training Program. A Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** (52 FR 30178) on August 13, 1987.

Cited in the appendices to this notice are those VA regulations and administrative issuances which:

(1) Provide benefits or assistance to persons based upon age;

(2) Establish criteria for participation in age related terms; or

(3) Describe intended beneficiaries or target groups in age related terms.

Appendix A lists the age distinctions contained in VA regulations. Appendix B lists the age distinctions contained in administrative issuances. The first column contains the name of the program; the second column identifies the VA regulation or adminstrative issuance containing the age distinction; and the third column identifies the statute authorizing the use of the age distinction consistent with 45 CFR 90.15 of the governmentwide regulations.

Dated: February 25, 1988.

**Thomas K. Turnage,**

*Administrator.*

| Program | Appendix A Regulations | Justification |
|---|---|---|
| Veterans' Educational Assistance (Chapter 34). | 1. 38 CFR 21.4236(b)(1)(B) Special Supplemental Assistance (tutorial | 38 U.S.C. 1692(b)(2) |
| | 2. 38 CFR 21.4135—Discontinuance dates | 38 U.S.C. 101 |
| | 3. 38 CFR 21.4136 (f)—Rates—educational assistance allowance—38 U.S.C. Chapter 34—Dependents. | 38 U.S.C. 101 |
| | 4. 38 CFR 3.57—Child | 38 U.S.C. 1682 |
| Survivors' and Dependents' Educational Assistance. | 1. 38 CFR 3.807 Dependents' Educational Assistance—Certification | 38 U.S.C. 1701 |
| | 2. 38 CFR 21.3021—Definitions | 38 U.S.C. 1701 |
| | 3. 38 CFR 21.3040—Eligibility—child | 38 U.S.C. 1712 |
| | 4. 38 CFR 21.3041—Periods of eligibility—child | 38 U.S.C. 1712 |
| | 5. 38 CFR 21.3043—Suspension of program—child | 38 U.S.C. 1712 |
| | 6. 38 CFR 21.3030—Claims | 38 U.S.C. 1713 |
| | 7. 38 CFR 21.3031—Informal Claims | 38 U.S.C. 1713 |
| | 8. 38 CFR 3.707(A)—Dependents' Educational Assistance—Child | 38 U.S.C. 1762 |
| | 9. 38 CFR 21.3023—Nonduplication—pension, compensation and dependency and indemnity compensation. | 38 U.S.C. 1762 |
| | 10. 38 CFR 21.3300(a)—Special restorative training | 38 U.S.C. 1740 |
| | 11. 38 CFR 21.4102 Requirement—38 U.S.C. Chapter 35 | 38 U.S.C. 1720, 1736, 1741, 1761 |
| | 12. 38 CFR 21.4139(b) Payee | 38 U.S.C. 1780 |
| | 13. 38 CFR 21.4141—Offsets, 38 U.S.C. Chapter 35—pension, compensation and dependency and indemnity compensation. | 38 U.S.C. 1762 |
| | 14. 38 CFR 3.707—Dependents' Educational Assistance | 38 U.S.C. 1762 |
| VA Hospital, Domiciliary or Nursing Home Care. | 1. 38 CFR 17.47—Eligibility for hospital, domiciliary or nursing home care | 38 U.S.C. 610 |
| Civilian Health and Medical Program of the VA (CHAMPVA). | 1. 38 CFR 17.54—Medical Care for Survivors and Dependents of Certain Veterans. | 38 U.S.C. 613 |
| State Cemetery Grants | 1. 38 CFR Part 39—Scope of grants program | 38 U.S.C. 1008 |
| Temporary Vocational Training Program. | 1. 38 CFR 21.6001—21.6420 (proposed) | 38 U.S.C. 524 |

| Program | Appendix B Administrative Issuances | Justification |
|---|---|---|
| Veterans' Educational Assistance (Chapter 34). | 1. M22-2, Part IV, Chapter 12, Paragraph 12.03b—Certification by School Official | 38 U.S.C. 1692(b)(2) |
| | 2. M22-2, Part IV, Chapter 7, Paragraph 7.05—Effective Dates for Removing Dependents. | 38 U.S.C. 101 |
| | 3. M22-2, Part IV, Chapter 7, Paragraph 7.02—Qualifying Dependents | 38 U.S.C. 1682 |
| Survivors' and Dependents Educational Assistance | 1. M21-1, Chapter 10, Paragraph 10.06—Action Upon Child's Attainment of Ages 13, 16 and 18. | 38 U.S.C. 1763, 1701 |
| | 2. M21-1, Chapter 10, Paragraph 10.11-10.17—Children—Relationship and School Attendance; Chapter 11, Paragraph 11.10—Permanent Incapacity for Self-Support. | 38 U.S.C. Ch. 35, Sections 1712, 1713, 1762, 1763 |
| | 3. M22-2, Part II, Chapter 6, Paragraph 6.02a—Basic Eligibility Determinations | 38 U.S.C. 1701 |
| | 4. M22-2, Part II, Chapter 6, Paragraph 6.04—Periods of Eligibility—Child | 38 U.S.C. 1712 |
| | 5. M22-2, Part II, Chapter 1, Paragraph 1.01(d)(4)—Application Forms | 38 U.S.C. 1713 |
| | 6. M22-2, Part V, Chapter 7, Paragraph 7.15—Special Restorative Training Awards—Chapter 35 Only. | 38 U.S.C. 1740 |

| Program | Appendix B Administrative Issuances | Justification |
|---|---|---|
| | 7. M22-2, Part II, Chapter 8, Paragraph 8.01e. Referrals for Counseling Children | 38 U.S.C. 1720, 1736, 1741, 1761 |
| | 8. M22-2, Part II, Chapter 2, Paragraph 2.05—Pension, Compensation and Dependency and Indemnity Compensation—Chapter 35. | 38 U.S.C. 1762 |
| | 9. M21-1, Chapter 10, Paragraph 10.09—Nonduplication of Benefits | 38 U.S.C. 1762 |
| | 10. DVB Circular 20-85-10, Temporary Vocational Training Program for Certain New Pension Recipients. | 38 U.S.C. 524 |
| Veterans Benefits | 1. M21-1, Chapter 10, Paragraph 10.01-10.05, Children—Relationship and School Attendance Chapter 11, Paragraph 11.01-11.11, Permanent Incapacity for Self-Support. | 38 U.S.C. 101(4)(A), 101(4)(B) |
| Approval of Educational Institutions | 2. M21-1, Chapter 10, Paragraph 10.06-10.10 | 38 U.S.C. 104(a), 104(b) |
| | 3. Program Guide 21-1, Section A-12—Direct Payment at Majority | 38 U.S.C. 101(4)(A), 101(4)(B) |

[FR Doc. 88-4482 Filed 3-1-88; 8:45 am]
BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 53, No. 41
Wednesday, March 2, 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).

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 10:00 a.m., Tuesday, March 22, 1988.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Rule enforcement reviews.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 88–4582 Filed 2–29–88; 10:52 am]

BILLING CODE 6351-01-M

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 10:30 a.m., Tuesday, March 22, 1988.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Enforcement Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 88–4583 Filed 2–29–88; 10:52 am]

BILLING CODE 6351-01-M

**CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** 2:30 p.m., Thursday, March 3, 1988.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

**STATUS:** Closed to the Public.

**MATTERS TO BE CONSIDERED:** Enforcement Matter OS #3530.

The Commission will consider Enforcement Matter OS #3530.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301–492–5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

**Sheldon D. Butts,**

*Deputy Secretary.*

February 29, 1988.

[FR Doc. 88–4606 Filed 2–29–88; 1:53 p.m.]

BILLING CODE 6355-01-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 11:00 a.m., Monday March 7, 1988

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Street NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 26, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88–4509 Filed 2–26–88; 5:01 pm]

BILLING CODE 6210-01-M

**INTERNATIONAL TRADE COMMISSION**

**TIME AND DATE:** Tuesday, March 8, 1988 at 10:00 a.m

**PLACE:** Room 101, 500 E Street, SW, Washington, DC 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints.
5. Inv. 731–TA–376 (Final) (Certain Stainless Steel Buttweld Pipe Fittings from Japan)—briefing and vote.
6. Any items left over from previous agenda.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary (202) 252–1000.

**Kenneth R. Mason,**

*Secretary*

February 24, 1988.

[FR Doc. 88–4501 Filed 2–26–88; 5:01 pm]

BILLING CODE 7020-02-M

**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of February 29, March 7, 14, and 21, 1988.

**PLACE:** Commissioners' Conference Room, 1717 H Street, NW., Washington, DC

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of February 29**

*Thursday, March 3*

3:55 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
4:30 p.m.
Briefing by Executive Branch (Closed—Ex. 1)

*Friday, March 4*

9:30 a.m.
Briefing on Sequoyah Restart (Public Meeting)

**Week of March 7**

Tentative

*Thursday, March 10*

9:30 a.m.
Discussion/Possible Vote on Full Power Operating License for South Texas (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) a. Sequoyah Restart (Tentative)

*Friday, March 11*

10:30 a.m.
Discussion/Possible Vote on Rancho Seco Restart (Public Meeting)

**Week of March 14**

Tentative

*Monday, March 14*

2:00 p.m.
Briefing on the Status of Efforts to Develop a De Minimis Policy (Public Meeting)

*Thursday, March 17*

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Braidwood–2 (Public Meeting)
2:00 p.m.
Briefing on Status of TMI–2 (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

*Friday, March 18*

10:00 a.m.
NRC Participation in International Agreements and Research Programs (Public Meeting)

**Week of March 21**

Tentative

*Monday, March 21*

2:00 p.m.
Briefing on Status of Proposed Rulemaking on Basic QA in Radiation Therapy and Related Activities (Public Meeting)

*Tuesday, March 22*

10:00 a.m.
Classified Security Briefing (Closed—Ex. 1)
2:00 p.m.
Briefing on High Priority AEOD Issues (Public Meeting)

*Thursday, March 24*

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Note:** Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

**TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—**(202) 634–1498.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill (202) 634–1410.

**William M. Hill, Jr.,**

*Office of the Secretary.*

February 25, 1988.

[FR Doc. 88–4527 Filed 2–26–88; 5:01 pm]

BILLING CODE 7590–01–M

federal register

Wednesday
March 2, 1988

Part II

# Office of Management and Budget

**Budget Deferrals; Notice**

## OFFICE OF MANAGEMENT AND BUDGET

### Budget Deferrals

**To the Congress of the United States:**

In accordance with the Impoundment Control Act of 1974, I herewith report three new deferrals of budget authority totaling $3,570,665,449 and ten revised deferrals of budget authority now totaling $4,973,643,337.

The deferrals affect programs in the Departments of Agriculture, Defense—Military, Defense—Civil, Energy, Health and Human Services, and Transportation.

The details of these deferrals are contained in the attached report.

**Ronald Reagan**

The White House,
*February 19, 1988.*

BILLING CODE 3110-01-M

## CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

| DEFERRAL NO. | ITEM | BUDGET AUTHORITY |
|---|---|---|
| | **Funds Appropriated to the President:** | |
| | International Security Assistance: | |
| D88-20 | Foreign military sales credit..... | 2,949,000 |
| D88-1A | Economic support fund..... | 2,000,727 |
| D88-21 | Military assistance..... | 608,186 |
| D88-22 | International disaster assistance.... | 13,479 |
| | **Department of Agriculture:** | |
| | Forest Service: | |
| D88-3A | Expenses, brush disposal..... | 130,954 |
| | **Department of Defense, Military:** | |
| D88-7A | Military construction..... | 1,298,748 |
| D88-8A | Family housing..... | 186,955 |
| | **Department of Defense, Civil:** | |
| D88-9A | Wildlife conservation..... | 785 |
| | **Department of Energy:** | |
| | Power Marketing Administration: | |
| D88-16A | Southwestern Power Administration, Operation and maintenance..... | 13,200 |
| D88-17A | Western Area Power Administration, Construction, rehabilitation, operation and maintenance..... | 3,200 |
| | **Department of Health and Human Services:** | |
| | Office of Assistant Secretary for Health: | |
| D88-18A | Scientific activities overseas (special foreign currency)..... | 2,960 |
| | Social Security Administration: | |
| D88-10A | Limitation on administrative expenses (construction)..... | 6,207 |
| | **Department of Transportation:** | |
| | Federal Aviation Administration: | |
| D88-12A | Facilities and equipment (Airport and airway trust fund)..... | 1,329,907 |
| | Total, deferrals..... | 8,544,309 |

## SUMMARY OF SPECIAL MESSAGES FOR FY 1988
(in thousands of dollars)

| | RESCISSIONS | DEFERRALS |
|---|---|---|
| Third special message: | | |
| New items | --- | 3,570,665 |
| Revisions to previous special messages | --- | 3,866,281 |
| Effects of third special message | --- | 7,436,947 |
| Amounts from previous special messages that are changed by this message (changes noted above) | --- | 1,107,362 |
| Subtotal, rescissions and deferrals | --- | 8,544,309 |
| Amounts from previous special messages that are not changed by this message | --- | 765,661 |
| Total amount proposed to date in all special messages | --- | 9,309,970 |

**Deferral No:** D88-20

## DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

**AGENCY:** Funds Appropriated to the President

**Bureau:** International Security Assistance

**Appropriation title and symbol:**

Foreign military sales credit 1/

1181082

**OMB identification code:**

11-1082-0-1-152

**Grant program:**

[ ] Yes [X] No

**Type of account or fund:**

[X] Annual

[ ] Multiple-year (expiration date)

[ ] No-Year

**New budget authority.....** $4,049,000,000
(P.L. 100-202)

**Other budgetary resources...** $_____

**Total budgetary resources...** $4,049,000,000

**Amount to be deferred:**

Part of year.....$2,949,000,000

Entire year.....$_____

**Legal authority** (in addition to sec. 1013):

[X] Antideficiency Act

[ ] Other _____

**Type of budget authority:**

[X] Appropriation

[ ] Contract authority

[ ] Other _____

**Justification:** The President is authorized by the Arms Export Control Act to sell or finance by credit or guarantee articles and defense services to friendly countries to facilitate the common defense. Under Section 2 of the Act, the Secretary of State, under the direction of the President, is responsible for sales made under the Act, including determining whether there shall be a sale to a country and the amount thereof. Executive Order 11958 further requires the Secretary of State to obtain the prior concurrence of the Secretaries of Defense and Treasury, respectively, regarding standards and criteria for credit and guarantee transactions that are based upon national security and financial policies. These funds have been deferred pending approval of specific loans to eligible countries by the Departments of State, Defense and Treasury. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

**Estimated Program Effect:** None

**Outlay Effect:** None

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1/ This account was the subject of a similar deferral in 1987 (D87-22).

D88-1A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D88-1 transmitted to Congress on October 1, 1987.

This increases by $1,960,727,000 the previous deferral of $40,000,000 in the Economic support fund, Funds Appropriated to the President, resulting in a total deferral of $2,000,727,000. The increase in the amount deferred results from the deferral of funds included in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (net of $35 million released from 1987 appropriations). Funds are deferred pending approval of specific grants by the Secretary of State. The deferral was reduced to $1,833,927,000 on January 19 and to $1,828,927,000 on February 5, 1988.

Deferral No: D88-1A

## DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

**AGENCY:** Funds Appropriated to the President

**Bureau:** International Security Assistance

**Appropriation title and symbol:**

Economic support fund 1/
*118/91037
117/81037

**OMB identification code:**

11-1037-0-1-152

**Grant program:**

[X] Yes [ ] No

**Type of account or fund:**

[ ] Annual
[X] Multiple-year Sept. 30, 1988 (expiration date)
[ ] No-Year
Sept. 30, 1989

**New budget authority.....*** $3,188,320,000
(P.L. 100-202)
**Other budgetary resources..*** 66,232,000

**Total budgetary resources..*** 3,254,552,000

**Amount to be deferred:**
Part of year.....* $2,000,727,000

Entire year.....

**Legal authority** (in addition to sec. 1013):

[X] Antideficiency Act

[ ] Other

**Type of budget authority:**

[X] Appropriation

[ ] Contract authority

[ ] Other

*Coverage:

| Appropriation | Account Symbol | OMB Identification Code | Amount Deferred |
|---|---|---|---|
| Economic support fund..... | 117/81037 | 11-1037-0-1-152 | $5,000,000 |
| Economic support fund..... | 118/91037 | 11-1037-0-1-152 | 1,995,727,000 |
| | | | 2,000,727,000 |

***Justification:** This action defers funds pending approval of specific grants to eligible countries by the Secretary of State after review by the Agency for International Development and the Treasury Department. This will ensure that each approved program is consistent with the foreign, national security and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

**Estimated Program Effect:** None

**Outlay Effect:** None

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1/ This account was the subject of a similar deferral in 1987 (D87-1A).

* Revised from previous report.

