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Thursday
January 26, 1989

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WHAT IT IS AND HOW TO USE IT

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 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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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.

WASHINGTON, DC

WHEN: February 28, at 9:00 a.m.
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Reader Aids
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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 89–8 of December 21, 1988

Determination Under Section 702 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100–204)

Memorandum for the Secretary of State

Pursuant to Section 702 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100–204), I hereby determine that, with regard to the United Nations,

—the consensus based decision-making procedure established by General Assembly Resolution 41/213 is being implemented and its results respected by the General Assembly;

—progress is being made toward the 50 percent limitation on seconded employees of the Secretariat from any one member state as called for by recommendations 55 and 57 of the Group of High Level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial Functioning of the United Nations (Group 18); and

—the 15 percent reduction in the staff of the Secretariat as called for by recommendation 15 of the Group of 18 is being implemented and that such reduction is being equitably applied among the nationals on such staff.

You are authorized and directed to report this determination to the Congress and to publish it in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, December 21, 1988.

[FR Doc. 89–1985
Filed 1–24–89; 4:47 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1930

Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations governing the Management and Supervision of Multiple Family Housing Loan And Grant Recipients to incorporate provisions of the Tax Reform Act of 1986. This action permits owners of Rural Rental Housing (RRH) projects receiving tax credits additional time to market the units to attract tenants meeting tax credit income requirements when vacancies exist or occur. Also, this action is needed to inform FmHA staff members of their responsibilities with regard to the Tax Reform Act.

The FmHA also amends the same regulations to establish authorization for FmHA to transfer unused rental assistance (RA) without a borrower's consent, but *with* right of appeal.

EFFECTIVE DATE: February 27, 1989.

FOR FURTHER INFORMATION CONTACT: Ernest W. Harris, Loan Specialist, Multiple Family Housing Servicing and Property Management Division, Farmers Home Administration, Room 5321, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone: (202) 382–1613.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "non-major". It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, this action does not involve any of the designated categories for "reserved nonmajor" actions.

Environmental Impact Statement

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

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under numbers 10.405, 10.411, 10.415 and 10.427 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983).

General Information

1. Before passage of the Tax Reform Act of 1986, RRH borrowers were able to report operating "losses" on their investment in RRH projects due primarily to accelerated depreciation and mortgage interest paid on such properties. Such "losses" could legitimately be applied against other income for individual income tax purposes. The Tax Reform Act of 1986 replaces this type incentive with tax credits. Section 515(p) of the Housing Act of 1949 has been amended to reflect the provisions of the Tax Reform Act of 1986. This amendment to the regulation implements the amendment to the Housing Act of 1986 setting forth conditions regarding renting of the project under which borrowers may qualify for the tax credit without undue penalties caused by FmHA occupancy requirements. This amendment further provides safeguards for higher income tenants who may be displaced by the borrower's election to receive tax credit. Finally, this amendment will not affect projects not receiving tax credit consideration and will not materially affect existing tenant selection criteria.

2. In administering the rental assistance (RA) program, the FmHA has experienced two concerns. First there has been limited RA appropriation to meet the total RA need nationwide. Second, in some instances a few projects have not needed or utilized their full RA allotment on a sustained basis. This change will permit the FmHA to transfer sustained unused portions of RA allocations to other projects, as provided for in the rental assistance agreement, Form FmHA 1944–27, to fully utilize available RA funds. Such decisions would be appealable by the borrower.

Regulatory Flexibility Act

The Administrator, Farmers Home Administration, (FmHA) USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities. It provides direction to rural rental housing borrowers receiving tax credits with regard to tenant selection, establishes authority for the FmHA State Director to transfer unused rental assistance and informs FmHA staff of their responsibilities with respect to the aforementioned changes.

Discussion of Comments

On June 8, 1988, FmHA published in the **Federal Register** (53 FR 21460) a proposed rule giving interested parties until August 8, 1988, to submit comments. A total of five comments were received in response to the proposed rule. Three comments were from the public sector and the other two were from FmHA field office staff.

All commentors expressed opposition to the tax credit provisions in general and to the provision regarding the six-month vacancy period before renting to other eligible tenants in particular. While the opposition is understood by the Agency, the inclusion of these provisions is statutory and not just an administrative requirement.

Two commentors suggested "* * * threat to financial viability * * *" should be defined and they stated their opposition to leaving the decision on

this matter to the discretion of the FmHA District Director (D.D.). The Agency agrees and has responded to this expressed concern by including in the regulatory language a description of financial conditions in a project that defines "* * * threat to financial viability * * *".

One commentor suggested that any action taken by the D.D. to require occupancy by tax credit-ineligibles should be covered by the appeals process as provided by FmHA Instruction 1900–B. The Agency agrees and an amendment in the regulation pertaining to those units under tax credits will reflect this.

One commentor suggested that before transferring RA, the project should be operating, at least, at a break-even cash-flow position for six months and the project should have a waiting list showing the ability of the project to maintain a stable financial position. The Agency does not believe that this is a valid argument. It is not the intent of the Agency to involuntarily transfer RA from a project which clearly *needs* the RA already assigned to that project. The intent is to transfer RA from those projects where it is *not* needed, specifically where the owner has demonstrated a lack of eligible tenants and/or applicants who need it.

One commentor suggested that at least five RA units remain unused before FmHA considers a transfer. The Agency believes that a threshold of five (5) unused RA units is too high because of the large number of projects that have less than five (5) rental assistance units, yet are not using part of those units. The Agency addressed this issue by changing the regulation to provide that the State Director may transfer the number of unused, minus at least one. This will provide some degree of flexibility.

One commentor suggested that upon transfer of units from a project, the owner should have the first choice of reassignment of the units to one of that owner's other projects, the second choice to the discretion of the District Office in which the units are located, then to the State Office, etc. The existing regulation authorizes the State Director to decide where any transferred units are to be reassigned to meet the greatest need. The Agency believes that this policy should not be changed.

Finally, the two FmHA employees expressed their belief that unused RA should be transferred regardless of whether the RA agreement is on Form FmHA 1944–27 or otherwise. While the Agency fully understands this line of thought, this is not legally defensible since earlier versions of the RA agreement contained specific language which would not permit the Agency to carry out this action.

List of Subjects in 7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and Community Development, Loan programs—Housing and Community Development, Low- and moderate-income housing—Rental, Reporting requirements.

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

PART 1930—GENERAL

1. The authority citations for Part 1930 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23, 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

2. Exhibit B to Subpart C is amended by revising paragraph VI. D. 2. e. (1), by redesignating paragraphs VI E and F as paragraphs VI F and G, respectively, and by adding a new paragraph VI E to read as follows:

Exhibit B of Subpart C—Multiple Housing Management Handbook

* * * * *

VI. Renting Procedure

* * * * *

D. * * *

2. * * *

e. * * *

(1) The borrower or management agent will request that each prospective tenant provide this information on a voluntary basis to enable monitoring of compliance with Federal laws prohibiting discrimination. When the applicant does not provide this information, the rental agent will complete this item based on personal observation or surname.

* * * * *

E. *Tax Credit Compliance.* The Tax Reform Act of 1986 permits certain RRH borrowers to receive tax credits for low-income housing projects if: 20 percent or more of the units are occupied by very low-income tenants whose annual adjusted income is 50 percent or less of the area median gross income, or 40 percent or more of the units are occupied by tenants whose annual adjusted income is 60 percent or less of the area median gross income.

1. Eligible borrowers with projects qualified to receive tax credits will follow the tenant selection criteria of paragraph VI F of this Exhibit except that tenant selection may be postponed until applicants for occupancy are available whose occupancy will allow borrowers to meet their tax credit requirements.

2. The borrower may be required to rent to other eligible applicants when the District Director determines that vacancies of at least six months duration exist, and that such vacancies threaten the financial viability of the project to the extent that current income, plus any remaining initial operating capital, and any funds from other borrower sources are no longer adequate to pay operating and maintenance costs, pay debt service and fund the reserve account as scheduled. This determination must be in the form of a written notification to the borrower. The borrower must be advised of their appeal rights on units designated for tax credits as specified in Subpart B of Part 1900 of this chapter. (Example: For 38 units of a 48-unit project designated for tax credits, the appeal applies when the borrower is required by the District Director to rent one or more of these 38 units to other eligible applicants.

3. Borrowers requesting Internal Revenue Service (IRS) tax credits in an existing project must honor the remaining period of a tenant's lease and, unless material noncompliance or other good cause to terminate occupancy as described in paragraph XIV A of this Exhibit exists, renew the tenant's lease or establish other mutually acceptable housing arrangements.

* * * * *

3. In Exhibit B, paragraph VII D is amended by changing the reference "paragraph VI F of this Exhibit" to read "paragraph VI G of this Exhibit."

4. In Exhibit B–1, paragraph No. 3 is amended by adding a new item h to read as follows:

Exhibit B–1 of Subpart C—Management Plan Requirements for FmHA Multiple Family Housing Projects

* * * * *

3. * * *

h. In projects receiving tax credits, what will the policy be toward renewal of leases with higher income tenants when borrowers are concerned with renting to low-income tenants, so as not to jeopardize their tax credits?

* * * * *

5. In Exhibit E, paragraphs XI B 1 b and 2 b are amended by changing the reference "paragraph VI E of Exhibit B" to read "paragraph VI F of Exhibit B."

6. In Exhibit E, paragraph XI B 4 is amended by changing the reference "paragraph VI E 3" to read "paragraph VI F 3."

7. Exhibit E to Subpart C is amended by adding a new paragraph XV B 5 c to read as follows:

Exhibit E of Subpart C—Rental Assistance Program

* * * * *

XV. Suspending or Transferring Existing Rental Assistance Agreements.

B. * * *

5. * * *

c. If, after the end of the initial year of a Rental Assistance Agreement, the borrower has not used a portion of the RA units for any

ensuing consecutive 12-month period, the State Director may transfer the number of unused units, minus at another project. This would apply only if the current agreement is on Form FmHA 1944-27 and when:

(1) The borrower has made the efforts described in paragraphs 5a (2) (i), (ii) and (iii) to market the project to tenants needing RA.

(5) The transfer will be completed in accordance with paragraph XV A 2 of this Exhibit.

* * * * *

Date: November 8, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 89-1741 Filed 1-25-89; 8:45 am]

BILLING CODE 3410-07-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 125

Procurement Automated Source System

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) hereby amends its regulations relating to the collection of fees and distribution of user guides in connection with the Procurement Automated Source System (PASS). The purpose of these amendments is to facilitate an expansion of the number of users which had previously been limited by certain contract provisions. The primary effect of these changes will be to free the expansion of PASS from the constraints of the Agency's budget process, while retaining the Agency's own access to the system and its control over fundamental decisions related to the operation of the system.

DATES: Effective January 26, 1989.

FOR FURTHER INFORMATION CONTACT: Jonathan H. Mertz (202) 653-6635.

SUPPLEMENTARY INFORMATION: On November 23, 1988, SBA published the proposed rule with a 15 day comment period. (53 FR 226) No comments were received.

Under current procedures the SBA maintains a Procurement Automated Source System (PASS) through a private contractor and allows small and large businesses and government agencies direct access to the system. This rule reflects a restructuring of the contract fee arrangements for the PASS system.

Under previous provisions, the contractor received a monthly base user interface fee, and a fixed fee per user for any users above the number allowed under the base user interface fee, both paid by the Agency. The number of base users was set and the number of additional users was theoretically unlimited. Under the former provisions of the contract, Agency funding levels would restrict the ultimate number of system users.

This rule eliminates the requirement that all user receipts be credited to the agency and makes the contractor responsible for all accounts receivable and collection duties. The rule also reduces the number of manuals required to be distributed to each new user from two to one.

Compliance with Executive Order 12291, Executive Order 12612, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) and the Paperwork Reduction Act (44 U.S.C. Ch. 35).

Executive Order 12291

For the purposes of E.O. 12291, SBA has determined that this rule is not a major rule because it will not have an annual effect on the economy of $100 million or more; or cause a major increase in costs for consumers, individuals, industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based businesses to compete with foreign-based businesses in domestic or export markets. The total anticipated PASS budget is $1.2 million for fiscal year 1989 and the number of additional users are estimated at 150. Assuming normal use, the additional users will be expected to generate approximately $43,200 per year in user fees. This assumes the current user fee rate of $24 per hour of usage. This is well below the $100 million annual floor specified by E.O. 12291.

Executive Order 12612

This rule will not have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

Regulatory Flexibility Act

For purposes of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities. The direct effects of this rule will be on the PASS contractor and on those users who will receive one fewer training manuals. Additionally, most PASS users are not small businesses.

Paperwork Reduction Act

This rule will not impose any reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Ch. 35.

List of Subjects in 13 CFR Part 125

Government procurement, Small business, Technical assistance.

For reasons set forth above, Title 13, Part 125 of the Code of Federal Regulations, is amended as follows:

PART 125—[AMENDED]

1. The authority citation for part 125 continues to read as follows:

Authority: Section 610(a) of Pub. L. 100-202, 101 Stat. 1339, secs. 5(b)(6), 8 and 15 of the Small Business Act, 72 Stat. 384, as amended (15 U.S.C. 631, *et seq.*), 31 U.S.C. 9701, 9702, 96 Stat. 1051).

§ 125.10 [Amended]

2. Section 125.10(b) is amended by removing from the sentence which begins "The contractor will bill the SBA * * *" the phrase "minus any fees it collects from non-SBA users," and substituting in the sentence beginning "Each PASS ID entitles * * *" the phrase "one PASS User guide" for "two PASS User Guides."

Dated: December 21, 1988.

James Abdnor,

Administrator.

[FR Doc. 89-1770 Filed 1-25-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-CE-30-AD; Amdt. 39-6118]

Airworthiness Directives; British Aerospace PLC Model HP137 Mkl, Jetstream Model 200 and Jetstream Model 3101 (Includes Model 3100) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain British Aerospace (BAe) PLC Model HP137 Mkl, Jetstream Model 200, and Jetstream Model 3101 (includes Model 3100) airplanes, which requires initial and repetitive inspections of the wing spar fuselage attachment fitting shear angles for cracks, and repair thereof when detected. Cracks have been found in the shear angles necessitating a reduction in the previous inspection threshold specified by the manufacturer. The

inspections and repair specified in this AD will preclude structural failure of the wing.

DATE: February 26, 1989.

COMPLIANCE: As prescribed in the body of the AD.

ADDRESSES: BAe Alert Service Bulletin (ASB) Jetstream 57–A–JA880144, dated June 14, 1988, and Service Bulletin (SB) 57–JM5303, dated June 14, 1988, applicable to this AD may be obtained from British Aerospace PLC, Manager, Product Support, Civil Aircraft Division, Prestwick Airport, Ayrshire, KA9 2RW, Scotland; telephone 44 292 79888; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041; telephone (703) 435–9100. This information may also be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Aircraft Certification Office, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.38.30; or Mr. John P. Dow, Sr., FAA, ACE–109, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD requiring repetitive inspections of the wing spar fuselage attachment fitting shear angles for cracks, and repair thereof when detected, on certain British Aerospace PLC Model HP137 MKl, Jetstream Model 200, and Jetstream Model 3101 (includes Model 3100) airplanes was published in the **Federal Register** on September 30, 1988 (53 FR 38299). The proposal resulted from a field report that during routine maintenance on a BAe Jetstream series airplane, a crack was detected on the shear angle of the left and right hand wing-to-fuselage main wing spar attachment fitting. The manufacturer had previously determined an inspection interval of the shear angle based upon fatigue testing. Consequently, because of this field report, British Aerospace (BAe) PLC issued ASB Jetstream 57–A–JA880144, dated June 14, 1988, which reduces the inspection threshold. This bulletin describes initial and recurring visual inspections of the shear angle of the left and right hand main wing-to-fuselage attachment fitting, dye penetrant inspections if cracks are suspected, remedial measures in the event cracks are found, and corrective measures to prevent such cracks. In addition, BAe issued SB 57–JM5303, dated June 14, 1988, permitting optional installation of new shear angles, which eliminate the repetitive inspection requirement of ASB 57–A–JA880144.

The Civil Airworthiness Authority (CAA), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom (UK), classified ASB 57–A–JA880144 and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under CAA–UK registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the CAA–UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of ASB Jetstream 57–A–JA880144, dated June 14, 1988, and the mandatory classification of this Service Bulletin by the CAA–UK, and concluded that the condition addressed by ASB Jetstream 57–A–JA880144, dated June 14, 1988, is an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include and AD on this subject.

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

The FAA has determined that this regulation involves approximately 140 airplanes at an approximate annual cost of $93 for each airplane, or a total annual fleet cost of $13,000. The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

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

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

2. By adding the following new AD:

British Aerospace (BAe) PLC: Applies to Model HP 137 Mkl, Jetstream Model 200, and Jetstream Model 3101 (includes Model 3100) (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated in the body of the AD after the effective date of this AD, unless already accomplished.

To prevent reduction of strength of the main wing spar attachment structure, accomplish the following:

(a) Upon the accumulation of 4,000 landings or within the next 400 landings, whichever occurs later, and thereafter at intervals of 2,000 landings, visually or dye penetrant inspect, as required, the Part Number (P/N) 13707B99 and P/N 13707B100 shear angles for cracks as described in BAe Alert Service Bulletin (ASB) Jetstream 57–A–JA880144, dated June 14, 1988, section 2, ACCOMPLISHMENT INSTRUCTIONS.

(1) If a crack is detected that is 1½ inch (37 mm) in total length, or 1 inch (25 mm) vertically or longer, prior to further flight modify the airplane in accordance with BAe Modification JM5303, dated June 14, 1988, by replacing the shear angles with P/N 13707B125 and P/N 13707B126 shear angles.

(2) If a crack is detected that is less than 1 inch vertically or 1½ inch total length, re-inspect the shear angles thereafter at intervals not to exceed 100 landings, and prior to an additional 400 landings modify the airplane in accordance with BAe Modification JM5303, dated June 14, 1988.

(b) If no record of landings is available, 1 hour time-in-service equals 2 landings may be used in determining the compliance times in this AD.

(c) The inspections described in paragraph (a) above are not required when the airplane's left and right shear angles have been modified by BAe Modification JM5303, dated June 14, 1988.

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

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000, Brussels, Belgium.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to British Aerospace PLC, Manager, Product Support, Civil Aircraft Division, Prestwick Airport, Ayrshire, KA9 2RW, Scotland; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on February 26, 1989.

Issued in Kansas City, Missouri, on January 9, 1989.

Earsa L. Tankesley,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-1596 Filed 1-25-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 87C-0379]

Confirmation of Effective Date for Carbazole Violet

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of November 22, 1988, for the final rule that amended the color additive regulations to provide for the safe use of carbazole violet for coloring contact lenses.

EFFECTIVE DATE: Effective date confirmed: November 22, 1988.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 21, 1988 (53 FR 41322), FDA amended the color additive regulations by adding § 73.3107 (21 CFR 73.3107) to provide for the safe use of carbazole violet for coloring contact lenses.

FDA gave interested persons until November 21, 1988, to file objections or requests for a hearing on this final rule. The agency received no objections or requests for a hearing. Therefore, FDA concludes that the final rule published in the **Federal Register** of October 21, 1988, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the October 21, 1988, final rule. Accordingly, the regulation promulgated thereby became effective November 22, 1988.

Dated: January 18, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-1711 Filed 1-25-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 73

[Docket No. 87C-0253]

Confirmation of Effective Date for Chromium-Cobalt-Aluminum Oxide

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of November 22, 1988, for the final rule that amended the color additive regulations to provide for the safe use of chromium-cobalt-aluminum oxide for coloring contact lenses.

EFFECTIVE DATE: Effective date confirmed: November 22, 1988.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C. St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 21, 1988 (52 FR 41324), FDA amended the color additive regulations by adding § 73.3110a (21 CFR 73.3110a) to provide for the safe use of chromium-cobalt-aluminum oxide for coloring contact lenses.

FDA gave interested persons until November 21, 1988, to file objections or requests for a hearing on this final rule. The agency received no objections or requests for a hearing. Therefore, FDA concludes that the final rule published in the **Federal Register** of October 21, 1988, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the October 21, 1988, final rule. Accordingly, the regulation promulgated thereby became effective November 22, 1988.

Dated: January 18, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-1712 Filed 1-25-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Diethylcarbamazine Citrate, Oxibendazole Chewable Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Norden Laboratories, providing for the safe and effective additional uses of diethylcarbamazine/oxibendazole chewable tablets in dogs for removal and control of whipworms and ascarids.

EFFECTIVE DATE: January 26, 1989.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Norden Laboratories, Lincoln, NE 68501, is the sponsor of NADA 136-483, providing for use of Filaribits® Plus Chewable Tablets (diethylcarbamazine/oxibendazole) in

the prevention of infection with *Dirofilaria immitis* (heartworm disease) and *Ancylostoma caninum* (hookworm infection) in dogs. Norden has filed two supplemental NADA's providing for additional uses of the drug for removal and control of *Trichuris vulpis* (whipworm infection) and for the removal and control of mature and immature stages of intestinal *Toxocara canis* (ascarid infection) in dogs. The supplemental NADA's are approved and 21 CFR 520.623(c)(2) is revised to reflect the approvals. The basis for approval is discussed in the freedom of information summaries.

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

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

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

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

2. Section 520.623 is amended by revising paragraph (c)(2) to read as follows:

§ 520.623 Diethylcarbamazine citrate, oxibendazole chewable tablets.

* * * * *

(c) * * *

(2) *Indications for use.* For prevention of infection with *Driofilaria immitis* (heartworm disease) and *Ancylostoma caninum* (hookworm infection) and for removal and control of *Trichuris vulpis* (whipworm infection) and mature and immature stages of intestinal *Toxocara canis* (ascarid infection).

* * * * *

Dated: January 18, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–1720 Filed 1–25–89; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Pyrantel Tartrate; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of two new animal drug applications (NADA's) held by Countrymark, Inc. The NADA's provide for (1) the use of Type A medicated articles containing 9.6 and 19.2 grams of pyrantel tartrate per pound for making Type C medicated swine feeds to be used as anthelmintics, and (2) the use of Type A medicated articles containing four concentrations of equal amounts of tylosin and sulfamethazine for making Type C medicated swine feeds to be used in accordance with 21 CFR 558.630(f)(2)(ii). Elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: February 6, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3183.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA's 138–343 and 138–940 held by Countrymark, Inc. (formerly Ohio Farmers Grain and Supply Association). The NADA's provide for (1) the use of Type A medicated articles containing 9.6 and 19.2 grams of pyrantel tartrate per pound for making Type C medicated swine feeds to be used as anthelmintics, and (2) the use of Type A medicated articles containing four concentrations of equal amounts of tylosin and sulfamethazine for making Type C medicated swine feeds to be used in accordance with 21 CFR 558.630(f)(2)(ii). This document removes 21 CFR 558.485(a)(24) and reserves it for future use, and the firm's drug labeler code from 21 CFR 558.630(b)(10), which reflects approval of the NADA's.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

§ 558.485 [Amended]

2. Section 558.485 *Pyrantel tartrate* is amended by removing paragraph (a)(24) and reserving it for future use.

§ 558.630 [Amended]

3. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraph (b)(10) by removing drug sponsor code No. "026439,".

Dated: January 18, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–1818 Filed 1–25–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CG 88–112]

Change in Name and Location of Muskegon Captain of the Port

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rulemaking amends the name and location of the Muskegon Captain of the Port Office. The Muskegon Captain of the Port Office is moving to Grand Haven, Michigan, and will thereupon be called Captain of the Port Grand Haven. This move consolidates several staffs to implement an organizational change. The boundaries of the Captain of the Port Zone do not change.

EFFECTIVE DATE: January 26, 1989.

FOR FURTHER INFORMATION CONTACT: Mrs. Janice C. Jackson, Project Manager, Office of Marine Safety, Security and

Environmental Protection, telephone (202) 267–0389. Normal working hours are between 7:00 a.m. and 3:30 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not prepared for this regulation. This amendment relates to agency organization and is exempt from the notice of proposed rulemaking requirements in 5 U.S.C. 533(b). Since this change has no substantive effect, good cause exists to make it effective in less than 30 days after publication, under 5 U.S.C. 533(d). The rulemaking merely changes the name and location of the Office of the Muskegon Captain of the Port. There will be no effect on the public, since the boundaries of the Captain of the Port Zone will not change. The Grand Haven Captain of the Port will continue to perform the same marine safety functions at the new facility.

Drafting Information: The principal persons involved in drafting this rulemaking are Mrs. Janice C. Jackson, Project Manager, Office of Marine Safety, Security and Environmental Protection; and Lieutenant Commander Don M. Wrye, Project Council, Office of Chief Counsel.

Discussion: The U.S. Coast Guard will move Captain of the Port, Group Muskegon and ESMT Muskegon to Grand Haven, Michigan. This move is a follow-on to implementing an organizational change.

Regulatory Evaluation: This final rule is exempt from the provisions of Executive Order 12291 since it pertains to matters of agency organization as provided in section 1(a)(3) of the Order. It is considered to be nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. Coast Guard marine safety activities in this area will not be affected by this rulemaking. The Captain of the Port Grand Haven, Michigan, will carry out the functions previously performed by the Captain of the Port Muskegon, Michigan. Since the impact of this final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 3

Organization and Functions (Government Agencies).

In consideration of the preceding, Part 3 of Title 33 of the Code of Federal Regulations is amended as follows:

PART 3—[AMENDED]

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

Authority: 14 U.S.C. 633; 49 CFR 1.45, 1.46.

§ 3.45–80 [Amended]

2. Section 3.45–80 is amended by removing the word "Muskegon" in the section heading, and in paragraphs (a) and (b), and adding the words "Grand Haven" in its place.

Dated: January 18, 1989.