Deferral No: D88-21

**DEFERRAL OF BUDGET AUTHORITY**
Report Pursuant to Section 1013 of P.L. 93-344

| | |
|---|---|
| **AGENCY:** Funds Appropriated to the President | **New budget authority.....** $ 700,750,000 (P.L. 100-202) |
| **Bureau:** International Security Assistance | **Other budgetary resources...** $ |
| **Appropriation title and symbol:** Military assistance 1/ 1181080 | **Total budgetary resources...** $ 700,750,000 |
| | **Amount to be deferred:** Part of year..... $ 608,186,000 |
| | Entire year..... $ |
| **OMB identification code:** 11-1080-0-1-152 | **Legal authority (in addition to sec. 1013):** [X] Antideficiency Act |
| **Grant program:** [ ] Yes [X] No | [ ] Other |
| **Type of account or fund:** | **Type of budget authority:** |
| [X] Annual | [X] Appropriation |
| [ ] Multiple-year (expiration date) | [ ] Contract authority |
| [ ] No-Year | [ ] Other |

**Justification:** Pursuant to the Foreign Assistance Act (FAA) of 1961, as amended, the President is authorized to furnish grant military assistance to any friendly country or international organization if he finds that it will strengthen the security of the United States or promote world peace. Executive Order No. 12163 of September 29, 1979, as amended, delegates certain Presidential functions under the FAA to the Secretaries of State and Defense. These funds are being deferred until approval of specific programs by the Departments of State, Treasury, and Defense. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

**Estimated Program Effect:** None

**Outlay Effect:** None

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1/ This account was the subject of a similar deferral in 1986 (D87-23).

Deferral No: D88-22

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

| | |
|---|---|
| AGENCY: Funds Appropriated to the President | New budget authority.....$ 25,000,000 (P.L. 100-202) |
| Bureau: International Security Assistance | Other budgetary resources...$ 4,785,069 |
| Appropriation title and symbol: | Total budgetary resources...$ 29,785,069 |
| International disaster assistance, Executive 1/<br>11X1035 | Amount to be deferred:<br>Part of year.....$ 13,479,449<br>Entire year.....$ |
| OMB identification code:<br>11-1035-0-1-151 | Legal authority (in addition to sec. 1013):<br>[X] Antideficiency Act<br>[ ] Other |
| Grant program:<br>[X] Yes [ ] No | |
| Type of account or fund:<br>[ ] Annual<br>[ ] Multiple-year (expiration date)<br>[X] No-Year | Type of budget authority:<br>[X] Appropriation<br>[ ] Contract authority<br>[ ] Other |

Justification: The International disaster assistance account allows the President to respond to humanitarian disaster relief efforts throughout the world. The Foreign Assistance and Related Programs Appropriations Act, 1988 provided $25 million for disaster assistance activities. $13 million is deferred pending the development of country-specific plans to insure that aid is provided in an efficient manner to those most in need. This deferral action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

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1/ This account was the subject of a similar deferral in 1987 (D87-25).

D88-3A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D88-3 transmitted to Congress on October 1, 1987.

This revision to a deferral of the Department of Agriculture, Forest Service, Expenses, brush disposal account, increases the amount previously reported from $120,425,470 to $130,954,180. This increase of $10,528,710 results from the deferral of actual balances carried over from 1987.

Deferral No: D88-3A

**DEFERRAL OF BUDGET AUTHORITY**
Report Pursuant to Section 1013 of P.L. 93-344

**AGENCY:**
Department of Agriculture
**Bureau:**
Forest Service
**Appropriation title and symbol:**
Expenses, brush disposal 1/
12X5206
**OMB identification code:**
12-9922-0-2-302
**Grant program:**
[ ] Yes [X] No
**Type of account or fund:**
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

**New budget authority..... $ 54,438,000**
(16 U.S.C. 490)
**Other budgetary resources..*** 130,954,180
**Total budgetary resources..*** 185,392,180

**Amount to be deferred:**
Part of year..... $_____
Entire year.....* 130,954,180

**Legal authority (in addition to sec. 1013):**
[X] Antideficiency Act
[ ] Other _____

**Type of budget authority:**
[X] Appropriation
[ ] Contract authority
[ ] Other _____

***Justification:** Purchasers of National Forest timber are required to deposit the estimated cost to the Forest Service for disposing of brush and other debris resulting from timber cutting operations pursuant to 16 U.S.C. 490. The deposits becoming available in the current year are estimated and the related disposal operations are planned for subsequent years. Many timber contracts cover several years and brush disposal operations do not occur until harvesting is completed. Weather conditions can delay both the harvesting and the brush disposal. It is difficult to predict weather conditions in advance but the work will be performed whenever factors permit. The Forest Service is planning for a stable year-to-year program which will require $54.4 million in 1988. The current fiscal year reserve of $130.9 million is established pursuant to the provisions of the Antideficiency Act (31 U.S.C. 1512) as a reserve for brush disposal operations in future years and contingencies.

**Estimated Program Effect:** None

**Outlay Effect:** None

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1/ This account was the subject of a similar deferral in 1987 (D87-2A).

* Revised from previous report.

D88-7A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D88-7 transmitted to Congress on October 1, 1987.

This increases by $1,297,848,000 the previous deferral of $900,000 in the Department of Defense, Military construction, resulting in a total deferral of $1,298,748,000. The increase in the amount deferred results from the deferral of funds included in the 1988 Military Construction Appropriations Act pending the identification of projects to be funded. The new deferrals were subsequently made available for obligation on January 28, 1988.

Deferral No: D88-7A

## DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

**AGENCY:**
Department of Defense - Military

**Bureau:**
Military Construction 1/

**Appropriation title and symbol:**
See Coverage Section below

**OMB Identification code:**
See Coverage Section below

**Grant program:**
[ ] Yes [X] No

**Type of account or fund:**

| | | |
|---|---|---|
| [ ] | Annual | Sept. 30, 1988<br>Sept. 30, 1989 |
| [X] | Multiple-year | Sept. 30, 1990<br>(expiration date) |
| [X] | No-Year | Sept. 30, 1991<br>Sept. 30, 1992 |

New budget authority.....*$5,353,632,000
(P.L. 100-202)
Other budgetary resources..* 2,614,943,000
Total budgetary resources2/* 7,968,575,000

Amount to be deferred:
Part of year.....*$1,298,748,000
Entire year.....* _____

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

Coverage:

| Appropriation | Account Symbol | OMB Identification Code | Amount Deferred |
|---|---|---|---|
| Military construction, Defense Agencies..... | 977/10500 | 97-0500-0-1-051 | $900,000 |
| *Military construction, Navy..... | 178/21205 | 17-1205-0-1-051 | 1,228,111,000 |
| *Military construction, Naval Reserve..... | 178/21235 | 17-1235-0-1-051 | 69,737,000 |
| Total..... | | | 1,298,748,000 |

**Justification:** These funds are deferred due to lack of Congressional project authorization or to administrative delays, such as project designs not being completed and incomplete coordination of projects with other Federal agencies or local government agencies. Funds will be apportioned for individual projects throughout the year upon authorization or completion of project design and/or coordination. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

**Estimated Program Effect:** None

**Outlay Effect:** None

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1/ This account was the subject of a similar deferral in 1987 (D87-6A).

2/ Includes all accounts under this appropriation title.

* Revised from previous report.

D88-8A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D88-8 transmitted to Congress on October 1, 1987.

This increases by $135,940,000 the previous deferral of $51,015,000 in Department of Defense, Family housing, resulting in a total deferral of $186,955,000. The increase in the amount deferred results from the deferral of funds included in the 1988 Military Construction Appropriations Act. The new deferral of $135,940,000 was made available for obligation on January 21, 1988.

Deferral No: D88-8A

## DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

**AGENCY:**

Department of Defense - Military

**Bureau:**

Family Housing, Defense 1/

**Appropriation title and symbol:**

See Coverage Section below

**OMB identification code:**

See Coverage Section below

**Grant program:**

[ ] Yes [X] No

**Type of account or fund:**

[ ] Annual — Sept. 30, 1988 / Sept. 30, 1989

[X] Multiple-year — Sept. 30, 1990 (expiration date)

[X] No-Year — Sept. 30, 1991 / Sept. 30, 1992

New budget authority.....*$3,149,490,000 (P.L. 100-202)

Other budgetary resources.* 468,297,000

Total budgetary resources2/ 3,617,787,000

**Amount to be deferred:**

Part of year.....*$ 186,955,000

Entire year.....* _____

**Legal authority (in addition to sec. 1013):**

[X] Antideficiency Act

[ ] Other _____

**Type of budget authority:**

[X] Appropriation

[ ] Contract authority

[ ] Other _____

Coverage:

| Appropriation | Account Symbol | OMB Identification Code | Amount Deferred |
|---|---|---|---|
| Family housing, Navy..... | 177/10703 | 17-0703-0-1-051 | $ 22,000,000 |
| *Family housing, Air Force. | 578/20704 | 57-0704-0-1-051 | 135,940,000 |
| Family housing, Air Force.. | 577/10704 | 57-0704-0-1-051 | 29,015,000 |
| Total..... | | | 186,955,000 |

**Justification:** These funds are deferred due to administrative delays, such as project designs not being completed and incomplete coordination of projects with other Federal agencies or local government agencies. Funds will be apportioned for individual projects throughout the year upon Congressional authorization or completion of project design and/or coordination. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

**Estimated Program Effect:** None

**Outlay Effect:** None

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1/ This account was the subject of a similar deferral in 1987 (D87-74).

2/ Includes all accounts under this appropriation title.

* Revised from previous report.

D88-9A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D88-9 transmitted to Congress on October 1, 1988.

This revision to a deferral of the Department of Defense - Civil, Wildlife conservation account increases the amount previously reported from $636,432 to $785,035. This increase of $148,603 results from the deferral of actual balances carried over from 1987 and 1988 receipts.

Deferral No: D88-9A

## DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

**AGENCY:**

Department of Defense - Civil

**Bureau:** Wildlife Conservation, Military Reservations [1]

**Appropriation title and symbol:**

Wildlife Conservation, Army 21X5095
Wildlife Conservation, Navy 17X5095
Wildlife Conservation, Air Force 57X5095

**OMB identification code:**

97-5095-0-2-303

**Grant program:**

[ ] Yes [X] No

**Type of account or fund:**

[ ] Annual

[ ] Multiple-year (expiration date)

[X] No-Year

**New budget authority.....*** $ 2,101,242
(16 U.S.C. 670F)
**Other budgetary resources..*** 955,793

**Total budgetary resources..*** 3,057,035

**Amount to be deferred:**
Part of year..... $

Entire year.....* 785,035

**Legal authority** (in addition to sec. 1013):

[X] Antideficiency Act

[ ] Other

**Type of budget authority:**

[X] Appropriation

[ ] Contract authority

[ ] Other

Coverage:

| Appropriation | Account Symbol | OMB Identification Code | Amount Deferred |
|---|---|---|---|
| Wildlife Conservation, Army..... | 21X5095 | 21-5095-0-2-303 | $487,971 |
| Wildlife Conservation, Navy..... | 17X5095 | 17-5095-0-2-303 | 56,000 |
| *Wildlife Conservation, Air Force... | 57X5095 | 57-5095-0-2-303 | 241,064 |
| | | | 785,035 |

* Revised from previous report.

**Justification:** These are permanent appropriations of receipts generated from hunting and fishing fees in accordance with the purpose of the law -- to carry out a program of natural resource conservation. These funds are being deferred because: (1) the authorizing legislation states that installations may accumulate funds over a period of time to fund a major project, (2) the installation may be designing and obtaining approval for the project, and (3)

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[1] These accounts were the subject of a similar deferral in 1987 (D87-88).

D88-9A

there is a seasonal relationship between the collection of fees and their subsequent expenditure. Most of the fees are collected during the winter and spring months, while most of the program work is performed during the summer and fall months. Funds collected in a prior year are deferred in order to be available to finance the program during summer and fall months or in subsequent years. Additional amounts will be apportioned when projects are identified. This deferral is made under the provisions of the Antideficiency Act (31 U.S.C. 1512).

**Estimated Program Effect:** None

**Outlay Effect:** None

D88-16A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D88-16 transmitted to Congress on October 29, 1987.

This revision to a deferral of the Department of Energy's account for Operation and maintenance, Southwestern Power Administration, increases the amount previously reported from $6,000,000 to $13,200,000. This increase of $7,200,000 results from savings during 1987 due to lower costs of purchasing power that increased the unobligated balances carried over from 1987 into 1988. These funds cannot be effectively used in 1988 due to continued low costs of purchasing power.

Deferral No: D88-16A

**DEFERRAL OF BUDGET AUTHORITY**
Report Pursuant to Section 1013 of P.L. 93-344

| | |
|---|---|
| **AGENCY:**<br>Department of Energy<br>**Bureau:**<br>Power Marketing Administration<br>**Appropriation title and symbol:**<br>Southwestern Power Administration, Operation and maintenance 1/<br>89X0303<br>**OMB identification code:**<br>89-0303-0-1-271<br>**Grant program:**<br>[ ] Yes [X] No<br>**Type of account or fund:**<br>[ ] Annual<br>[ ] Multiple-year (expiration date)<br>[X] No-Year | New budget authority.....*$ 16,648,000<br>(P.L. 100-202)<br>Other budgetary resources..* 35,698,677<br>Total budgetary resources..* 52,346,677<br>**Amount to be deferred:**<br>Part of year..... $<br>Entire year.....* 13,200,000<br>**Legal authority (in addition to sec. 1013):**<br>[X] Antideficiency Act<br>[ ] Other<br>**Type of budget authority:**<br>[X] Appropriation<br>[ ] Contract authority<br>[ ] Other |

**Justification:** This account funds the activities of the Southwestern Power Administration (SWPA), an agency that markets wholesale hydroelectric power produced at Corps of Engineers dams in six southwestern states. SWPA activities also include construction, operation and maintenance of approximately 1,660 miles of transmission lines over which power is distributed to customers. The law requires SWPA to deliver power to its customers at the lowest cost consistent with sound business practice. Further, the law requires SWPA to recover all costs from its customers, thus mandating that SWPA carefully examine proposed costs to avoid unnecessary spending. In 1987, available funds were in excess of amounts required to purchase power and pay non-Federal utilities to deliver it because higher rainfall resulted in higher power generation from the Federal dams. As a result, the level of unobligated funds carried into 1988 for purchasing power was higher than assumed when the 1988 Budget was prepared. There currently is no plan to use these funds in 1988, although the funds will be made available if a significant, unplanned need arises. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

**Estimated Program Effect:** None

**Outlay Effect:** None

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1/ This account was the subject of a similar deferral in 1987 (D87-10A).

* Revised from previous report.

D88-17A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D88-17 transmitted to Congress on October 29, 1987.

This revision to a deferral of the Department of Energy's account for Construction, Rehabilitation, Operation and maintenance, Western Power Administration, increases the amount previously reported from $774,000 to $3,200,000. This increase of $2,426,000 results from savings during 1987 due to lower costs of purchasing power that increased the unobligated balances carried over from 1987 into 1988. These funds were made available for obligation on February 5, 1988.

Deferral No: D88-17A

**DEFERRAL OF BUDGET AUTHORITY**
Report Pursuant to Section 1013 of P.L. 93-344

| | |
|---|---|
| **AGENCY:** Department of Energy<br>**Bureau:** Power Marketing Administration<br>**Appropriation title and symbol:** Western Area Power Administration, Construction, rehabilitation, operation and maintenance 1/ 89X5068<br>**OMB identification code:** 89-5068-0-2-271<br>**Grant program:** [ ] Yes [X] No<br>**Type of account or fund:**<br>[ ] Annual<br>[ ] Multiple-year (expiration date)<br>[X] No-Year | **New budget authority.....*** $ 242,512,000 (P.L. 100-202)<br>**Other budgetary resources...*** 152,983,462<br>**Total budgetary resources...*** 395,495,462<br>**Amount to be deferred:**<br>Part of year..... $<br>Entire year.....* 3,200,000<br>**Legal authority (in addition to sec. 1013):**<br>[X] Antideficiency Act<br>[ ] Other<br>**Type of budget authority:**<br>[X] Appropriation<br>[ ] Contract authority<br>[ ] Other |

**Justification:** This account funds the activities of the Western Area Power Administration (WAPA), an agency that markets wholesale hydroelectric power produced at projects principally operated by the Bureau of Reclamation and the Corps of Engineers in 15 western states. WAPA activities also include construction, operation and maintenance of approximately 16,000 miles of transmission lines over which power is distributed to customers. The law requires WAPA to deliver power to its customers at the lowest cost consistent with sound business practice. Further, the law requires WAPA to recover all costs from its customers, thus mandating that WAPA carefully examine proposed costs to avoid unnecessary spending. In 1987, available construction funds were in excess of amounts required due to contract slippage. As a result, the level of unobligated funds carried into 1988 was higher than assumed when the 1988 Budget was prepared. This deferral action was taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

**Estimated Program Effect:** None

**Outlay Effect:** None

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1/ This account was the subject of a similar deferral in 1987 (D87-29).

* Revised from previous report.

D87-18A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D87-18 transmitted to Congress on October 29, 1987.

This revision to a deferral for the Scientific activities overseas (special foreign currency) account of the Office of Assistant Secretary for Health in the Department of Health and Human Services increases the amount previously reported from $2,391,288 to $2,959,981. This net increase of $568,693 results from the deferral of unanticipated additional balances carried over from 1987 that cannot be used in 1988.