M.J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–1850 Filed 1–25–89; 8:45 am]

BILLING CODE 491–014–M

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33 CFR Part 117

[CGD5–88–054]

Drawbridge Operation Regulations; Neuse River, New Bern, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the North Carolina Department of Transportation, the County of Pamlico, North Carolina, and the County of Craven, North Carolina, the Coast Guard is changing the regulations that govern the operation of the U.S. 17 drawbridge across the Neuse River at mile 33.7 in New Bern, North Carolina, by further restricting the number of bridge openings during weekday rush hours. This change is being made to alleviate vehicular traffic congestion caused by the steady increase in recreational traffic on the Neuse River during the boating season and the resulting increase in bridge openings. The Coast Guard is making similar changes to the regulations governing the operation of the drawbridge across the Trent River, mile 0.0, on U.S. 70, in New Bern, North Carolina. The changes to this regulation are to the extent practical and feasible, intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge.

EFFECTIVE DATE: These regulations become effective on February 27, 1989.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704–5004, (804) 398–6222.

SUPPLEMENTARY INFORMATION: On September 20, 1988, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** (53 FR 36471) concerning the bridge across the Neuse River in New Bern, North Carolina. The Commander, Fifth Coast Guard District, also published the proposal as a Public Notice dated September 16, 1988. In the notice of proposed rulemaking, interested persons were given until November 4, 1988, to submit comments. In the public notice, interested persons were given until October 21, 1988, to submit comments. Four comments were received.

Drafting Information

The drafters of these regulations are Linda L. Gilliam, Project Officer, and LCDR Robin K. Kutz, Project Attorney.

Discussion of Comments

The North Carolina Department of Transportation, the County of Pamlico, North Carolina, and the County of Craven, North Carolina, requested that the U.S. 17 drawbridge across the Neuse River at mile 33.7 in New Bern, North Carolina, be regulated to restrict openings from 6:30 a.m. to 8:30 a.m. and from 4:00 p.m. to 6:00 p.m., Monday through Friday, with the exception of an opening at 7:30 a.m. and at 5:00 p.m. for any vessels waiting to pass through the bridge. The request also included the preservation of the current requirement that from May 24 to September 8, on Sundays and Federal holidays, drawbridge openings be restricted from 2:00 p.m. to 7:00 p.m., except for openings at 4:00 p.m. and 6:00 p.m. for any vessels waiting to pass. This request was made as a result of the steady increase in pleasure craft traffic on the Neuse River, resulting in excessive draw openings, which are causing vehicular traffic congestion on U.S. 17 during weekday and evening rush hours for motorists traveling to and from the Cherry Point Naval Aviation Depot.

A proposed rule restricting drawbridge openings during the requested timeframe was published in the **Federal Register** (53 FR 36471) on September 20, 1988, and the proposal was announced in a Public Notice dated September 16, 1988. Comments were solicited through November 4, 1988, and four comments were received. Two comments supported the extended weekday morning and afternoon closures. The two other comments were received from a private boatowner and the Fairfield Harbour Yacht Club, both opposing the Sunday and Federal holiday restrictions that begin on May 24 and run through September 8. The comments of the two opponents to the rule have been considered and it is felt that continuing the May 24 through

September 8 restrictions for drawbridge openings on Sundays and Federal holidays should inconvenience boaters very little. This restriction was initially published in the **Federal Register** (37 FR 5295) on March 14, 1972, and for sixteen years it has remained in effect without objection. Consequently, the Coast Guard believes these restrictions are not unduly burdensome, and this provision shall remain untouched in the final rule.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment. Although the rule does impact both the town of New Bern and the State of North Carolina, specifically the Department of Transportation, which operates the bridge, the effect on state and local operations is minimal and entirely positive.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 of Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that these regulations are not expected to have any effect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations. Since the economic impact on these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.823(a) is revised to read as follows:

§ 117.823 Neuse River.

(a) The draw of the U.S. 17 bridge, mile 33.7, at New Bern:

(1) Need not open from 6:30 a.m. to 8:30 a.m. and from 4:00 p.m. to 6:00 p.m., Monday through Friday, for pleasure vessels. However, the draw shall open at 7:30 a.m. and 5:00 p.m., for any vessel waiting to pass.

(2) Need not open from 2:00 p.m. to 7:00 p.m. from May 24 through September 8, on Sundays and Federal holidays, for pleasure vessels. However, the draw shall open at 4:00 p.m. and 6:00 p.m., for any vessel waiting to pass.

(3) Shall always open on signal for public vessels of the United States, State or local vessels used for public safety, tugs with tows, vessels in distress.

(4) Shall open on signal at all other times.

* * * * *

Dated: January 10, 1989.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 89–1851 Filed 1–25–89; 8:45 am]

BILLING CODE 4910–14–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

Procedures for Transfers to Federal Records Centers

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration is revising § 1228.152(f) to increase from 90 to 120 days the time allowed for agencies located outside the continental United States to transfer their records to the Federal records centers after receipt of the annotated SF 135. This will eliminate unnecessary paperwork and confusion for the Federal records centers and the agencies, and allow sufficient time for overseas agencies to transfer their records to the appropriate FRC.

EFFECTIVE DATE: January 26, 1989.

FOR FURTHER INFORMATION CONTACT: John Constance or Nancy Allard at 202–523–3214 (FTS 523–3214).

SUPPLEMENTARY INFORMATION: A study was recently completed to determine whether changing the time limit for agencies located outside the continental United States to transfer their records to Federal records centers would be beneficial to the agencies and the centers. It was determined that some overseas offices have experienced delays in shipping records to the Federal records centers, because records first go to a central staging area, where their transfer is often delayed. Delinquent notices from the centers stating that the 90 days had passed and that the agency must resubmit its paperwork often crossed in the mail with the actual records being sent to the centers. Amending this time limit will eliminate unnecessary paperwork and confusion for the Federal records centers and the agencies, and allow sufficient time for overseas agencies to transfer their records to the appropriate FRC. This change is being issued as a final rule, because it affects only Federal agencies and, since it relaxes requirements which are beneficial to the agencies, it is important to implement the change as soon as possible.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1228

Archives and records.

For the reasons set forth in the preamble, Chapter XII of Title 36 of the Code of Federal Regulations is amended as follows:

PART 1228—DISPOSITION OF FEDERAL RECORDS

1. The authority citation for Part 1228 continues to read as follows:

Authority: 44 U.S.C. 2101–2111, 2901–2909, 3101–3107, 3301–3314.

2. Section 1228.152 is amended by revising paragraph (f) to read as follows:

§ 1228.152 Procedures for transfers to Federal records centers.

* * * * *

(f) The physical transfer of records to a records center should be accomplished as soon as possible after the agency has received the annotated copy of the Standard Form 135. If NARA has not received the shipment within 90 days after transmittal of the annotated SF 135 to the agency (120 days for agencies located outside the continental United States), it will return the SF 135 to the agency. The agency will then have to resubmit the accessioning paperwork.

* * * * *

Dated: January 11, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89–1692 Filed 1–25–89; 8:45 am]

BILLING CODE 7515–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3457-5]

Approval and Promulgation of State Implementation Plans, Montana; Butte TSP Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today is modifying the March 4, 1980, conditions in the Montana State Implementation Plan (SIP) for attainment of the primary particulate standard in the Butte nonattainment area. EPA is approving the measures that were developed to reduce emissions from unpaved roads and an open copper mine owned by Washington Construction. These were the primary sources of the particulate emissions in the Butte nonattainment area at the time of the nonattainment designation. However, studies indicate that wood smoke is the probable cause of the recent violations. EPA is, therefore, requiring the State to address residential wood combustion as part of the Butte TSP Control Plan. The State has the option of replacing the Butte TSP SIP with a PM–10 SIP; the wood smoke problem will then be addressed under PM–10. (See 52 FR 24634 for PM–10 SIP requirements.)

EFFECTIVE DATE: This action will be effective on February 27, 1989.

ADDRESSES: Copies of the submittals are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202–2405

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street SW., Washington, DC. 20460

FOR FURTHER INFORMATION CONTACT: Lee Hanley, Air Programs Branch, Environmental Protection Agency, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202–2405, (303) 293–1762.

SUPPLEMENTARY INFORMATION: In 1977 the Montana Air Quality Bureau (AQB) divided the State into various control regions and classified the air quality of each region as required by the 1977 Clean Air Act Amendments. One such region was the east portion of Butte which was classified nonattainment of the National Ambient Air Quality Standard (NAAQS) secondary particulate standard. (See 43 FR 8962, March 3, 1978.) Classification was made using October 1976 to September 1977 particulate data collected at Greeley High School which showed a geometric mean of 79 ug/m^3 as well as exceedances of the 24-hour secondary standard. The Butte nonattainment boundary was drawn by the AQB using air quality modeling information provided by the EPA and PEDCO (1977) and knowledge of the various sources of dust in Butte.

The AQB submitted the control region information to EPA on January 6, 1978. EPA reviewed the information and changed the designation from nonattainment of the secondary standard to nonattainment of both secondary and primary NAAQS particulate standards based on data collected through the end of 1977. (See 44 FR 45420, August 2, 1979, and 45 FR 14036, March 3, 1980.)

On April 24, 1979, the Butte SIP for attainment of the primary standard was submitted to EPA and included a request for delay in submission of the secondary standard plan for 18 months. The SIP identified fugitive emissions from paved roads and the open pit copper mine owned by the Anaconda Copper Company as the cause of the TSP problem. An analysis using the 1977 emission inventory and an acceptable diffusion model demonstrated that a strategy to control fugitive dust emissions would attain the annual primary standard by 1982. The State was proceeding to develop a regulation to control re-entrained dust from paved streets for an estimated reduction of 8 ug/m^3.

EPA gave conditional approval of the April 24 submittal on March 4, 1980, 45 FR 14036, contingent upon the development and adoption of a revised airborne particulate rule and submission of a demonstration that the estimated reductions will be achieved. That rule was to be submitted to EPA by February 15, 1981; it was to be implemented so as to achieve the standard by December 1982.

In a separate action on March 4, 1980, 45 FR 14072, EPA proposed approval of the 18 month extension for the submission of a revised particulate rule. That action was finalized on September 23, 1980, 45 FR 62982, in which EPA approved a schedule calling for the adoption and submissin of an airborne particulate rule by February 15, 1981.

Studies which followed indicated that the airborne particulate rule was inappropriate. Therefore, the State proposed a new schedule specifying submittal of an effective plan by September 30, 1982. A plan was submitted on February 10, 1983, accompanied by a request for redesignation of the Butte TSP (primary and secondary) nonattainment area. The submittal included (1) a schedule for street sweeping and paving committed to by the Butte-Silver Bow local government and, (2) a commitment by the State to issue a permit to Anaconda limiting emissions from their mining operation. Internal EPA review of this submittal led to a requirement that the actual permit become part of the Plan.

On April 15, 1983, a permit was issued to Anaconda which specified emission controls and operating limits predicted to maintain compliance with the primary standard under all foreseen mining scenarios. A copy of the permit was submitted to EPA on April 18, 1983, and is part of the Butte TSP Plan. On June 7, 1983, the State submitted a document clarifying their authority to enforce conditions of the permit.

Mining operations at Anaconda ceased in April 1982. The mine (Berkeley Pit) was flooded with minimal plans for additional mining. The deterioration of the access roads and the poor economics of the mining industry made reopening of the mine highly improbable. Indefinite curtailment of all mining activities took place in June 1983. Anaconda continued to maintain the facility.

In addition to the conditions of the permit on the Anaconda operations, other parts of the February 1983 submittal were reviewed to determine the adequacy of the attainment demonstration. The review centered primarily on the State's choice to demonstrate compliance using the Industrial Source Complex Long Term (ISCLT) dispersion model. The model assumed mining would continue and included the conditions contained in the Anaconda air quality permit. Also, the model used meteorological data, temperature and wind data, from the Alpine site which is close to the mine.

Various future mining and control strategy scenarios were modeled. Two city activity levels (based on population) were evaluated and controls on the anticipated emissions defined as Level I and Level II. Level I is with no controls, and Level II is with 10% TSP controls achieved by street sweeping in the nonattainment area. The mine scenario evaluated three levels of controls on the mining activity: one consisted of 50% control on the active storage and crusher dump; the second assumed 70% control on haul roads; and the third assumed both controlling strategies together. Stripping ratio and total mining output were also varied so as to develop

various options. (Stripping ratio is the volume of overburden to the volume of ore.)

Other permanent changes in mining activity include mining only in the East Pit and waste dumping only in the Hillcrest site. The East Pit is northeast of the nonattainment area. The change in the mining location from the previous site which was northwest of the Greeley site will have a significant effect on the nonattainment area. The wind direction in the Butte area is northwest to southeast. Mining originally was northwest of the Greeley High School. Moving the mining activity to the east reduces the fugitive emission impact on the nonattainment area.

The result of the modeling analysis demonstrated that with the implementation of all permit conditions, the Butte nonattainment area would achieve the primary annual NAAQS for particulates.

The State concentrated its modeling efforts on the primary annual standard since it was the initial cause of the nonattainment designation. The primary 24-hour standard had not appeared to be a problem in the studies conducted or in the monitoring data.

After extensive study on the modeling analysis, the monitoring data and the Anaconda permit, EPA advised the State on May 30, 1985 of its conclusion that an attainment demonstration had only provided for the primary standards. The State responded on June 21, 1985, that it wished to revise its February 10, 1983 submittal by requesting approval of the primary TSP Plan and redesignation for attainment of the primary standards.

As EPA proceeded to process the State's request, EPA was informed that violations of the primary 24-hour standard had occurred for the first time. (The violation occurred in December 1985.)

The Anaconda permit, that is one of the primary control strategies to the Butte TSP Plan, had also undergone some changes. In October 1985, Washington Construction of Missoula, Montana purchased the Butte mining interest of Anaconda's partner company, Atlantic Richfield Corporation and announced intentions to resume mining activity. In December 1985, the Anaconda permit was transferred to Washington Construction, therefore binding them to the same operating permit conditions which were imposed on Anaconda. In July 1986, Washington Construction resumed mining operations in Butte.

At a meeting on May 20, 1986, EPA and the State agreed that the request for redesignation of the Butte nonattainment area could not be approved because of the violations in 1985.

On May 7, 1986, the State submitted a letter and a study indicating that the sources of the particulate emission have changed since the February 10, 1983 plan was developed. The 1986 study demonstrated that the violations occurred in the winter months, and that the primary source of the remaining particulate problem is from residential wood combustion. Based on the State's statistical analysis, EPA agrees that wood smoke is the most probable source of the winter violations. Since the violations that occurred were of the 24-hour primary TSP standard, the State is now required to do short-term modeling.

On May 14, 1987, EPA proposed approval in the modifications of the March 4, 1980, conditions in the Montana TSP SIP. The comment period closed on July 13, 1987; no comments were received.

EPA Action

EPA is approving the control strategy submitted to meet the conditions in the March 4, 1980 conditional approval, as well as, modifying the conditional approval to require the State to address the wood smoke problem. The controls that are being approved include sweeping and flushing of Continental Drive, paving and partial paving of 18 streets, and the permit to Washington Construction Company (formally the Anaconda Minerals Company permit).

The EPA revised the particulate matter standard on July 1, 1987 (52 FR 24634) and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with a nominal diameter of ten micrometers or less (PM–10). However, at the State's option, EPA will continue to process TSP SIP revisions which were in process at the time the new PM–10 standard was promulgated. In the policy published on July 1, 1987, (p. 24679, column 2) EPA stated that it would regard existing TSP SIPs as necessary interim particulate matter plans during the period preceding the approval of State plans specifically aimed at PM–10. If the TSP SIP revision is judged to include more stringent provisions than are in the existing TSP plan, EPA's general policy would be to approve it. It is EPA's judgment that the regulations in this action would increase the stringency of the TSP plan and are therefore likely to result in better control of PM–10 as well. Thus, EPA is approving the modifications to this TSP SIP.

EPA is modifying the March 4, 1980 conditional approval by requiring the State to conclusively determine whether the recent violations are due to wood smoke emissions. Once a determination is made, a new control strategy will have to be incorporated into the Butte TSP Plan.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from publication). This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of Montana was approved by the Director of the Federal Register on July 1, 1982.

Date: September 26, 1988.

Lee M. Thomas,

Administrator.

Part 52 Chapter I, Title 40 of the *Code of Federal Regulations* is amended as follows:

PART 52—[AMENDED]

Subpart BB—Montana

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1370 is amended by adding paragraph (c)(21) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(21) Revisions to Montana TSP SIP for Butte were submitted by Governor Ted Schwinden on February 10, 1983.

(i) Incorporation by reference—

(A) State of Montana Air Quality Control, Implementation Plan, Chapter 5C, Butte, adopted January 14, 1983.

(B) Air quality Permit #1749 for Anaconda Minerals Company filed March 28, 1983.

[FR Doc. 89–1787 Filed 1–25–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-31; RM-5682, RM-5848, RM-5979, RM-6166, RM-6384, RM-6385]

Radio Broadcasting Services: Moscow, Ohio; Paris, Kentucky, etc.)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 246C2 for Channel 244A at Somerset, Kentucky, and modifies the license of Station WSEK(FM) to specify operation on the higher class channel, as requested by First Radio, Inc., at coordinates 37–07–06 and 84–36–44. This action also allots Channel 245A at Dry Ridge, Kentucky. City reference coordinates for this allotment are 38–40–54 and 84–35–18. In addition, Channel 293A is allotted to Williamstown, Kentucky, with a site restriction at coordinates 38–37–15 and 84–35–45. The proposal to allot Channel 298A to Moscow, Ohio, is denied. A counterproposal to upgrade Station WCOZ at Paris, Kentucky, is denied. Channel 261C2 is substituted for Channel 261A at Winchester, Kentucky, and the license of Station WFMI(FM) is modified to specify operation on the higher class channel at coordinates 38–08–00 and 84–29–35. Channel 237A is substituted for 261A at Carrollton, Kentucky, and the license of Station WIKI(FM) is modified to specify operation on the new channel at coordinates 38–38–23 and 85–12–44. Channel 298A is substituted for Channel 237A at Falmouth, Kentucky, and the license of Station WIOK is modified to specify operation on the new channel at coordinates 38–43–15 and 84–22–27. With this action, this proceeding is terminated.

DATES: Effective January 27, 1989; The window period for filing applications for Channel 245A at Dry Ridge and Channel 293A at Williamstown will open on January 30, 1989, and close on March 1, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–31, adopted December 8, 1988, and released December 13, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments, is amended under Kentucky by adding Channel 246C2 and removing Channel 244A at Somerset; adding Dry Ridge, Channel 245A; adding Williamstown, Channel 293A; adding Channel 261C2 and removing Channel 261A at Winchester; adding Channel 237A and removing Channel 261A at Carrollton; and adding Channel 298A and removing Channel 237A at Falmouth.

Steve Kaminer,

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

[FR Doc. 89–1817 Filed 1–25–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–195; RM–5810]

Radio Broadcasting Services; Onawa, IA, and Vermillion, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Barnco, substitutes Channel 272C1 for Channel 272A at Onawa, Iowa, and modifies its permit for Station KOOO to specify operation on the higher powered channel. Channel 272C1 can be allotted to Onawa in compliance with the Commission's minimum distance separation requirements and can be used at Station KOOO's present transmitter site. The coordinates for this allotment are North Latitude 42–01–41 and West Longitude 96–11–11. In addition, the Commission substitutes Channel 292A for Channel 272A at Vermillion, South Dakota, and modifies the license of Station KVRF to specify the alternate Class A channel. Channel 292A can be allotted to Vermillion in compliance with the Commission's minimum distance separation requirements and can be used at Station KVRF's present transmitter site. The coordinates for this allotment are North Latitude 42–47–32 and West Longitude 97–00–03. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 6, 1989.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–195, adopted November 29, 1988, and released January 19, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended by revising the entry for Onawa, Iowa, by deleting Channel 272A and adding Channel 272C1, and revising the entry for Vermillion, South Dakota, by deleting Channel 272A and adding Channel 292A.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89–1821 Filed 1–25–89; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 54, No. 16
Thursday, January 26, 1989

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-189-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require replacement of the takeoff warning system stabilizer limit switch assembly mounting brackets that move the switch operating band outside the stabilizer green band. This proposal is prompted by reports that, even though the stabilizer controls have been set within safe operating limits, air loading on the horizontal stabilizer has caused sufficient movement when trim is set at the end of the "green band" to cause the takeoff warning alarm to sound during takeoff. This condition, if not corrected, could lead to unnecessary rejected takeoffs and the consequent high potential for airplane incidents and accidents.

DATES: Comments must be received no later than March 20, 1989.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-189-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark J. Perini, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1944. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-189-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been several reports of operators of Boeing Model 747 series airplanes experiencing false alarms of the takeoff warning system during takeoff, even though the stabilizer controls are set within safe operating limits. Several of these incidents resulted in rejection of the takeoff at high speeds. It has been determined that the stabilizer limit switch actuation point was reached due to air loading of the horizontal stabilizer, causing the alarm to activate, while the stabilizer trim indicator was still within the green band.

The FAA has reviewed and approved Boeing Service Bulletin 747-27-2228, Revision 1, dated October 26, 1984, which describes procedures to replace the stabilizer limit switch assembly mounting brackets with new brackets that move the switch actuation points outside the stabilizer green band.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacement of the stabilizer switch assembly mounting brackets in accordance with the service bulletin previously described.

There are approximately 330 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 137 Model 747 airplanes of U.S. registry would be affected by this AD, that it would take approximately 17.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The average cost of parts is estimated to be $96 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $109,052.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, as listed in Boeing Service Bulletin 747–27–2228, Revision 1, dated October 26, 1984, certificated in any category. Compliance required within the next 18 months following the effective date of this AD, unless previously accomplished.

To prevent rejected takeoffs as a result of false takeoff warnings, accomplish the following:

A. Replace the stabilizer limit switch assembly mounting brackets, in accordance with Boeing Service Bulletin 747–27–2228, Revision 1, dated October 26, 1984.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 11, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–1748 Filed 1–25–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 106

[Docket No. 87N–0402]

Infant Formula Microbiological Testing, Consumer Complaints, and Record Retention Requirements

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing, as required by the Drug Enforcement, Education, and Control Act of 1986 (Pub. L. 99–570), to revise its infant formula regulations with respect to record retention, microbiological and nutrient testing, manufacturer's audits, and consumer complaints. The proposed revisions would result in new, more detailed record retention provisions for the infant formula industry and would help ensure a safe, wholesome, and sanitary sole source of nutrition for infants.

DATES: Comments by March 27, 1989. Proposed compliance date for all affected products initially introduced or initially delivered for introduction in interstate commerce or prepared from raw materials shipped in interstate commerce is 60 days after date of publication of the final regulation.

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

FOR FURTHER INFORMATION CONTACT: Nicholas Duy, Center for Food Safety and Applied Nutrition (HFF–204), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–3177.

SUPPLEMENTARY INFORMATION:

I. Background

In 1978, a major manufacturer of infant formulas reformulated two of its soy products by discontinuing the addition of salt. This reformulation resulted in the manufacture of products containing an inadequate amount of chloride, an essential nutrient. By mid 1979, hypochloremic metabolic alkalosis, a syndrome associated with chloride deficiency, had been diagnosed in a substantial number of infants. Most of the cases resulted from prolonged and exclusive use of these soy infant formulas.

After reviewing the matter, Congress determined that, to improve protection of infants using infant formula products, modifications of industry's and FDA's recall procedures were needed. In addition, greater regulatory control over the formulation and production of infant formulas was needed. Accordingly, Congress passed, and the President signed into law on September 26, 1980, the Infant Formula Act of 1980 (Pub. L. 96–359). The Infant Formula Act of 1980 (the 1980 act) is codified in section 412 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350a). In 1982, FDA implemented the infant formula recall procedures, as prescribed for in section 412(d) of the act, by establishing Subpart D of 21 CFR Part 7 (see 47 FR 18832; April 30, 1982). In 1982, FDA also implemented the Infant Formula Quality Control Procedures, as provided for in section 412(a)(2)(D) of the act, by establishing 21 CFR Part 106 (see 47 FR 17016; April 20, 1982). In 1985, FDA further implemented the 1980 act by establishing Subparts B, C, and D in 21 CFR Part 107 regarding Infant Formula Labeling, Exempt Infant Formula, and Nutrient Requirements for Infant Formula, respectively (see 50 FR 1833, January 14, 1985; 50 FR 45106, October 30, 1985; and 50 FR 48183, November 22, 1985).

More recently, Congress amended section 412 of the act as a provision of the Drug Enforcement, Education, and Control Act of 1986 (Pub. L. 99–570) to address recent concerns expressed by Congress and consumers about the Infant Formula Act of 1980. The President signed the amendments on October 27, 1986. The 1986 amendments require the agency to publish regulations concerning current good manufacturing practices and quality control procedures for infant formula and regulations for the maintenance of records associated with these practices and procedures, including consumer complaint files.

The 1986 amendments significantly enlarge FDA's authority to require the retention of records and to make such records available to agency representatives. Specifically, the amendments provide for:

1. The retention of all records necessary to demonstrate compliance with good manufacturing practices and quality control procedures prescribed by the Secretary under paragraph (2) [of the amendments] including records

containing the results of all testing required under paragraph (2)(B) [Paragraphs (2) and (2)(B) refer to good manufacturing practices and quality control procedures determined to be necessary by the Secretary, and specify testing for each required nutrient in each batch prior to distribution, the regularly scheduled testing during the shelf life of the infant formula, the testing and in-process controls designed to prevent adulteration of each batch, and the conduct of regularly scheduled audits to determine compliance with good manufacturing practices and quality control procedures.];

2. The retention of all certifications or guarantees of analysis by premix suppliers;

3. The retention by a premix supplier of all records necessary to confirm the accuracy of all premix certifications and guarantees of analysis;

4. The retention of—

a. All records pertaining to the microbiological quality and purity of raw materials used in infant formula powder and in finished infant formula, and

b. All records pertaining to food packaging materials which show that such materials do not cause an infant formula to be adulterated within the meaning of section 402(a).

5. The retention of all records of the results of regularly scheduled audits conducted pursuant to the requirements prescribed by the Secretary, and

6. The retention of all complaints and the maintenance of files with respect to, and the review of, complaints concerning infant formulas which may reveal the possible existence of a hazard to health.

No comparable provisions existed in the prior law. In adopting the 1986 amendments, Congress recognized that the retention of records by manufacturers and access on the part of the agency to such records are of critical importance in assuring that infant formulas are safe and have been manufactured in an appropriate manner. The amendments give FDA broad authority to require the retention of and access to records, including "all" records of certain types. It is for this reason the agency has decided to propose regulations concerning these record retention requirements.

The 1986 amendments to the Infant Formula Act also impose additional obligations on the agency concerning the promulgation of regulations establishing various other requirements pertaining to infant formulas. Because of these additional obligations, the agency is also proposing certain microbiological testing requirements and guidelines for use in determining when particular microorganisms are present at a level that may result in an adulterated product, requirements for additional nutrient testing and manufacturer's audits, and requirements concerning consumer complaints. The agency also plans to publish a second proposal at a later date to further amend the infant formula regulations concerning current good manufacturing practices and quality control procedures as required by the 1986 amendments.

II. Overview of the Proposed Regulation

The agency is proposing to amend its existing regulations concerning infant formula (21 CFR Part 106) to reflect the statutory changes concerning the retention of records, including consumer complaint files and the need to test for potential microbiological contaminants in powdered infant formula. The proposed regulations mirror the broad authority Congress provided the agency in this area.

The proposed regulations pertain to records concerning (1) the verification of the presence of required nutrients in infant formula in accordance with section 412(i) of the Act and in 21 CFR 107.100; (2) specific nutrient testing results at the "final product stage"; (3) premix certifications or guarantees; (4) microbiological quality and purity of raw materials in powdered infant formulas and in finished infant formulas; (5) food packaging materials; (6) manufacturer's audits, and (7) complaints. Each aspect of the proposed regulations is discussed below.

III. Records Pertaining to Microbiological Quality and Purity of Raw Materials and Finished Infant Formula

A. Background

The 1986 amendments require the retention of "all records pertaining to the microbiological quality and purity of raw materials used in infant formula powder and in finished infant formula." This portion of the 1986 amendments provides authority to review, evaluate, and copy all records containing microbiological testing results for raw materials used in the manufacture of powdered infant formula and the testing results for finished infant formula, both powdered and liquid. The 1986 amendments also provide FDA the authority to review, evaluate, and copy records containing the specifications used by an infant formula manufacturer to evaluate the results of its microbiological testing. In establishing these requirements, Congress recognized that infant formula is a special category of food that needs stringent safeguards that must include criteria to determine its microbiological quality and purity. Stringent microbiological safeguards are necessary because infant formula is often the only source of nourishment for an infant, and infants are far more sensitive than adults to many foodborne microorganisms or their toxins. (An infant's high degree of sensitivity is due to such factors as an underdeveloped immune system, high gastric pH, and unstable bowel flora.)

B. Powdered Infant Formula

Powdered infant formulas, unlike the liquid products, are not packaged in hermetically-sealed containers and then heated (cooked) until the product is commercially sterile. Accordingly, the low microbial levels that are routinely achieved for liquid products cannot be attained for powdered products. Therefore, manufacturers of powdered infant formulas rely primarily on a lack of moisture to prevent microbial growth in the product.

Prior to the 1986 amendments and the regulation proposed herein to implement these amendments, the agency has not had the authority to require testing or obtain access to the testing records of the powdered products. (The Good Manufacturing Practice Regulations for Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers (21 CFR Part 113) contain testing, recordkeeping, and access requirements concerning the commercial sterility of the liquid product.) Consequently, in the past, there have been occasions where infants became ill as a result of microbial contamination of the powdered product.[1] Conditions conducive to microbial growth occur when the microbial level present in the dry formula is excessive and the diluted product is not refrigerated as instructed on the label. For these reasons, there is a need to require manufacturers to test and evaluate the microbial quality of the finished powdered infant formulas.

This requirement of the proposed regulations is based on the premise that testing powdered formula at the final product stage is sufficient to determine when raw materials containing excessive levels of microbial contamination are used in the manufacture of powdered infant formula

[1] "*Salmonella eling* Infections Associated With the Consumption of Infant Dried Milk," *The Lancet*, 2(856):900–903, October 17, 1987.

or when a powdered formula has inadvertently become microbiologically contaminated during processing.

C. Microbiological Testing Requirements for Powdered Infant Formula

In deciding which microorganisms powdered infant formula manufacturers should test for, the agency has reviewed and evaluated data and information concerning the potential for microbiological contamination in infant formula. This review included the studies on Microbiological Quality of Dry-Milk Mixes and Milk Substitute Infant Formulas; Microbiological Guidelines and Sampling Plans for Dried Infant Cereals and Powdered Infant Formula from a Canadian National Microbiological Survey; and the report from the International Commission on Microbiological Specifications for Foods, 1974, as presented in the book "Microorganisms in Foods 2," Chapter 10. In light of the review,[2] the agency has concluded that manufacturers must test for those pathogenic microorganisms that have been found in infant formula and raw materials used for infant formula and those microorganisms that have been associated with manufacturing practices that enhance bacterial growth. These microorganisms include *Salmonella* species, *Listeria monocytogenes*, *Escherichia coli*, *Staphylococcus aureus*, *Bacillus cereus*, and *Clostridium perfringens* as well as those microorganisms detected by an Aerobic Plate Count.

The studies and information reviewed by the agency do not mention the need to test for *L. monocytogenes*. However, FDA has in routine testing begun to detect *L. monocytogenes* in milk and milk products. This organism represents a potential life-threatening situation if present in infant formula and, therefore, has been included among those for which testing would be required.

The agency has identified in Table I the levels for each of the above microorganisms at which a health concern may arise. This concern can be particularly alarming when infant formula containing excessive microbial levels is also misused by consumers who do not strictly follow the directions for preparation and use given on each container.

[2] "Proposed Microbiological Criteria for Powdered Dry-Milk, Milk-Derived, and Milk Substitute Infant Formulas"; copy on file with the Dockets Management Branch (address above).

TABLE I.—INFANT FORMULA MICROBIOLOGICAL GUIDELINES

Bacteria	n	M
Salmonella	60	[1] 0
Listeria monocytogenes	10	[1] 0
Escherichia coli	5	[1] <3
Staphylococcus aureus	5	[1] 3
Bacillus cereus	10	[2] 1,000
Clostridium perfringens	10	[2] 1,000
Aerobic plate count	5	[3] 10,000

Key: n = number of units sampled; M is on a per gram basis.
[1] Fails test if any unit exceeds the value (M).
[2] Fails test if 2 or more units exceed 100 organisms/gram or any unit exceeds the value (M).
[3] Fails test if 3 or more units exceed 1,000 organisms/gram or any unit exceeds the value (M).

The agency intends to treat these levels as guidelines for manufacturers' use in determining when particular microorganisms are present at a level that may result in an adulterated product. The agency has decided to use these levels as guidelines rather than propose tolerances because scientific understanding of microbial food contamination is evolving quickly in this area and the methodology for identifying microorganisms is also undergoing rapid change. The proposed testing requirement for potential microbiological contaminants and the levels given above are consistent with (1) the standard adopted by the International Commission on Microbiological Specifications for Foods of the Food and Agricultural Organization of the United Nations and the World Health Organization, and (2) results from FDA and Canadian Surveys as given in the reports referenced above.

The agency has also decided upon the sampling plan and the analytical methods that it will use in applying the microbiological guidelines. It is important for manufacturers to have this information because microbiological testing results depend upon the methods used. The methodology to be used by FDA is standard for testing this food class for these microorganisms and utilizes a statistically acceptable sample size.

The methodology that FDA will be using when sampling infant formula products is given in the Bacteriological Analytical Manual (BAM), 6th Edition (1984), and subsequent revisions, published by the Association of Official Analytical Chemists, 1111 North 19th St., Suite 210, Arlington, VA 22209, except for the method for *L monocytogenes*. The method for *L monocytogenes* is available at the Dockets Management Branch (address above) and will be included in the next edition of BAM. For *Salmonella*, FDA will use the methodology described in Chapter 7, BAM. The sample preparation procedures described in paragraph 1, Section C of Chapter 7 will be used. For *E coli*, FDA will use the methodology described in Chapter 5, BAM; for *S. aureus*, the methodology described in Chapter 14, BAM; for *B. cereus*, the methodology described in Chapter 16, BAM; for *C. perfringens*, the methodology described in Chapter 17, BAM; and for the Aerobic Plate Count, the methodology described in Chapter 4, BAM.

D. Lot Testing for Potential Microbiological Contamination

The proposed regulation contains the requirement that manufacturers test each lot of powdered infant formula for each of the microorganisms identified in Table I. However, the proposal also provides manufacturers the opportunity to identify alternate approaches. In offering an alternate approach, a manufacturer would have to justify why each lot of powdered infant formula should not be tested for each identified microorganism. (For example, stringent raw material specifications and in-process heating of the product may routinely result in levels of microorganisms significantly below the levels identified above. In this case, spot checking, checking of one or more indicator microorganism, or some other procedure may be sufficient to confirm the microbiological quality for each lot of final product.) To support the alternate approach, a manufacturer would also have to submit a complete description of quality control procedures, current good manufacturing practices, raw material specifications, processing procedures and specifications, and test results demonstrating a history of meeting these criteria. In addition, the manufacturer would have to justify how the alternate testing proposed is sufficient to assure the microbiological quality of the finished product.

Appropriate types of testing and testing frequency will vary depending on manufacturing procedures. Thus, more specific identification of information needed to obtain agency agreement is not possible. If the agency does not agree with the manufacturer's recommendation that it is not necessary to test for each microorganism in each lot, the agency will notify the manufacturer of that decision.

The 1986 amendments specifically require that all records pertaining to the microbiological quality and purity of raw materials used in powdered infant formula and in finished infant formula be retained as required by § 106.100(m).

Accordingly, the proposal calls for the retention of all records related to required testing for 1 year after the expiration of the shelf life of the infant formula or 3 years from the date of manufacture, whichever is greater.

E. Microbial Quality of Raw Materials

The agency is proposing to require microbial testing of the final product only. The agency's rationale for placing requirements on the final product rather than raw materials is based on the fact that the level of microbial contamination in raw materials may or may not be indicative of the microbial level in the final product. Potential microbiological contamination may be introduced by raw materials or through improper processing or holding procedures. Final product testing would determine microbiological contamination from all of these sources. However, some manufacturers may find it in their best interests to test and evaluate the microbial quality of the raw material, as well as the final product. Although the agency is not proposing to require raw material microbiological testing, the agency is proposing that when the manufacturer performs such testing, the manufacturer must maintain the records of the testing and must permit FDA access to the records. This requirement will allow FDA to evaluate the results of the testing in the context of the processing procedures and specifications used by the manufacturer and will help identify any potential or real contamination problems.

IV. Complaints

The 1986 amendments require "the retention of all complaints and the maintenance of files with respect to, and the review of, complaints concerning infant formulas which may reveal the possible existence of a hazard to health." The agency proposes to define a complaint as any allegation, written or verbal, expressing dissatisfaction with the product for any reason that may reveal the possible existence of a hazard to health, including complaints about appearance, taste, odor, and quality. FDA is narrowing this definition to exclude correspondence about price, package size or shape, or other matters that could not possibly reveal the existence of a hazard to health. FDA believes that this definition, even with its qualifications is sufficiently broad to assure the protection of the public health because it requires investigation of all allegations that may reveal the possible existence of a hazard to health.

FDA is also proposing that complaints be separated into two classes; (1) those complaints which indicate that an infant became ill from consuming the product or that the infant required treatment by a physician or health care provider, and (2) those complaints that may involve a possible existence of a hazard to health but do not refer to an infant becoming ill or to the need for a physician's care. The agency believes that classifying complaints in this manner will assist in identifying complaints that call for FDA's most intensive review, and will expedite FDA's identification of potential health problems.

Moreover, the agency is proposing to require that manufacturers maintain a designated file for complaint records. The proposed regulations provide that each complaint file must contain the name of the infant formula, lot number, name of the complainant, copy of the complaint, all correspondence with the complainant, and all associated manufacturing records and complaint investigation records necessary to evaluate the complaint. The regulations would also require that the complaint file include the manufacturer's evaluations and findings concerning the complaint and a notation of the actions taken to follow up on any complaint that identified a possible existence of a hazard to health. FDA believes it is critical that information regarding serious health effects be investigated and promptly reported to FDA. Accordingly, FDA will immediately initiate its own investigation into this matter. Under existing regulations, manufacturers must promptly notify FDA whenever they have knowledge that an infant formula may present a hazard to human health. In this rulemaking, the agency is proposing a specific requirement that manufacturers must notify FDA within 15 days whenever an investigation indicates there is a reasonable probability of a casual relationship between an infant's death and the consumption of an infant formula. The notifcation shall be within 15 days of receiving such information. Moreover, the proposed regulations provide that when a manufacturer does not conduct an investigation of a complaint, the complaint file must include an explanation of why no investigation was conducted and the name of the responsible individual making the decision not to investigate.

The agency believes all the foregoing proposed requirements concerning the maintenance of a complaint file are essential to ensure the collection of the information necessary to provide an evaluation of the significance of a consumer complaint and to determine whether a hazard to health may exist. These criteria are consistent with agency requirements concerning consumer complaints on drugs, medical devices, biologics, and cosmetics.

V. Retention of Records Demonstrating Compliance With Good Manufacturing Practices and Quality Control Procedures

The 1986 amendments require manufacturers to test for (1) all required nutrients in each batch of infant formula prior to distribution to ensure compliance with section 412(b)(3)(C) of the act, and (2) vitamins A, B_1, C, and E at the "final product stage" in order to ensure that each batch of infant formula is in compliance wth section 412(b)(3)(A) and 412(i) of the act. The amendments also call for testing to verify the shelf life of the infant formula as a means of ensuring compliance with section 412(b)(2)(B)(ii) of the act. The proposed regulations would classify records containing the results of all these tests as "necessary" records and, accordingly, require the retention of all the test results. FDA would need access to these records containing test results in order to determine whether standard procedures and practices have been followed during the manufacture of infant formula and to determine the cause of any observed deviations in nutrient concentrations.

The 1986 amendments also require the retention of all certifications and guarantees of analyses by premix suppliers and all records necessary to confirm the accuracy of the analyses made to provide the basis of premix certification and guarantees for the period of time required by § 106.100(m). Premix manufacturers routinely maintain a record of the purity of the nutrient or ingredient, the amount of each nutrient or ingredient added to a premix, and the analytical testing results necessary to verify the addition of the correct amounts and purity of each nutrient. The agency is, therefore, proposing that it is necessary to retain all of these records and make them available for FDA review and evaluation upon request. The review of all of these records is necessary to be certain that a premix has been properly prepared.

Moreover, the 1986 amendments provide that manufacturers must retain records to demonstrate completion of regularly scheduled audits as required by section 412(b)(4)(A)(v) of the act. Accordingly, the agency is proposing that manufacturers maintain documentation establishing that regularly scheduled audits by appropriately trained individuals: (1) Are conducted; (2) assure compliance

with current good manufacturing practices and quality control procedures; and (3) follow the firm's complete audit plans and procedures.

Without such information the agency would not be able to ascertain when or if manufacturers are conducting audits properly.

VI. Records Pertaining to Chemical Contaminants

The agency is also concerned about potential chemical contaminants which may cause an infant formula to become adulterated. For this reason, and because retention of chemical contaminants records is involved, the agency considered including, in this "record retention" proposal, a requirement that manufacturers conduct tests for potential chemical contaminants and that the results of these tests be retained and made available for FDA review. However, after reviewing the issues involving the establishment of current good manufacturing practices to control potential chemical contaminants, the agency has concluded it would be more appropriate to address the issues in the proposal on current good manufacturing practices quality control that the agency expects to issue in the near future.

VII. Miscellaneous Records

The 1986 amendments require the retention of all records that pertain to food-packaging materials and that show that such materials do not cause an infant formula to be adulterated by virtue of the fact that the formula contains an unsafe food additive (within the meaning of section 402(a)(2)(C) of the act). Any available information that indicates whether food-packaging materials do or do not result in the presence of unapproved food additives in infant formula is, by necessity, required to be retained and available for FDA review. The proposed regulations, accordingly, contain this requirement.

VIII. Conditions of Retention and Maintenance of Records

The 1986 amendments also require that records be retained for at least 1 year after the expiration of the shelf life of the products. The agency is proposing to require record retention for at least 1 year after the expiration of the shelf life of the product or 3 years from date of manufacture, whichever is greater. The 3-year limitation makes this proposed requirement consistent with the record retention requirement in 21 CFR 113.100 for thermally processed low-acid foods packaged in hermetically sealed containers.

IX. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

X. Economic Impact

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354) and Executive Order 12291, the economic effects of this proposed rule have been analyzed. This proposed rule merely implements the requirements of the 1986 amendments and will not generate costs beyond those necessitated by the amendments.

Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action. Further, in accordance with Executive Order 12291, FDA certifies that this proposed rule will not result in a major rule as defined by that order.

XI. Paperwork Reduction Act of 1980

Section 106.100 of this proposed rule contains collection of information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of this collection of information requirements. Other organizations and individuals desiring to submit comments on the collection of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

XII. Comments

Interested persons may, on or before March 27, 1989, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 106

Food grades and standards, Infants and children, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Part 106 be amended to read as follows:

PART 106—INFANT FORMULA QUALITY CONTROL PROCEDURES

1. The authority citation for 21 CFR Part 106 is revised to read as follows.

Authority: Secs. 412, 701(a), 52 Stat. 1055, 94 Stat. 1190 (21 U.S.C. 350a, 371(a)); 21 CFR 5.10, 5.11.

2. Section 106.100 is revised to read as follows:

Subpart C—Records and Reports

§ 106.100 Records.

(a) Every manufacturer of infant formula shall maintain the records specified in this regulation in order to permit the Food and Drug Administration to verify that each manufacturer is in compliance with section 412 of the Federal Food, Drug, and Cosmetic Act (the act). Such records shall include those which pertain to:

(1) Nutrient premixes;

(2) Quality control;

(3) Final product nutrient testing results;

(4) Distribution;

(5) Microbiological quality and purity of raw materials and in finished infant formula;

(6) [Reserved]

(7) Manufacturer's audits of current good manufacturing practices and quality control procedures; and

(8) Complaints.

(b) The manufacturer shall maintain all records that pertain to food-packaging materials and that show that such materials do or do not cause an infant formula to be adulterated within the meaning of section 402(a)(2)(C) of the act.

(c) The manufacturer shall maintain all records that pertain to nutrient premixes. Such records shall include, but are not limited to:

(1) All results of testing conducted to ensure that each nutrient premix is in compliance with the premix certificate and guarantee and specifications provided by the premix supplier.

(2) All certificates and guarantees given by premix suppliers concerning the nutrients required by section 412(i) of the act and § 107.100 of this chapter.

(3) The results of any testing conducted by the premix supplier to confirm the accuracy of all certificates

and guarantees concerning nutrient premixes for infant formulas. Such records shall include:

(i) The results of tests conducted to determine the purity of each nutrient required by section 412(i) of the act or § 107.100 of this chapter and any other nutrient listed on the label;

(ii) The weight of each nutrient added;

(iii) The results of any quantitative tests conducted to determine the amount of each nutrient certified or guaranteed; and

(iv) The results of any quantitative tests conducted to identify the nutrient levels present when nutrient premixes exceed their expiration date or shelflife (retest date).

(d) The manufacturer shall maintain all records necessary to assure proper nutrient quality control in the manufacture of infant formula products. Such records shall include the results of any testing conducted to verify that each nutrient required by section 412(i) or § 107.100 of this chapter is present in each batch of infant formula at the appropriate concentration. This requirement pertains to ingredients in-process batch and finished product from the time of manufacture through its expiration date.

(e) The manufacturer shall maintain all records necessary to assure required nutrient content at the "final product stage." Such records shall include, but are not limited to, testing results for vitamins A, B_1 (thiamine), C, and E for each batch of infant formula. "Final product stage" means the point in the manufacturing process prior to distribution at which the infant formula is homogenous and not subject to further degradation from the manufacturing process.

(f) The manufacturer shall maintain all records pertaining to distribution of the infant formula. Such records shall include, but are not limited to sufficient information and/or data necessary to effect and monitor recalls for the products in accordance with Part 7, Subpart D of this chapter.

(g) The manufacturer shall maintain all records pertaining to the microbiological quality and purity of raw materials and finished powdered infant formula. Such records shall include, but are not limited to, test results for *Salmonella, Listeria monocytogenes, Escherichia coli, Bacillus cereus, Clostridium perfringens, Staphylococcus aureus,* and the Aerobic Plate Count for each lot of powedered infant formula. If a manufacturer wishes to demonstrate to FDA that a given powdered infant formula need not be tested as required under this paragraph, the manufacturer may request an exception from the requirement.

(1) Any request for exception must include the following information:

(i) The raw material microbiological specifications;

(ii) The details of in-process heating and other processing procedures that may affect the microbiological quality of the product;

(iii) All other quality control procedures and current good manufacturing practices affecting the microbiological quality of the product;

(iv) All tests results that pertain to compliance with published microbiological guidelines for infant formula; and

(v) An alternate quality control program and a justification that the testing proposed by the manufacturer is sufficient to assure the microbiological quality of the product.

(2) The Center for Food Safety and Applied Nutrition will review information submitted by an infant formula manufacturer under paragraph (g)(1) of this section. On the basis of such review and other information available, the Center for Food Safety and Applied Nutrition may accept or reject the manufacturer's contention that testing for each microorganism identified in paragraph (g) of this section, in each lot, is not necessary.

(3) If after completing its review of all information submitted, the Center for Food Safety and Applied Nutrition concludes that testing each lot for each microorganism identified in paragraph (g) of this section is necessary, the Center will so notify the manufacturer and specify the reasons therefore. Within the 10 working days following the receipt of this notification, the manufacturer may request under § 10.75 of this chapter to have the decision reviewed by the Office of the Commissioner of Food and Drugs. A determination by the Director of the Center for Food Safety and Applied Nutrition that is not appealed becomes a final agency decision.

(4) After a final decision by the Director of the Center for Food Safety and Applied Nutrition or by the Office of the Commissioner on the microbiological testing requirements, the manufacturer shall comply with this decision or the product will be considered to be adulterated.

(h) [Reserved]

(i) The manufacturer shall maintain all records pertaining to regularly scheduled audits. Such records shall contain the information and data necessary to assure compliance with current good manufacturing practices and quality procedures identified in Parts 106, 107, 109, 110, and 113 of this chapter. The records must include written assurances from the manufacturer that regularly scheduled audits by appropriately trained individuals are being conducted and that the complete audit plans and procedures for the firm have been followed. The actual written reports of the audits need not be made available.

(j) The manufacturer shall maintain records of procedures describing the handling of all written and oral compliants regarding infant formula. Each manufacturer shall follow these procedures and shall include in them provisions for the review of any complaint involving an infant formula and a determination as to the need for an investigation of a possible existence of a hazard to health.

(1) For purposes of this section, every manufacturer shall interpret a complaint as any communication that contains any allegation, written or verbal, expressing dissatisfaction with a product for any reason that may concern the possible existence of a hazard to health including complaints about appearance, taste, odor, and quality. Correspondence about prices, package size or shape, or other reasons that could not possibly reveal a possible existence of a hazard to health shall not, for compliance purposes, be considered a complaint and therefore need not be made available to an FDA investigator.

(2) When there is a possible existence of a hazard to health, the manufacturer shall conduct an investigation into the validity of the complaint. Where such an investigation is conducted, the manufacturer shall include in the record the determination of a possible existence of a hazard to health, or lack thereof, and basis for the determination. Where such an investigation is not conducted, the manufacturer shall include in the record the reason that an investigation was found to be unnecessary and the name of the responsible person making such a determination.

(3) When there is a reasonable possibility of a causal relationship between the consumption of an infant formula and an infant's death, the manufacturer shall conduct an investigation and shall notify the agency as required in § 106.120(b) within 15 days of receiving such information.

(4) The manufacturer shall maintain in a designated file all records pertaining to complaints. The manufacturer shall separate the files into two classes:

(i) Those complaints that allege that the infant became ill from consuming the

product or required treatment by a physician or health care provider.

(ii) Those complaints that may involve a possible existence of a hazard to health but do not refer to an infant becoming ill or the need for treatment by physician or a health care provider.

(5) The manufacturer shall include in a complaint file the following information concerning a complaint:

(i) The name of the infant formula;

(ii) The lot number;

(ii) The name of complainant;

(iv) A copy of the complaint or a memo of the telephone conversation or meeting and all correspondence with the complainant;

(v) All the associated manufacturing records and complaint investigation records needed to evaluate the complaint;

(vi) All actions taken to follow up on the complaint; and

(vii) All findings and evaluations of the complaint.

(6) The manufacturer shall maintain the files regarding infant formula complaints at the establishment where the infant formula was manufactured, processed, or packed. The manufacturer may alternatively maintain such files at one other facility if all records required by this section for a manufacturer are readily available for inspection at that one other facility.

(k) The manufacturer shall make readily available for authorized inspection all records required under this part, or copies of such records. Records shall be available at any reasonable time during the retention period of the establishment where the activities described in such records occurred. (Infant formula complaint files may be maintained at one other facility for each manufacturer if all required records are readily available at that one other facility.) These records or copies thereof shall be subject to photocopying or other means of reproduction as part of such inspection. Records that can be immediately retrieved from another location by electronic means shall be considered as meeting the requirements of this paragraph.

(l) Records required under this part may be retained either as original records or as true copies such as photocopies, microfilm, microfiche, or other accurate reproductions of the original records. Where reduction techniques, such as microfilming, are used, suitable reader and photocopying equipment shall be readily available.

(m) Production control, product testing, testing results, complaints, and distribution records necessary to verify compliance with Parts 106, 107, 109, 110, and 113 of this chapter, or other appropriate regulations shall be retained for 1 year after the expiration of the shelf life of the infant formula or 3 years from the date of manufacture, whichever is greater.