Deferral No: D88-18A

**DEFERRAL OF BUDGET AUTHORITY**
Report Pursuant to Section 1013 of P.L. 93-344

| | |
|---|---|
| **AGENCY:** Department of Health and Human Services | New budget authority..... $_____ (P.L. _____) |
| **Bureau:** Office of Assistant Secretary for Health | Other budgetary resources..* 5,359,981 |
| **Appropriation title and symbol:** Scientific activities overseas (special foreign currency) 1/ 75X1102 | Total budgetary resources..* 5,359,981 |
| | Amount to be deferred: Part of year..... $_____ |
| | Entire year.....* 2,959,981 |
| **OMB identification code:** 75-1102-0-1-552 | Legal authority (in addition to sec. 1013): [X] Antideficiency Act |
| **Grant program:** [ ] Yes [X] No | [ ] Other _____ |
| **Type of account or fund:** | Type of budget authority: |
| [ ] Annual | [X] Appropriation |
| [ ] Multiple-year (expiration date) | [ ] Contract authority |
| [X] No-Year | [ ] Other _____ |

**Justification:** The Scientific activities overseas program is funded with appropriations which consist of excess foreign currencies owned by the United States. The currencies of Burma and Poland held by the Treasury have been designated as excess to normal U.S. needs in 1988. Funds for this program, which remain available until expended, are used for scientific research projects in those countries.

The amount of funds to be obligated during 1988 and the amount to be deferred for the entire year were determined after a careful review of the scientific merit of project proposals in the countries for which excess currency is available. The research projects in those countries that will contribute toward meeting U.S. scientific needs have been selected for funding in 1988. The amount being deferred is excess to current program requirements and is being reserved for contingencies under the provisions of the Antideficiency Act (31 U.S.C. 1512).

**Estimated Program Effect:** None

**Outlay Effect:** None

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1/ This account was the subject of a similar deferral in 1987 (D87-1

* Revised from previous report.

D88-10A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D88-10 transmitted to Congress on October 1, 1987.

This revision to a deferral for the Limitation on administrative expenses (construction) account of the Social Security Administration in the Department of Health and Human Services increases the amount previously reported from $6,170,831 to $6,207,115. This net increase of $36,284 results from the deferral of additional balances carried over from 1987 due to an overestimation of construction obligations in 1987 ($33,987) and unanticipated additional recoveries ($2,297).

Deferral No: D88-10A

**DEFERRAL OF BUDGET AUTHORITY**
Report Pursuant to Section 1013 of P.L. 93-344

| | |
|---|---|
| **AGENCY:** Department of Health and Human Services | New budget authority..... $_____ (P.L. _____) |
| **Bureau:** Social Security Administration | Other budgetary resources..*$ 7,187,115 |
| **Appropriation title and symbol:** Limitation on administrative expenses (construction) 1/ 75X8704 | Total budgetary resources..*$ 7,187,115 |
| | **Amount to be deferred:** Part of year..... $_____ |
| | Entire year.....*$ 6,207,115 |
| **OMB identification code:** 20-8007-0-6-651 | Legal authority (in addition to sec. 1013): [X] Antideficiency Act |
| **Grant program:** [ ] Yes [X] No | [ ] Other _____ |
| **Type of account or fund:** [ ] Annual | **Type of budget authority:** [X] Appropriation |
| [ ] Multiple-year _____ (expiration date) | [ ] Contract authority |
| [X] No-Year | [ ] Other _____ |

**Justification:** This account provides funding for construction and renovation of the Social Security Administration's (SSA) headquarters and field office buildings. The only costs in 1988 are for roof repair and replacement and for close-out and claims pending for previously approved construction projects. Some additional obligations will occur in 1989 and subsequent years for roof replacement repair projects. Should new requirements arise, subsequent apportionments will reduce this deferral. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

**Estimated Program Effect:** None

**Outlay Effect:** None

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1/ This account was the subject of a similar deferral in 1987 (D87-12A).

* Revised from previous report.

D88-12A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D88-12 transmitted to Congress on October 1, 1987.

This increases by $450,857,855 the previous deferral of $879,049,171 in the Department of Transportation's Facilities and equipment, FAA trust fund account, resulting in a total deferral of $1,329,907,026. The increase results from projects and equipment funded in the Department of Transportation Appropriation Act, 1988, that cannot be constructed or contracted for this year.

Deferral No: D88-12A

**DEFERRAL OF BUDGET AUTHORITY**
Report Pursuant to Section 1013 of P.L. 93-344

**AGENCY:**
Department of Transportation
**Bureau:**
Federal Aviation Administration
**Appropriation title and symbol:**
Facilities and equipment (Airport and airway trust fund) 1/
69X8107 695/98107*698/28107
697/18107 694/88107 696/08107
**OMB identification code:**
69-8107-0-7-402
**Grant program:**
[ ] Yes [X] No

**Type of account or fund:**
[ ] Annual Sept. 30, 1988 / Sept. 30, 1989
[X] Multiple-year Sept. 30, 1990 (expiration date)
[X] No-Year Sept. 30, 1991 / Sept. 30, 1992

**New budget authority.....*** $1,108,056,000
(P.L. 100-202)
**Other budgetary resources.*** 1,209,816,297
**Total budgetary resources.*** 2,317,872,297

**Amount to be deferred:**
Part of year..... $_____
Entire year.....* 1,329,907,026

**Legal authority** (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other _____

**Type of budget authority:**
[X] Appropriation
[ ] Contract authority
[ ] Other _____

**Justification:** Funds from this account are used to continue to procure specific Congressionally-approved facilities and equipment for the expansion and modernization of the National Airspace System. The projects financed from this account include construction of buildings, the purchase of new equipment for new or improved air traffic control towers, automation of the en route airway control system, and expansion/improvement of navigational and landing aid systems. These activities were justified and provided for in the Department's regular budget submissions and were appropriated by Congress for the year in which requested. Due to the lengthy procurement and construction time for these interrelated facilities and complex equipment systems, it is not possible to obligate all the funds necessary to complete each project in the year funds were appropriated. Therefore, it is necessary to apportion funds so that sufficient resources will be available in future periods to complete these projects. This action is consistent with FAA's full funding approach and Congressional intent to provide multi-year funding for the total costs of projects. This action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512), which authorizes the establishment of reserves for contingencies.

**Estimated Program Effect:** None

**Outlay Effect:** None

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1/ This account was the subject of a similar deferral in 1987 (D87-16A). None of the deferred funds expire at the end of FY 1988.

* Revised from previous report.

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Wednesday
March 2. 1988

Part III

# Environmental Protection Agency

40 CFR Parts 116, 117 and 302

Reportable Quantities for Releases of Lead, Methyl Isocyanate (MIC); Delisting of Ammonium Thiosulfate; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 116, 117, and 302**

**[SW H-FRL-3281-9]**

## Reportable Quantities (RQs) for Releases of Lead, Methyl Isocyanate (MIC); Delisting of Ammonium Thiosulfate

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Sections 103(a) and 103(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERLA), as amended require that persons is charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities (RQs) immediately notify the National Response Center of the release. The toll-free telephone number of the National Response Center is listed below under "Addresses." Section 102(b) sets a reportable quantity of one pound for hazardous substances, except those substances for which reportable quantities have been established pursuant to section 311(b)(4) of the Clean Water Act (CWA). In addition to these reporting requirements, section 304 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires that releases of hazardous substances in quantities that are equal to or greater than the RQs be reported to State and local authorities.

Section 102(a) authorizes the U.S. Environmental Protection Agency (EPA) to adjust reportable quantities for hazardous substances and to designate as hazardous substances, those substances which when released into the environment, may present substantial danger to the public health or welfare or the environment. Currently, there are 721 CERLA hazardous substances.

In today's rulemaking, EPA proposes an adjusted RQ for one of the two remaining hazardous substances without a proposed or final adjusted RQ, lead metal.[1] The Agency is also proposing to readjust the RQs for four lead compounds: Lead acetate, lead phosphate, lead stearate, and lead sulfide. The RQ adjustments proposed in this rulemaking will affect not only the statutory one-pound RQs under CERLA, but also the RQs established pursuant to section 311(b)(4) of the CWA.[2] In today's rule, EPA also proposes to delist ammonium thiosulfate as a hazardous substance under section 101(14) of CERCLA and section 311 of the CWA, and remove this substance from Table 116.4 of 40 CFR Part 116, Table 117.3 of 40 CFR Part 117, and Table 302.4 of 40 CFR Part 302. Additionally, this rule contains a proposal to replace the trademark "Kelthane" with its generic equivalent, dicofol, in Table 302.4 of 40 CFR Part 302, Table 116.4 of 40 CFR 116, and Table 117.3 of 40 CFR Part 117.

**DATES:** Comments must be received on or before April 1, 1988. Comments received after this date may not be considered because of the April 30, 1988 statutory deadline for all final RQ adjustments.

**ADDRESSES:** The toll-free telephone number of the National Response Center is 1–800/424–8802; in the Washington, DC metropolitan area, the number is 1–202/426–2675.

*Comments:* Comments should be submitted in triplicate to Emergency Response Division, Attention: Superfund Docket Clerk, Docket Number 102 RQ–R2, Superfund Docket Room LG-100, 401 M Street SW., Washington, DC 20460.

*Docket:* Copies of materials relevant to this rulemaking are contained in Room LG–100 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket is available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, make an appointment by calling 1–202/382–3046. The public may copy a maximum of 50 pages from any regulatory docket at no cost. Additional copies cost $.20 per page.

**FOR FURTHER INFORMATION CONTACT:** Gerain H. Perry, Response Standards and Criteria Branch, Emergency Response Division (WH–548B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or the RCRA/Superfund Hotline at 1–800/424–9346 (in the Washington, DC metropolitan area, call 1–202/382–3000).

**SUPPLEMENTARY INFORMATION:** The contents of today's preamble are listed in the following outline:

I. Introduction
A. Statutory Authority
B. Background of this Rulemaking
II. Reportable Quantity Adjustments
A. Introduction
B. Summary of the Reportable Quantity Adjustment Methodology
C. Hazardous Substances for Which Adjusted RQs Are Being Proposed
D. Update on Methyl Isocyanate
III. Reportable Quantity Adjustments Under Section 311 of the Clean Water Act
IV. Proposal To Delist Amonium Thiosulfate As A Hazardous Substance
V. Replacement of the Registered Trademark, "Kelthane," with the Generic Name, Dicofol
VI. Regulatory Analyses
A. Executive Order No. 12291
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
List of Subjects

### I. Introduction

#### *A. Statutory Authority*

Section 102(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Pub. L. 96–510), 42 U.S.C. 9601 *et seq.* (CERCLA or the Act), as amended by the superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499) (SARA), establishes reportable quantities (RQs) for releases of hazardous substances at one pound, except those for which RQs were established pursuant to section 311 of the CWA. Section 102(a) of CERCLA authorizes EPA to adjust all of these RQs by regulation.

Section 103 of CERCLA requires that the person in charge of a vessel or facility notify the National Response Center immediately when there is a release of a hazardous substance in an amount equal to or greater than the RQ for that substance. This notification requirement serves as a trigger for informing the government of a release so that Federal personnel can evaluate the need for a Federal removal or remedial action and undertake any necessary action in a timely fashion.

In addition to the reporting requirements established by CERCLA, SARA section 304 requires Federal, State, and local reporting for releases of CERCLA hazardous substances. The notification required by SARA section 304 is to be given immediately after the release of an RQ or more (one pound if a reporting trigger is not established by regulation) by the owner or operator of a facility to the community emergency coordinator for each local emergency planning committee for any area likely to be affected by the release, and to the State Commission of any State likely to be affected by the release. The section

[1] The RQ for other remaining hazardous substance without a proposed or final adjusted RQ, methyl isocyanate (MIC), will be proposed for adjustment in a future rulemaking when the Agency's evaluation of the dose-response data for this substance is completed. For further discussion of the status of this evaluation, see Section II.D. of this preamble. Until this evaluation is completed, the one-pound statuory RQ remains in effect.

[2] Lead acetate, lead phosphate, and lead stearate were originally designated and assigned RQs under section 311 of the CWA.

304 notification requirements apply only to releases which may result in exposure to persons off-site and which are from facilities that produce, use, or store a "hazardous chemical," as defined by regulations under the Occupational Safety and Health Act of 1970 (29 CFR 1910.1200(c)) and section 311 of SARA.

Section 109 of CERCLA, as amended, and section 325 of SARA authorize civil penalties for failure to report releases of hazardous substances which equal or exceed RQs. Section 103 of CERCLA, as amended, authorizes criminal penalties for submitting false or misleading information in a notification made pursuant to CERCLA section 103, and increases the maximum penalties and years of imprisonment for violation of the section 103 reporting requirement.

*B. Background of this Rulemaking*

On May 25, 1983, EPA proposed a rule (48 *FR* 23552) to clarify procedures for reporting releases of CERCLA hazardous substances and to adjust RQs for 387 of the then 696 hazardous substances.[3] The May 25, 1983 NPRM also compiled for the first time the list of "hazardous substance" defined under section 101(14) of CERCLA. The preamble to that NPRM discussed in detail the CERCLA notification provisions, the methodology and criteria used to adjust the RQ levels, and the RQ adjustments proposed under section 102 of CERCLA and under section 311 of the CWA. A final rule published on April 4, 1985 (50 *FR* 13456) adjusted reportable quantities for 340 hazardous substances. In a Notice of Proposed Rulemaking (NPRM) also published on April 4, 1985, the Agency proposed RQ adjustments for 105 additional hazardous substances (50 *FR* 13514). A final rule published on September 29, 1986 (51 *FR* 34534) finalized RQ adjustments for 102 of these 105 hazardous substances. In a final rule published on October 24, 1986 (51 *FR* 37725), EPA promulgated RQ adjustments for four additional hazardous substances.[4] In an NPRM published on March 16, 1987 (52 *FR* 8140), the Agency proposed to adjust RQs for 273 of the 275 remaining hazardous substances whose RQs had not yet been adjusted by regulation. The March 16, 1987 **Federal Register** also contained an NPRM which proposed RQ adjustments for radionuclides (52 *FR* 8172). Today's NPRM proposes an RQ adjustment from the one-pound statutory RQ for one of the remaining hazardous substances, lead metal.

In the April 4, 1985 NPRM (50 *FR* 13514), EPA proposed to adjust the statutory RQ for lead metal to 5000 pounds. After publication of that NPRM, EPA determined that the statutory one-pound RQ for lead metal should be retained, pending its evaluation for potential carcinogenicity. Based upon the results of this evaluation, EPA today proposes to adjust the statutory RQ for lead metal to 100 pounds. This NPRM also proposes to readjust the RQs for four lead compounds to 100 pounds. Two of these lead compounds (lead stearate and lead sulfide) received adjusted RQs in the September 29, 1986 final rule; the other two lead compounds (lead acetate and lead phosphate) received proposed RQ adjustments in the March 16, 1987 NPRM.

The RQ adjustments proposed in this rule would amend Table 302.4 of 40 CFR 302.4 and, consistent with 40 CFR 117.3, would apply not only to CERCLA RQs, but also to the RQs established for hazardous substances under section 311(b)(4) of the CWA.

Section II of this preamble discusses the RQ adjustments proposed in this rulemaking and the methodology used in assigning these proposed RQs. Section III addresses RQ adjustments under section 311 of the CWA. Section IV discusses a proposal to delist ammonium thiosulfate as a hazardous substance under the CWA and CERCLA. Section V provides a summary of the analyses supporting this proposed rule.

## II. Reportable Quantity Adjustments

*A. Introduction*

This rulemaking proposes RQ adjustments based on specific scientific and technical criteria that relate to the possibility of harm from the release of a hazardous substance in a reportable quantity. The quantity released is but one factor considered by the government when assessing the need to respond. Other factors assessed on a case-by-case basis include, but are not limited to, the location of the release, its proximity to drinking water supplies or other valuable resources, and the likelihood of exposure or injury to nearby populations. The proposed RQ adjustments, when finalized, will enable the Agency to focus its resources on those releases which are most likely to pose potential threats to public health and welfare and the environment, and will also relieve the regulated community and emergency response personnel from the burden of making and responding to reports of releases which are unlikely to pose such threats.

In this NPRM, the Agency proposes adjusted RQs for lead metal and four lead compounds. These hazardous substances have been evaluated for potential carcinogenicity, as well as other primary criteria. The proposed RQ adjustments published today are based upon the results of these evaluations.

*B. Summary of the Reportable Quantity Adjustment Methodology*

The Agency has wide discretion in adjusting the statutory RQs for hazardous substances under CERCLA. Administrative feasibility and practicality are important considerations. The Agency's methodology for adjusting RQs begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each hazardous substance. The intrinsic properties examined—called "primary criteria"—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity,[5] and potential carcinogenicity.

The Agency ranks each intrinsic property (except potential carcinogenicity) on a five-tier scale, associating a specific range of values on each scale with a particular RQ value. This five-tier scale uses the five RQ levels of 1, 10, 100, 1,000, and 5,000 pounds, originally established pursuant to CWA section 311 (see 40 CFR Part 117 and 44 FR 50776). For hazardous substances evaluated for potential carcinogenicity, each substance is assigned a hazard ranking of "high," "medium," or "low." These hazard rankings correspond with RQ levels of 1, 10, and 100 pounds, respectively (52 FR 8140). Each hazardous substance evaluated under the various primary criteria receives several tentative RQ values based on its particular properties. The lowest of all of the tentative RQs becomes the "primary criteria RQ" for that substance.

EPA's methodology for adjusting RQs for potential carcinogens is derived from the Agency's Guidelines for Carcinogen Risk Assessment (51 FR 33992, September 24, 1986). The evaluation of

[3] Since the May 25, 1983 NPRM, 25 additional substances have been listed under section 101(14). These substances are: waste stream F024 (49 *FR* 5308); coke oven emissions (49 *FR* 36560); waste streams F020, F021, F022, F023, F026, F027, and F028 (50 *FR* 1978); waste streams K111, K112, K113, K114, K115, and K116, o-toluidine and p-toluidine (50 *FR* 42936); waste streams K117, K118, and K136 (51 *FR* 5327); 2-ethoxyethanol (51 *FR* 6537); and waste streams K123, K124, K125, and K126 (51 *FR* 37725).