(n) The manufacturer shall maintain quality control records that contain sufficient information to permit a public health evaluation of any batch of infant formula.

Dated: January 18, 1988.

Frank E. Young,

Commissioner of Food and Drugs.

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 89-1721 Filed 1-25-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-158-86, 160-86]

Excise and Income Taxes; 401(k) Arrangements Under the Tax Reform Act of 1986 and Nondiscrimination Requirements for Employee and Matching Contributions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to the **Federal Register** publication for Monday, August 8, 1988, at 53 FR 29719 of the notice of proposed rulemaking. The proposed rules relate to cash or deferred arrangements described in section 401(k) of the Internal Revenue Code of 1986, and nondiscrimination rules for employee contributions and matching contributions made to employee plans contained in section 401(m) of the Code by the Tax Reform Act of 1986.

FOR FURTHER INFORMATION CONTACT: Williams D. Gibbs, Office of the Assistant Chief Counsel, Employee Benefits and Exempt Organizations, 202-377-9372 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1988, proposed rules relating to cash or deferred arrangements and nondiscrimination rules for employee contributions and matching contributions were published in the **Federal Register** (53 FR 29719). The amendments were proposed to conform the regulations to changes in the applicable tax law made by the Tax Reform Act of 1986.

Need for Correction

As published, the proposed rules contain a typographical error which may prove to be misleading and is in need of correction.

Correction of Publication

Accordingly, the publication of the proposed rules (EE-158-86, 160-86), which was the subject of FR Doc. 88-17721 (53 FR 29719), is corrected as follows:

Paragraph 1. On page 29734, the third column, eleventh line from the bottom of the page, the word "following" is removed.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89-1816 Filed 1-25-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 05-89-01]

Regulated Navigation Area, Hampton Roads, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering revising the regulated navigation area in 33 CFR 165.501 for Hampton Roads, Virginia, to provide special operating requirements for the Elizabeth River ferries using the dock to be constructed at the foot of High Street in Portsmouth, Virginia. The restrictions are designed to ensure the safety of the passengers, the ferries, and other vessels navigating the area.

DATES: Comments must be received on or before February 24, 1989.

ADDRESSES: Comments and other materials should be mailed to Commander (mpv), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments and other materials referenced in this notice will be available for inspection and copying at the offices of the Commander, Fifth Coast Guard District, in Room 408A. 431 Crawford Street, Portsmouth, Virginia. Normal office hours are between 8:00 a.m. and 4:30) p.m., Monday through Friday, except Federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant D.T. Ormes, Port and Vessel

Safety Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia, 23704–5004, (804) 398–6388.

SUPPLEMENTARY INFORMATION:
Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 05–89–01), and the specific section of the proposal to which their comments apply, and give the reasons for each comment.

Drafting Information

The drafters of this notice are LT D.T. Ormes, Project Officer, Port and Vessel Safety Branch, Fifth Coast Guard District, and CAPT R.J. Reining, Project Attorney, Fifth Coast Guard District Legal Staff.

Discussion of Proposed Rule

If adopted this proposal would impose operating restrictions on ferries being operated for the Tidewater Transportation District Commission (TRT) that will use a new dock being constructed by the City of Portsmouth, Virginia, at the foot of High Street. The District Engineer for the Norfolk District, U.S. Army Corps of Engineers, conditioned the issuance of a permit for the construction of the dock on the Coast Guard's approval of specific plans for the safe operation of the dock. This proposal will implement that condition.

Four basic restrictions are proposed. The restrictions are designed to ensure the safety of the passengers, the ferries, and other vessels navigating the area. First, use of the dock will be restricted to vessels being operated as ferries for TRT. Second, the ferries will not be allowed to remain moored to the dock when large vessels, such as aircraft carriers, and liquefied petroleum gas carriers transit the Elizabeth River. Third, the ferries will only be allowed to tie up long enough to embark and disembark passengers. They will not be allowed to remain at the dock waiting for a predetermined departure time. And fourth, when a ferry is tied up to the dock, the master or another licensed officer must be in the pilothouse and prepared to immediately get the vessel underway or stop passenger loading.

These restrictions are necessary because of the confined nature of the Southern Branch of the Elizabeth River in the immediate vicinity of the new dock. This situation is compounded by the occasional rafting of vessels at the Norfolk Shipbuilding and Drydock Co. facilities on the eastern bank of the river.

Since the dock is being permitted for ferry operations, the proposal restricts the use of the dock to vessels being operated as ferries by TRT.

The restrictions on mooring ferries to the dock during the transit of large naval vessels and liquefied petroleum gas carriers are necessary due to the limited maneuvering ability of these vessels. These vessels and their accompanying tugboats and escorts would be hampered by the presence of a ferry at the dock, and the ferry would be at risk if moored to the dock during such a passage.

Because of the exposed nature of the dock, the ferries will only be permitted to stay at the dock for the time necessary to conduct passenger operations. This measure is designed to limit the hazards posed to vessels transiting the area by the ferries moored at the dock. The docking facilities at Waterside in Norfolk and Portside in Portsmouth provide adequate facilities for the ferries to remain moored during crew rest breaks, while waiting for the next scheduled runs, and overnight.

The requirement for the master or another licensed officer to remain in the pilothouse while moored at the dock is being imposed to ensure that the ferry will be able to respond to any developing situations. One concern over the location is the danger to passengers from the wake of passing vessels. By remaining in the pilothouse the master or other licensed officer will be able to monitor other vessel traffic in the area, conduct any needed communications by radio, and if necessary take action to provide for the safety of the passengers.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This proposal only imposes minimum restrictions on how the ferry will operate at the new dock being constructed at the foot of High Street. These restrictions should not have any effect on the economic viability of its operation.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This action has been thoroughly reviewed by the Coast Guard and it has been determined to be excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction (COMDTINST) M16475.1B.

Federalism Assessment

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, and Waterways.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. Section 165.501 is amended by adding paragraphs (d)(11)(iv), d(12)(v), and (d)(13) to read as follows:

§ 165.501 Chesapeake Bay entrance and Hampton Roads, Virginia and adjacent waters—regulated navigation area.

* * * * *

(d) *Regulations:* * * *

(11) *Restrictions on Vessel Operations During Aircraft Carrier and Other Large Naval Vessel Transits of the Elizabeth River.* * * *

(iv) Notwithstanding paragraph (d)(11)(i) of this section, a vessel may not remain moored at the Elizabeth River Ferry dock at the foot of High Street in Portsmouth, Virginia, when the dock is within a safety zone for a naval aircraft carrier or other large naval vessel.

(12) *Restrictions on Vessel Operations During Liquefied Petroleum Gas Carrier Movements on the Chesapeake Bay and Elizabeth River.* * * *

(v) Notwithstanding paragraph (d)(12)(i) of this section, a vessel may not remain moored at the Elizabeth River Ferry dock at the foot of High Street in Portsmouth, Virginia, when the dock is within a safety zone for a liquefied petroleum gas carrier.

(13) *Restrictions on the use of the Elizabeth River Ferry dock at the foot of High Street, Portsmouth, Virginia.*

(i) No vessels, other than those being operated as a ferry for the Tidewater Transit Transportation District, may embark or disembark passengers or otherwise moor at the Elizabeth River Ferry dock at the foot of High Street, Portsmouth, Virginia.

(ii) Any vessel being operated for the Tidewater Transit Transportation District may not moor at the dock longer than necessary to embark passengers waiting transportation or disembark passengers already aboard the vessel.

(iii) The master or another authorized licensed officer must remain in the pilothouse and be prepared to get the vessel underway immediately or take other actions necessary to ensure the safety of the vessel's passengers, whenever a vessel is moored at the dock.

* * * * *

Dated: January 13, 1989.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89-1852 Filed 1-25-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-3509-7]

National Emission Standards for Hazardous Air Pollutants; Test Methods; Addition of Methods 108B and 108C

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The purpose of this proposed rule is to add Methods 108B and 108C, "Determination of Arsenic Content in Ore Samples from Nonferrous Smelters" to Appendix B of 40 CFR Part 61. These methods are being proposed as alternative test methods to Method 108A at the request of ASARCO, Inc. The request was made to preclude a financial hardship on the company by the analytical equipment required in Method 108A and to allow the use of standardized company procedures that are similar to Method 108A.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

DATES: *Comments.* Comments must be received on or before April 11, 1989.

Public Hearing. If anyone contacts EPA requesting to speak at a Public hearing by February 16, 1989, a public hearing will be held on March 13, 1989 beginning at 10:00 a.m. Persons interested in attending the hearing should call Foston Curtis at (919) 541-1063 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by February 16, 1989.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention: Docket Number A-88-12, U.S. Environmental Protection Agency, South Conference Center, Room 4, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Foston Curtis, Emission Measurement Branch (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-1063.

Docket. Docket No. A-88-12, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Foston Curtis or Roger T. Shigehara Emission Measurement Branch (MD-19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-1063.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

Proposed Methods 108B and 108C will allow applicable sources to use procedures that, in certain cases, are less expensive and easier to use than the existing Method 108A. Method 108B is an instrumental method that is very similar to Method 108A; Method 108C is a colorimetric procedure that has been recognized for use by the American Society for Testing and Materials. The methods have been used extensively by ASARCO Incorporated as part of their ore evaluation program. They have requested that these methods be accepted as alternatives to Method 108A and have submitted information describing the methods in detail and data to establish their validity. This request is based on ASARCO's successful use of the methods and their desire to avoid a financial hardship being placed on their two laboratories through the purchase of accessory equipment for Method 108A. This proposal will primarily affect ASARCO, but other applicable sources within primary copper smelters may choose to use these methods.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard or make it more stringent. Rather, the rulemaking will add alternative test methods of which they are already subject.

II. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed revisions in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considerd by EPA in the development of this proposed rulemaking. The principal purposes of the docket are to: (1) Allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) serve as the record in case of judicial review (except for interagency review materials) [Section 307(d)(7)(A)].

C. Office of Management and Budget Review

Executive Order 12291 Review. Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This

rulemaking would not result in any of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a "major rule." It will not have an annual effect on the economy of $100 million or more, nor will it result in a major increase in costs or prices. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

D. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have any economic impact on small entities because no additional costs will be incurred.

This rulemaking does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Arsenic, Beryllium, Hazardous materials, Mercury, and Vinyl chloride.

Date: January 18, 1989

Don R. Clay

Acting Assistant Administrator for Air and Radiation.

It is proposed that 40 CFR Part 61 be amended as follows:

PART 61—[AMENDED]

1. The authority for 40 CFR Part 61 continues to read as follows:

Authority: Sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7412, 7414, 7416, and 7601).

§ 61.164 [Amended]

2. In § 61.164(d)(2), "conduct mission" in the first sentence is corrected to read "conduct emission."

§ 61.174 [Amended]

3. In § 61.174(f)(2), "Method 108A" in the second sentence is revised to read "Method 108A, 108B, or 108C."

4. In § 61.174(f)(3), "R_s" in the equation is corrected to read "R_c."

5. By adding Methods 108B and 108C to Appendix B as follows:

Appendix B—Test Methods

* * * * *

Method 108B—Determination of Arsenic Content in Ore Samples From Nonferrous Smelters

1. Applicability and Principle

1.1 Applicability. This method applies to the determination of inorganic arsenic (As) content of process ore and reverberatory matte samples from nonferrous smelters and other sources as specified in the regulations. Samples resulting in an analytical concentration greater than 10 μg As/ml may be analyzed by this method.

1.2 Principle. Arsenic bound in ore samples is liberated by acid digestion and analyzed by flame atomic absorption spectrophotometry.

2. Apparatus

2.1 Sample Preparation.

2.1.1 Teflon Beakers. 150-ml.

2.1.2 Graduated Pipets. 5-ml disposable.

2.1.3 Graduated Cylinder. 50-ml.

2.1.4 Volumetric Flask. 100-ml.

2.1.5 Analytical Balance. To measure within 0.1 mg.

2.1.6 Hot Plate.

2.1.7 Perchloric Acid Fume Hood.

2.2 Analysis.

2.2.1 Spectrophotometer. Equipped with an electrodeless discharge lamp and a background corrector to measure absorbance at 193.7 mm.

2.2.2 Beaker and Watch Glass. 400-ml.

2.2.3 Volumetric flask. 1-liter.

2.2.4 Volumetric Pipets. 1-, 5-, 10-, and 25-ml.

3. Reagents

Unless otherwise specified, use American Chemical Society (ACS) reagent grade (or equivalent) chemicals throughout.

3.1 Sample Preparation.

3.1.1 Water. Deionized distilled to meet American Society for Testing and Materials Specification D 1193–74, Type 3.

3.1.2 Nitric Acid (HNO_3), Concentrated. HANDLE WITH CAUTION.

3.1.3 Hydrofluoric Acid (HF), Concentrated. HANDLE WITH CAUTION.

3.1.4 Perchloric Acid ($HClO_4$), 70 Percent. HANDLE WITH CAUTION.

Note.—Because of its caustic, hygroscopic, and deflagrating nature, use extreme care in handling $HClO_4$. Keep separate from water and oxidizable materials to prevent vigorous evolution of heat, spontaneous combustion, or explosion. Heat solutions containing $HClO_4$ only in hoods specifically designed for $HClO_4$.

3.1.5 Hydrochloric Acid (HCl), Concentrated. HANDLE WITH CAUTION.

3.2 Analysis.

3.2.1 Water. Same as in Section 3.1.1.

3.2.2 Stock Arsenic Standard, 1.0 mg As/ml. Dissolve 1.3203 g of primary grade As_2O_3 (dried at 105°C) in a 400-ml beaker with 10 ml of HNO_3 and 5 ml of HCl. Cover with a watch glass and heat gently until dissolution is complete. Add 10 ml of HNO_3 and 25 ml of $HClO_4$, evaporate to strong fumes of $HClO_4$ and reduce to about 20 ml of volume. Cool, add 100 ml of water and 100 ml of HCl, and transfer quantitatively to a 1-liter volumetric flask. Dilute to volume with water and mix.

3.2.3 Acetylene. Suitable quality for atomic absorption analysis.

3.2.4 Air. Suitable quality for atomic absorption analysis.

3.2.5 Quality Assurance Audit Samples. Same as in Method 108A, Section 3.2.8.

4. Procedure

4.1 Sample Collection. Same as in Method 108A, Section 4.1.

4.2 Sampe Preparation. Weigh 100 to 1000 mg of finely pulverized sample to the nearest 0.1 mg. Transfer the sample to a 150-ml Teflon beaker. Dissolve the sample by adding 15 ml of HNO_3, 10 ml of HCl, 10 ml of HF, and 10 ml of $HClO_4$, in the exact order as described, and let stand for 10 minutes. In a $HClO_4$ fume hood, heat on a hot plate until 2–3 ml of $HClO_4$ remain, then cool. Add 20 ml of water and 10 ml of HCl. Cover and warm until the soluble salts are in solution. Cool, and transfer quantitatively to a 100-ml volumetric flask. Dilute to the mark with water.

4.3 Spectrophotometer Preparation. Same as in Method 108A, Section 4.3.

4.4 Preparation of Standard Solutions.

4.4.1 Pipet 1, 5, 10, and 25 ml of the stock As solution into separate 100-ml flasks. Add 2 ml of $HClO_4$, 10 ml of HCl, and dilute to the mark with water. This will provide standard concentrations of 10, 50, 100, and 250 μg As/ml. For lower level arsenic samples, use Method 108C.

4.4.2 Measure the standard absorbances against the reagent blank. Check these absorbances frequently against the blank during the analysis to ensure that baseline drift has not occurred.

4.4.3 Prepare a standard curve of absorbance versus concentration.

(**Note.**—For instruments equipped with direct concentration readout devices, preparation of a standard curve will not be necessary.) In all cases, follow calibration and operational procedures in the manufacturer's instruction manual. Maintain a laboratory log of all calibrations.

4.5 Analysis.

4.5.1 Arsenic Determination. Determine the absorbance of each sample using the blank as a reference. If the sample concentration falls outside the range of the calibration curve, make an appropriate dilution with 2 percent $HClO_4$/10 percent HCl (prepared by diluting 2 ml concentrated $HClO_4$ and 10 ml concentrated HCl to 100 ml with water) so that the final concentration falls within the range of the curve. From the curve, determine the As concentration in each sample.

4.5.2 Mandatory Check for Matrix Effects on the Arsenic Results. Same as in Method 12, Section 5.4.2, 40 CFR Part 60.

4.5.3 Audit analysis. Same as in Method 108A, Section 4.5.3.

5. Calculations

Same as in Method 108A, Section 5.

6. Bibliography

Same as in Method 108A, Bibliography.

Method 108C—Determination of Arsenic Content in Ore Samples From Nonferrous Smelters

1. Applicability and Principle

1.1 Applicability. This method applies to the determination of inorganic arsenic (As) content of process ore and reverberatory matte samples from nonferrous smelters and other sources as specified in the regulations. This method is applicable to samples having an analytical concentration less than 10 μg As/ml.

1.2 Principle. Arsenic bound in ore samples is liberated by acid digestion and analyzed by the molybdenum blue photometric procedure.

2. Apparatus

2.1 Sample Preparation and Distillation.

2.1.1 Analytical Balance. To measure to within 0.1 mg.

2.1.2 Erlenmeyer Flask. 300-ml.

2.1.3 Hot Plate.

2.1.4 Distillation Apparatus. No. 6, American Society for Testing and Materials (ASTM) E50; detailed in Figure 108C–1.

2.1.5 Graduated Cylinder. 50-ml.

2.1.6 Perchloric Acid Fume Hood.

2.2 Analysis.

2.2.1 Photometer. Capable of measuring at 660 nm.

2.2.2 Volumetric Flasks. 50- and 100-ml.

3. Reagents

Unless otherwise specified, use ACS reagent grade (or equivalent chemicals) throughout.

3.1 Sample Preparation.

3.1.1 Water. Deionized distilled to meet ASTM Specification D 1193–74, Type 3. When high concentrations of organic matter are not expected to be present, the analyst may omit the $KMnO_4$ test for oxidizable organic matter.

3.1.2 Nitric Acid (HNO_3), Concentrated. HANDLE WITH CAUTION.

3.1.3 Hydrofluoric Acid (HF), Concentrated. HANDLE WITH CAUTION.

3.1.4 Sulfuric Acid (H_2SO_4), Concentrated. HANDLE WITH CAUTION.

3.1.5 Prechloric Acid ($HClO_4$), 70 Percent. HANDLE WITH CAUTION.

Note.—Because of its caustic, hygroscopic, and deflagrating nature, use extreme care in handling $HClO_4$. Keep separate from water and oxidizable materials to prevent vigorous evolution of heat, spontaneous combustion, or explosion. Heat solutions containing $HClO_4$ only in hoods specifically designed for $HClO_4$.

3.1.6 Hydrochloric Acid (HCl), Concentrated. HANDLE WITH CAUTION.

3.1.7 Dilute Hydrochloric Acid. Add one part concentration HCl to nine parts water.

3.1.8 Hydrazine Sulfate [$(NH_2)_2.H_2SO_4$].

3.1.9 Potassium Bromide (KBr).

3.1.10 Bromine Water, Saturated.

3.2 Analysis.

3.2.1 Water. Same as in Section 3.1.1.

3.2.2 Methyl Orange Solution, 1 g/liter.

3.2.3 Ammonium Molybdate Solution, 5 g/liter. Dissolve 0.5 g $(NH_4)_6M_7O_{24}.4H_2O$ in water in a 100-ml volumetric flask, and dilute to the mark. This solution shall be freshly prepared.

3.2.4 Standard Arsenic Solution, 10 μg As/ml. Dissolve 0.1320 g of AS_2O_3 in 100 ml HCl in a 1-liter volumetric flask. Add 200 ml of water, cool, dilute to the mark with water, and mix. Transfer 100 ml of this solution to a 1-liter volumetric flask, add 40 ml HCl, cool, dilute to the mark, and mix.

3.2.5 Hydrazine Sulfate Solution, 1 g/liter. dissolve 0.1 g of $(NH_2)_2 \cdot H_2SO_4$ in water, and dilute to 100 ml in a volumetric flask. This solution shall be freshly prepared.

3.2.6 Potassium Bromate ($KBrO_3$) Solution, 0.03 Percent. Dissolve 0.3 g $KBrO_3$ in water, and dilute to 1 liter with water.

3.2.7 Ammonium Hydroxide (NH_4OH), Concentrated.

3.2.8 Boiling Granules.

3.2.9 1/1 HCl/Water. Dilute equal parts concentrated HCl with water.

4. Procedure

4.1 Sample Preparation and Distillation.

4.1.1 Weigh 1.0 g of finely pulverized sample to the nearest 0.1 mg. Transfer the sample to a 300-ml Erlenmeyer flask and add 15 ml of HNO_3, 4 ml HCl, 2 ml HF, 3 ml $HClO_4$, and 15 ml H_2SO_4. In a $HClO_4$ fume hood, heat on a hot plate to decompose the sample. Then heat while swirling over an open flame until dense, white fumes evolve. Cool, add 15 ml of water, swirl to hydrate the H_2SO_4 completely, and add several boiling granules. Cool to room temperature.

4.1.2 Add 1 g of KBr, 1 g hydrazine sulfate, and 50 ml HCl. Immediately attach the distillation head with thermometer and dip the side arm into a 50-ml graduated cylinder containing 25 ml of water and 2 ml of bromine water. Keep the graduated cylinder immersed in a beaker of cold water during distillation. Distill until the temperature of the vapor in the flask reaches 107 °C. When distillation is complete, remove the flask from the hot plate, and simultaneously wash down the side arm with water as it is removed from the cylinder.

4.1.3 If the expected arsenic content is in the range of 0.0020 to 0.10 percent, dilute the distillate to the 50-ml mark of the cylinder with water, stopper, and mix. Transfer a 5.0-ml aliquot to a 50-ml volumetric flask. Add 10 ml of water and a boiling granule. Place the flask on a hot plate and heat gently until the bromine is expelled and the color of methyl orange indicator persists upon the addition of 1–2 drops. Cool the flask to room temperature. Neutralize just to the yellow color of the indicator with dropwise additions of NH_4OH. Bring back to the red color by dropwise addition of dilute HCl, and add 10 ml excess. Proceed with the molybdenum blue color development as described in section 4.2.

4.1.4 If the expected arsenic content is in the range of 0.0002 to 0.0010 percent As, transfer either the entire initial distillate or the measured remaining distillate from above to a 250-ml beaker. Wash the cylinder with two successive portions of concentrated HNO_3, adding each portion to the distillate in the beaker. Add 4 ml of concentrated $HClO_4$, a boiling granule, and cover with a flat watch glass placed slightly to one side. Boil gently on a hot plate until the volume is reduced to approximately 10 ml. Add 3 ml of HNO_3, and continue the evaporation until $HClO_4$ is refluxing on the beaker cover. Cool briefly, rinse the underside of the watch glass and the inside of the beaker with about 3–5 ml of water, cover, and continue the evaporation to expel all but 2 ml of the $HClO_4$.

Note.—If the solution appears cloudy due to a small amount of antimony distilling over, add 4 ml of 1/1 HCl/water and 5 ml of water, cover, and warm gently until clear. If cloudiness persists, add 5 ml of HNO_3 and 2 ml H_2SO_4. Continue the evaporation of volatile acids to solubilize the antimony until dense white fumes of H_2SO_4 appear. Retain at least 1 ml of the H_2SO_4. To the 2 ml of $HClO_4$ solution or 1 ml of the H_2SO_4 solution, add 15 ml of water, boil gently for 2 minutes, and then cool. Proceed with the molybdenum

blue color development by neutralizing the solution directly in the beaker just to the yellow indicator color by dropwise addition of NH_4OH. Just bring back the red color by dropwise addition of dilute HCl. Transfer the solution to a 50-ml volumetric flask, and rinse the beaker successively with 10 ml of dilute HCl, followed by several small portions of water. At this point the volume of solution in the flask should be no more than 40 ml. Continue with the color development as described in section 4.2.

4.2 Analysis.

4.2.1 Add 1 ml of $KBrO_3$ solution to the flask and heat on a low-temperature hot plate to about 50 °C to oxidize the arsenic and methyl orange. Add 5.0 ml of ammonium molybdate solution to the warm solution and mix. Add 2.0 ml of hydrazine sulfate solution, dilute until the solution comes within the neck of the flask, and mix. Place in a 400-ml beaker, 80 percent full of boiling water for 10 minutes. Enough heat must be supplied to prevent the water bath from cooling much below the boiling point upon inserting the volumetric flask. Remove the flask, cool to room temperature, dilute to the mark, and mix.

4.2.2 Transfer a suitable portion of the reference solution to an absorption cell, and adjust the photometer to the initial setting, using a light band centered at 660 nm. While maintaining this photometer adjustment, take the photometric readings of the calibration solutions followed by the samples.

4.3 Preparation of Calibration Curve. Transfer 1.0, 2.0, 4.0, 8.0, 12.0, 16.0, and 20.0 ml of standard arsenic solution (10 μg/ml) to each of seven 50-ml volumetric flasks. Dilute to 20 ml with dilute HCl. Add one drop of methyl orange solution and neutralize to the yellow color with dropwise addition of NH_4OH. Just bring back to the red color by dropwise addition of dilute HCl, and add 10 ml in excess. Proceed with the color development as described in Section 4.2 Plot the photometric readings of the calibration solutions against μg As per 50 ml of solution. From the curve, determine the As concentration in each sample.

4.4 Audit Analysis. Same as in Method 108A, Section 4.5.3.

5. Calculation

Same as in Method 108A, Section 5.

6. Bibliography

Ringwald, D. (TRW). Arsenic Determination on Process Materials from ASARCO's Copper Smelter in Tacoma, Washington. Unpublished Report. Prepared for the Emission Measurement Branch, Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. August 1980. 35 p.