[4] These substances are: Waste streams K123, K124, K125, and K126, each of which received a final RQ adjustment of one pound.

[5] EPA is aware that some chronic effects result from acute (short-term) exposures and considers such data in the chronic toxicity evaluations. The Agency is further evaluating data on chronic effects resulting from acute exposures to ensure that such data receive adequate consideration in the RQ adjustment process.

hazardous substances for potential carcinogenicity initially involves a qualitative assessment of the available scientific literature on the substance. The data are reviewed to determine the degree of certainty or weight of evidence that a particular hazardous substance is a potential human carcinogen. The substance is then classified in an overall weight-of-evidence category (A, B, C, D, or E).

Group A (human carcinogen) contains hazardous substances for which the available data is sufficient to support a causal association between exposure to the hazardous substance and cancer. Group B (probable human carcinogen) includes hazardous substances for which the weight of evidence of human carcinogenicity based on epidemiologic studies is "limited," or for which the weight of evidence of carcinogenicity based on animal studies is "sufficient" (in the absence of sufficient human evidence). Group C (possible human carcinogen) includes hazardous substances with "limited" evidence of carcinogenicity in animals and "inadequate evidence" or "no data" from human epidemiologic studies. As mentioned in the March 16, 1987 NPRM (52 FR 8140, 8144), Group D (not classifiable for human carcinogenicity) and Group E (evidence of noncarcinogenicity for humans) substances are not considered to be "potential carcinogens" for RQ adjustment purposes, and therefore are not ranked for potential carcinogenicity.

The evaluation of hazardous substances for potential carcinogenicity also involves a quantitative assessment of the available data to calculate the relative strength of a hazardous substance to elicit a carcinogenic response (i.e., the "potency factor"). Based on these potency factors, each potential carcinogen is ranked and then placed in one of three potency groups. Group 1 includes those hazardous substances with the highest potencies. Other potential carcinogens with medium and low potencies are placed in Groups 2 and 3, respectively.

Whenever available information allows EPA to quantify potency, a substance is placed in Group 1, 2, or 3. However, for certain potential carcinogens, there is evidence of carcinogenic effect, but the quantitative information is not adequate to allow the Agency to estimate a potency factor using the Agency's current methodology. There are three classes of such substances. First, if the best available data are inadequate for calculating a single potency factor but indicate that a substance may be a strong carcinogen (e.g., all animals exposed to every experimental dose developed tumors), the Agency will assign the substance to the highest potency group (Group 1). Second, if the best available data are inadequate for calculating a potency factor and allow no quantitative inferences to be made, the substance will be assigned to Group 2, as though it had a mid-range potency factor. Third, if the best available data are inadequate for calculating a single potency factor, but allow a categorical inference that a substance is a weak potential carcinogen, the Agency will assign the substance to the lowest potency group (Group 3). As discussed below in section II.C., this is the case for lead metal and the four lead compounds. These assigned potency groups enable the Agency to assign hazard rankings to these substances by following a procedure of combining the qualitative weight-of-evidence group with the quantitative potency group (see 52 FR 8140, 8144). This procedure uses a hazard ranking matrix (see 52 FR 8140, 8145) to group the potential carcinogens into "high," "medium," and "low" hazard categories. RQ levels are then assigned to the hazard rankings as follows: High—one pound RQ; medium—10 pound RQ; and low—100 pound RQ.

For a more detailed discussion of the RQ adjustment methodology based on the primary criterion of potential carcinogenicity, see the preamble to the March 16, 1987 NPRM (52 FR 8140) and the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 3, available for inspection at Room LG-100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

### *C. Hazardous Substances for Which Adjusted RQs Are Being Proposed*

The available literature on lead metal and lead compounds recently was evaluated for potential carcinogenicity by the Agency's Carcinogen Assessment Group (CAG). The RQ for lead metal is proposed for adjustment in this rulemaking. The Agency is also proposing RQ adjustments for four lead compounds in today's rulemaking: Lead acetate, lead phosphate, lead stearate, and lead sulfide. EPA today is proposing a 100-pound RQ adjustment for these five substances based on the results of this evaluation.

Lead acetate and lead phosphate were assigned proposed RQ adjustments of 10 pounds in the March 16, 1987 NPRM (52 FR 8140, 8154) based on potential carcinogenicity. The proposed RQ adjustments for both of these substances in the March 16, 1987 NPRM were based on weight-of-evidence classification of Group B for lead compounds,[6] and a potency Group 2 assignment that was based on a study of the only lead compound for which adequate potency data were available—lead acetate. Thus, EPA extrapolated the potency data from lead acetate to lead phosphate. Extrapolation of data on one hazardous substance to a similar substance is used in the RQ adjustment methodology only when there are no adequate data for the hazardous substance in question and adequate data are available for chemically similar compounds. For example, the weight-of-evidence and potency classifications for cadmium acetate, cadmium bromide, and cadmium chloride are based on epidemiologic data for workers exposed to cadmium oxide and/or cadmium fumes.[7]

The lead acetate study referred to above involved a single dose of lead acetate to the study animal and a relatively small test population. Upon reconsideration of the available lead acetate potency studies, however, the Agency has decided to base its potency group assignment for lead and lead compounds on a different study of lead acetate that is more appropriate for dose-response assessment for three reasons: (1) It used multiple doses of lead acetate to the study animal; (2) it used a larger test population; and (3) it provides a good "fit" to the linear multistage model developed to simulate tumor production. The overall analysis of this lead acetate study indicates that lead acetate has a low potency and therefore should be assigned to potency Group 3, resulting in a low hazard ranking and a 100-pound RQ for lead acetate based on potential carcinogenicity. The Agency considers this low potency to be applicable to lead metal and the four lead compounds addressed in this proposed rulemaking because (1) lead acetate is the most soluble of the lead salts and therefore is likely to be the most potent, and (2) no lower potency group could be assigned to lead metal and the four lead compounds based on the Agency's methodology for establishing RQs for

[6] See the addendum to the Health Effects Assessment for Lead, EPA document number 540/1-86/055, available for inspection at Room LG-100, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

[7] See the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, Volume 3 (Appendix A), available for inspection at Room LG-100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

potential carcinogens (i.e., Group 3 is the lowest potency group). For a more detailed discussion of these lead acetate studies, see the Technical Background Document to Support Rulemaking Pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended: Methyl Isocyanate (MIC), Lead and Lead Compounds, Delisting of Ammonium Thiosulfate as a Hazardous Substance, and Replacement of the Registered Trademark Kelthane with the Generic Name Dicofol. In the September 29, 1986 final rule (51 FR 34534), lead stearate and lead sulfide were assigned final RQ adjustments of 5000 pounds based on chronic toxicity. The 100-pound proposed RQ adjustments for lead stearate, lead sulfide, and lead metal are also based on the lead acetate potency study that supports this rulemaking.

The following table arrays the RQs originally mandated by statute and the previous proposed or final RQ adjustments for lead metal and the four lead compounds, as well as the newly proposed RQ adjustments for these substances.

RQ ADJUSTMENT HISTORY FOR LEAD METAL AND FOUR LEAD COMPOUNDS

| | Statutory | Previous proposed or final RQ | Proposed RQ Adjustment |
|---|---|---|---|
| Lead (metal) | 1 | 5000 (proposed [1]). | [2]100 |
| Lead acetate | 5000 | 10 (proposed [2]) | [3]100 |
| Lead phosphate. | 1 | 10 (proposed [2]) | [2]100 |
| Lead stearate | 5000 | 5000 (final [3]) | [2]100 |
| Lead sulfide | 5000 | 5000 (final [3]) | [2]100 |

[1] aquatic toxicity.
[2] potential carcinogenicity.
[3] chronic toxicity

The qualitative assessment of the data on lead metal and the four lead compounds reproposed for RQ adjustment in this NPRM places all of these substances in weight-of-evidence Group B. That is, these substances have been interpreted from the data to be "probable human carcinogens." The quantitative assessment of the information, however, reveals that the data are inadequate to assign a single potency factor to any lead compound because of the considerable uncertainties that currently exist regarding the pharmacokinetics of these substances. EPA's assessment of the data (i.e., the lead acetate potency study that is the basis for the potency group assignment for lead metal and the four lead compounds in this rulemaking) does indicate that the carcinogenic potency of lead metal and all lead compounds is in the low range. This range is within the lowest potency group (Group 3). Using the Agency's methodology for quantitative assessment of potential carcinogens discussed earlier in Section II.B., if the best available data are inadequate for calculating a single potency factor, but allow a categorical inference that a substance is a weak carcinogen, the Agency will assign the substance to the lowest potency group (Group 3). Therefore, according to EPA's methodology for evaluating hazardous substances for potential carcinogenicity, lead metal and lead compounds are assigned to potency Group 3.

The weight-of-evidence Group B, potency Group 3 classification for lead and the four lead compounds results in a proposed RQ adjustment of 100 pounds for these substances. The Agency knowledges that assignment of a single proposed RQ adjustment to these substances differs from the approach applied to certain other metals and their compounds (e.g., beryllium and beryllium compounds) in a prior RQ adjustment rulemaking (see 50 FR 13456, 13479, April 4, 1985). Because EPA was able to calculate separate potency factors for beryllium and its compounds, one RQ was assigned to beryllium metal, and a different RQ was assigned to individual beryllium compounds.

The existing data for exposure to lead metal and lead compounds (with the exception of lead acetate), by contrast, are not adequate to estimate potencies for the individual substances. For further information regarding the basis for establishing RQs for lead metal and these four lead compounds, see the Technical Background Document to Support Rulemaking Pursuant to Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended: Methyl Isocyanate (MIC), Lead and Lead Compounds, Delisting of Ammonium Thiosulfate as a Hazardous Substance, and Replacement of the Registered Trademark Kelthane with the Generic Name Dicofol, and other associated documents, available for inspection at Room LG-100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

An additional 10 lead compounds and 13 lead-containing waste streams are not proposed for RQ adjustment in this rulemaking because their previous final or proposed RQ adjustments would not change as a result of application of the lead acetate potency study supporting today's proposed rule. Nine of these 23 hazardous substances received 100-pound proposed or final RQ adjustments in previous RQ rulemakings.[8] The remaining 14 substances received proposed or final RQ adjustments of one or 10 pounds in previous RQ rulemakings.[9] The RQs for each of these 14 substances remain at their one or 10-pound levels for one of two reasons: (1) A non-lead constituent of the substance has an RQ based on potential carcinogenicity of one or 10 pounds; or (2) the proposed or final RQ of the substance based on chronic toxicity is 10 pounds.

In addition to the potentially carcinogenic effects of lead on humans, lead has been associated with a variety of deleterious chronic effects on various human biological systems across a broad range of exposure levels. Newborn and young children, as well as the fetus, are especially sensitive to lead. These groups may suffer effects on neurological development and function and various hematological and metabolic processes as a result of exposure to lead. In addition to its innate toxicity, lead increases the permeability of the blood-brain barrier. Therefore, lead can make the affected organism more susceptible to the deleterious effects of other neurotoxicants. The Agency is evaluating the most current data available on these chronic effects and, if necessary will readjust the RQ for lead based on chronic toxicity in a future rulemaking.

### *D. Update on Methyl Isocyanate*

EPA initially proposed to adjust the statutory one-pound RQ for methyl isocyanate (MIC) to 100 pounds in the

[8] These nine substances are: Lead chloride, lead fluoborate, lead fluoride, lead iodide, lead nitrate, lead subacetate, lead sulfate, lead thiocyanate, and lead-containing waste stream K046. Lead subacetate was assigned a proposed RQ adjustment of 100 pounds based on potential carcinogenicity in the March 16, 1987, NPRM (52 FR 8140, 8154). The remaining eight substances were assigned 100-pound final RQ adjustments based on primary criteria other than potential carcinogenicity in the September 29, 1986, final rule (51 FR 34534, 34542).

[9] These 14 substances are: Lead arsenate, tetraethyl lead, and lead-containing waste streams K002, K003, K005, K048, K049, K051, K052, K061, K062, K069, K086, and K100. Lead arsenate was assigned a proposed RQ adjustment of one-pound in the March 16, 1987, NPRM (52 FR 8140, 8154) based on the potential carcinogenicity of the arsenate ion. Tetraethyl lead and waste stream K052 were assigned final adjusted RQs of 10 pounds based on chronic toxicity in the September 29, 1986, final rule (51 FR 34534, 34543, 34545). The remaining 11 hazardous waste streams received proposed RQ adjustments of one pound based on potential carcinogenicity in the March 16, 1987, NPRM.

May 25, 1983, NPRM. After the December 3, 1984, release of MIC in Bhopal, India, and the resultant loss of human life, EPA rescinded the proposed adjusted RQ for MIC in the April 4, 1985, final rule (50 FR 13456) and retained the statutory one-pound RQ, pending further analysis of the data on MIC. Subsequent to that recision, the available data on MIC were evaluated for inhalation toxicity and indicate a 100-pound RQ.

Recently, however, the Agency has obtained additional toxicological data on MIC, including new animal studies documented in *Environmental Health Perspectives*, Volume 72. EPA currently is awaiting human toxicological and epidemiological data associated with the release of MIC in Bhopal. When the Agency's evaluation of these data is completed, EPA will adjust the RQ for MIC as appropriate. The Agency has decided to retain the statutory one-pound RQ for MIC, pending completion of this analysis, rather than propose an RQ adjustment without first completing a thorough evaluation of the human toxicity data.

### III. Reportable Quantity Adjustments Under Section 311 of the Clean Water Act

The April 4, 1985, final rule (50 FR 13456) amended 40 CFR 117.3 to make RQs adjusted under CERCLA the applicable RQs for notification of discharges of hazardous substances pursuant to CWA section 311. Thus, the RQ adjustments proposed in this rulemaking will, when finalized, apply to both CERCLA and CWA section 311 RQs. Where there is a release of a hazardous substance in a quantity equal to or greater than an RQ into navigable waters, a single report to the National Response Center by the person in charge will satisfy the notification requirements of both statutes. Of course, the owner or operator of the facility may still need to notify State and local authorities under SARA section 304. (Note, however, that section 304 does not apply to vessels.) For further discussion of the relationship between CERCLA RQs and CWA section 311 RQs, see the May 25, 1983, proposed rule preamble at 48 FR 23569, and the April 4, 1985, final rule preamble at 50 FR 13473.

### IV. Proposal to Delist Ammonium Thiosulfate as a Hazardous Substance

On March 7, 1986, Karley Industries, Inc. filed a petition requesting the Agency to delist ammonium thiosulfate as a hazardous substance under section 311 of the CWA, and, as a result, also under section 101(14) of CERCLA. Kerley Industries stated that the classification of ammonium thiosulfate as a hazardous substance under the CWA was based on aquatic toxicity by inference from an inappropriate reference compound, ammonium sulfite. The toxicological test data on other more closely related alkali metal thiosulfate salts indicate that the thiosulfate chemical family is physiologically innocuous.

Kerley Industries, in support of its request to delist ammonium thiosulfate as a hazardous substance, supplied data that showed a 96-hour LC50 of 1000 mg/1 for bluegills and a 96-hour LC50 of 770 m/1 for rainbow trout. These test results are above 500 mg/1 for aquatic toxicity, which is the threshold listing criterion under the CWA. In addition, the Agency has been unable to locate any data that support the continued listing of ammonium thiosulfate as a hazardous substance under the CWA. Based on the available information, the Agency has determined that ammonium thiosulfate does not meet the listing criteria for aquatic toxicity, and therefore proposes to delist ammonium thiosulfate as a hazardous substance under section 311 of the CWA, 40 CFR 116.4, and 40 CFR 117.3. As a result of the delisting under section 311, the substance would be a "hazardous substance" under section 101(14) of CERCLA only by virtue of its designation under section 102 of CERCLA (section 101(14)(B)). The Agency, therefore, is proposing to revoke its designation of ammonium thiosulfate as a CERCLA hazardous substance under section 102(a) of CERCLA and 40 CFR 302.4(a). The Agency solicits comments with supporting data on whether ammonium thiosulfate should be delisted as a hazardous substance under the CWA and CERCLA.

### V. Replacement of the Registered Trademark, "Kelthane," With the Generic Name, Dicofol

In response to a July 28, 1987 petition from Rohm and Haas Company, EPA has decided to change the registered trademark "Kelthane" to the generic name dicofol in Table 116.4 of 40 CFR Part 116, Table 117.3 of 40 CFR Part 117, and Table 302.4 of 40 CFR Part 302. The term Kelthane is on these lists because it was originally listed as a hazardous substance under section 311 of the CWA. Kelthane has been assigned a final adjusted RQ of 10 pounds (50 FR 13489, April 4, 1985). The Agency believes that listing this hazardous substance by its generic or chemical name is appropriate because there are companies other than Rohm and Haas that manufacture or generate dicofol. This listing by generic name (dicofol) should reduce the likelihood that Rohm and Haas would be considered liable under section 107(a) of CERCLA for releases of this hazardous substance into the environment for which it is not responsible.

### VI. Regulatory Analyses

#### *A. Executive Order No. 12291*

Executive Order (E.O.) No. 12291 requires that regulations be classified as major or non-major for purposes of review by the Office of Management and Budget (OMB). According to E.O. No. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(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 United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

An economic analysis performed by the Agency, available for inspection at Room LG–100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, shows that today's proposed rule is nonmajor, because the rule will result in estimated net cost savings of $16,000 annually. The annual net cost savings of all RQ adjustments promulgated or proposed to date (including those proposed in this NPRM) is $14.8 million. It should be noted that these net cost savings reflect only those effects of the RQ adjustments that are: (1) Readily quantifiable in dollars; and (2) associated with the notification requirements under CERCLA, as amended (including the associated activities of recordkeeping, notification processing, monitoring, and response). Any potential cost savings associated with the proposed delisting of ammonium thiosulfate as a CERCLA hazardous substance that are directly tied to the U.S. Department of Transportation's role in regulating hazardous substances under the Hazardous Materials Transportation Act are not included in this analysis.

This proposed rule has been submitted to OMB for review, as required by E.O. No. 12291.

#### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small

entities." To determine whether a Regulatory Flexibility Analysis is necessary for today's proposed rule, a preliminary analysis was conducted using a computer model that simulated the typical operation of a small U.S. chemical company.

The results of the simulation indicate that the upper-bound total cost of compliance to small firms is negligible. See the Regulatory Impact Analysis of Reportable Quantity Adjustments under sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act, Volume I, March 1985, available for inspection at Room LG-100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Therefore, because today's proposed rule is not expected to have a significant impact on small entities, EPA certifies that no Regulatory Flexibility Analysis is necessary.

*C. Paperwork Reduction Act*

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050-0046. Submit comments on these requirements to EPA and the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place NW., 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.

**List of Subjects**

*40 CFR Part 116*

Hazardous substances, Penalties, Water pollution control.

*40 CFR Part 117*

Hazardous substances, Penalties, Reporting and recordkeeping requirements, Water pollution control.

*40 CFR Part 302*

Air pollution control, Chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Oil pollution, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: February 17, 1988.

**Lee M. Thomas,**

*Administrator.*

For the reasons set forth in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

## PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for Part 302 is revised to read as follows:

**Authority:** 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

**§ 302.4 [Amended]**

2. Section 302.4 is amended by revising the following entries in Table 302.4 to read as set forth below. The appropriate footnotes are republished and footnote " " is revised. In addition to these amendments, Table 302.4 and its Appendix A are amended by removing the entry for "Ammonium thiosulfate," and by removing the term "Kelthane" and inserting in its place the term "Dicofol." The note preceding Table 302.4 is republished without change.

* * * * *

**Note.**—The numbers under the column headed "CASRN" are the Chemical Abstracts Service Registry Numbers for each hazardous substance. Other names by which each hazardous substance is identified in other statutes and their implementing regulations are provided in the "Regulatory Synonyms" columns. The "Statutory RQ" column lists the RQs for hazardous substances established by section 102 of CERCLA. The "Statutory Code" column indicates the statutory source for designating each substance as a CERCLA hazardous substance: "1" indicates that the statutory source is section 311(b)(4) of the Clean Water Act, "2" indicates that the source is section 307(a) of the Clean Water Act, "3" indicates that the source is section 112 of the Clean Air Act, and "4" indicates that the source is RCRA section 3001. The "RCRA Waste Number" column provides the waste identification numbers assigned to various substances by RCRA regulations. The column headed "Category" lists the code letters "X", "A", "B", "C", and "D", which are associated with reportable quantities of 1, 10, 100, 1000, and 5000 pounds, respectively. The "Pounds (kg)" column provides the proposed reportable quanitity adjustment for each hazardous substance in pounds and kilograms.

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

| Hazardous Substance | CASRN | Regulatory Synonyms | Statutory | | | Proposed RQ | |
|---|---|---|---|---|---|---|---|
| | | | RQ | Code † | RCRA Waste Number | Category | Pounds (Kg) |
| * | * | * | * | * | * | * | * |
| Acetic acid, lead salt | 301042 | Lead acetate | 5000 | 1,4 | U144 | B | 100 (45.4) |
| * | * | * | * | * | * | * | * |
| Isocyanic acid, methyl ester | 624839 | Methyl isocyanate | 1* | 4 | P064 | | # # |
| * | * | * | * | * | * | * | * |
| Lead †† | 7439921 | | 1* | 2 | | B | 100 (45.4) |
| Lead acetate | 301042 | Acetic acid, lead salt. | 5000 | 1,4 | U144 | B | 100 (45.4) |
| * | * | * | * | * | * | * | * |
| Lead phosphate | 7446277 | Phosphoric acid, lead salt. | 1* | 4 | U145 | B | 100 (45.4) |
| Lead stearate | 7428480 | | 5000 | 1 | | B | 100 (45.4) |
| | 1072351 | | | | | | |
| * | * | * | * | * | * | * | * |
| | 52652592 | | | | | | |
| | 56189094 | | | | | | |
| Lead sulfide | 1314870 | | 5000 | 1 | | B | 100 (45.4) |
| * | * | * | * | * | * | * | * |
| Methyl isocyanate | 624839 | Isocyanic acid, methyl ester | 1* | 4 | P064 | | # # |
| * | * | * | * | * | * | * | * |

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

| Hazardous Substance | CASRN | Regulatory Synonyms | Statutory | | | Proposed RQ | |
|---|---|---|---|---|---|---|---|
| | | | RQ | Code † | RCRA Waste Number | Category | Pounds (Kg) |
| Phosphoric acid, lead salt | 7446277 | Lead phosphate | 1* | 4 | U145 | B | 100 (45.4) |
| * | * | * | * | * | * | * | |

†—indicates the statutory source as defined by 1, 2, 3, or 4 below.
††—No reporting of releases of this hazardous substance is required if the diameter of the pieces of the solid metal released is equal to or exceeds 100 micrometers (0.004 inches).

1—indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 311(b)(4).
2—indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 307(a).
3—indicates that the statutory source for designation of this hazardous substance under CERCLA is CAA Section 112.
4—indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001

1*—indicates that the 1-pound RQ is a CERCLA statutory RQ.
# #—The Agency may adjust the RQ for methyl isocyanate in a future rulemaking; until that time the stautory 1-pound RQ will be retained.

## PART 116—LIST OF HAZARDOUS SUBSTANCES

1. The authority citation for Part 116 is revised to read as follows:

**Authority:** 33 U.S.C. 1321 and 1361.

**§ 116.4 [Amended]**

2. Section 116.4 is amended by removing the entry for "Ammonium thiosulfate," and by removing the term "Kelthane" and inserting in its place the terms "Dicofol" in the list of hazardous substances in Table 116.4A and Table 116.4B.

* * * * *

## PART 117—DESIGNATION, REPORTABLE QUANTITIES AND NOTIFICATION

1. The authority citation for Part 117 is revised to read as follows:

**Authority:** 33 U.S.C. 1321 and 1361, and Executive Order 11735.

**§ 117.3 [Amended]**

2. Section 117.3 is amended by revising the following entries in Table 117.3 to read as set forth below. In addition to these amendments, Table 117.3 is amended by removing the entry for "Ammonium thiosulfate," and by removing the term "Kelthane" and inserting in its place the term "Dicofol." The note following Table 117.3 is republished without change.

* * * * *

**Note.**—The first number under the column headed "RQ" is the reportable quantity in pounds. The number in parentheses is the metric equivalent in kilograms. For convenience, the table contains a column headed "Category" which lists the code letters "X", "A", "B", "C", and "D" associated with reportable quantities of 1, 10, 100, 1000 and 5000 pounds, respectively.

**Revised Table 117.3 (Reportable Quantities of Hazardous Substances Designated Pursuant to Section 311 of the Clean Water Act)**

TABLE 117.3.—REPORTABLE QUANTITIES OF HAZARDOUS SUBSTANCES

| Material | Category | RQ in pounds (kilograms) |
|---|---|---|
| * * * * * | | |
| Lead acetate | B | 100(45.4) |
| * * * * * | | |
| Lead stearate | B | 100(45.4) |
| * * * * * | | |
| Lead sulfide | B | 100(45.4) |
| * * * * * | | |

**Note.**—The first number under the column headed "RQ" is the reportable quantity in pounds. The number in parentheses is the metric equivalent in kilograms. For convenience, the table contains a column headed "Category" which lists the code letters "X", "A", "B", "C", and "D" associated with reportable quantities of 1, 10, 100, 1000 and 5000 pounds respectively.

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Part IV

# Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 602

Income Taxes; Passive Foreign Investment Companies; Temporary Regulations

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 602**

**[T.D. 8178]**

## Income Taxes; Passive Foreign Investment Companies

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

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary income tax regulations that provide guidance to passive foreign investment companies and their shareholders that are United States persons about the time, manner and other requirements for making certain elections. These elections were enacted by the Tax Reform Act of 1986. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in this issue of the **Federal Register**.

**DATE:** Effective for taxable years beginning after December 31, 1986.

**FOR FURTHER INFORMATION CONTACT:** Gayle E. Novig of the Office of the Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (CC:INTL-655-87) (202-634-5423, not a toll free number).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains Temporary Income Tax Regulations (26 CFR Part 1) under sections 1291(d)(2), 1294, 1295, and 1297(b)(1) of the Internal Revenue Code of 1986. These provisions were added to the Internal Revenue Code of 1986 by section 1235 of the Tax Reform Act of 1986 (Pub. L. 99-514). The temporary regulations are effective for taxable years beginning after 1986. However, these regulations are not intended to address comprehensively the issues raised by sections 1291, 1294, 1295, and 1297 of the Code.

### Need for Temporary Guidance

The temporary regulations provided by this document will remain in effect until superseded by final regulations on these elections. Passive foreign investment companies and their shareholders wishing to make the elections in this Treasury decision for their first taxable year beginning after 1986 have an immediate need for guidance with respect to the time and manner of making the elections. For this reason, it is impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or to issue the decision subject to the effective date limitation of subsection (d) of that section.

### Explanation of Provisions

*General*

The Tax Reform Act of 1986 established special rules for the taxation of U.S. persons that are shareholders of passive foreign investment companies (PFICs). For taxable years beginning after December 31, 1986, a foreign corporation will be classified as a PFIC if either 75 percent or more of its gross income for the taxable year is passive, or 50 percent or more of the average value of its assets for the taxable year produce passive income or are held for the production of passive income. Subject to certain exceptions, passive income for these purposes generally is foreign personal holding company income as defined in section 954(c) of the Internal Revenue Code.

There are two types of PFICs. Absent an election to be treated as a qualified electing fund (QEF), a PFIC is considered a "nonqualified fund." U.S. persons that are shareholders of nonqualified funds are subject to special ordinary income treatment and a deferred tax amount upon disposition of the stock and receipt of certain distributions. If, however, a PFIC makes the election under section 1295 to be a QEF, its shareholders that are U.S. persons will be taxed currently on their respective shares of the QEF's earnings.

*Statutory Provisions*

Election to be a Qualified Electing Fund

A PFIC may make the election under section 1295 to be a QEF for any taxable year. To be effective for a particular taxable year, the election must be filed with the Internal Revenue Service Center in Philadelphia before the 15th day of the third month of the following taxable year. The election, once made, applies to the year for which first effective and all subsequent taxable years that the electing company is a PFIC. The election may be revoked only with the consent of the Secretary. In addition, to be a QEF, the PFIC must comply with requirements prescribed by the Secretary for determining its ordinary earnings and net capital gain for each taxable year, for reporting the U.S. ownership of its stock, and for other purposes necessary to carry out the objectives of the PFIC provisions.

QEF Shareholder Election to Recognize Gain

U.S. persons that are shareholders of a QEF are taxed under section 1293 on their pro rata shares of the QEF's annual ordinary earnings and net capital gain. If the QEF was a nonqualified fund in a prior taxable year included in the shareholder's holding period, the U.S. person also may be taxable under section 1291 on dispositions of the QEF stock and receipt of certain distributions. To limit the shareholder's taxation to section 1293, the shareholder may make the election under section 1291(d)(2) to mark the stock to market as of the first day of the QEF's first taxable year as a QEF. A U.S. person making this election is deemed to have sold the stock held in the QEF on that day for its fair market value. The deemed sale is taxable as a disposition subject to the special tax rules of section 1291. Gain, but not loss, realized on the deemed sale will be recognized. The shareholder's basis in the stock will be adjusted for any gain recognized, and the shareholder's holding period shall thereafter be treated as beginning on the date of the deemed sale. Thereafter, the shareholder will be taxable only under section 1293 with respect to the subsequent earnings derived from the investment in the QEF.

Election to Extend Time for Payment of Tax

The U.S. investor in a QEF is currently taxed on the undistributed earnings of the QEF; however, section 1294 enables the shareholder to elect annually to defer payment of the tax on those earnings, subject to an interest charge. The electing shareholder may terminate the election at any time by paying the tax and interest due. Otherwise, the election automatically terminates upon the occurrence of an event described in section 1294(c).

Election to Purge Stock of PFIC Taint

If, in a particular taxable year, a shareholder owns stock in a foreign corporation which qualifies as a PFIC under section 1296, the stock will retain its character as PFIC stock in subsequent taxable years unless the PFIC is a QEF for the shareholder's entire holding period. An election is available under section 1297(b)(1), however, which allows a shareholder to purge the PFIC taint attributable to stock of a corporation that was a PFIC but no longer qualifies as such under the passive income or passive asset test of section 1296 (former PFIC). Unless the election is made, the shareholder will continue to be taxable pursuant to

section 1291 even after the corporation ceases to meet the PFIC definitional test of section 1296. The election effects a deemed sale of the stock and only applies in circumstances in which the PFIC was not a qualified electing fund at some time during the electing shareholder's holding period. The electing shareholder is treated as having sold the stock in the former PFIC on the last day of the former PFIC's last taxable year during which it met the PFIC definitional test. The deemed sale is treated as a disposition for purposes of section 1291 and, therefore, is subject to the deferred tax amount defined in section 1291(c).

**Explanation of Temporary Regulations**

The temporary regulations provide the time, manner and other requirements for making the elections under sections 1291(d)(2), 1294, 1295, and 1297(b)(1).

*Election to be a Qualified Electing Fund*

Section 1.1295–1T of the temporary regulations prescribes the time and manner for making the QEF election and the requirements for continued QEF qualification. The temporary regulations provide that the PFIC must file its QEF election with the Philadelphia Service Center before the 15th day of the third month following the taxable year for which the election is made. The temporary regulations permit a PFIC whose post-1986 short taxable year ended before December 31, 1987 to make the election any time before March 15, 1988. The QEF election will not be available to PFICs with any bearer shares. As part of the election, the PFIC must provide certain information, including the total ordinary earnings and net capital gain for the year of the election and, in certain cases, the fair market of a share of its stock as of the first day of the election year. However, any PFIC which must file its election statement before May 15, 1988, will be able to amend and supplement the information provided in its election statement as well as extend the time to satisfy the other election requirements in § 1.1295–1T(b) described below by June 15, 1988.

The temporary regulations also require the PFIC to notify its shareholders of the daily amount of ordinary earnings and net capital gain of the PFIC deemed earned on a share of stock during the taxable year. However, if the number of outstanding shares of stock in the PFIC changed at any time during the year, the PFIC must provide the shareholders a schedule of the per share amounts of ordinary earnings and net capital gain of the PFIC for each day during the taxable year. The PFIC must send the shareholder notification and request for certification by the 15th day of the third month following each taxable year to which the election applies. However, the date for sending shareholder notification and request for certification statements is extended until June 15, 1988 for elections filed before March 15, 1988 under § 1.1295-1T(b)(1)(iii) of the temporary regulations.

The shareholder notification and certification statement will require certain shareholders of record that hold the stock for their own benefit to complete the certification statement and return it to the PFIC. The shareholder notification and request for certification statement also will advise certain types of shareholders of record to notify their owners, or the persons on whose behalf they hold the stock, of their pro rata shares of the earnings of the PFIC. These shareholders also must be advised to request the indirect owners to report their status as U.S. persons to the PFIC. Only U.S. persons that are direct or indirect shareholders of the PFIC are required to certify their status to the PFIC. The temporary regulations provide that failure of a shareholder to comply with the request for certification will not invalidate the QEF election.

The temporary regulations require the QEF to provide the Internal Revenue Service, by the 15th day of the ninth month following each taxable year to which the election applies, the names, addresses and taxpayer identification numbers of U.S. persons obtained through certification, and their pro rata shares of the ordinary earnings and net capital gain. For taxable years after the year of the election, this information will be required as part of the annual report to be filed by the QEF by the 15th day of the ninth month following each year to which the election applies. The annual report will be similar to the election statement.

The temporary regulations also require a QEF to amend the earnings information filed with the Internal Revenue Service and sent to its shareholders at any time that a recalculation of the ordinary earnings and net capital gain of the QEF is necessary.

The temporary regulations under § 1.1295–1T(b)(3) require the QEF to appoint a person resident in the United States as the QEF's authorized representative in the United States for tax administrative purposes. Section 1.1295-1T(b)(4) requires the QEF to maintain permanent books of account, records and other documents that are necessary to verify the reported amounts of ordinary income and capital gain, to maintain ledgers of all shareholders of record for each year to which the election applies, to keep copies of such documents in the United States, and to make the documents available for inspection by Internal Revenue Service personnel.