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[FR Doc. 89–1792 Filed 1–25–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC–480–P]

Medicare Program; Uniform Relative Value Guide for Anesthesia Services Furnished by Physicians

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish a relative value guide for use in all carrier localities in making payment for anesthesia services furnished by physicians under Medicare Part B. This proposal would implement section 4048(b) of the Omnibus Budget Reconciliation Act of 1987. The proposed relative value guide is designed to ensure that payments using the guide do not exceed the amount that would have been made under the current payment system. Although the statute requires that the uniform relative value guide be effective for services furnished on or after January 1, 1989, we are proposing to delay the effective date until March 1, 1989.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on February 27, 1989.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–480–FC, 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 Ave., SW., Washington, DC, or

Room 132, Est High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC–480–P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this 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: James Menas, (301) 966–4507.

SUPPLEMENTARY INFORMATION:

I. Background

Under our current regulations (42 CFR 405.552 and 405.553), anesthesiology services personally furnished by a physician are reimbursed on a reasonable charge basis under Part B of the Medicare program (Supplementary Medical Insurance). In addition, payment on a reasonable charge basis under Medicare Part B can be made for the physician's personal medical direction that he or she furnishes to a qualified individual (for example, a certified registered nurse anesthetist (CRNA)).

As a condition for reasonable charge payment, the physician may not direct more than four concurrent anesthesia procedures at a time, must be physically present in the operating suite, and may not perform any other services during the same period of time. In addition to these requirements and prohibitions, the physician is required to perform several personal services to the patient before, during, and after the procedure such as examining the patient and personally participating in the most demanding parts of the procedure.

Medicare carriers processing anesthesia claims calculate the reasonable charge for anesthesia services based on the following:

- Base value units assigned to the specific procedure performed that represent the value of all anesthesia services except the value of the actual time spent administering the anesthesia
- Time units that represent the elapsed period of time from when the anesthesiologist prepares the patient for induction and ending when the anesthesiologist is no longer in personal attendance to the patient. The carrier allows no more than one time unit for each 15 minute interval
- The carrier may also use modifier units that take into account special factors such as the age or physical condition of the patient. About 85 percent of the carriers recognize modifier units

The sum of these units is multiplied by the lesser of the individual physician's customary charge conversion factor or the prevailing charge conversion factor and compared with the billed charge to arrive at the reasonable charge for the physician's anesthesia service. The individual physician's customary charge conversion factor is derived from the physician's billed charges and underlying base, time, and if appropriate, modifier units. The prevailing charge conversion factor is computed by arraying the anesthesia customary charge conversion factors in

ascending order and weighting each by the frequency of services on which it was based. An actual amount in the array that is high enough to include the customary charge conversion factors of the anesthesiologists who perform at least 75 percent of the cumulative services determines the prevailing charge conversion factor.

When the anesthesiologist medically directs concurrent anesthesia services, the amount of reasonable charge reimbursement depends on whether the anesthetist under medical direction is or is not the employee of the anesthesiologist and the number of concurrent anesthesia services performed. The number of base units are reduced by 10, 25, or 40 percent depending upon whether two, three, or four concurrent procedures are performed. If the anesthesiologist performs the entire service personally or medically directs concurrent services using his or her employee (anesthetist), one time unit for each 15 minute interval is allowed. If the anesthetist is not employed by the anesthesiologist, the carrier allows no more than one time unit for each 30 minute interval rather than one unit for each 15 minutes.

In cases in which a physician directs more than four concurrent procedures, all the reasonable and necessary preanesthesia services personally furnished by the physician up to and including induction of the patient qualify for reasonable charge reimbursement. Those services furnished subsequent to induction of the patient are considered physician services to the provider and are payable to the provider on a prospective payment basis if the services are furnished to an inpatient of a hospital that is subject to the prospective payment system or on a reasonable cost basis for all other hospitals. Section 8312.1G of the Medicare Carriers Manual (HCFA Pub. 14–3) further specifies that payment for these preanesthesia services is limited to three base units plus one time unit for induction if the induction was personally performed by the physician. No further time units are recognized for any of the concurrent procedures.

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) was enacted. Section 4048(b) of Pub. L. 100–203 requires the Secretary, in consultation with groups representing physicians who furnish anesthesia services, to establish a relative value guide for use in all carrier localities in making payment under Medicare Part B for physician anesthesia services furnished on or after January 1, 1989. The provision is to be budget neutral. The guide must be designed to result in payments that do not exceed the amount of the expenditures that would have occurred absent this provision of the law. This proposed rule would implement the provision of section 4048(b) of Pub. L. 100–203.

II. Provisions of this Proposed Rule

A. Selection of Relative Value Guide and Coding Issues

In processing anesthesia claims, carriers currently have the authority to choose the relative value guide they use for assigning base units to anesthesia services. The principal relative value guides in use at this time include various versions of the American Society of Anesthesiologists' (ASA) Relative Value Guide, particularly the 1967, 1970, and 1973 versions of that guide; the 1964 or the 1969 California Relative Value Scale (CRVS); various State guides; and charge-based relative value guides. These guides assign anesthesia relative value base units to surgical procedures. Because of this, our carriers require physicians to report the anesthesia service using the surgical procedure codes from the Physicians Current Procedural Terminology, Fourth Edition, or commonly referred to as CPT–4.

The CPT–4 also includes an anesthesiology coding system developed by ASA that categorizes anesthesia procedures by body part. There are 17 broad categories ranging from anesthesia procedures on the head to anesthesia procedures associated with miscellaneous procedures. These categories are composed of approximately 248 codes. This compares with up to 4200 surgical procedure codes under which carriers currently classify anesthesia services.

ASA has also developed a relative value guide to complement the CPT–4 anesthesia codes which assign a specific number of base units to each of the 248 codes. ASA's relative value guide also provides for the use of modifier units for physical status and additional units for qualifying circumstances. In addition, ASA's relative value guide provides base unit values for pulmonary function testing and therapeutic and diagnostic services. However, the CPT–4 codes assigned to these services represent medical and surgical services, not anesthesia services. Therefore, we are proposing not to establish relative values for these categories of service.

Some carriers currently recognize additional payments beyond the current anesthesia fee for specialized forms of monitoring, such as intra-arterial, central venous, and Swan-Ganz. Under the CPT–4 coding system, these services are reported by medical or surgical codes. Under the adoption of the uniform relative value guide, we would allow carriers to continue with their current policies. Carriers who do not currently recognize additional payment for specialized forms of monitoring would maintain their current practice. We are concerned, however, that the continuation of this practice will result in payment policies that are not uniform for services that represent an integral part of the anesthesia service for a surgical patient. Therefore, we are requesting comments on the option of *not* recognizing separate reasonable charge payments for specialized monitoring. Rather, payment for specialized monitoring would be included through the anesthesia conversion charge factor.

The Department signed an agreement with the American Medical Association (AMA) on February 1, 1983 that permitted the Medicare and Medicaid programs to use the AMA's copyrighted CPT–4 for reporting physicians' services. It was the understanding of the parties involved that use of the CPT–4 anesthesia codes would be implemented unless experience indicated conversion was inappropriate. HCFA was to conduct analysis and research to determine whether the conversion from CPT–4 surgical codes to CPT–4 anesthesia codes would result in higher program expenditures. Although preliminary research describing variation in carrier anesthesia payment practices was conducted under a contract awarded by HCFA to a research firm, HCFA has not completed a full assessment of the impact of the carriers' conversion to the CPT–4 anesthesia codes on program expenditures. We believe that enactment of section 4048(b) of Pub. L. 100–203 provides us with the opportunity in implementing a uniform relative value guide to convert to CPT–4 anesthesia codes without increasing program expenditures.

We have discussed the choice of the relative value guide, as well as possible alternatives, with representatives of ASA. We are proposing to select the 1988 ASA Relative Value Guide as the uniform guide to be used for making payment under Medicare Part B for several reasons. First of all, the 1988 ASA Relative Value Guide is linked to the CPT–4 anesthesia codes. All other relative value guides are linked to the surgical procedures. Also, the number of procedure codes under this system is significantly less than under the current system, and this simplifies program administration.

A further advantage of the 1988 ASA Relative Value Guide is that its design lends itself to determining relative value units for new procedures. Because the ASA guide is more oriented to grouping surgical procedures or body systems rather than oriented to the specific surgical procedure furnished, a relative value ordinarily can be assigned to a new procedure based on the existing relative value unit for the code in the surgical procedure group or body system category that is most comparable to the new procedure.

However, in adopting this relative value guide, we would reduce the number of base units assigned to all lens surgery to four units. Under the current ASA guide, lens surgery has a units value of six. On October 7, 1986, we published a final notice in which we uniformly reduced the number of base units for cataract surgery from eight units to four units (51 FR 35693). We plan to continue this policy. Also, in the final notice, we had reduced the number of base units for iridectomy anesthesia to four units. Under ASA's system, iridectomy anesthesia would be reported under "Anesthesia for procedures on eye; not otherwise specified." This category of services is currently assigned a base unit of five units. We are requiring carriers to continue to recognize four base units for iridectomy anesthesia and for physicians to identify iridectomy anesthesia separately from other anesthesia procedures on the eye.

In addition, for reasons discussed below, no modifier units would be recognized under the uniform relative value guide. Ordinarily, ASA revises its relative value guide annually. While we are proposing to adopt ASA's 1988 Relative Value Guide, as modified, we are reserving the right to accept or reject future revisions made to the guide by ASA and to modify existing relative values for technological changes or other reasons.

The relative value guide is set forth in the Appendix to this proposed rule.

Although we are proposing to adopt the ASA's relative value guide, we are concerned that the decrease in the number of codes to report anesthesia services would lead to a loss of coding information and carriers would be unable to make proper coverage decisions in all cases. For example, use of surgical codes currently allows a carrier to identify, at the front end, both surgical and anesthesia services associated with cosmetic surgery. This capability is lessened to some degree with the movement to anesthesia codes. However, this problem may be dealt with in different ways. To ensure that anesthesia services have not been inappropriately paid, we could require the carriers to conduct postpayment reviews. For services furnished on or after April 1, 1989, section 1842(p) of the Act, as added by section 202(g) of the Medicare Catastrophic Coverage Act of 1988, requires physicians to include the appropriate diagnosis code on their bills or Part B claims. We expect that the inclusion of diagnosis codes with bills or claims would allow the carriers to better identify noncovered anesthesia services if we adopt the use of CPT–4 anesthesia codes. While we are proposing the use of CPT–4 anesthesia codes, we are considering requiring the continuation of the use of CPT–4 surgical codes to report anesthesia services. We invite comment on the extent to which the CPT–4 anesthesia codes could be modified to prevent inappropriate coding or fragmentation of services and more readily permit the detection of noncovered services. We are also interested in receiving comments on whether the adoption of the CPT–4 anesthesia codes will lessen or enhance our ability to eliminate the use of time units (see discussion below).

In proposing to use the 1988 ASA guide with the described modifications, we considered a number of alternatives. We considered adopting the 1988 ASA Relative Value Guide but assigning the values to the surgical codes. We believe, however, that on balance adoption of both the anesthesia coding system and the relative value guide is perferable because it simplifies the coding system.

We also considered developing a new base unit relative value guide from the relative value guides currently used by carriers. The guide would have been developed from the most commonly used guide or a composite of commonly used guides. However, adoption of this option would have required us to develop our own guide and that would not have been feasible given the time constraints imposed on us by the requirements of section 4048(b) of Pub. L. 100–203. In addition, ASA is strongly opposed to this option because it would continue the use of surgical codes instead of anesthesia codes to describe anesthesia services.

We also considered adopting the complete ASA 1988 Relative Value Guide, including the use of modifier units and units for qualifying circumstances. Modifier units are allowed based on the patient's physical status (for example, one unit is added if the patient has a severe systemic disease). Additional units are allowed for qualifying circumstances, such as for patients of extreme age (for example, one additional unit is added if the patient is over age 70), for unusual risk factors (for example, use of total body hypothermia or controlled hypertension), or for less than optimum operative condition (for example, under emergency conditions).

We have discussed the use of modifier units with ASA and are not adopting modifier units as included in the 1988 ASA Guide. As noted previously, under ASA's system, different levels of modifier units may be recognized based on the patient's physical status. The use of modifier units under these circumstances appears to be subjective and difficult for carriers to validate in a claims review operation without substantial cost and effort. ASA has proposed to refine the circumstances under which modifier units are recognized, and has drawn up revised guidelines that define more precisely the specific patient conditions that warrant modifier units. For example, two additonal units would be added if the patient had a myocardial infarction less than three months before the operation. One additional unit would be added if the patient had unstable angina. ASA also recommended the elimination of modifier units for induced hypertension or hypothermia and suggested that the age-risk requirement for modifier units be raised from age 70 to 75.

We believe that the elimination of modifier units would not have a substantial adverse effect on individual anesthesiologists. Currently, about 35 percent of carriers do not recognize modifier units, and anesthesiologists in these carriers' areas would not experience any change. Second, the proportion of total anesthesia units associated with modifier units is relatively minor; with ASA's proposed changes, the proportion should be less than 10 percent of total units. Third, whether modifier units are included is significant only if there are substantial differences in the distribution of patients among anesthesiologists. This would occur only if some anesthesiologists see a very different mix of patients undergoing the same surgical procedures, for example, anesthesiologists who consistently see patients with angina and other conditions qualifying for modifier units more than other anesthesiologists in the area. Differences in the mix of patients undergoing surgery are already largely accounted for by differences in base and time units. Although ASA strongly believes that anesthesiologists in some hospitals, particularly teaching hospitals, do see patients more likely to have severe systemic disease and possibly more advanced age within a

surgical category, we currently do not have evidence that this is the case to any substantial degree.

We also believe it would be difficult to preserve budget neutrality under ASA's proposed modifier unit system. This is because each carrier would have to estimate the number of modifier units that it would have allowed if ASA's modifier unit policy had been used to process claims during 1988.

Finally, we are concerned with the precedent that modifiers could establish for other specialities with respect to Medicare patients. For example, surgeons could argue that Medicare cases should be charged higher amounts because that are longer and more complex than non-Medicare cases.

Another alternative we considered was to adopt the 1988 ASA Relative Value Guide only as it pertains to base units and to allow each carrier to continue its current modifier unit policy. We believe, however, that this would only continue the variations among carriers with respect to their policies on modifier units, and that this alternative would be inconsistent with the statutory requirement that we develop a uniform relative value guide.

Still another approach would be to develop a relative value guide that would recognize only base units. Under this approach, no time or modifier units would be recognized and payment for anesthesia services would be based only on reasonable charge conversion factors and base units. Under this system, we would create a new system of relative value units from the sum of the uniform base unit and the average time unit for the anesthesia procedure.

There are a number of considerations that would justify elimination of time units. First, the starting and ending points of the anesthesia time interval are not sharply defined, but are decided by the anesthesiologist. For example, anesthesia time starts when the anesthesiologist begins to prepare the patient for the induction of anesthesia in the operating room and ends when the anesthesiologist no longer is in personal attendance to the patient. Also, our current policy on time units allows the anesthesiologist an additional time unit for any portion of time that exceeds the allowable time unit. For example, if an anesthesiologist personally performs a procedure which lasts an hour, he or she would be allowed one unit for every 15 minutes, resulting in four time units. However, if the same procedure took 61 minutes, the anesthesiologist would receive an additional unit, thus resulting in five time units.

In fact, our current policy on recognizing time units was the focus of a recent study conducted by the Office of the Inspector General (OIG). (Copies of this report entitled "Medicare Part B Payments for Unexpended Physician Efforts Relating to Anesthesia Services" (A-07-88-00080 issued on August 9, 1988) can be obtained by writing to the Office of the Inspector General, 330 Independence Avenue SW., Washington, DC 20201.) Based on the study, OIG recommended the following options to change the current time policy:

- Pay for actual time expended, rather than treating all fractional units as whole units. That is 65 minutes would equal four and one-third time units instead of five units.
- Round all fractional units down to the next lower whole unit. That is, disregard all fractional time units (for example, any amount of time between 61 and 74 minutes would equal four units instead of five units).

Another alternative considered by OIG that would make anesthesia payments more commensurate with the effort expended would be to pay only for those fractional units in excess of one-half as whole units. That is, any fraction equal to or less than one-half time unit (seven and one-half minutes) would be disregarded (for example, 65 minutes would equal four units, but 68 minutes would equal five units).

We believe that elimination of time units would be consistent with the way in which we pay for other physicians' services. We do not ordinarily pay surgeons additional amounts based on the time it takes to perform the surgery. Surgeons bill and receive payment that does not vary with the length of the surgery. In our view, there is no policy or operational reason why the same principle should not apply to anesthesia services. While we have decided to retain the use of time units at this time for purposes of implementing the uniform relative value guide, we are considering the alternatives discussed above which would limit the potential for inappropriate use of time units for billing purposes. We are specifically requesting comments on these alternatives. We will initiate more aggressive monitoring of the accuracy of time reporting in the future. Moreover, we are announcing our intention (subject to publication of another proposed rule) to eliminate the separate time unit element of the anesthesia payment system within two years of the effective date of the final rule implementing the uniform relative value guide. The elimination of time units will be the subject of a separate notice of proposed rulemaking and comments submitted in response to that proposed rule will, of course, be carefully considered before final implementation of a revised time unit policy. Assuming that the ASA Relative Value Guide is adopted as proposed, we will carefully consider whether modifications of that guide are needed to facilitate the elimination of time units (for example, by some limited expansion of the number of codes). If the evidence suggests that elimination of time units is feasible only with the use of CPT-4 surgical codes, a conversion back to the use of those codes will be proposed in order to achieve the goal of eliminating time units (for example, because the statistical variation in the average time for procedures collapsed in the 248 anesthesia codes is too large).

As noted, adoption of ASA's current relative value guide will require that each carrier crosswalk its surgical codes to the anesthesia codes that are used by the ASA guide. ASA has furnished us with a table that crosswalks the CPT-4 surgical codes to the anesthesia codes. For example, the CPT-4 anesthesia code 00100, anesthesia for procedures on integumentary system of head and/or salivary glands, including biopsy, subsumes the following CPT-4 surgical codes: 15780, 15790, 15791, 15820, 15821, 15822, 15823, 15824, 15826, 15828, 15840, 15842, 15845. We will make this table available to the carriers to assist them in carrying out the coding conversion.

B. Budget Neutrality

Section 4048(b) of Pub. L. 100-203 provides that the uniform relative value guide is to be designed so as to result in Medicare payments for anesthesia services not exceeding the amount that would have occurred under the current system of reimbursement. In order to comply with this statutory requirement, we would require that carriers adjust their customary and prevailing charges during the profile update process for 1989. Customary and prevailing charges would be computed as if the 1988 ASA Relative Value Guide, without modifiers, had been used to process claims for services furnished during the 12-month period ending June 30, 1988. This is the 12-month period that is used to update the customary and prevailing charges on January 1, 1989. There are some carriers that are unable to make this adjustment as part of the profile update process because time and modifier units are merged. We would require these carriers to make the adjustment based on a representative sample of anesthesia services.

The prevailing charge as limited by the Medicare economic index (MEI) would be adjusted by the ratio of the

unadjusted prevailing charge under the new system to the unadjusted prevailing charge under the old system.

Example

The prevailing charge conversion factor as limited by the MEI is $20. The unadjusted prevailing charge conversion factor, that is, the 75th percentile of the customary charge array under the prior system, is $30. The revised "budget neutral" unadjusted prevailing charge conversion factor is calculated at $33. The "budget neutral" MEI adjusted prevailing charge is calculated as follows:

$$\$20 \times \frac{\$33}{\$30} = \$22$$

Revised maximum allowable actual charges (MAACs) would be calculated by multiplying the previous year's MAAC by the ratio of the updated customary charge determined under the carrier's previous system to the updated customary charge determined under the uniform relative value guide.

C. Delay in the Effective Date of the Uniform Relative Value Guide

We are proposing to delay the implementation of the uniform relative value guide until March 1, 1989. Thus, for services furnished on or after January 1, 1989 and before March 1, 1989, anesthesia services would continue to be paid on the basis of CPT–4 surgical codes and under the carrier's relative value guide. The carriers would update customary and prevailing charge conversion factors on January 1, 1989 in the usual manner.

We are proposing the delay to allow the carriers additional time to recalculate budget neutral customary and prevailing charge conversion factors. In addition, since HCPCS will be updated in March 1989, the delay would also enable carriers to implement the coding change and the budget neutral conversion factors at the same time. If we were to adopt the statutory effective date, then our proposal would be implemented in two steps; that is the uniform relative value guide would be implemented on January 1, 1989 and the coding revisions on March 1, 1989. We believe that the additional time will provide for a more orderly transition between the current system and the uniform system.

The continuation of the current system for an additional two months would not adversely affect anesthesiologists or Medicare beneficiaries. Since the uniform relative value guide is to be implemented in a budget neutral fashion, the aggregate payment under the current system in January and February 1989 should not differ from payments that would have been made under the uniform relative value guide.

D. Updating the Uniform Relative Value Guide

One of the issues associated with our adopting a uniform relative value guide is the process by which the relative value guide is reviewed and revised. The ASA has advised us that they make only minor annual revisions to the Relative Value Guide and our analysis confirms this fact. For example, the 1988 Relative Value Guide lists only seven codes for which the base unit values have been changed from the 1987 version and four circumstances for which procedure code descriptions have changed.

It would be necessary to assign base units to new procedures as they are developed. The nature of the CPT–4 anesthesia codes is such that when new procedures are developed, the coding system generally would assign the new procedure to the body part code with which it is most closely associated. If there is no existing code that appropriately describes a new procedure, the carriers would, through their medical consultants, establish a local code and relative value base units. We would review that carriers' practices with those procedures every three years and establish uniform relative base units.

HCFA may, of course, propose modifications to existing relative value units because of changes in technology or for other reasons. For example, the technology involved with a given code may change and support a reduction in the base units assigned to the code. As noted, we believe that the number of revisions of this nature will not be significant on an annual basis. Also, we do not expect that the magnitude of these revisions would be enough to affect the customary and prevailing charge conversion factors.

The base unit adjustments would be similar to the cataract and iridectomy anesthesia base unit adjustment we made in October 1986. We would announce these adjustments through publication in the **Federal Register** of proposed and final notices as required under the regulations at § 405.502(h), which concern the establishment of special reasonable charge limits for physician services. A systematic adjustment to customary and prevailing charge factors may be required only when the cumulative number of revisions to the relative value units supports such an adjustment.

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Section 1842(b) of the Act requires that any relative value guide we propose as a basis for paying anesthesiologists must be implemented in such a way as not to result in payments to anesthesiologists for services provided to Medicare patients that are higher than the amounts they are currently receiving. In section II.B. of this preamble, we explain how we would implement this provision to comply with that requirement. Because we are required to maintain budget neutrality with respect to anesthesiology payments, we do not expect any economic impact to follow from this proposed rule. Therefore, this rule would not meet any of the criteria described in E.O. 12291 for a major rule, and, accordingly, we have not prepared a regulatory impact analysis.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all anesthesiologists are treated as small entities.

As explained in our discussion of E.O. 12291, section 4048(b) of Pub. L. 100–203 requires the Secretary to implement the new relative value guide for determining anesthesiology payment in a manner that will not result in any change in payments to anesthesiologists. Thus, the proposed rule should have no economic impact on anesthesiologists. For this reason, we have determined, and the

Secretary has certified, that a regulatory flexibility analysis is not necessary.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an 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 of a Metropolitan Statistical Area.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

IV. Other Required Information

A. Public Comment Period

In adopting substantive rules, we ordinarily publish a notice of proposed rulemaking in the **Federal Register** with a 60-day period for public comment as required under section 1871(b)(1) of the Act. Section 4039(g) of Pub. L. 100–203, however, provides that we may issue regulations on an interim or other basis as may be necessary to implement certain provisions of Pub. L. 100–203 relating to Medicare. We believe that this express legislative authority is fully applicable here with respect to implementation of section 4048(b) of Pub. L. 100–203. Consequently, in order to implement the provisions of section 4048(b) by March 1, 1989, we are shortening the period for comment to 30 days.

As previously discussed, section 4048(b) requires that we implement a uniform relative value guide for use in making payment for physician anesthesia services. This provision also requires that, in developing the relative value guide, we consult with groups representing physicians who furnish anesthesia services. We have acted expeditiously within the compressed time frame imposed by Congress to meet with physician anesthesia groups, to solicit their input on the design of the relative value guide, and to discuss with them the numerous options that have come under consideration. We have also sought to expedite the process of internal agency consideration of the draft rule through the use of shortened time frames. Notwithstanding these efforts, implementation of the relative value guide with a 60-day comment period would prevent publication of a final rule by the proposed implementation date of March 1, 1989. We therefore believe that shortening the public comment period from 60 days to 30 days is both necessary for the required execution of agency functions and in the best public interest.

We will consider all comments that we receive by the date and time specified in the "Date" section of this preamble. Because of the large number of comments that we normally receive during a comment period, we are unable to acknowledge or respond to each comment individually. However, we will respond to comments in the preamble to the final rule.

B. Paperwork Burden

This proposed rule does not impose information collection requirements. Consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 405, Subpart E would be amended as set forth below.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

1. The authority citation for Subpart E is revised to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1842 (b) and (h), 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b)), 1395k, 1395l(c), 1395u (b) and (h), 1395x (b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz) and section 4048(b) of Pub. L. 100–203 (42 U.S.C. 1395u note).

2. Section 405.553 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

§ 405.553 Reasonable charges for anesthesiology services.

(a) *General rule.* In determining reasonable charge payment for anesthesiology services that meet the conditions in § 405.552(a), the carrier follows the rules in paragraph (b) or (c) of this section, as applicable, and the rules in paragraph (d) of this section.

* * * * *

(d) *Use of a uniform relative value guide*— (1) *General rule.* For anesthesia services furnished by an anesthesiologist on or after March 1, 1989, the amount of payment for the service is determined based on a uniform relative value guide.