Section 1.1295.1T(b)(9) provides that if the electing corporation was a nonqualified fund during a post-1986 taxable year prior to the taxable year for which the section 1295 election is made, it must determine, for purposes of the shareholder election under section 1291(d)(2), the fair market value of its stock on the first day of its first taxable year as a QEF (the valuation date) according to the rules specified in § 1.1295-1T(b)(9) (i), and (ii). This requirement does not apply to a foreign corporation that makes the election for its first taxable year during which it qualifies as a PFIC. A PFIC required to make the fair market value determination must provide this information to those persons that were its shareholders on the valuation date.

The section 1295 election may be revoked by the PFIC but only with the consent of the Commissioner. The Commissioner's determination will take into account the enactment of technical corrections to the Tax Reform Act of 1986 after the PFIC made the election, as well as provisions of PFIC regulations, published after the PFIC made the election.

*QEF Shareholder Election to Recognize Gain.*

Section 1.1291-10T specifies the time and manner for making the election under section 1291(d)(2) of the Code to treat the stock of a PFIC as sold on the first day on which the PFIC is a QEF. This election only applies to a U.S. person that held such stock in the QEF when it was a nonqualified fund. The election may be made by a shareholder that may realize either a gain or a loss on the deemed sale (although the loss will not be recognized). Section 1.1291-10T(c) provides that the shareholder may make the election only with respect to the taxable year that includes the first day of the QEF's first taxable year as a QEF. Section 1.1291-10T(d) provides that, in order to make the election under section 1291(d)(2), the shareholder generally must pay the tax arising under section 1291 by the due date (determined without extensions) of the return for the shareholder's taxable year that includes the first day of the QEF's first taxable year as a QEF. If the shareholder files the election after the due date, the electing shareholder will

have to pay the tax on the gain included in income, the deferred tax amount, and the interest for the underpayment of tax pursuant to section 6601.

The temporary regulations provide rules for direct shareholders making the election under section 1291(d)(2). Guidance for indirect shareholders wishing to make the election will be provided at a later time.

*Election to Extend Time for Payment of Tax*

Section 1.1294–1T specifies the time and manner for making the annual election under section 1294 to extend the time for payment of the tax liability which is attributable to the undistributed earnings of the QEF, included in income under section 1293, for the taxable year of the QEF that ended during the taxable year of the shareholder. The tax liability is defined in § 1.1294–1T(f) as the excess of the tax imposed under chapter 1 of the Code for the taxable year over the tax that would be imposed for the taxable year without regard to the inclusion in income under section 1293 of undistributed earnings. The electing shareholder will be required to state in the section 1294 election the amount or ordinary earnings and net capital gain of the QEF included in the income of the shareholder for the year and the amount of the tax liability, payment of which is being deferred by reason of the election under section 1294. An extension of time to pay tax terminates upon the occurrence of any of the events listed in § 1.1294–1T(e). These events include receipt of earnings to which the election is attributable, transfer or pledge of the stock with respect to the stock with respect to which the section 1294 election applies, a loan, pledge or guarantee by the QEF to the electing shareholder or to a person related to the shareholder, cessation of the QEF's status as a QEF or as a PFIC, or a determination by the District Director pursuant to section 1294(c)(3) that collection of the tax is in jeopardy.

*Election to Purge Stock of PFIC Taint*

Section 1.1297–3T provides the time and manner for making the election under section 1297(b)(1) of the Code to treat the PFIC stock as sold on the last day of the last taxable year during which it was a PFIC. Thereafter, the foreign corporation will not be treated as a PFIC in the hands of the shareholder. The shareholder makes the election by filing an amended tax return within three years after the due date, as extended, of the shareholder's tax return for the taxable year that includes the date of the deemed sale. The shareholder must describe in the election the manner in which the former PFIC lost the characteristics of a PFIC. The electing shareholder will be liable for interest for underpayment of tax for the year of the deemed sale.

The temporary regulations provide rules for direct shareholdes making the election under section 1297(b)(1). Guidance for indirect shareholders wishing to make the election will be provided at a later time.

**Special Analyses**

It has been determined that this temporary regulation is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. A general notice of proposed rule is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

**Paperwork Reduction Act**

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545–1028.

**Drafting Information**

The principal author of these temporary regulations is Gayle E. Novig of the Office of the Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

**List of Subjects**

*26 CFR 1.1201–1 Through 1.1297–1*

Income taxes, Capital gains and loses, Recapture and passive foreign investment companies.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR Part 1 is amended as follows:

**Income Tax Regulations**

**Paragraph 1.** The authority for 26 CFR Part 1 continues to read in part:

**Authority:** 26 U.S.C. 7805. * * * Sections 1.1291–10T, 1.1294–1T, 1.1295–1T, and 1.1297–3T also issued, respectively, under the authority of 26 U.S.C. 1291(d)(2), 1294, 1295, and 1297(b)(1).

**Par. 2.** New §§ 1.1291–0T, 1.1291–0T, 1.1294–1T, 1.1295–1T, and 1.1297–3T are added immediately following § 1.1287–1.

The added sections read as follows:

**§ 1.1291–0T Passive Foreign Investment Companies. Table of contents (Temporary).**

**§ 1.1291–0T Election by a United States person to recognize gain in a qualified electing fund**

(a) Purpose and scope
(b) Election to recognize gain
(1) In general
(2) Qualification date
(3) Exception
(c) Time for making the election
(d) Manner of making the election
(1) In general
(2) Information to be included in the election
(e) Adjustment to basis; treatment of holding period

**§ 1.1294–1T Election to extend the time for payment of tax on undistributed earnings of a qualified electing fund**

(a) Purpose and scope
(b) Election to extend time for payment of tax
(1) In general
(2) Exception
(3) Undistributed earnings
(i) In general
(ii) Effect of loan, pledge or guarantee
(c) Time for making the election
(1) In general
(2) Exception
(d) Manner of making the election
(1) In general
(2) Information to be included in the election
(e) Termination of the extension
(f) Undistributed PFIC earnings tax liability
(g) Authority to require a bond
(h) Annual reporting requirement

**§ 1.1295–1T Election by a passive foreign investment company to be a qualified electing fund**

(a) In general
(b) Election requirements
(1) Time for making the election
(i) In general
(ii) Exception for elections for post-1986 years ended before 12/31/87
(iii) Curing an election made before 5/15/88
(2) Manner of making the election
(i) In general
(ii) Information to be included in the election statement
(3) Appointment of U.S. agent
(4) Books and records
(5) Annual shareholder notification and request for certification of U.S. ownership
(i) In general
(ii) The notification of PFIC information and request for shareholder certification
(6) Annual reporting by the PFIC to the Internal Revenue Service

(7) Amendment of earnings information
(8) Taxpayer identification number
(9) Fair market value determination by certain companies
(i) Companies other tnan open-end investment companies
(ii) Open-end investment companies
(c) Revocability of election
(1) In general
(2) Failure to obtain shareholder certification

**§ 1.1297–3T Deemed sale election by a United States person that is a shareholder of a passive foreign investment company**

(i) In general
(b) Time and manner for making the election
(1) In general
(2) Information to be included in the election
(3) Adjustment to basis; treatment of holding period

**§ 1.1291–10T Election by a United States person to recognize gain in a qualified electing fund (Temporary).**

(a) *Purpose and scope.* This section provides rules for making the election under section 1291(d)(2). Under that section, a U.S. person may elect to recognize gain with respect to stock in a qualified electing fund (QEF) held on the first day of the QEF's first taxable year during which it is a QEF. In general, a QEF is a foreign coporation that is a passive foreign investment company (PFIC), as defined in section 1296, and that has made the election under section 1295. For rules concerning the election by a PFIC under section 1295, see § 1.1295–1T.

(b) *Election to recognize gain*—(1) *In general.* A U.S. person may elect to recognize gain under the provisions of this § 1.1291–10T if such person was a shareholder of a QEF on the qualification date. A person that makes such an election shall be treated as having sold on the qualification date for its fair market value stock of the QEF that the person held on that date. The deemed sale is taxed as a disposition pursuant to section 1291. Under that section, the gain is considered earned pro rata over the shareholder's holding period in the stock, and is taxed as ordinary income. The tax on the gain attributable to post-1986 taxable years during which the corporation is a PFIC is based on the value of tax deferral and includes an interest charge. An election may be made by a shareholder that would realize a loss on the deemed sale. Any loss realized on the deemed sale may not be recognized.

(2) *Qualification date.* The qualification date with respect to any shareholder of a QEF is the first day of the QEF's first taxable year as a QEF.

(3) *Exception.* This election does not pertain to a shareholder that held stock in a PFIC which was a QEF for all of the PFIC's taxable years beginning after 1986 during which it qualified as a PFIC and that are included in whole or in part in the shareholder's holding period. See section 1291(d)(1).

(c) *Time for making the election.* Except as provided below, an election under this § 1.1291–10T must be made with the filing of the electing shareholder's tax return for the taxable year which includes the qualification date. The election may be made by filing an amended tax return within three years of the due date, as extended, for the shareholder's tax return for the taxable year which includes the qualification date.

(d) *Manner of making the election*—(1) *In general.* The election shall be made by filing Form 8621 or a statement containing the information and representations required by paragraph (d)(2) of this section, reporting the gain on the income tax return as required by section 1291(a)(2), and by paying the tax on the gain as required by section 1291 (including the payment of the deferred tax amount required under sections 1291(a)(1)(C) and 1291(c)). The electing shareholder that makes the election under this section after the due date of the return (determined without extensions) shall pay interest, pursuant to section 6601, on the underpayment of tax for the taxable year that includes the qualification date.

(2) *Information to be included in the election.* If a statement is used in lieu of Form 8621, the statement should be identified, in a heading, as an election under section 1291(d)(2). The statement must contain the following information and representations:

(i) The name, address and taxpayer identification number of the electing shareholder;

(ii) The name, address and taxpayer identification number of the QEF, the stock of which is the subject of the election;

(iii) A statement that the shareholder is making the election under section 1291(d)(2);

(iv) A representation that the person making the election was a shareholder in the QEF on the qualification date;

(v) The qualification date;

(vi) A schedule of the shares held by the electing shareholder in the QEF on the qualification date, listing the date(s) of acquisition, the number of shares acquired on each date listed, and the electing shareholder's tax basis in each of those shares;

(vii) The fair market value of the stock in the QEF as of the qualification date, as provided to the electing shareholder by the QEF pursuant to § 1.1291–1T(b)(5); and

(viii) A schedule showing the computation of the gain recognized on the deemed sale, and the calculation of the deferred tax amount, as defined in section 1291(c).

(e) *Adjustment to basis; treatment of holding period.* An electing shareholder that recognizes gain on the deemed sale shall increase its adjusted basis in the stock by the amount of gain recognized. An electing shareholder shall not adjust the basis in stock with respect to which the shareholder realized a loss on the deemed sale. An electing shareholder thereafter shall treat its holding period in the stock, for purposes of sections 1291 through 1297, as beginning on the qualification date without regard to whether it recognized gain on the deemed sale; for purposes of section 1223, the holding period in the stock in the QEF shall include the period prior to the deemed sale.

**§ 1.1294–1T Election to extend the time for payment of tax on undistributed earnings of a qualified electing fund (Temporary).**

(a) *Purpose and scope.* This section provides rules for making the annual election under section 1294. Under that section, a U.S. person that is a shareholder in a qualified electing fund (QEF) may elect to extend the time for payment of its tax liability which is attributable to its share of the undistributed earnings of the QEF. In general, a QEF is a passive foreign investment company (PFIC), as defined in section 1296, that makes the election under section 1295. Under section 1293, a U.S. person that owns, or is treated as owning, stock of a QEF at any time during the taxable year of the QEF shall include in gross incme, as ordinary income, its pro rata share of the ordinary earnings of the QEF for the taxable year and, as long-term capital gain, its pro rata share of the net capital gain of the QEF for the taxable year. The shareholder's taxable year in which or with which the taxable year of the QEF ends.

(b) *Election to extend time for payment*—(1) *In general.* A U.S. person that is a shareholder of a QEF on the last day of the QEF's taxable year may elect under section 1294 to extend the time for payment of that portion of its tax liability which is attributable to the inclusion in income pursuant to section 1293 of the shareholder's share of the QEF's undistributed earnings. The election under section 1294 may be made only with respect to undistributed earnings, and interest is imposed under

section 6601 on the amount of the tax liability which is subject to the extension. This interest must be paid on the termination of the election.

(2) *Exception.* An election under this § 1.1294–1T cannot be made for a taxable year of the shareholder if any portion of the QEF's earning is includible in the gross income of the shareholder for such year under either section 551 (relating to foreign personal holding companies) or section 951 (relating to controlled foreign corporations).

(3) *Undistributed earnings*—(i) *In general.* For purposes of this § 1.1294–1T the term "undistributed earnings" means the excess, if any, of the amount includible in gross income by reason of section 1293(a) for the shareholder's taxable year (the includible amount) over the sum of (A) the amount of any distribution to the shareholder during the QEF's taxable year and (B) the portion of the includible amount that is attributable to stock in the QEF that the shareholder transferred or otherwise disposed of before the end of the QEF's year. For purposes of this paragraph, a distribution will be treated as made from the most recently accumulated earnings and profits.

(ii) *Effect of a loan, pledge or guarantee.* A loan, pledge, or guarantee described in § 1.1294–1T(e) (2) or (4) will be treated as a distribution of earnings for purposes of paragraph (b)(3)(i)(A). If earnings are treated as distributed in a taxable year by reason of a loan, pledge or guarantee described in § 1.1294–1T(e) (2) or (4), but the amount of the deemed distribution resulting therefrom was less than the amount of the actual loan by the QEF (or the amount of the loan secured by the pledge or guarantee), earnings derived by the QEF in a subsequent taxable year will be treated as distributed in such subsequent year to the shareholder for purposes of paragraph (b)(3)(i)(A) by virtue of such loan, but only to the extent of the difference between the outstanding principal balance on the loan in such subsequent year and the prior years' deemed distributions resulting from the loan. For this purpose, the outstanding principal balance on a loan in a taxable year shall be treated as equal to the greatest amount of the outstanding balance at any time during such year.

*Example (1).* (i) *Facts.* *FC* is a PFIC that made the election under section 1295 to be a QEF for its taxable year beginning January 1, 1987. *S* owned 500 shares, or 50 percent, of *FC* throughout the first six months of 1987, but on June 30, 1987 sold 10 percent, or 50 shares, of the *FC* stock that it held. *FC* had $100,000*x* of ordinary earnings but no net capital gain in 1987. No part of *FC*'s earnings in includible in *S*'s income under either section 551 or 951. *FC* made no distributions to its shareholders in 1987. *S*'s pro rata share of income is determined by attributing *FC*'s income ratably to each day in *FC*'s year. Accordingly, FC's daily earnings are $274*x* ($100,000*x*/365). *S*'s share of the earnings of *FC* is $47,484*x*, determined as follows.

*FC*'s daily earnings × number of days percentage held by *S* × percentage of ownership in *FC*.

Accordingly, *S*'s pro rata share of *FC*'s earnings for the first six months of *FC*'s year deemed earned while *S* held 50 percent of *FC*'s stock is $24,797*x* ($274*x* × 181 days × 50%). *S*'s pro rata share of *FC*'s earnings for remainder of *FC*'s year deemed earned while *S* held 45 percent of *FC*'s stock is $22,687*x* ($274*x* × 184 days × 45%). Therefore, *S*'s total share of *FC*'s earnings to be included in income under section 1293 is $47,484*x* ($24,797*x* + $22,687*x*).

(ii) *Election.* *S* intends to make the election under section 1294 to defer the payment of its tax liability that is attributable to the undistributed earnings of *FC*. The amount of current year undistributed earnings as defined in § 1.1294–1T(b)(3) with respect to which *S* can make the election is the excess of *S*'s inclusion in gross income under section 1293(a) for the taxable year over the sum of (1) the cash and other property distributed to *S* during *FC*'s tax year out of earnings included in income pursuant to section 1293(a), and (2) the earnings attributable to stock disposed of during *FC*'s tax year. Because *S* sold 10 percent, or 50 shares, of the *FC* stock that it held during the first six months of the year, 10 percent of its share of the earnings for that part of the year, which is $2,480*x* ($24,797*x* × 10%), is attributable to the shares sold. *S* therefore cannot make the election under section 1294 to extend the time for payment of its tax liability on that amount. Accordingly, *S* can make the election under section 1294 with respect to its tax on $45,004*x* ($47,484*x* less $2,480*x*), which is its pro rata share of *FC*'s earnings, reduced by the earnings attributable to the stock disposed of during the year.

*Example (2).* (i) *Facts.* The facts are the same as in Example (1) with the following exceptions. *S* did not sell any *FC* stock during 1987. Therefore, because *S* held 50 percent of the *FC* stock throughout 1987, *S*'s pro rata share of *FC*'s ordinary earnings was $50,000*x*, no part of which was includible in *S*'s income under either section 551 or 951. There were no actual distributions of earnings to *S* in 1988. On December 31, 1987, *S* pledged the FC stock as security for a bank loan of $75,000*x*. The pledge is treated as a disposition of the *FC* stock and therefore a distribution of *S*'s share of the undistributed earnings of *FC* up to the amount of the loan principal. *S*'s entire share of the undistributed earnings of *FC* are deemed distributed as a result of the pledge of the *FC* stock. *S* therefore cannot make the election under section 1294 to extend the time for payment of its tax liability on its share of *FC*'s earnings for 1987.

(ii) *Deemed distribution.* In 1988, *FC* has ordinary earnings of $100,000*x* but no net capital gain. *S*'s pro rata share of *FC*'s 1988 ordinary earnings was $50,000*x*. *S*'s loan remained outstanding throughout 1988; the highest loan balance during 1988 was $74,000*x*. Of *S*'s share of the ordinary earnings of FC of $50,000*x*, $24,000*x* is deemed distributed to *S*. This is the amount by which the highest loan balance for the year ($74,000*x*) exceeds the portion of the undistributed earnings of *FC* deemed distributed to *S* in 1987 by reason of the pledge ($50,000*x*). *S* may make the election under section 1294 to extend the time for payment of its tax liability of $26,000*x*, which is the amount by which *S*'s includible amount for 1988 exceeds the amount deemed distributed to *S* during 1988.

(c) *Time for making the election*—(1) *In general.* An election under this § 1.1294–1T may be made for any taxable year in which a shareholder reports income pursuant to section 1293. Except as provided in paragraph (c)(2), the election shall be made by the due date, as extended, of the tax return for the shareholder's taxable year for which the election is made.

(2) *Exception.* An election under this section may be made within 60 days of receipt of notification from the QEF of the shareholder's pro rata share of the ordinary earnings and net capital gain if notification is received after the time for filing the election provided in paragraph (c)(1) (and requires the filing of an amended return to report income pursuant to section 1293). If the notification reports an increase in the shareholder's pro rata share of the earnings previously reported to the shareholder by the QEF, the shareholder may make the election under this paragraph (c)(2) only with respect to the amount of such increase.

(d) *Manner of making the election*—(1) *In general.* A shareholder shall make the election by (i) attaching to its return for the year of the election Form 8621 or a statement containing the information and representations required by this section and (ii) filing a copy of Form 8621 or the statement with the Internal Revenue Service Center, P.O. Box 21086, Philadelphia, Pennsylvania 19114.

(2) *Information to be included in the election statement.* If a statement is used in lieu of Form 8621, the statement should be identified, in a heading, as an election under section 1294 of the Code. The statement must include the following information and representations:

(i) The name, address, and taxpayer identification number of the electing shareholder and the taxable year of the shareholder for which the election is being made;

(ii) The name, address and taxpayer identification number of the QEF if provided to the shareholder;

(iii) A statement that the shareholder is making the election under section 1294 of the Code;

(iv) A schedule containing the following information:

(A) The ordinary earnings and net capital gain for the current year included in the shareholder's income under section 1293;

(B) The amount of cash and other property distributed by the QEF during its taxable year with respect to stock held directly or indirectly by the shareholder during that year, identifying the amount of such distributions that is paid out of current earnings and profits and the amount paid out of each prior year's earnings and profits; and

(C) The undistributed PFIC earnings tax liability (as defined in paragraph (f) of this section) for the taxable year, payment of which is being deferred by reason of the election under section 1294;

(v) The number of shares of stock held in the QEF during the QEF's taxable year which gave rise to the section 1293 inclusion and the number of such shares transferred, deemed transferred or otherwise disposed of by the electing shareholder before the end of the QEF's taxable year, and the data of transfer; and

(vi) The representations of the electing shareholder that—

(A) No part of the QEF's earnings for the taxable year is includible in the electing shareholder's gross income under either section 551 or 951 of the Code;

(B) The election is made only with respect to the shareholder's pro rata share of the undistributed earnings of the QEF; and

(C) The electing shareholder, upon termination of the election to extend the date for payment, shall pay the undistributed PFIC earnings tax liability attributable to those earnings to which the termination applies as well as interest on such tax liability pursuant to section 6601. Payment of this tax and interest must be made by the due date (determined without extensions) of the tax return for the taxable year in which the termination occurs.

(e) *Termination of the extension.* The election to extend the date for payment of tax will be terminated in whole or in part upon the occurrence of any of the following events:

(1) The QEF's distribution of earnings to which the section 1294 extension to pay tax is attributable; the extension will terminate only with respect to the tax attributable to the earnings that were distributed.

(2) The electing shareholder's transfer of stock in the QEF (or use thereof as security for a loan) with respect to which an election under this § 1.1294–1T was made. The election will be terminated with respect to the undistributed earnings attributable to the shares of the stock transferred. In the case of a pledge of the stock, the election will be terminated with respect to undistributed earnings equal to the amount of the loan for which the stock is pledged.

(3) Revocation of the QEF's election as a QEF or cessation of the QEF's status as a PFIC. A revocation of the QEF election or cessation of PFIC status will result in the complete termination of the extension.

(4) A loan of property by the QEF directly or indirectly to the electing shareholder or related person, or a pledge or guarantee by the QEF with respect to a loan made by another party to the electing shareholder or related person. The election will be terminated with respect to undistributed earnings in an amount equal to the amount of the loan, pledge, or guarantee.

(5) A determination by the District Director pursuant to section 1294(c)(3) that collection of the tax is in jeopardy. The amount of undistributed earnings with respect to which the extension is terminated under this paragraph (d)(5) will be left to the discretion of the District Director.

(f) *Undistributed PFIC earnings tax liability.* The electing shareholder's tax liability attributable to the ordinary earnings and net capital gain included in gross income under section 1293 shall be the excess of the tax imposed under chapter 1 of the Code for the taxable year over the tax that would be imposed for the taxable year without regard to the inclusion in income under section 1293 of the undistributed earnings as defined in paragraph (b)(3) of this section.

*Example.* The facts are the same as in § 1.1294–1T (b)(3), *Example (1)*, with the following exceptions. *S*, a domestic corporation, did not dispose of any *FC* stock in 1987. Therefore, because *S* held 50 percent of the *FC* stock throughout 1987, *S*'s pro rata share of *FC*'s ordinary earnings was $50,000*x*. In addition to $50,000*x* of ordinary earnings from *FC*, *S* had $12,500*x* of domestic source income and $6,000*x* of expenses (other than interest expense) not definitely related to any gross income. These expenses are apportioned, pursuant to § 1.861–8(c)(2), on a pro rata basis between the domestic and foreign source income—$1,200*x* of expenses, or one-fifth, to domestic source income, and $4,800*x* of expenses, or four-fifths, to the section 1293 inclusion. *FC* paid foreign taxes of $25,000*x* in 1987. Accordingly, *S* is entitled to claim as an indirect foreign tax credit pursuant to section 1293(f) a proportionate amount of the foreign taxes paid by *FC*, which is $12,500*x* ($25,000*x* x $50,000*x*/$100,000*x*). *S* is taxed in the U.S. at the rate of 34 percent. The amount of tax liability for which *S* may extend the time for payment is determined as follows:

1987 Tax Liability (With Section 1293 Inclusion)

| Source | U.S. | | Foreign |
|---|---|---|---|
| Income | 12,500*x* | | 0 |
| Section 1293 | 0 | | 50,000*x* |
| Expenses | −1,200*x* | | −4,800*x* |
| Taxable income | 11,300*x* | | 45,200*x* |
| Total taxable income | | 56,500*x* | |
| U.S. income tax rate | | x34% | |
| Pre-credit U.S. tax | | 19,210*x* | |
| Foreign tax credit | | −12,500*x* | |
| 1987 Tax Liability | | 6,710*x* | |

1987 Tax Liability (Without Section 1293 Inclusion)

| Source | U.S. | Foreign |
|---|---|---|
| Income | 12,500*x* | 0 |
| Expenses | −6,000*x* | |
| Taxable income | 6,500*x* | |
| U.S. tax rate | x34% | |
| U.S. Tax | 2,210*x* | |
| Foreign tax credit | 0 | |
| Hypothetical 1987 Tax Liability | 2,210*x* | |

The amount of tax, payment of which *S* may defer pursuant to section 1294, is $4,500*x* ($6,710*x* less $2,210*x*).

(g) *Authority to require a bond.* Pursuant to the authority granted in section 6165 and in the manner provided therein, and subject to notification, the District Director may require the electing shareholder to furnish a bond to secure payment of the tax, the time for payment of which is extended under this section. If the electing shareholder does not furnish the bond within 60 days after receiving a request from the District Director, the election will be revoked.

(h) *Annual reporting requirement.* The electing shareholder must attach Form 8621 or a statement to its income tax return for each year during which an election under this section is outstanding. The statement must contain the following information: (1) The total amount of undistributed earnings as of the end of the taxable year to which the outstanding elections apply; (2) the total amount of the undistributed PFIC earnings tax liability and accrued interest charge as of the end of the year;

(3) the total amount of distributions received during the taxable year; and (4) a description of the occurrence of any other termination event described in paragraph (e) of this section that occurred during the taxable year. The electing shareholder also shall file by the due date, as extended, for its return a copy of Form 8621 or the statement with the Philadelphia Service Center, P.O. Box 21086, Philadelphia, Pennsylvania 19114.

**§ 1.1295-1T Election by a passive foreign investment company to be a qualified electing fund (Temporary).**

(a) *In general.* This section provides rules under which a foreign corporation that qualifies as a passive foreign investment company (PFIC), as defined in section 1296, may make the election under section 1295 to be a qualified electing fund (QEF). U.S. persons that are shareholders of a QEF are taxable annually, pursuant to section 1293, on their pro rata shares of the earnings and profits of the QEF unless the shareholder makes the election under section 1294 to extend the time or payment of tax on undistributed earnings. The election under section 1295 may not be made by a PFIC that issues any of its shares in bearer form or is otherwise unable to identify all of its shareholders of record. The election will be effective with respect to all direct and indirect shareholders of the PFIC. The election may be made for any taxable year of the corporation during which it is a PFIC.

(b) *Election requirements.* An election under section 1295 shall be valid only if the PFIC complies with the following requirements.

(1) *Time for making the election*—(i) *In general.* A PFIC must make the election under this section before the fifteenth day of the third month following the taxable year for which it is being made. Pursuant to section 7502 and the regulations thereunder, an election or an amended election under this section that is postmarked by United States mail on or before the due date will be considered timely filed. An election mailed by air, postage prepaid and properly addressed to the Internal Revenue Service Center in Philadelphia, Pennsylvania, and bearing an originating official postmark of a foreign postal authority dated at least 10 calendar days before the due date, will be deemed timely filed.

(ii) *Exception for elections for post-1986 years ended before 12/31/87.* A PFIC whose first post-1986 taxable year ended before December 31, 1987 may file its election under this section any time before March 15, 1988.

(iii) *Curing an election made before 5/15/88.* A PFIC that must file its election under this section before May 15, 1988 has until June 15, 1988 to satisfy all other requirements of this paragraph (b), provided that the PFIC has filed a statement containing the information specified in paragraphs (b)(2)(ii) (A), (B), and (C) of this section at the address specified in paragraph (b)(2)(i) before the fifteenth day of the third month following the taxable year for which the election is made (or, in the case of any PFIC described in paragraph (b)(1)(ii), before March 15, 1988).

(2) *Manner of making the election*—(i) *In general.* A PFIC shall make an election under this section by filing Form 8644 (if available) or a statement, in English, containing the information and representations required by this paragraph (b)(2). The form or statement shall be filed with the Internal Revenue Service Center, P.O. Box 21086, Philadelphia, Pennsylvania 19114 U.S.A. The form or statement shall be signed by a responsible officer of the PFIC who verifies, under penalties of perjury, that the officer is authorized to make the election on behalf of the PFIC and that all the information and representations provided in the form or statement are true, correct, and complete to the best of the officer's knowledge and belief.

(ii) *Information to be included in the election statement.* If a statement is used, the statement should be identified, in a heading, as an election under section 1295. The statement must contain the following information and representations:

(A) The name, address, taxpayer identification number, if any, and country and year of incorporation of the PFIC.

(B) A statement that the PFIC is making the election under section 1295 and the date on which the PFIC is making the election.

(C) The taxable year to which the election under section 1295 applies.

(D) The name and address of the United States resident who has been designated by the PFIC as its U.S. agent pursuant to paragraph (b)(3) of this section.

(E) The PFIC's representation that it will maintain its books of account, records, shareholder ledgers, and other documents in the United States in accordance with paragraph (b)(4) of this section and will make such documents available for inspection in the United States by personnel of the Internal Revenue Service.

(F) The name and address of the person (or persons) having custody of the PFIC's books of account, records, shareholder ledgers, and other documents in the United States.

(G) A description of each class of stock of the PFIC outstanding during the taxable year, and the manner in which the stock was traded; if the stock is traded in an established securities market(s), the name of the market(s).

(H) The total amount of ordinary earnings and net capital gain of the PFIC for the taxable year, as determined under United States federal income tax principles and in accordance with section 1293(e). The computations for this purpose shall be determined in the company's functional currency, as defined in section 985(b), and then translated into U.S. dollars, if necessary, at the weighted average exchange rate for the PFIC's taxable year, as provided in section 989(b), specifying the rate of exchange utilized.

(I) The amount of distributions of U.S. dollars and the fair market value and description of any other property (including foreign currency) distributed during the taxable year of the PFIC to which the election under this section applies.

(J) If the PFIC is required to make the fair market value determination under paragraph (b)(9) of this section, the fair market value of one share of each class of stock in the PFIC as of the first day of the PFIC's first taxable year as a QEF, specifying the manner in which the fair market value of the stock was determined, and the relevant data, including the sources thereof, used in the determination. The PFIC shall notify its shareholders of the value of its stock as provided in paragraph (b)(5) of this section.

(3) *Appointment of U.S. agent.* The PFIC shall appoint a person resident in the United States as its authorized representative in the United States (U.S. agent). The PFIC shall have a U.S. agent at all times after the election under section 1295 is made (or perfected pursuant to paragraph (b)(1)(iii) of this section) and during which it remains in effect. The U.S. agent shall be the PFIC's representative for all purposes relating to the administration and enforcement of the federal income tax laws, including providing the Commissioner or his delegate with such information and documents or access thereto as the Commissioner may require for the administration of sections 1291 through 1297 and the regulations thereunder.

(4) *Books and records.* The PFIC shall maintain for each taxable year to which the election under section 1295 applies permanent books of account, records and such other documents as are necessary to establish its ordinary

earnings and net capital gain as provided in section 1293(e) and computed in accordance with U.S. generally accepted accounting principles and federal income tax principles. The PFIC also shall maintain for each taxable year to which the election under section 1295 applies a ledger of all shareholders of record during the taxable year. The PFIC shall keep copies of such books, records, shareholder ledgers and other documents in the United States and shall maintain them so long as the contents thereof may be material to the administration of sections 1291 through 1297, but for not less than 10 years. Such books, records, shareholder ledgers and other documents shall be available for inspection in the United States by authorized Internal Revenue officers or employees.

(5) *Annual shareholder notification and request for certification of U.S. ownership*—(i) *In general.* Before the fifteenth day of the third month following each taxable year for which the election is in effect, the PFIC shall send the notification of PFIC information and request for shareholder certification statements, set forth in paragraph (b)(5)(ii) of this section, to all persons that were the shareholders of record of the PFIC at any time during such year.

(ii) *The notification of PFIC information and request for shareholder certification.* The notification of PFIC information and request for shareholder certification statements are described below. The PFIC may modify these statements as it deems necessary provided the information contained in the following statements is transmitted to the PFIC shareholders. The PFIC information to be reported in the notification to shareholders includes information regarding the ordinary earnings and net capital gain of the PFIC. The PFIC may report the daily amount of its ordinary earnings and net capital gain on a per share basis. However, if the number of outstanding shares of the PFIC's stock changed at any time during the taxable year, the PFIC shall provide the shareholders a schedule of the per share amounts of ordinary earnings and net capital gain for each day during the taxable year. Each shareholder will determine its pro rata shares of the ordinary earnings and net capital gain of the PFIC based on the information provided by the PFIC. The information contained in paragraph I(F) of the notification statement, regarding the section 1291(d)(2) election, is not required if the PFIC made the election to be a QEF for its first taxable year during which it qualifies as a PFIC under section 1296.

**Important Tax Information: Response Required**

*Notification of Qualified Electing Fund Status and Request for Certification*

I. Notification of Qualified Electing Fund Status

A. Earnings and profits: [*Name of the PFIC*] has elected to be a qualified electing fund for U.S. tax purposes for the taxable year beginning [*first day of the PFIC's taxable year*] and ending [*last day of the PFIC's taxable year*]. As a result of this election, all U.S. persons that are direct or indirect shareholders of [*name of the PFIC*] during any part of that taxable year must include in gross income for U.S. tax purposes their pro rata shares of ordinary earnings and net capital gain earned by [*name of the PFIC*] during the taxable year pursuant to section 293 of the Internal Revenue Code. [*The daily amounts of ordinary earnings and net capital gain per share of stock in* [*name of the PFIC*] for the taxable year ended [*last day of the PFIC'S taxable year*] are as follows; you are to compute your pro rata shares of ordinary earnings and net capital gain by multiplying the daily, per share amount of each type of income by the number of shares held by you during the year and the number of days held.] [Attached is a schedule of the per share amounts of ordinary earnings and net capital gain for each day during the taxable year of [*name of the PFIC*]; you are to compute your pro rata shares of ordinary earnings and net capital gain by multiplying each day's per share earnings amounts by the number of shares held on that day and then adding the daily ordinary earnings and net capital gain amounts.]

*Ordinary Earnings:* [Daily dollar amount per share of stock] [See attached schedule of the per share dollar amounts, for each day.] of ordinary earnings as determined under section 1293.

*Net Capital Gain:* [Daily dollar amount per share of stock] [See attached schedule of the per share dollar amounts, for each day.] of net capital gain as determined under section 1293.