(2) *Selection of a uniform relative value guide.* The uniform relative value guide used is the 1988 American Society of Anesthesiologists' Relative Value Guide except that—

(i) The number of base units recognized for anesthesia services furnished during cataract or iridectomy surgery is four units;

(ii) Modifier units are not recognized; and

(iii) Base units associated with other than the Physicians' Current Procedure Terminology, Fourth Edition (CPT–4) anesthesia codes, such as those associated with medical or surgical services, are not recognized.

(3) *Updating the uniform relative value guide*—(i) *New procedures.* For new procedures, the carriers establish, through their medical consultants, a local code and number of base units. The number of base units for a new anesthesia procedure is determined by assigning to the new procedure the number of base units of the most comparable existing anesthesia procedure code in the appropriate body system or part category. Every three years, HCFA reviews the carriers' practices with those procedures and establishes uniform relative value base units for the new procedures.

(ii) *Revisions to current procedures.* Adjustments to the number of base units for current anesthesia procedures may be made under the provisions of § 405.502(h), which set forth the procedures for determining special reasonable charge limits for physician services.

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: October 31, 1988

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: December 9, 1988

Otis R. Bowen,

Secretary.

CPT-4	Procedure	Base units
	HEAD	
00100	Anesthesia for procedures on integumentary system of head and/or salivary glands, including biopsy; not otherwise specified	5
00102	Plastic repair of cleft lip	6
00104	Anesthesia for electroconvulsive therapy	4
00120	Anesthesia for procedures on external, middle, and inner ear, including biopsy; not otherwise specified	5
00124	Otoscopy	4
00126	Tympanotomy	4
00140	Anesthesia for procedures on eye; not otherwise specified	5
00142	Lens surgery	4
00144	Corneal transplant	6
00145	Vitrectomy	6
00148	Ophthalmoscopy	4
00160	Anesthesia for procedures on nose and accessory sinuses; not otherwise specified	5
00162	Radical surgery	7
00164	Biopsy, soft tissue	4
00170	Anesthesia for intraoral procedures, including biopsy; not otherwise specified	5
00172	Repair of cleft palate	6
00174	Excision of retropharyngeal tumor	6
00176	Radical surgery	7
00190	Anesthesia for procedures on facial bones; not otherwise specified	5
00192	Radical surgery (including prognathism)	7
00210	Anesthesia for intracranial procedures; not otherwise specified	11
00212	Subdural taps	5
00214	Burr holes	9
	(For burr holes for ventriculography, see 01902.)	
00216	Vascular procedures	15
00218	Procedures in sitting position	13
00220	Spinal fluid shunting procedures	10
00222	Electrocoagulation of intracranial nerve	6
	NECK	
00300	Anesthesia for all procedures on integumentary system of neck, including subcutaneous tissue	5
00320	Anesthesia for all procedures on esophagus, thyroid, larynx, trachea and lymphatic system of neck; not otherwise specified	6
00322	Needle biopsy of thyroid	3
	(For procedures on cervical spine and cord see 00600, 00604, 00670)	
00350	Anesthesia for procedures on major vessels of neck; not otherwise specified	10
00352	Simple ligation	5
	(For arteriography; see radiologic procedure 01916)	
	THORAX (CHEST WALL AND SHOULDER GIRDLE)	
00400	Anesthesia for procedures on anterior integumentary system of chest, including subcutaneous tissue; not otherwise specified	3
00402	Reconstructive procedures on breast (eg., reduction or augmentation mammoplasty, muscle flaps)	5
00404	Radical or modified radical procedures on breast	5
00406	Radical or modified radical procedures on breast with internal mammary node dissection	13
00410	Electrical conversion of arrhythmias	4
00420	Anesthesia for procedures on posterior integumentary system of chest, including subcutaneous tissue	5
00450	Anesthesia for procedures on clavicle and scapula; not otherwise specified	5
00452	Radical surgery	6
00454	Biopsy of clavicle	3
00470	Anesthesia for partial rib resection; not otherwise specified	6
00472	Thoracoplasty (any type)	10
00474	Radical procedures, (eg., pectus excavatum)	13
	INTRATHORACIC	
00500	Anesthesia for all procedures on esophagus	15
00520	Anesthesia for closed chest procedures (including esophagoscopy, bronchoscopy, thoracoscopy); not otherwise specified	6
	(For transvenous pacemaker insertion, see 00530.)	
00522	Needle biopsy of pleura	4
00524	Pneumocentesis	4
00528	Mediastinoscopy	8
00530	Transvenous pacemaker insertion	4
00540	Anesthesia for thoracotomy procedures involving lungs, pleura, diaphragm, and mediastinum; not otherwise specified	13
00542	Decortication	15
00544	Pleurectomy	15
00546	Pulmonary resection with thoracoplasty	15
00548	Intrathoracic repair of trauma to trachea and bronchi	15
00560	Anesthesia for procedures on heart, pericardium, and great vessels of chest; without pump oxygenator	15
00562	With pump oxygenator	20
00580	Anesthesia for heart or heart/lung transplant	20
	SPINE AND SPINAL CORD	
00600	Anesthesia for procedures on cervical spine and cord; not otherwise specified (For myelography and discography see radiological procedures 01906-01914.)	10
00604	Posterior cervical laminectomy in sitting Position	13
00620	Anesthesia for procedures on thoracic spine and cord; not otherwise specified	10
00622	Thoracolumbar sympathectomy	13

CPT–4	Procedure	Base units
00630	Anesthesia for procedures in lumbar region; not otherwise specified	8
00632	Lumbar sympathectomy	7
00634	Chemonucleolysis	10
00670	Anesthesia for extensive spine and spinal cord procedures (eg., Harrington rod technique)	13
	UPPER ABDOMEN	
00700	Anesthesia for procedures on upper anterior abdominal wall; not otherwise specified	3
00702	Percutaneous liver biopsy	4
00730	Anesthesia for procedures on upper posterior abdominal wall	5
00740	Anesthesia for upper gastrointestinal endoscopic procedures	5
00750	Anesthesia for hernia repairs in upper abdomen; not otherwise specified	4
00752	Lumbar and ventral (incisional) hernias and/or wound dehiscence	6
00754	Omphalocele	7
00756	Transabdominal repair of diaphragmatic hernia	7
00770	Anesthesia for all procedures on major abdominal blood vessels	15
00790	Anesthesia for intraperitoneal procedures in upper abdomen including bowel shunts; not otherwise specified (For harvesting of liver, use 01990.)	7
00792	Partial hepatectomy (excluding liver biopsy)	13
00794	Pancreatectomy, partial or total (eg., Whipple procedure)	8
00796	Liver transplant (recipient)	30
	LOWER ABDOMEN	
00800	Anesthesia for procedures on lower anterior abdominal wall; not otherwise specified	3
00802	Panniculectomy	5
00806	Anesthesia for laparoscopic procedures	6
00810	Anesthesia for intestinal endoscopic procedures	6
00820	Anesthesia for procedures on lower posterior abdominal wall	5
00830	Anesthesia for hernia repairs in lower abdomen; not otherwise specified	4
00832	Ventral and incisional hernias	6
00840	Anesthesia for intraperitoneal procedures in lower abdomen; not otherwise specified	6
00842	Amniocentesis	4
00844	Abdominoperineal resection	7
00846	Radical hysterectomy	8
00848	Pelvic exenteration	8
00850	Cesarean section	7
00855	Cesarean hysterectomy	8
00860	Anesthesia for extraperitoneal procedures in lower abdomen, including urinary tract; not otherwise specified	6
00862	Renal procedures, including upper ⅓ of ureter or donor nephrectomy	7
00864	Total cystectomy	8
00866	Adrenalectomy	10
00868	Renal transplant (recipient) (For donor nephrectomy, use 00862.) (For harvesting kidney from brain-dead patient, use 01990.)	10
00870	Cystolithotomy	5
00872	Anesthesia for lithotrypsy, extracorporeal shock wave	7
00880	Anesthesia for procedures on major lower abdominal vessels; not otherwise specified	15
00882	Inferior vena cava ligation	10
00884	Transvenous umbrella insertion	5
	PERINEUM	
00900	Anesthesia for procedures on perineal integumentary system (including biopsy of male genital system); not otherwise specified	3
00902	Anorectal procedure (including endoscopy and/or biopsy)	4
00904	Radical perineal procedure	7
00906	Vulvectomy	4
00908	Perineal prostatectomy	6
00910	Anesthesia for transurethral procedures (including urethrocystoscopy); not otherwise specified	3
00912	Transurethral resection of bladder tumor(s)	5
00914	Transurethral resection of prostate	5
00916	Post-transurethral resection bleeding	5
00920	Anesthesia for procedures on male external genitalia; not otherwise specified	3
00922	Seminal vesicles	6
00924	Undescended testis, unilateral or bilateral	4
00926	Radical orchiectomy, inguinal	4
00928	Radical orchiectomy, abdominal	6
00930	Orchiopexy, unilateral and bilateral	4
00932	Complete amputation of penis	4
00934	Radical amputation of penis with bilateral inguinal lymphadenectomy	6
00936	Radical amputation of penis with bilateral inguinal and iliac lymphadenectomy	8
00938	Insertion of penile prosthesis (perineal approach)	4
00940	Anesthesia for vaginal procedures (including biopsy of labia, vagina, cervix or endometrium); not otherwise specified	3
00942	Colpotomy, colpectomy, colporrhaphy	4
00944	Vaginal hysterectomy	6
00946	Vaginal delivery	5
00948	Cervical cerlage	4
00950	Culdoscopy	5
00952	Hysterscopy	4
	PELVIS (EXCEPT HIP)	
01000	Anesthesia for procedures on anterior integumentary system of pelvis (anterior to iliac crest), except external genetalia	3
01110	Anesthesia for procedures on posterior integumentary system of pelvis (posterior to iliac crest), except perineum	5

CPT–4	Procedure	Base units
01120	Anesthesia for procedures on bony pelvis	6
01130	Anesthesia for body cast application or revision	3
01140	Anesthesia for interpelviabdominal (hind quarter) amputation	15
01150	Anesthesia for radical procedures for tumor of pelvis, except hind quarter amputation	8
01160	Anesthesia for closed procedures involving symphysis pubis or sacroiliac joint	4
01170	Anesthesia for open procedures involving symphysis pubis or sacroiliac joint	8
01180	Anesthesia for obturator neurectomy, extrapelvic	3
01190	Intrapelvic	4
	UPPER LEG (EXCEPT KNEE)	
01200	Anesthesia for all closed procedures involving hip joint	4
01202	Anesthesia for arthroscopic procedures of hip joint	4
01210	Anesthesia for open procedures involving hip joint; not otherwise specified	6
01212	Hip disarticulation	10
01214	Total hip replacement or revision	10
01220	Anesthesia for all closed procedures involving upper ⅔ of femur	4
01230	Anesthesia for open procedures involving upper ⅔ of femur; not otherwise specified	6
01232	Amputation	5
01234	Radical resection	8
01240	Anesthesia for all procedures on integumentary system of upper leg	3
01250	Anesthesia for all procedures on nerves, muscles, tendons, fascia, and bursae of upper leg	4
01260	Anesthesia for all procedures involving veins of upper leg, including exploration	3
01270	Anesthesia for procedures involving arteries of upper leg, including bypass graft; not otherwise specified	8
01272	Femoral artery ligation	4
01274	Femoral artery embolectomy (for grafts involving intra-abdominal vessels see 00880)	6
	KNEE AND POPLITEAL AREA	
01300	Anesthesia for all procedures on integumentary system of knee and/or popliteal area	3
01320	Anesthesia for all procedures on nerves, muscles, tendons, fascia and bursae of knee and/or popliteal area	4
01340	Anesthesia for all closed procedures on lower ⅓ of femur	4
01360	Anesthesia for all open procedures on lower ⅓ of femur	5
01380	Anesthesia for all closed procedures on knee joint	3
01382	Anesthesia for arthroscopic procedures of knee joint	3
01390	Anesthesia for all closed procedures on upper ends of tibia and fibula, and/or patella	3
01392	Anesthesia for all open procedures on upper ends of tibia and fibula and/or patella	4
01400	Anesthesia for open procedures on knee joint; not otherwise specified	4
01402	Total knee replacement	7
01404	Disarticulation at knee	5
01420	Anesthesia for all cast applications, removal, or repair involving knee joint	3
01430	Anesthesia for procedures on veins of knee and popliteal area; not otherwise specified	3
01432	Artiovenous fistula	5
01440	Anesthesia for procedures on arteries of knee and popliteal area; not otherwise specified	5
01442	Popliteal thromboendarterectomy, with or without patch graft	8
01444	Popliteal excision and graft or repair for occlusion or aneurysm	8
	LOWER LEG (BELOW KNEE) (Includes ankle and foot)	
01460	Anesthesia for all procedures on integumentary system of lower leg, ankle, and foot	3
01462	Anesthesia for all closed procedures on lower leg, ankle, and foot	3
01464	Anesthesia for arthroscopic procedures of ankle joint	3
01470	Anesthesia for procedures on nerves, muscles, tendons, and fascia of lower leg, ankle, and foot; not otherwise specified	3
01472	Repair of ruptured Achilles tendon, with or without graft	5
01474	Gastrocnemius recession (eg, Strayer procedure)	5
01480	Anesthesia for open procedures on bones of lower leg, ankle, and foot; not otherwise specified	3
01482	Radical resection	4
01484	Osteotomy or osteoplasty of tibia and/or fibula	4
01486	Total ankle replacement	7
01490	Anesthesia for lower leg cast application, removal, or repair	3
01500	Anesthesia for procedures on arteries of lower leg, including bypass graft; not otherwise specified	8
01502	Embolectomy, direct or catheter	6
01520	Anesthesia for procedures on veins of lower leg; not otherwise specified	3
01522	Venous thrombectomy, direct or catheter	5
	SHOULDER AND AXILLA (Includes humeral head and neck, sternoclavicular joint, acromioclavicular joint, and shoulder joint)	
01600	Anesthesia for all procedures on integumentary system of shoulder and axilla	3
01610	Anesthesia for all procedures on nerves, muscles, tendons, fascia, and bursae of shoulder and axilla	5
01620	Anesthesia for all closed procedures on humeral head and neck, sternoclavicular joint, and shoulder joint	4
01622	Anesthesia for arthroscopic procedures of shoulder joint	4
01630	Anesthesia for procedures on humeral head and neck, sternoclavicular joint, acromioclavicular joint, and shoulder joint; not otherwise specified	5
01632	Radical resection	6
01634	Shoulder disarticulation	9
01636	Interthoracoscapular (forequarter) amputation	15
01638	Total shoulder replacement	10
01650	Anesthesia for procedures on arteries of shoulder and axilla; not otherwise specified	6
01652	Axillary-brachial aneurysm	10
01654	Bypass graft	8

CPT-4	Procedure	Base units
01656	Axillary-femoral bypass graft	10
01670	Anesthesia for all procedures on veins of shoulder and axilla	4
01680	Anesthesia for shoulder cast application, removal or repair; not otherwise specified	3
01682	Shoulder spica	4
	UPPER ARM AND ELBOW	
01700	Anesthesia for all procedures on integumentary system of upper arm and elbow	3
01710	Anesthesia for procedures on nerves, muscles, tendons, fascia, bursae of upper arm and elbow; not otherwise specified	3
01712	Tenotomy, elbow to shoulder, open	5
01714	Tenoplasty, elbow to shoulder	5
01716	Tenodesis, rupture of long tendon of biceps	5
01730	Anesthesia for all closed procedures on humerus and elbow	3
01732	Anesthesia for arthroscopic procedures of elbow joint	3
01740	Anesthesia for open procedures on humerus and elbow; not otherwise specified	4
01742	Osteotomy of humerus	5
01744	Repair of nonunion or malunion of humerus	5
01756	Radical procedures	6
01758	Excision of cyst or tumor of humerus	5
01760	Total elbow replacement	7
01770	Anesthesia for procedures on arteries of upper arm; not otherwise specified	8
01772	Embolectomy	6
01780	Anesthesia for procedures on veins of upper arm and elbow; not otherwise specified	3
01782	Phleborrhaphy	4
	FOREARM, WRIST AND HAND	
01800	Anesthesia for all procedures on integumentary system of forearm, wrist and hand	3
01810	Anesthesia for all procedures on nerves, muscles, tendons, fascia, bursae of forearm, wrist, and hand	3
01820	Anesthesia for all closed procedures on radius, ulna, wrist, or hand bones	3
01830	Anesthesia for open procedures on radius, ulna, wrist, or hand bones; not otherwise specified	3
01832	Total wrist replacement	6
01840	Anesthesia for procedures on arteries of forearm, wrist, and hand; not otherwise specified	6
01842	Embolectomy	6
01844	Anesthesia for vascular shunt, or shunt revision, any type (e.g. dialysis)	6
01850	Anesthesia for procedures on veins of forearm, wrist, and hand; not otherwise specified	3
01852	Phleborrhaphy	4
01860	Anesthesia for forearm, wrist, or hand cast application, removal or repair	3
	RADIOLOGICAL PROCEDURES	
01900	Anesthesia for injection procedure for hysterosalpingography	3
01902	Anesthesia for burr hole(s) for ventriculography	9
01904	Anesthesia for injection procedure for pneumoencephalography	7
01906	Anesthesia for injection procedure for myelography; lumbar	5
01908	Cervical	5
01910	Posterior fossa	9
01912	Anesthesia for injection procedure for discography; lumbar	5
01914	Cervical	6
01916	Anesthesia for arteriograms, needle; carotid, or vertebral	5
01918	Retrograde, brachial or femoral	5
01920	Anesthesia for cardiac catheterization including coronary arteriography and ventriculography (not to include Swan-Ganz catheter)	7
01921	Anesthesia for angioplasty	7
01922	Anesthesia for computerized axial tomography scanning or magnetic resonance imaging	7
	MISCELLANEOUS PROCEDURE(S)	
01990	Physiological support for harvesting of organ(s) from brain-dead patient	7
01995	Regional IV administration of local anesthetic agent (upper or lower extremity)	5
01999	Unlisted anesthesia procedure(s)	[1]C

[1] Individual Consideration

[FR Doc. 89-1696 Filed 1-25-89; 8:45 a.m.]
BILLING CODE 4120-01-M

42 CFR Parts 405, 410, 412, 413, and 482

[BERC-423-P]

Medicare Program; Fee Schedules for the Services of Certified Registered Nurse Anesthetists

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the Medicare regulations to allow certified registered nurse anesthetists (CRNAs) to receive Medicare payment for the anesthesia services and related care they furnish. In addition, this proposed rule sets forth the fee schedules that would be used to make payment for the services of CRNAs, except for the services of CRNAs in certain rural hospitals, which would be paid on a reasonable cost basis. This proposal, which would be effective for services furnished on or after January 1, 1989, would implement section 9320 of the Omnibus Budget Reconciliation Act of 1986, as amended by section 4084 of the Omnibus Budget Reconciliation Act of 1986, as amended by section 4084 of the Omnibus Budget Reconciliation Act of 1987, section 411(i)(3) of the Medicare Catastrophic Coverage Act of 1988, and section 608(c) of the Family Support Act of 1988.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on March 27, 1989.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–423–P, P.O. Box 28676, 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 Ave., SW., Washington, DC.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

When commenting, please refer to file code BERC–423–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: James Menas, (301) 966–4507, CRNA Fee Schedules.

George Morey, (301) 966–4653, Definition of CRNA.

SUPPLEMENTARY INFORMATION:

I. Background

Under the current regulations, which are located at 42 CFR 405.552 and 405.553, anesthesiology services personally furnished by a physician are paid on a reasonable charge basis under Part B of the Medicare program (Supplementary Medical Insurance). In addition, payment may also be made on a reasonable charge basis for the personal medical direction that a physician furnishes to a certified registered nurse anesthetist (CRNA).

If the physician directs an anesthesia procedure that involves a CRNA who is employed by the physician, the reasonable charge is determined as the least of the physician's customary charge conversion factor, the prevailing charge conversion factor, each of which is multiplied by the number of allowable units, or the physician's actual charge. The number of allowable units is the sum of the base units assigned to the anesthesia procedure, time units that represent the elapsed time of the anesthesia procedure (limited to no more than one time unit for each 15 minutes of anesthesia time) and modifier units that take into account special factors, such as the age or physical condition of the patient, if the physician bills and the carrier recognizes modifier units.

If a physician furnishes medical direction on an anesthesia procedure that involves a CRNA who is not employed by the physician, the reasonable charge is also determined as the least of the physician's customary charge conversion factor, the prevailing charge conversion factor, each of which is multiplied by the number of allowable units, or the physician's actual charge. However, in these cases, the number of allowable units is the sum of the base units assigned to the anesthesia procedure, time units, which are limited to no more than one time unit for each 30 minutes of anesthesia time, and modifier units, if the physician bills and the carrier recognizes modifier units.

When the CRNA is not employed by the physician, the cost of the CRNA's services is reimbursed to the hospital on a reasonable cost basis for anesthesia services furnished to hospital inpatients or outpatients or to the ambulatory surgical center (ASC) as part of the facility fee for anesthesia services furnished to ASC patients. Thus, the difference in Medicare payment to the physician between a medically-directed anesthesia procedure involving a CRNA who is the physician's employee and a medically-directed anesthesia procedure involving a CRNA who is not the physician's employee is two time units per hour multiplied by the appropriate conversion factor. Therefore, although the CRNA service is not identified separately on a physician's bill or claim, our current policy estimates the Part B payment for a CRNA's service at two time units per hour multiplied by the appropriate conversion factor.

II. Summary of New Legislation

On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) was enacted. The provisions of section 9320 of Pub. L. 99–509 made the following changes (which are reflected in sections 1832(a)(2)(B), 1833(a)(1)(H) and (1), and 1861(s)(11) and (bb) of the Social Security Act (the Act)) that affect Medicare payment for the services of nurse anesthetists:

- Effective with services furnished on or after January 1, 1989, direct reimbursement is provided for anesthesia services and related care furnished by CRNAs, subject to State licensure and nurse anesthetist certifying body requirements.
- Medicare pays 80 percent of the lesser of the actual charge or the fee schedule amount for anesthesia services and related care after the Part B deductible has been met. Assignment is mandatory in order for CRNAs to receive payment for these services, and violators are subject to civil monetary penalties.
- The Secretary is directed to establish a fee schedule for CRNA services, using a system of time units, a system of base and time units, or any other appropriate methodology. The initial fee schedule must be based on audited data from cost reporting periods ending in Federal fiscal year (FY) 1985, and must be adjusted annually by the percentage increase in the Medicare Economic Index, in order to be effective on January 1st of each year. The fee schedule can be national or adjusted for geographic areas.
- No hospital that presents a claim or request for payment for services of a CRNA may treat any uncollected coinsurance amount imposed with respect to such services as a bad debt of the hospital.
- The reasonable cost pass-through provision ends effective for CRNA services furnished to hospital inpatients after December 31, 1988.
- The initial fee schedule must be set so that total payment for CRNA services, plus the applicable coinsurance in FY 1989, equals estimated total amounts that would have been paid in 1989 if the services were included as inpatient hospital services. The Secretary is also directed to adjust physician charges for medical direction or the fee schedule amounts, or both, to ensure that total payments plus coinsurance for all these services in 1989 and 1990 do not exceed the amounts that would have been paid absent this legislation. If this results in reductions in physician reasonable charges, a nonparticipating physician may not charge more than 125 percent of the reduced prevailing charge plus (in the first year) half the difference between his or her actual charge in the previous year and 125 percent of the reduced prevailing charge. Violators are subject to sanctions.

In addition, section 9320 of Pub. L. 99–509 added a new paragraph (11) to section 1861(s) of the Act to provide specifically that "services of a certified registered anesthetist (as defined in subsection (bb))" are among the medical and other health services that are covered under Part B of Medicare. Section 1861(bb)(1) of the Act states that "services of a certified registered nurse anesthetist" means anesthesia services and related care, furnished by a CRNA, that the nurse anesthetist is authorized to perform as such by the State in which the services are furnished. Section 1861(bb)(2) of the Act states that the

term "CRNA" means a CRNA licensed by the State who meets such education, training, and other requirements relating to anesthesia services and related care as the Secretary may prescribe. Section 1861(bb)(2) of the Act further authorizes the Secretary, in prescribing these requirements, to use the same requirements as those established by a national organization for the certification of nurse anesthetists.

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) was enacted. The provisions of section 4084 of Pub. L. 100–203, which amended sections 1833 (l)(2) and (l)(5)(A) of the Act, made the following changes to the CRNA fee schedule legislation established by section 9320 of Pub. L. 99–509:

- The initial fee schedule could be developed from "other data as the Secretary determines necessary" in addition to using FY 1985 cost report data.
- The CRNA payment based on the fee schedule can be made to an ambulatory surgical center as well as the CRNA, the hospital, or physician group.

In addition to the changes made by section 4084 of Pub. L. 100–203, section 4048(a) of Pub. L. 100–203 amended section 1842(b) of the Act to provide that in determining the reasonable charge of a physician for medical direction of two or more CRNAs for anesthesia services furnished on or after April 1, 1988 and before January 1, 1991, the number of base units recognized for each concurrent procedure is reduced by—

- Ten percent, in the case of medical direction of two CRNAs;
- Twenty-five percent, in the case of medical direction of three CRNAs; and
- Forty percent, in the case of medical direction of four CRNAs.

On July 1, 1988, the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) was enacted. Section 411(i)(3) of Pub. L. 100–360 made technical amendments to section 4084 of Pub. L. 100–203 to provide that—

- The term "CRNA," as prescribed by the Secretary, also includes an anesthesiologist assistant (section 1861(bb)(2) of the Act); and
- With respect to CRNA services, the amounts paid would be 80 percent of the least of the—

—Actual charge;

—Prevailing charge that would be recognized if the services had been performed by an anesthesiologist; or

—Fee schedule amount (section 1833(a)(1)(H) of the Act).

On October 13, 1988, the family Support Act of 1988 (Pub. L. 100–485) was enacted. Section 608(c) of Pub. L. 100–485 amended section 9320 of Pub. L. 99–509 to allow certain hospitals that are located in a rural area (as defined for purposes of section 1886(d) of the Act) to continue to be reimbursed on a reasonale cost basis for CRNA services during calendar years 1989, 1990, and 1991.