B. [*Name of the PFIC*] distributed $ in cash and other property to you during its taxable year.

C. [*Name of the PFIC*] [was] [was not] a controlled foreign corporation within the meaning of section 957 of the Internal Revenue Code during the taxable year. Its subpart F income, as determined under section 951 for the taxable year, is _____.

D. [*Name of the PFIC*] [was] [was not] a foreign personal holding company within the meaning of section 552 of the Internal Revenue Code during the taxable year. Its undistributed foreign personal holding company income, as determined under section 556, is _____.

E. If any portion of your share of the current year earnings of [*name of the PFIC*] was not distributed to you during its taxable year and you owned the stock in [*name of the PFIC*] on [*the last day of the PFIC's taxable year*], you may be able to extend the time for payment of tax on some or all of this income under section 1294 of the Internal Revenue Code. See IRS Form 8621.

[Paragraph F is not required if the PFIC made the election to be a QEF for its first post-1986 taxable year that it qualifies as a PFIC under section 1296.]

F. If you were a U.S. person that was a direct or indirect shareholder of [*name of the PFIC*] on [*the first day of its first taxable year as QEF*], you may make the election under section 1291(d)(2) to recognize gain on a deemed sale of your stock in [*name of the PFIC*]. The fair market value of your stock interest, divided among the different classes of stock that you owned on that day, is as follows:

[Class of Stock]: $[fair market value determined in accordance with § 1.1295–1T(b)(9)].

G. The U.S. taxpayer identification number assigned to [*name of the PFIC*] is _____.

II. Request for Certification

U.S. persons that own stock directly or indirectly in [*name of the PFIC*] are requested to report to [*name of the PFIC*] by completing the following certification statement and returning it to the company. If additional space is needed, provide the required information on a separate sheet of paper and attach it to this form.

*U.S. persons.* If you are a U.S. citizen or individual resident, a U.S. corporation, or an estate, trust (other than a grantor trust, described below) or partnership that is a U.S. person for U.S. tax purposes, please complete the Certification Statement below and return it to [*name of the PFIC*] by [*date*].

*Foreign persons.* If you are a foreign corporation that is a passive foreign investment company, a foreign corporation that has a 50 percent or greater shareholder, or an estate, trust (other than a grantor trust, described below), or partnership that is not a U.S. person for U.S. tax purposes, please send this Notification of Qualified Electing Fund Status and Request for Certification to each of your shareholders (foreign corporations that are not passive foreign investment companies need only send the statement to their 50 percent or greater shareholder(s)), beneficiaries, or partners, indicating on the Notification of Qualified Electing Fund Status the amounts attributable to such person's indirect interest in [*name of the PFIC*]. (If you are unable to compute the amounts attributable to such person's indirect interest, please indicate the amounts attributable to your own interest in [*name of the PFIC*].)

*Grantor trusts.* If you are a trust the income of which is taxed entirely to the grantor or other person considered the owner of the trust under U.S. tax principles, please send the Notification of Qualified Electing Fund Status and Request for Certification to the grantor/owner of the trust.

*Nominees.* If you are a U.S. or foreign person holding stock in [*name of the PFIC*] for the account of another person, please send this Notification of Qualified Electing Fund Status and Request for Certification to that other person, indicating on the Notification of Qualified Electing Fund Status the amounts attributable to such person's indirect interest in [*name of the PFIC*].

Each indirect shareholder that certifies to the PFIC that (he)(she)(it) is a U.S. person shall state (his)(her)(its) pro rata share of the ordinary earnings and net capital gain of the PFIC and pro rata share of the cash and the fair market value of other property distributed by the PFIC.

*Certification Statement*

[*Name of direct or indirect PFIC shareholder (as reported on the U.S. tax return)*] is a U.S. citizen/U.S. individual resident/U.S. corporation/U.S. estate/U.S. trust/U.S. partnership/foreign trust/foreign estate (please circle applicable category) that held stock directly or indirectly in [*name of the PFIC*] during [*name of the PFIC*]'s taxable year ending _____. [*Name of direct or indirect shareholder*]'s address is _____, and United States taxpayer identification number is _____. [*Name of direct or indirect PFIC shareholder*]'s pro rata share of ordinary earnings is $_____, pro rata share of net capital gain is $_____, and pro rata share of the cash and the fair market value of other property distributed by [*name of the PFIC*] is _____. Stock in [*name of PFIC*] is not registered in the name of [*name of indirect PFIC shareholder*] because the stock was held through [*name(s) of nominee(s) or foreign person(s) through which stock was held indirectly*].

Under penalties of perjury, I declare that I have examined this certification and, to the best of my knowledge and belief, it is true, correct, and complete.

[Signature of shareholder/authorized representative of shareholder and title, and date].

(6) *Annual reporting by the PFIC to the Internal Revenue Service.* By the fifteenth day of the ninth month following each taxable year of the PFIC to which the election under this section applies, the PFIC shall send to the Internal Revenue Service Center, P.O. Box 21086, Philadelphia, Pennsylvania 19114:

(i) A schedule containing the following information obtained pursuant to the certification procedure described in § 1.1295–1T(b)(5) from each direct or indirect shareholder that certified its status as a U.S. person: Names, addresses, taxpayer identification numbers, their pro rata shares (determined in the manner described in section 1293(b)) of the ordinary earnings and net capital gain of the PFIC for the taxable year determined in accordance with section 1293(e), and their pro rata shares of cash and fair market value of other property distributed to them or to the persons that held the stock directly or indirectly for their benefit.

(ii) For all taxable years of the PFIC following the year of the election, a Form 8644 (if available) or a statement containing the information described in paragraphs (b)(2)(ii) and (b)(6)(i) relating to information to be included in the election statement.

(7) *Amendment of earnings information.* The QEF shall report to the Internal Revenue Service, at the address specified in paragraph (b)(6) of this section, any amendments to the earnings information required to be provided to the Internal Revenue Service pursuant to paragraphs (b)(2)(ii)(H) and (b)(6) of this section, and notify all its shareholders of any amendments to the earnings information reported to the shareholders pursuant to paragraph (b)(5). The QEF shall recalculate its ordinary earnings and net capital gain at any time that it discovers an error in its previous calculations or its books and records or otherwise makes a necessary adjustment in its books and records. The amended information shall be clearly identified as amending the original report or shareholder notification.

(8) *Taxpayer identification number.* The Internal Revenue Service will assign the PFIC a taxpayer identification number upon the filing of the PFIC's election to be a QEF. The PFIC shall use the assigned number on all forms, statements, notifications and other communications filed with the Internal Revenue Service or provided to its shareholders for purposes of the election under this section.

(9) *Fair market value determination by certain companies.* If a foreign corporation is making the election to be a QEF for a taxable year other than the first taxable year during which it qualified as a PFIC under section 1296, it must determine the fair market value of its stock on the first day of its first taxable year to which the election under section 1295 applies (the valuation date). A PFIC required to make the fair market value determination shall notify its shareholders of the stock value pursuant to paragraph (b)(5) of this section. This value is to be used by the shareholder in making the election under section 1291(d)(2) to recognize gain on a deemed sale of the PFIC stock held on the valuation date. For purposes of determining the fair market value of the stock in the PFIC, the following rules shall apply.

(i) *Companies other than open-end investment companies.* The fair market value of companies, other than open-end investment companies as defined in paragraph (b)(9)(ii)(B) of this section, shall be determined pursuant to subdivisions (A) through (E) of this paragraph (b)(9)(i).

(A) If the stock of the PFIC was regularly traded on an established securities market on the valuation date, the fair market value of the stock shall be the closing price of the stock on the valuation date. If there were no sales on the valuation date, but there were sales on dates within 30 business days before or after the valuation date, the fair market value shall be the mean of the opening and closing prices on the nearest date before or after the valuation date.

(B) If the stock of the PFIC was regularly traded in more than one established securities market, the price of the stock on a composite listing of all established securities markets in which it is regularly traded must be used, provided such a composite listing is set forth in a generally available listing or publication of general circulation. If such a composite listing is not available, the records of the price in the established securities market in which the stock is principally traded must be used.

(C) In any case in which a dividend is declared on a share of stock before the valuation date but payable to stockholders of record on a date after the valuation date, the amount of the dividend must be added to the ex-dividend quotation in determining the fair market value of the stock as of the valuation date.

(D) If the stock in the PFIC was not traded on an established securities market on the valuation date, or within 30 business days before or after the valuation date, the fair market value of the stock shall be the value determined by applying the guidelines of Rev. Rul. 59–60; 1959–1 C.B. 237, as amplified by Rev. Rul. 77–287, 1977–2 C.B. 319, Rev. Rul. 80–213, 1980–2 C.B. 101, and Rev. Rul. 83–120, 1983–2 C.B. 170.

(E) For purposes of this paragraph, the terms "established securities market" and "regularly traded" shall have the meanings given such terms in § 1.897–1 (m) and (n), respectively. However, stock will not be treated as regularly traded if there was not a sale of the stock within 30 business days before or after the valuation date on an established securities market.

(ii) *Open-end investment companies*—(A) The fair market value of a share in a PFIC that is an open-end investment company (commonly known as a "mutual fund") shall be its public redemption price (or bid price) on the valuation date. If there is no public redemption price quoted by the PFIC for the valuation date, the fair market value of the mutual fund share is the last public redemption price quoted by the PFIC for the most recent day preceding the valuation date for which there was a quotation. In any case where a dividend is declared on a share in a PFIC that is an open-end investment company before the valuation date, but payable to shareholders of record after the

valuation date and the share is quoted "ex-dividend" on the valuation date, the amount of the dividend must be added to the ex-dividend quotation in determining the fair market value of the share as of the valuation date.

(B) The term "open-end investment company" and the term "mutual fund" include only a company that on the applicable valuation date was engaged in offering its shares to the public in the capacity of an open-end investment company. An open-end investment company is an investment company that stands ready to redeem its shares, on demand, at their current net asset value.

(C) The term "public redemption price" and the term "bid" price mean the price (the current net asset value) at which the open-end investment company will redeem its shares.

(c) *Revocability of the election*—(1) *In general.* The election under section 1295 may be revoked by the PFIC only with the consent of the Commissioner. In addition, the Commissioner may revoke the election for failure of the PFIC to satisfy any requirements set forth in this section within 90 days of the mailing of notification from the Internal Revenue Service of such failure. The revocation will be effective for the taxable year for which the requirement was not satisfied. The PFIC shall notify the U.S. persons that are its shareholders within 90 days of receipt of a notice from the Internal Revenue Service that the election under section 1295 has been revoked.

(2) *Failure to obtain shareholder certification.* The election under section 1295 will not be invalidated or revoked in the event a shareholder of the PFIC fails to provide the certification requested pursuant to paragraph (b)(5) of this section.

**§ 1.1297-3T Deemed sale election by a United States person that is a shareholder of a passive foreign investment company (Temporary).**

(a) *In general.* Except as indicated below, a shareholder of a foreign corporation that no longer qualifies as a passive foreign investment company (PFIC) shall be treated for tax purposes as holding stock in a PFIC and therefore continue to be subject to taxation under section 1291 unless the shareholder makes the election under section 1297(b)(1). This continuing PFIC taint shall not apply to stock in a PFIC for which an election under section 1295 to be a qualified electing fund (QEF) has been in effect throughout that portion of the shareholder's holding period during which the PFIC qualified as a PFIC. A U.S. person making the election under section 1297(b)(1) shall be treated as having sold its stock in the PFIC on the last day of the last taxable year of the foreign corporation during which it qualified as a PFIC (termination date). The shareholder thereafter shall not be treated as holding stock in a PFIC and shall not be subject to taxation under section 1291. The deemed sale is taxed as a disposition under section 1291. Pursuant to that section, the gain, if any, is considered earned pro rata over the shareholder's holding period in the-stock and is taxed as ordinary income. The tax on the gain is based on the value of the tax deferral and includes an interest charge. Any loss realized in the deemed sale may not be recognized. This section provides rules for making the election under section 1297(b)(1). The election is available to a U.S. person that is a shareholder of a foreign corporation if—

(1) The foreign corporation was a PFIC at any time during the period the U.S. person held the stock;

(2) At any one time during the U.S. person's holding period, the foreign corporation qualified as a PFIC but was not a QEF; and

(3) The foreign corporation is no longer a PFIC within the meaning of section 1296.

(b) *Time and manner of making the election*—(1) *In general.* The shareholder shall make the election under this section and section 1297(b)(1) by filing an amended income tax return for its taxable year that includes the termination date within three years of the due date, as extended, for the shareholder's tax return for such taxable year. The shareholder must attach to the amended tax return either Form 8621 or a statement, prepared in accordance with paragraph (c)(2) of this section, reporting the gain on the deemed sale of the stock as required by section 1291(a)(2) (as if such deemed sale occurred under section 1291(a)(2)), and by paying the tax on the gain as required by section 1291 (including the payment of the deferred tax amount required under sections 1291(a)(1)(C) and 1291(c)). The electing shareholder also shall pay interest, pursuant to section 6601, on the underpayment of tax for the taxable year of termination. An electing shareholder that realizes a loss shall report the loss on Form 8621, but shall not recognize the loss.

(2) *Information to be included in the election.* If a statement is used, the statement should be identified, in a heading, as an election under section 1297(b)(1). The statement must include the following information and representations:

(i) The name, address and taxpayer identification number of the electing shareholder;

(ii) The name, address and taxpayer identifiction number, if any, of the PFIC;

(iii) A statement that the shareholder is making the election under section 1297(b)(1);

(iv) The period in the electing shareholder's holding period in the stock during which the foreign corporation was a PFIC, the period during which it was a QEF (and whether the shareholder elected under section 1294 to defer payment of its tax liability attributable to any portion of such period), and the termination date;

(v) The manner in which the PFIC lost the characteristics of a PFIC;

(vi) A schedule listing the shares in the PFIC held by the electing shareholder on the termination date, listing the date(s) each share or block of shares was acquired, the number of shares acquired on each date listed, and the tax basis of each share;

(vii) The fair market value of the stock in the PFIC on the termination date; for this purpose, the fair market value of the stock shall be determined according to the rules of § 1.1295–1T(b)(9); and

(viii) A schedule showing the computation of the gain recognized on the deemed sale, and a calculation of the deferred tax amount, as defined in section 1291(c).

(3) *Adjustment to basis; treatment of holding period.* An electing shareholder that recognizes gain on the deemed sale of stock shall increase its adjusted basis in the stock by the amount of gain recognized. An electing shareholder shall not adjust the basis in stock with respect to which the shareholder realized a loss on the deemed sale. An electing shareholder shall thereafter treat its holding period in the stock, for purposes of sections 1291 through 1297, as beginning on the day following the termination date without regard to whether it recognized gain on the deemed sale; for section 1223 purposes, the holding period in the stock in the PFIC shall include the period prior to the deemed sale.

**OMB Control Number Under the Paperwork Reduction Act**

*(26 CFR Part 602)*

**Par. 3.** The authority for Part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**§ 602.101 [Amended]**

**Par. 4.** Section 602.101(c) is amended by inserting in the appropriate places in the table § 1.1291–0T . . . 1545–1028, § 1.1291–10T . . . 1545–1028, § 1.1294–1T . . . 1545–1028, § 1.1295–1T . . . 1545–1028, § 1.1297–3T . . . 1545–1028.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

Approved: February 23, 1988.

**O. Donaldson Chapoton,**

*Assistant Secretary of the Treasury.*

[FR Doc. 88–4446 Filed 2–26–88; 3:54 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CC:INTL-941-86]

## Income Taxes, Passive Foreign Investment Companies

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

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary income tax regulations relating to elections by passive foreign investment companies and their shareholders who are United States persons. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

**DATES:** The regulations are proposed to be effective for taxable years beginning after December 31, 1986. Written comments and requests for a public hearing must be delivered or mailed by May 2, 1988.

**ADDRESS:** Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attention: CC:LR:T (CC:INTL-941-86), Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Gayle E. Novig of the Office of the Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202-634-5423, not a toll free number).

**SUPPLEMENTARY INFORMATION:**

### Background

This document provides proposed income tax regulations (26 CFR Part 1) under sections 1291(d)(2), 1294, 1295, and 1297(b)(1) of the Internal Revenue Code of 1986. These provisions were added to the Internal Revenue Code by section 1235 of the Tax Reform Act of 1986 (Pub. L. 99-514). The regulations will be effective for taxable years beginning after 1986. For the text of the temporary regulations, see T.D. 8178 published in this issue of the **Federal Register**. The preamble to the temporary regulations provides a discussion of the rules.

### Special Analyses

It has been determined that this proposed rule is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required and has not been prepared. Although this document is a notice of proposed rulemaking that solicits public comment, it has been concluded that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

### Comments and Requests For a Public Hearing

Before these temporary and proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**. The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests persons submitting comments to OMB to also send copies of the comments to the Service.

### Drafting Information

The principal author of these temporary regulations is Gayle E. Novig of the Office of the Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

### List of Subjects in 26 CFR §§ 1.1201-1 Through 1.1297-1

Income taxes, Capital gains and losses, Recapture and passive foreign investment companies.

### Proposal of Regulations

The temporary regulations, FR Doc. 88-4446 [T.D. 8178] published in this issue of the **Federal Register**, are hereby also proposed as final regulations under sections 1291, 1294, 1295, and 1297 of the Internal Revenue Code.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

[FR Doc. 88-4447 Filed 2-26-88; 3:54 pm]

BILLING CODE 4830-01-M

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Wednesday, March 2, 1988

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