To qualify in 1989, a rural hospital must establish before April 1, 1989 to the satisfaction of the Secretary that—

- It employed or contracted with a CRNA but not more than one full-time equivalent CRNA as of January 1, 1988;
- It had a volume of 250 or fewer surgical procedures, including inpatient and outpatient procedures, requiring anesthesia in calendar year 1987; and
- Each CRNA employed by or under contract with the hospital has agreed not to bill under Medicare Part B for professional services furnished at the hospital.

To qualify in 1990 or 1991, a rural hospital must establish before the beginning of the calendar year that in the prior year it did not furnish more than 250 surgical procedures including inpatient and outpatient procedures requiring anesthesia services.

These provisions are to be implemented so as to maintain budget neutrality consistent with section 1833(1)(3) of the Act.

III. Provisions of this Proposed Rule

A. Services of a CRNA or an Anesthesiologist Assistant

To implement the provisions of sections 1861(s)(11) and (bb) of the Act, we are proposing to make two changes in the regulations on coverage of medical and other health services in 42 CFR Part 401, Subpart B. Specifically, we are planning to revise § 410.10 by adding "services of a CRNA or an anesthesiologist assistant" to the list of medical and other health services in that section. In additon, we are proposing to add a new § 410.66 to define the terms "CRNA", "anesthesiologist assistant," and "anesthetist."

We are proposing to define "CRNA" as a registered nurse who is licensed as a professional registered nurse by the State in which he or she practices, and either—

- Is currently certified by either the Council on Certification of Nurse Anesthetists or the Council on Recertification of Nurse Anesthetists; or
- Has graduated within the past 18 months from a nurse anesthesia program that meets the standards of the Council on Accreditation of Nurse Anesthesia Educational Programs and is awaiting initial certification.

This definition relies on certification by either of the two nationally recognized certifying bodies for nurse anesthetists, and thus reflects the provision of section 1861(bb) of the Act that authorizes the use of requirements established by a national organization for the certification of nurse anesthetists.

Although we are proposing this definition of CRNA, we recognize that there are other interpretations of section 1861(bb) of the Act which, if adopted, would require use of a more restrictive definition of that term. In particular, the phrase "certified registered nurse anesthetist licensed by the State" in section 1861(bb)(2) of the Act could be read to mean that the anesthetist must be licensed by the State *as a CRNA* rather than only as a registered nurse. Moreover, the statutory reference to a *certified* registered nurse anesthetist could be interpreted to exclude from the definition those persons who are not actually certified. Such an interpretation would not, for example, allow nurse anesthetists who have completed the CRNA training but have not passed the required certification examination to be classified as CRNAs for Medicare purposes.

While we considered use of the more restrictive definition of CRNA, we are not now proposing to adopt it. We believe use of this definition would be inconsistent with the intent of Congress in enacting section 1861(bb) of the Act and with current anesthesia practice. With respect to the issue of licensure, our information indicates that fewer than 10 States currently license CRNAs as such. The remaining States license registered nurses and either employ one of a variety of means to officially sanction the practice of anesthesia by a nonphysician or have no formal process by which they authorize nurses to give anesthesia. If we were to require CRNAs to be licensed as such by the State, individuals who are now functioning as CRNAs but practice in States that do not specifically license CRNAs could not be considered CRNAs under Medicare and would not be permitted to administer anesthesia in Medicare participating hospitals and ASCs. We doubt that Congress intended section 1861(bb) of the Act to achieve this result. Thus, with respect to licensure, we are proposing to require only that the individual be licensed as a professional registered nurse by the State in which he or she practices or meet any other licensure requirement the State imposes with respect to nonphysician anesthetists.

With regard to the second issue, we believe it is permissible under section 1861(bb) of the Act for individuals to be considered CRNAs under Medicare even if they are in fact not certified. Several considerations persuaded us not to propose a definition of CRNA based on an interpretation of the law requiring actual certfication. First, we have been advised that the Council on Certification of Nurse Anesthetists recognizes as "certification-eligible" those registered nurses who have graduated within the past 24 months from a nurse anesthesia program that meets the Council's standards, but have not yet passed the required certification examination. We also note that the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) accreditation standards permit certification-eligible nurse anesthetists to furnish services under the same degree of supervision as CRNAs. It was also stated to us that the laws of many States permit certification-eligible nurse anesthetists to function as CRNAs for specified time periods, usually ranging between 12 and 24 months in length.

If we were to adopt a definition of CRNA that excluded certification-eligible nurse anesthetists, we would be establishing a definition that is inconsistent with existing practice in the nursing profession, with the standards of the JCAHO, and with the nurse practice acts of many States. There is no indication in the legislative history of 1861(bb) of the Act that Congress specifically intended such an inconsistency. Therefore, we are proposing to recognize certification-eligible nurse anesthetists as CRNAs for a period of 18 months following their graduation from an approved nurse anesthesia program.

Because of the existence of alternative interpretations of section 1861(bb) of the Act, we are particularly interested in receiving public comment on which interpretation should be followed in the implementing regulations.

We are proposing to define an "anesthesiologist assistant" as an individual who is permitted by State law to administer anesthesia and has successfully completed a six-year program for anesthesiologist assistants, two years of which consist of specialized academic and clinical training in anesthesia and who is under the direct supervision of an anesthesiologist who is physically present. This definition is the same as that currently set forth in the Medicare conditions of participation for hospitals at § 482.52(a)(5). To ensure that these definitions are applied consistently, we would revise § 482.52 (a)(4) and (a)(5) to reflect the addition of the new § 410.66.

In addition, we are proposing to define the term "anesthetist" to include both anesthesiologist assistants and CRNAs. The use of this term represents a clear and convenient means of referring to both types of practitioners.

B. General Method of Payment

Effective with services furnished on or after January 1, 1989, as required by section 1833(a)(1)(H) of the Act, payment for the services of a CRNA is made, after the Part B deductible has been met, at 80 percent of the least of the—

- Actual charge;
- Prevailing charge that would be recognized if the services had been performed by an anesthesiologist; or
- Fee schedule amount.

C. Development of a Fee Schedule

1. Background

Section 1833(l)(1) of the Act requires the Secretary to establish a fee schedule for the services of CRNAs. In establishing the fee schedule, section 1833(l)(4) of the Act provides that the Secretary may use a system of time units, a system of base and time units, or any appropriate methodology. The Secretary may also establish a nationwide fee schedule or adjust the fee schedule for geographic areas.

In addition, under section 1833(l)(3)(A) of the Act, the initial fee schedule is to be established in such a way as to ensure that the estimated total amount paid under the fee schedule, plus the applicable coinsurance amounts, will be equal to the amount that would have been paid had the services been included as inpatient hospital services. Furthermore, section 1833(l)(3)(B) of the Act provides that the Secretary must reduce the prevailing charges of physicians for medical direction of CRNAs, or the fee schedule amount, or both, to the extent necessary to ensure that the estimated total amount that will be paid, plus the applicable coinsurance amounts, will not exceed the total amount that would have been paid absent this provision. This limitation is needed because physicians who employ CRNAs have been reimbursed for CRNA services through the reasonable charge allowance, and effective January 1, 1989, payment for all CRNA services will be through the fee schedule. Since the amounts paid on a per service basis to physicians for the CRNAs they employ are generally less than the amounts recognized as inpatient hospital costs, this adjustment is needed to ensure that we do not pay more under the CRNA fee schedule than we would have paid absent the new provision.

The difference in Medicare payment between the hospital-employed and physician-employed CRNAs is due primarily to the different payment methodologies. The hospital is reimbursed for CRNA services on a reasonable cost basis, which is related to the actual cost of the services. CRNAs who are employed and medically directed by anesthesiologists are paid as part of the physician's reasonable charge payment. Since fiscal year 1973, physicians' reasonable charge payments have been constrained by the Medicare economic index. Moreover, the basic method of paying physicians for their CRNA costs (that is, recognizing two additional time units per hour) was not established based on a statistical analysis of CRNA salary costs.

2. Structure and Geographic Basis for Fee Schedules

In determining the basic framework for the fee schedule, we believe that it is desirable to construct a system similar to that used for anesthesiologists (that is, a system based on time and base units). Since we are proposing to establish a uniform relative value guide for anesthesia services (see the proposed rule published elsewhere in this issue of the **Federal Register**), as required by section 4048 of Pub. L. 100-203, under which we are also proposing to eliminate modifier units, we are also proposing not to recognize modifier units in determining payments for CRNA services. We believe that use of the same type of system for anesthesia services furnished by CRNAs and anesthesiologists would be simpler for carriers to administer. Thus, the CRNA fee schedule payment would be determined by multiplying an appropriate conversion factor by the sum of the base unit for the anesthesia procedure and the time units. For CRNAs, one time unit would be allowed for each 15 minutes of anesthesia time.

As noted in the proposed rule on a uniform relative value guide for anesthesia services, it is our intention (subject to publication of another proposed rule) to eliminate the separate time unit element of the anesthesia payment system within two years of the effective date of the final rule implementing that guide. We are also considering alternatives discussed in the proposed rule on a uniform relative value guide for anesthesia services furnished by physicians, which would limit the potential for inappropriate use of time units for billing purposes. The

elimination of time units will be the subject of a separate proposed rulemaking document and comments submitted in response to that proposed rule will, of course, be carefully considered at that time.

Our current policy on recognizing time units as a component of payment for physician anesthesia services was the focus of a recent study conducted by the Office of the Inspector General (OIG). (Copies of this report entitled "Medicare Part B Payments for Unexpended Physician Efforts Relating to Anesthesia Services" (A-07-88-00080 issued on August 9, 1988) can be obtained by writing to the Office of the Inspector General, 330 Independence Avenue SW, Washington, DC 20201.) Based on the study, OIG recommended the following options to change the current time policy:

- Pay for actual time expended, rather than treating all fractional units as whole units. That is, 65 minutes would equal four and one-third time units instead of five units.
- Round all fractional units down to the next lower whole unit. That is, disregard all fractional time units (for example, any amount of time between 61 and 74 minutes would equal four units instead of five units).

Another alternative considered by OIG that would make anesthesia payments more commensurate with the effort expended would be to pay only for those fractional units in excess of one-half as whole units. That is, any fraction equal to or less than one-half time unit (seven and one-half minutes) would be disregarded (for example, 65 minutes would equal four units, but 68 minutes would equal five units).

We are proposing to structure the CRNA fee schedule on an individual State-level basis because there are significant differences among States in terms of CRNA salaries and malpractice rates. Using a national or regional fee schedule could cause an unnecessary redistribution of payments. We considered establishing CRNA payment rates by carrier locality. However, we do not have data available on CRNA payment rates on a county-wide basis that would allow construction of payment rates by locality. Thus, we are proposing payment levels on a State-level basis.

We note that there are significant differences in payment rates of hospital-employed CRNAs depending on whether they are medically directed by an anesthesiologist or working under the general supervision of the surgeon. As a result, we believe it is appropriate to construct separate fee schedules for CRNAs working under the medical direction of an anesthesiologist and for CRNAs working only under the general supervision of the surgeon. This latter group of CRNAs have more responsibility and higher average earnings than CRNAs working with medical direction. Thus, we believe it is appropriate to compute the rates separately on the basis of whether or not the CRNA is medically directed.

Based on the American Association of Nurse Anesthetists' (AANA's) annual membership survey, we estimate that there are approximately 16,000 CRNAs in full-time practice of the 21,000 CRNAs registered with AANA. Of the full-time CRNAs, about 45 percent are employed by hospitals or universities, 36 percent by physicians, and 10 percent practice independently. The remainder of CRNAs are employed by the military or work under other arrangements. We considered the following two sources of earnings data in establishing the fee schedule for medically-directed CRNAs and nonmedically-directed CRNAs:

- The annual earnings membership surveys conducted by AANA (the most recent survey reflects 1986 calendar year practice and income characteristics).
- A special survey of hospitals claiming CRNA pass-through costs conducted by our fiscal intermediaries during the first quarter of 1988. The HCFA survey obtained information from hospitals on total hours and direct anesthesia hours reported by CRNAs during the hospital's cost reporting period beginning in Federal fiscal year 1985.

We have chosen to use the AANA survey data because it separates data based on whether a CRNA is or is not medically directed. The HCFA survey did not capture this information. While HCFA's results on the national average earnings for hospital-employed CRNAs on a per case basis were similar to the results of AANA's annual survey (HCFA's data were about 10 percent higher), wide variations at the State level indicate that the AANA survey results are preferable in establishing State-level rates. The AANA survey data distinguish, at the State level, between medically-directed CRNAs and nonmedically-directed CRNAs.

We believe the AANA survey data are valid and reliable because—

- We have no reason to believe there is any bias in the survey results particularly since the survey was not conducted for the purpose of constructing a fee schedule, but rather is an ongoing annual membership survey; and
- At a national level, after adjusting for fringe benefits, the data are comparable (actually lower) to HCFA's results.

In using the AANA salary survey to develop the State-level fee schedule for medically-directed CRNAs, certain adjustments were made, as described below.

Step 1. Updating the 1986 Earnings to 1989 Level—Data from AANA's Annual Membership Surveys show that the national average annual rate of increase in CRNA salaries from 1982 through 1986 was approximately six percent. We are proposing to use this rate of change to approximate the rate of increase in CRNA salaries through 1989. Projecting this rate of change through 1989 would require an increase of 19 percent (that is, $1.06 \times 1.06 \times 1.06$) over 1986 average earnings.

Step 2. Fringe Benefit Adjustments—The value of fringe benefits is not reported on the AANA survey. Fringe benefits include items such as the value of pension costs, FICA taxes, and employee health insurance. (We note that the value of vacation, sick, and holiday time is included in the survey's reported salary amounts.) We are proposing to use 20 percent of the 1986 national average salary or income of CRNAs as a reasonable approximation of the costs of fringe benefits incurred by hospitals for their CRNA employees. This is the fringe benefit factor that was initially used in determining the costs to hospitals for the services of nonphysician anesthetists furnished on or after October 1, 1984. (See the August 31, 1984 prospective payment system final rule (49 FR 34794).)

Step 3. Billing Costs—We believe an allowance should be made for the billing costs that will be incurred by CRNAs or their employers (that is, hospitals) who must now begin to separately identify and bill the Part B carrier for CRNA services. Based on estimates of billing costs provided by AANA from costs incurred by independently practicing CRNAs that bill non-Medicare patients, we are proposing to increase salaries and fringe benefits by seven percent to account for billing costs.

Step 4. Constructing a Conversion Factor—The annual earnings figures resulting from the adjustment in Steps 1 through 3 above were translated into a conversion factor by—

- Dividing the adjusted average annual CRNA compensation by the average annual anesthesia case load performed by a full-time medically-directed CRNA (649 cases) to derive average per case earnings; and
- Dividing this figure by the average of 11.6 units per case (the total of

average time and base units per case) to compute a conversion factor.

The average case load of 649 anesthetics was reported in the 1986 AANA survey. The Center for Health Economics Research (CHER), a private nonprofit health care research organization, furnished us with the following information:

- The average number of base and time units per case (that is, Medicare and non-Medicare) involving a CRNA (11.6 units).
- The average number of base and time units per Medicare case involving an anesthesiologist who medically directs his or her CRNA employees (12.1 units).
- The average time per Medicare case involving an anesthesiologist who directs his or her CRNA employees (101 minutes).

The latter two items (12.1 units and 101 minutes) are used in Appendix B of this document to compute conversion factors for physician-employed medically-directed CRNAs.

The CHER statistics were calculated from data collected during the fall of 1986 as part of the Anesthesia Practice Survey. The purpose of this survey was to gather information on the practice patterns and case-mix characteristics of CRNAs and anesthesiologists. The Anesthesia Practice Survey was designed by CHER and funded under a cooperative agreement with HCFA.

Separate samples of CRNAs and anesthesiologists were selected for the Anesthesia Practice Survey. Each was a proportional random sample, stratified by regional and urban/rural location, to ensure an adequate geographic representation. Overall, 529 anesthesiologists and 520 CRNAs were interviewed.

An alternative data source we considered was a survey on anesthesia cases conducted by the accounting firm of Touche Ross for AANA during the first quarter of 1988. The Touche Ross survey estimated that the average number of base and time units per anesthesia case involving a CRNA is 10.9 units and the average number of base and time units per Medicare anesthesia case involving a CRNA is 11.3 units. We are not proposing to use the Touche Ross data since they are limited to eight hospitals and thus are not as representative as the CHER data.

Step 5. Malpractice Adjustment—The fee schedule conversion factor computed in Step 4 was further adjusted to reflect the cost of malpractice insurance incurred by hospitals for their CRNA employees. Data on State malpractice premiums for CRNAs were used for this purpose. The State-level malpractice premiums were obtained from St. Paul Fire and Marine Insurance Company, the largest carrier of malpractice insurance for CRNAs. We computed a State-level malpractice premium per unit by dividing the current State-level malpractice premium by the product of the national average number of anesthetics administered by CRNAs and the average total units per case. The malpractice adjustment was made after all the other adjustments because it reflects current malpractice rates.

The conversion factors that result from these computations are set forth in Appendix A. The following example illustrates the application of the methodology as described in Steps 1 through 5 to calculate the medically-directed hospital-employed CRNA rate for Alabama

EXAMPLE 1

Average salary for 1986 for full time medically-directed hospital-employed CRNAs (Alabama).	$52,582.
Average number of anesthesia cases.	649 cases.
Average number of base and time units per case involving CRNAs.	11.6 units/case.
Total units (649 × 11.6)	7,528 units.
1986 conversion factor ($52,582—7,528).	$6.98.
Adjustments for fringe benefits and billing costs ($6.98 × 1.20 × 1.07).	$8.97.
Update adjustment ($8.97 × 1.19)	$10.67.
Malpractice rate adjustment (Alabama).	$0.63.
1989 CRNA conversion factor ($10.67 + $0.63).	$11.30.

Another source of data used to establish the CRNA fee schedule is information from physician-employed CRNA arrangements. As noted above, if a physician employs and medically directs a CRNA, two time units per hour approximates Medicare's payment for the CRNA service. In Appendix B of this document, we list the CRNA rates for physician-employed CRNAs computed from the 1989 participating physician prevailing charge conversion factors and the average time per case. The 1989 particpating physician prevailing charge conversion factors represent a one percent increase over the comparable 1988 prevailing charge conversion factors due to the provisions of section 4042 of Pub. L. 100-203 (section 1842(b)(4) of the Act), which provides for a one percent increase in the Medicare economic index for physicians' services, other than services of primary care physicians, furnished on or after January 1, 1989. The following example illustrates the calculation of the physician-employed medically-directed CRNA rate for Alabama.

EXAMPLE 2

Average time per medically-directed case.	101 minutes.
Average time and base units per Medicare case.	12.1 units.
1989 weighted average prevailing charge conversion factor for participating anesthesiologists in Alabama.	$12.90.
Conversion factor for medically-directed physician-employed CRNAs ($12.90 × 101/30)/(12.1).	$3.59.

Because of differences in program payments between physician-employed and hospital-employed CRNAs whose services are medically directed, we considered establishing two different State-level CRNA fee schedules for medically-directed CRNAs. However, we are not making such a proposal because we believe that it could result in shifts in practice arrangements that would increase program payments without any change in service quality. Moreover, as a general policy, we believe that the fee schedule payments for like services should be the same and should not vary according to employment arrangements.

We also considered setting a single State-level rate for medically-directed CRNAs (both hospital-employed and physician-employed) based on practice costs of medically-directed hospital-employed CRNAs only. Under this approach, Medicare payments for CRNA services to physicians who employ and medically direct CRNAs would increase over the amounts previously recognized. However, this approach would be budget neutral with regard to the payments that would be made if CRNA services were paid as inpatient hospital services. Overall, however, Medicare payment for CRNA services would increase. To maintain overall budget neutrality, we estimate that all anesthesiologists' medical direction payments would need to be reduced by approximately 14 percent if the fee schedule were based solely on practice costs of medically-directed hospital-employed CRNAs. Alternatively, if only medical direction payments for anesthesiologists who medically direct their own CRNA employees were affected, the reduction would be approximately 30 percent. (We refer the reader to Appendix C for a detailed example of the medical-direction adjustment.)

We do not believe that Congress envisioned adjustments to medical direction payments of this magnitude when it enacted the CRNA fee schedule legislation, particularly the provisions of section 1833(l)(3)(B) of the Act. Moreover, as discussed above, Congress subsequently enacted reductions in anesthesia payments for concurrent medically-directed procedures under section 4048 of Pub. L. 100–203.

We also considered establishing a single rate by blending the hospital and physician CRNA data weighted by the proportion of different employment practices. In blending hospital-employed and physician-employed CRNA rates, we would weight each portion of the rate because more CRNAs are employed by hospitals than are employed by physicians. Excluding CRNAs who are not medically-directed, nationally, approximately 58 percent of medically-directed CRNAs are employed by hospitals and 42 percent are employed by physicians. These weights are based on data in AANA's 1986 Annual Survey pertaining to full-time CRNA practice arrangements. Weighting produces a single blended State-level medically-directed CRNA rate that is estimated to be budget neutral overall. However, the resultant rates are less than those based solely on data from medically-directed hospital employment practice arrangements. Under this proposal, no reduction would be made in physicians' medical direction payments. Collectively, hospitals that employ CRNAs whose services are medically directed would experience an 18 percent reduction in their payments for CRNAs. Medicare payments for anesthesia services furnished by CRNAs who are employed and medically directed by an anesthesiologist would increase by 45 percent. However, since the CRNA fee schedule payment is made on an assignment-related basis, the CRNA fee schedule payment may be less than the amount that the anesthesiologist could have collected, if the claim were not assigned, from the beneficiary.

We also considered establishing a single rate by blending the hospital and physician CRNA data by weights of 79 percent and 21 percent respectively. Under this option, reductions in the CRNA fee schedule would be incurred by hospitals and CRNAs and adjustments to medical direction allowances would be incurred by anesthesiologists. We estimate that hospitals that employ CRNAs whose services are medically directed would experience a nine percent reduction in payments. Amounts for anesthesia services furnished by CRNAs who are both employed and medically directed by physicians would increase by 61 percent. To account for this increase in CRNA payments, medical direction allowances of all anesthesiologists would be reduced by seven percent. Set forth below is a table that shows the options for the CRNA Fee Schedule/Medical Direction Adjustments:

Level of CRNA Fee Schedule	Medical Direction Allowance Reduction
$9.90	14.0 percent.
$9.00	7.0 percent.
$8.10	0.0 percent.

We are proposing to establish a single blended rate that weighs medically-directed hospital-employed CRNA data at 58 percent and medically-directed physician-employed CRNA data at 42 percent. Adaption of this methodology results in no adjustment being made to physicians' medical direction allowances.

The results of the blended fee schedule for CRNAs working under the medical direction of an anesthesiologist are listed in Appendix D of this document. The following example illustrates the application of the blended rate methodology for Alabama.

EXAMPLE 3

National hospital-employed CRNA percentage.	58 percent.
National physician-employed CRNA percentage.	42 percent.
Hospital-employed medically-directed CRNA rate (from example 1).	$11.30.
Physician-employed medically-directed CRNA rate (from example 2).	$3.59.
Blended rate (.58x$11.30)+-(.42x$3.59).	$8.06.

As mentioned above, section 4048 of Pub. L. 100–203 requires the Secretary to develop a uniform relative value guide for determining reasonable charges for anesthesia services. This provision is being implemented through a separate rulemaking document. Section 4048 of Pub. L. 100–203 requires that the uniform relative value guide be designed to ensure that Medicare program payments would not exceed the amount of payments that would otherwise occur. To achieve this result, carriers would need to adjust their prevailing charge conversion factors. Because of this adjustment, it would be necessary to recalculate medically-directed CRNA payment rates after the final rule on the uniform relative value guide is published in the **Federal Register**.

3. CRNAs Who Are Not Medically-Directed

AANA's 1986 annual membership survey collected data on State mean income and case load for CRNAs whose services are not medically-directed. In total, AANA collected data on 610 full-time CRNAs who are functioning without medical direction by a physician. Two-thirds of those CRNAs are independently practicing while the remaining one-third are employed by hospitals. The number of responses at the State-level was not sufficient to establish State-specific rates from the AANA data. Rather, we established the State-level rate for CRNAs who are not medically directed by analyzing the relationship between the national cost per case of full-time CRNAs who are not medically directed and full-time hospital-employed CRNAs who are medically-directed, and applying this ratio to the State-level rates for medically-directed CRNAs. The AANA data show that the average cost per case for full-time medically-directed hospital-employed CRNAs and nonmedically-directed CRNAs are $72.00 and $105.00 respectively. Because of the budget neutrality provision associated with rural hospitals that apply for reasonable cost payments for CRNAs, it was necessary that we adjust the nonmedically-directed rate. After this adjustment (See discussion below in section III. D. of this preamble), the nonmedically-directed cost per case was reduced to $99.00. The nonmedically-directed CRNA cost per case is 37.5 percent greater than the hospital-employed medically-directed CRNA cost per case.

The proposed State-level conversion factors for nonmedically-directed CRNAs, which are listed in Appendix E of this document, reflect this 37.5 percent differential (that is, the factors in Appendix E equal the factors in Appendix A multiplied by 37.5).

D. Continuation of Reasonable Cost Payments for Rural Hospitals

Section 9320 of Pub. L. 99–509 was amended by section 608(c) of Pub. L. 100–485 to allow certain hospitals located in rural areas to continue to be reimbursed on a reasonable cost basis for CRNA services during calendar years 1989, 1990, and 1991. To qualify in 1989, a rural hospital must establish before April 1, 1989 to the satisfaction of the Secretary that—

- As of January 1, 1988, it employed or contracted with a CRNA but not more than one full-time equivalent CRNA;

• In 1987, it had a volume of 250 or fewer surgical procedures, including inpatient and outpatient procedures, requiring anesthesia services; and

• Each CRNA employed by or under contract with the hospital has agreed not to bill under Medicare Part B for professional services furnished at the hospital.

To qualify in 1990 or 1991, a rural hospital must establish before the beginning of the respective calendar year that in the prior year it did not furnish more than 250 surgical procedures, including inpatient and outpatient procedures, requiring anesthesia services.

We are proposing to define a full-time equivalent anesthetist as one or more anesthetists who in total work no more than 2,080 hours per year. These hours represent total hours at the hospital and include time spent in furnishing anesthesia services to patients and general services to the hospital. We are also proposing to define "surgical procedures requiring anesthesia services" as those procedures in which the anesthesia is administered and monitored by a qualified nonphysician anesthetist, a physician other than the primary surgeon, or an intern or resident.

As required by section 9320(k) of Pub. L. 99–509 (as enacted by section 608(c) of Pub. L. 100–485), a rural area would be defined in the same way it is defined for purposes of the inpatient hospital prospective payment system (that is, section 1886(d) of the Act). That definition is set forth at § 412.62(f) and provides that a rural area is any area outside of a Metropolitan Statistical Area (MSA), a New England County Metropolitan Statistical Area, as defined by the Executive Office of Management and Budget, or the New England counties deemed to be parts of urban areas under section 601(g) of the Social Security Amendments of 1983.

Under section 1886(d)(8)(B) of the Act, hospitals in certain rural counties adjacent to one or more MSAs are considered to be located in one of the adjacent MSAs if certain standards are met. (These requirements are explained in greater detail in the September 30, 1988 final rule on the inpatient hospital prospective payment system (53 FR 38499).) Since for purposes of payment under section 1886(d) of the Act, these hospitals are no longer classified as rural, we are proposing that these hospitals also would not qualify as rural hospitals under section 9320(k) of Pub. L. 99–509 and would not be eligible to continue to receive reimbursement on a reasonable cost basis for CRNA service during 1989, 1990, and 1991.

The legislation also requires that this provision be implemented so as to maintain budget neutrality consistent with section 1833(l)(3) of the Act. For purposes of budget neutrality, we assumed that hospitals in which CRNAs are medically directed would not qualify for continuation of reasonable cost payments. We assumed that anesthesiologists who medically direct at least two CRNAs would never furnish fewer than 125 medically directed procedures per CRNA.

We used the results of the HCFA survey described above to estimate the number of hospitals that would qualify for continuation of reasonable cost payments for CRNA services. From the HCFA survey data, we identified 531 rural hospitals that could qualify for reasonable cost payments. (If we extrapolate this finding to all rural hospitals who claimed pass-through costs, we estimate that the total number of hospitals that would qualify is 757.)

The AANA provided us with data on the number of hospitals in which a CRNA who is not medically directed practices full-time at only one hospital. This equals 610 hospitals. It was therefore necessary to identify which of the 531 rural hospitals had one full-time equivalent CRNA who furnished 250 or fewer cases in calendar year 1986 (that is, the year for which we have AANA survey data). The criterion we established for identifying a full-time equivalent CRNA was a CRNA who reported working between 1500 and 2500 total hours at the listed hospital on the HCFA survey and who worked 400 or fewer hours of direct anesthesia time. (According to our methodology, 400 hours equates to 250 anesthesia cases.) Of the 531 rural hospitals, we identified 43 hospitals or 8.1 percent of the total as qualifying rural hospitals with one full-time equivalent CRNA.

According to the AANA, the average number of anesthesia cases furnished by a full-time CRNA who is not medically-directed is 541 and the average 1986 salary/gross income is $57,021. The average cost per case of these CRNAs is $105. We adjusted these numbers to account for the CRNAs who work full-time at a rural hospital that is expected to apply for payment on a reasonable cost basis. Of the 610 listed, we estimate 49 (8.1 percent) will qualify and apply for reasonable cost payments. We estimate that the average number of anesthesia cases furnished by a qualifying rural hospital will be 159. This estimate is based on the average number of anesthesia cases determined from the direct anesthesia hours reported by the CRNA on the HCFA survey form. The revised average cost per case of nonmedically-directed CRNAs is $99.00, a 5.7 percent decrease.

We will review the rural hospitals that elect reasonable costs for CRNA services furnished in 1989 and make appropriate adjustments if necessary, in January 1990 to the conversion factors for CRNAs who are not medically directed. We will be unable to make those adjustments before January 1, 1990 for the following reasons. As hospitals will have until April 1, 1989 to make the election of reasonable cost reimbursement, we will not receive the data on qualified rural hospitals until sometime after April 1, 1989. Also, any adjustments we might make will have to be first published as a notice in the Federal Register. We believe it would be most practical to set forth all adjustments to the CRNA conversion factors that might be necessary in a single notice published just prior to the January 1, 1990 update for CRNA conversion factors.

E. Updating the Fee Schedule for Years After 1989

For calendar years beginning with January 1, 1990, we would update the CRNA fee schedule by the percentage increase in the Medicare economic index, as required by section 1833(1)(2) of the Act. Section 1833(1)(3)(B) of the Act also requires the Secretary to adjust the CRNA fee schedules in 1990 to ensure that Part B payments do not exceed what would have been paid if the CRNA fee schedules were not enacted. We would monitor expenditures for CRNA services in 1989 to verify the accuracy of the estimates used to construct the initial fee schedules and make appropriate changes, as necessary, effective with anesthesia services furnished on or after January 1, 1990.

F. Relationship of Payment Under the Fee Schedule to Payment to Physicians for the Medical Direction of CRNAs

For services furnished on or after January 1, 1989, if a physician medically directs an anesthesia procedure involving CRNAs, the carrier would, in determining the reasonable charge for the procedure, allow no more than one time unit for each 30 minutes of anesthesia time. One time unit for each 15 minutes would be allowed only if the physician personally performs the anesthesia procedure. Consequently, if the physician medically directs concurrent anesthesia procedures and is the employer of the CRNA, two separate payments would be made to the physician, that is, a medical direction payment for the physician's service and

a payment under the CRNA fee schedule for the CRNA's service. Assignment is mandatory for the CRNA's service.

We are proposing to amend § 405.553 to revise the method of payment to physicians who medically direct CRNAs.

Under section 1833(l)(3)(B) of the Act, the Secretary may reduce either the medical direction reasonable charge payment or the CRNA fee schedule payment, or both, to ensure that the estimated total amount paid for medical direction and CRNA services in 1989 and 1990 do not exceed the amounts that would have been paid if section 9320 of Pub. L. 99–509 had not been enacted. As noted above, we are not proposing reductions in medical direction allowances.

Under the statute, for services furnished during the twelve-month period beginning January 1, 1989, a physician may not charge the beneficiary more than the limiting charge plus one-half of the amount by which the physician's actual charges for the service for the previous 12-month period exceeds the limiting charge. The limiting charge is 125 percent of the prevailing charge for the service after the medical direction adjustment. Since we are not proposing to adjust physician medical direction allowances, the special charge limit would not apply.

G. Supervision of CRNAs by Physicians Other Than Anesthesiologists

In the preamble to the March 2, 1983 final rule entitled, "Payment for Physician Services Furnished in Hospitals, Skilled Nursing Facilities, and Comprehensive Outpatient Rehabilitation Facilities," we noted that anesthesia payment rules apply to any physician who furnishes, directs, or supervises anesthesia services regardless of the physician's practice specialization or board certification (48 FR 8926). The preamble to that document also noted that the directing physician frequently is the surgeon who is performing the surgical procedure for which the anesthesia is required. Thus, in some hospitals and ambulatory settings, we have recognized the practice in which the surgeon assumes responsibility for direction of the anesthesia service.

Actual carrier practice for paying surgeons who medically direct CRNAs varies. Some carriers include a payment for the surgeon's anesthesia services with the surgical service allowance. Other carriers pay a separate amount for the surgeon's anesthesia service.

In a 1987 HCFA survey of carrier medical consultants concerning the propriety of the surgeons' anesthesia practice patterns, the overwhelming consensus of the carriers' medical directors was that a surgeon cannot appropriately provide the level of oversight needed to medically direct a CRNA and also perform surgery. We also believe that a surgeon cannot perform all the activities required for anesthesiology services related to medical direction under § 405.552, while concurrently performing surgery. For example, § 405.552(a)(2) specifically requires that a physician involved in medical direction not perform any other services, such as surgery, while the physician is involved in medical direction. This requirement could not be met by a surgeon who is performing an operative procedure. Therefore, we are proposing that, effective January 1, 1989, medical direction payments could not be made to a surgeon who concurrently supervises CRNAs and performs surgery. The payment of a separate reasonable charge for medical direction of anesthesia services is not a widespread practice. We note, however, that to the extent a surgeon employs or contracts with a CRNA, the surgeon is entitled to receive the CRNA fee schedule payment, effective on or after January 1, 1989, for services the CRNA furnishes.

We recognize that State law may require a surgeon to supervise the services of a CRNA while surgery is performed, and that this supervision is explicitly permitted under the hospital conditions of participation at § 482.52(a)(4) and the conditions for coverage of ambulatory surgical services at § 416.42(b)(2). However, we believe that it would be inappropriate to pay for such services of a surgeon as medical direction because we believe the requirements of § 405.552 would not be met. The oversight of a CRNA's services by a surgeon is, in our view, a quality control function that represents a service to the provider of the type described in § 405.480(a) or an ambulatory surgical center facility service.

We also recognize that CRNAs provide anesthesia services associated with therapeutic services, such as electroshock therapy, and anesthesia services associated with diagnostic radiology services, such as magnetic resonance imaging and computerized axial tomography scans. We are proposing that medical direction payments not be made to a radiologist or psychiatrist who furnishes nominal supervision of the anesthesia services since we do not believe these services meet the medical direction requirements under § 405.552. As in the case of supervision of anesthesia services by the operating surgeon, oversight of anesthesia required for electroshock therapy or diagnostic radiology, when furnished in a provider setting, represents a service to the provider.

H. Other Conforming Regulations Changes

Section 1833(l)(5)(C) of the Act requires that a hospital that files a claim or a request for payment for the services of a CRNA may not use any uncollected coinsurance amount for a CRNA service as a bad debt. We are proposing to revise § 413.80 to implement this provision.

I. Related Care Furnished by CRNAs

Anesthesiologists furnish specialized forms of monitoring, such as the insertion of intra-arterial lines, central venous pressure lines, and Swan Ganz catheters during surgical procedures. The majority of carriers recognize separate payments for these services in addition to payment for the anesthesia service. Also, anesthesiologists provide other services, such as pain management services, for which the carriers recognize separate payments. CRNAs also furnish specialized monitoring activities and other services not directly connected to the anesthesia service associated with the surgical service.

We are not recognizing additional payments for these services because payment for these services has been factored in the CRNA conversion factor rates. As noted, we used salary/income data from the AANA that reflects payment for all anesthesia and related charge services. If we recognized separate payments for these services, we would be allowing duplicate payments.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pub. L. 99–509 adds section 1833(1)(3)(B) of the Act which provides that the Secretary must reduce the prevailing charges of physicians for medical direction of CRNAs, or the fee schedule amount, or both, to the extent necessary to ensure that the estimated total amount that will be paid for CRNA services, plus the applicable coinsurance amounts, will not exceed the total amount that would have been paid absent this provision.

In section III.C. of this document, we explain how our proposed payment methodology would maintain the same payment levels, in the aggregate, to CRNAs, hospitals, and physicians that they would have received under the present payment methodologies. Because we would maintain budget neutrality with respect to these payments, we do not expect any aggregate economic impact that would meet any of the E.O 12291 criteria to result from this proposed rule. Therefore, we have not prepared an initial regulatory impact analysis.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we do not consider individuals or State to be small entities, but we do consider hospitals, physicians, and CRNAs to be small entities.

We are preparing an initial regulatory flexibility analysis for this proposed rule because of the large number of hospitals, physicians, and CRNAs that could potentially be affected, and the significance and potential controversy of these provisions.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an 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 of a Metropolitan Statistical Area.

We are not preparing a rural hospital impact statement since we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

1. Fee Schedule Methodology

We are proposing to establish the CRNA fee schedule for medically-directed CRNAs by blending the amounts paid to hospitals for their employee CRNAs with estimated Part B payments for CRNAs employed by physicians. The blended rate would be established by weighting the hospital rate by 0.58 and the physician rate by 0.42. This would result in an 18 percent reduction in Medicare payments to hospitals for CRNA services. Medical direction payments would not be made to a surgeon who concurrently supervises CRNAs and performs surgery.

2. Impact on Hospitals

According to fiscal year 1985 cost reports, 2,750 hospitals claimed reasonable costs for servics furnished by CRNAs. Of that number, 64 percent were rural hospitals and 36 percent were urban hospitals.

Section 608(c) of Pub. L. 100–485 allows qualified rural hospitals to continue to be paid on a reasonable cost basis for CRNA services. To qualify, the rural hospital—

- Must have employed or contracted with a CRNA, but not more than one full-time equivalent CRNA, as of January 1, 1988; and
- Must have had a volume of 250 or less surgical procedures, including inpatient and outpatient procedures, requiring anesthesia services in 1987.

In addition, each CRNA employed by or under contract with the hospital must have agreed not to bill under Part B for professional services furnished at the hospital. We estimate that almost 760 rural hospitals will qualify under this provision.

Hospitals who employ CRNAs whose services are medically directed by anesthesiologists would experience an 18 percent reduction in payments for CRNA services. These hospitals may continue to bill for services of CRNAs and experience this loss. Others may transfer the risk in payment reductions associated with the CRNA fee schedule to CRNAs by reducing their payments to CRNAs for services. Still other hospitals may choose to end the CRNAs' employment relationship with the hospital and allow the CRNAs to bill directly. The amount by which a hospital is able to reduce its payment to CRNAs for services, the hospital's Medicare patient volume, and the degree that the hospital wishes to exercise control over its CRNAs would be among the factors that ultimately determine whether hospitals continue to employ CRNAs and bill for CRNA services.

3. Impact on Physicians

a. *Anesthesiologists.* Under this proposed rule, anesthesiologists who medically direct CRNAs would not experience any reduction in Medicare medical direction allowances.

b. *Surgeons.* Under this proposed rule, medical direction payments would not be made to a surgeon who concurrently supervises CRNAs and performs surgery. The payment of a separate reasonable charge for medical direction anesthesia services is not a widespread practice. Thus, we believe that only a small number of practicing surgeons would be affected by this change. We do not have data available as to their number or the specific reduction in payments that would result from this change. We note that to the extent a surgeon employs or contracts with a CRNA, the surgeon is entitled to received the CRNA fee schedule payment, effective on or after January 1, 1989, for services the CRNA furnishes.

4. Impact on CRNAs

As noted in section III.C. of this preamble, no reduction would be made in physicians' medical direction payments while hospitals who employ CRNAs, collectively, would experience an 18 percent reduction in their payments for CRNAs. The effect of the 18 percent reduction on the hospital-employed CRNAs is discussed in section B.2. of this impact statement.

Currently, hospitals that use independently-practicing CRNAs who are not medically directed are paid on a reasonable cost basis. Under this proposed rule, hospitals or CRNAs would be paid on the basis of nonmedically-directed payment rates. These rates are based on data supplied by the AANA or CRNAs whose services are not medically directed. Thus, the rates are designed to approximate current hospital costs of obtaining the service of CRNAs contracting independently.

5. Alternatives Considered

Section III.C. of this preamble includes a complete discussion of the alternatives considered and explanations of why those alternatives were not chosen.

V. Other Required Information

A. Public Comments

Because of the large number of items of correspondence that we normally receive on a proposed rule, we are not able to acknowledge or respond to them

individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble, and we will repsond to the comments in the preamble to the final rule.

B. Effective Date of the Fee Schedule

Section 9320 of Pub. L. 99-509 requires that we implement a fee schedule for CRNAs effective with services furnished on or after January 1, 1989. However, we are first publishing the fee schedule in proposed form to allow full public participation and comment before publication of the final fee schedule. Since we will not publish the final fee schedule before the statutorily required effective date of January 1, 1989, we have issued a program instruction to our Medicare carriers describing the interim procedures for payment for CRNA services effective January 1, 1989.

We plan to issue the final rule on the fee schedule for the services of CRNAs as soon as possible following the end of the comment period and our evaluation and consideration of the comments we receive. When we do publish the final fee schedule, it will be retroactively applied to all services furnished on or after January 1, 1989.

C. Paperwork Reduction Act

This proposed rule contains no information collection requirements; therefore, it does not come under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 412

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 482

Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Chapter IV would be amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

I. Part 405, Subpart E is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

A. The authority citation for Subpart E is revised to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1842 (b) and (h), 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1385k, 1395l(a), 1395u (b) and (h), 1395x (b) and (v), 1395(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, and 1395xx).

B. In § 405.502, the introductory text of paragraph (a) is republished and a new paragraph (a)(11) is added to read as follows:

§ 405.502 Criteria for determining reasonable charges.

(a) *Criteria.* The law allows for flexibility in the determination of reasonable charges to accommodate reimbursement to the various ways in which health services are furnished and charged for. The criteria for determining what charges are reasonable include:

* * * * *

(11) In the case of services furnished by a certified registered nurse anesthethist or an anesthesiologist assistant, payment is made, after the Part B deductible is met, based on 80 percent of the least of the—

(i) Actual charge;

(ii) Prevailing charge that would be recognized if the services had been performed by an anesthesiologist; or

(iii) Fee schedule amount, as described in § 405.553.

* * * * *

C. Section 405.553 is revised to read as follows:

§ 405.553 Reasonable charges for anesthesiology services.

(a) *General rules.*

(1) In determining reasonable charge payment for anesthesiology services that meet the conditions in § 405.552(a), the carrier applies the provisions in paragraph (b) of this section for physicians and the provisions in paragraph (c) of this section for anesthetists, as defined in § 410.66 of this chapter.

(2) Payment is made for anesthesia services furnished by the following individuals:

(i) A physician with or without the assistance of an anesthetist.

(ii) An anesthetist receiving medical direction who is employed by, or under contract to—

(A) A physician;

(B) A hospital; or

(C) An ambulatory surgical center.

(iii) An anesthetist who furnishes anesthesia services or related care without medical direction.

(3) In determining reasonable charges for anesthesia services furnished by a physician, the carrier allows for the following time units, beginning from the time the physician or anesthetist begins to prepare the patient for induction of anesthesia, and ending when the patient may be safely placed under postoperative supervision and the physician or anesthetist is no longer needed in attendance:

(i) For services that are performed by a physician, including cases in which both an anesthetist and the physician furnish services to a single patient, no more than one time unit for each 15 minute interval, or fraction thereof.

(ii) For services that are medically directed by a physician, no more than one time unit for each 30 minute interval, or fraction thereof.

(b) *Services furnished by a physician.* The carrier determines the amount of payment for physician anesthesia services under the reasonable charge rules for physician services in providers set forth at § 405.551 and the general reasonable charge rules set forth at §§ 405.501 through 405.508.

(c) *Services furnished by anesthetists on or after January 1, 1989*—(1) *Amount of payment.* For services furnished on or after January 1, 1989, the carrier determines the amount of payment for anesthetist services based on the least of the—

(i) Actual charge;

(ii) Prevailing charge that would be recognized if the service had been performed by a physician; or

(iii) Fee schedule amount, which is the product of the applicable conversion factor, as described in paragraphs (c)(2) through (c)(6) of this section, and the sum of the base and time units per case. For services involving an anesthetist, the carrier allows no more than one time unit for each 15 minute interval, or fraction thereof.

(2) *Fee schedules.* HCFA establishes separate State-level fee schedules for—

(i) Anesthetists whose services are medically directed; and

(ii) Anesthetists whose services are not medically directed.

(3) *Calculation of conversion factors for anesthetists who are medically directed*—(i) *Hospital-employed anesthetists.* HCFA computes State-specific base salary amounts for medically-directed hospital-employed anesthetists from the 1986 American Association of Nurse Anesthetists annual membership survey as follows:

(A) The base salary amounts are adjusted to reflect an allowance for fringe benefits and an allowance for billing costs, and updated by an inflation factor to 1989.

(B) The adjusted amounts are divided by the product of the estimated national average number of anesthesia cases furnished by a full-time medically-directed hospital-employed anesthetist and the estimated average number of base and time units per anesthesia case.

(C) HCFA computes State-specific amounts for malpractice expenses and adds those amounts to the State-specific adjusted amounts derived in paragraph (c)(3)(i)(B) of this section. The resultant amounts are considered to be State-specific conversion factors for medically-directed hospital-employed anesthetists.

(ii) *Physician-employed anesthetists.*

HCFA computes State-specific conversion factors for medically-directed physician-employed anesthetists as follows:

(A) Multiply the locality prevailing charge conversion factor, as adjusted by the Medicare economic index, for anesthesia services of participating physicians by the average time per anesthesia case divided by 30 minutes. (If there are multiple localities within a State, or more than one carrier serves a State, a single, State-level weighted average participating physician prevailing charge is applied.)

(B) Divide the resulting amount by the average number of base and time units per anesthesia case involving a physician who medically directs and employs the CRNA.

(iii) *Calculation of medically-directed conversion factors.*

The applicable State-specific conversion factors for anesthetists who are medically directed are based on a blend of 58 percent of the hospital-employed conversion factor and 42 percent of the physician-employed conversion factor calculated under paragraphs (c)(3)(i) and (c)(3)(ii) of this section, respectively.

(4) *Calculation of conversion factors for anesthetists who are not medically directed.*

The State-specific conversion factors for anesthetists who are not medically directed are derived from the State-specific medically-directed hospital-employed anesthetist conversion factors, as calculated in paragraph (c)(3)(i) of this section, multiplied by 137.5 percent.

(5) *Updating the fee schedules.*

For services furnished in calendar years after 1989, the fee schedules applicable to each year are the previous year's schedule updated by the percentage increase in the Medicare economic index for that year.

(6) *Adjusting the fee schedules.*

The fee schedules may be adjusted for services furnished on or after January 1, 1990 to reflect data that are more accurate than the data used to construct the initial fee schedules.

(7) *Recipients of fee schedule payments.*

Fee schedule payments are made to the anesthetist who furnishes the service, or to a hospital, physician, or ambulatory surgical center with which the anesthetist has an employment or contractual arrangement that provides for these payments to be made.

II. Part 410 is amended as follows:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

A. The authority citation for Part 410 continues to read as follows:

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).

B. In § 410.10, the introductory text is republished, paragraph (o) is redesignated as paragraph (p), and a new paragraph (o) is added to read as follows:

§ 410.10 Medical and other health services: Includes services.

Subject to the conditions and limitations specified in § 410.12, "medical and other health services" includes the following services:

* * * * *

(o) Services of a certified registered nurse anesthetist or an anesthesiologist assistant.

* * * * *

C. In § 410.12, the introductory text of paragraph (a) is republished and paragraph (a)(2) is revised to read as follows:

§ 410.12 Medical and other health services: Basic conditions and limitations.

(a) *Basic conditions.* The medical and other health services specified in § 410.10 are covered by Medicare Part B only if they are not excluded under Subpart C of Part 405 of this chapter, and if they meet the following conditions:

* * * * *

(2) *By whom the services must be furnished.* The services must be furnished by a facility or other entity as specified in §§ 410.14 through 410.66.

* * * * *

D. A new § 410.66 is added to read as follows:

§ 410.66 Services of a certified registered nurse anesthetist or an anesthesiologist assistant: Basic rule and definitions.

(a) *Basic rule.*

Medicare Part B pays for anesthesia services and related care furnished by a certified registered nurse anesthetist or an anesthesiologist assistant who is legally authorized to perform the services by the State in which the services are furnished.

(b) *Definitions.*

For purposes of this part—

"Anesthesiologist assistant" means a person who—

(1) Is permitted by State law to administer anesthesia; and

(2) Has successfully completed a six-year program for anesthesiologist assistants of which two years consist of specialized academic and clinical training in anesthesia.

"Anesthetist" includes both an anesthesiologist assistant and a certified registered nurse anesthetist.

"Certified registered nurse anesthetist" means a registered nurse who is licensed by the State in which the nurse practices as a professional registered nurse and meets any other licensure requirements the State imposes with respect to nonphysician anesthetists, and either—

(1) Is currently certified by either the Council on Certification of Nurse Anesthetists or the Council on Recertification of Nurse Anesthetists; or

(2) Has graduated within the past 18 months from a nurse anesthesia program that meets the standards of the Council on Accreditation of Nurse Anesthesia Educational Programs and is awaiting initial certification.

III. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

A. the authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1122, 1815(e), 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1320a–1, 1395g(e), 1395hh, and 1395ww).

B. In § 412.1, paragraph (a) is revised to read as follows:

§ 412.1 Scope of part.

(a) *Purpose.* This part implements section 1886(d) of the Act by establishing a prospective payment system for inpatient hospital services furnished to Medicare beneficiaries in cost reporting periods beginning on or after October 1, 1983. Under the prospective payment system, payment for the operating costs of inpatient hospital services furnished by hospitals subject to the system (generally, short-term, acute-care hospitals) is made on the basis of prospectively determined rates and applied on a per discharge basis. Payment for other costs related to inpatient hospital services (capital-related costs, kidney acquisition costs incurred by hospitals with approved renal transplantation centers, direct costs of medical education, and the costs of qualified nonphysician anesthetists' services, as described in § 412.113(c)) is made on a reasonable cost basis. Additional payments are made for outlier cases, bad debts, and indirect medical education costs. Under the prospective payment system, a hospital may keep the difference between its prospective payment rate and its operating costs incurred in furnishing inpatient services, and is at risk for operating costs that exceed its payment rate.

* * * * *

C. In § 412.2, the introductory text of paragraph (d) is republished and paragraph (d)(5) is revised to read as follows:

§ 412.2 Basis of payment.

* * * * *

(d) *Excluded costs.* The following inpatient hospital costs are excluded from the prospective payment amounts and paid for on a reasonable cost basis:

* * * * *

(5) The costs of qualified nonphysician anesthetists' services, as described in § 412.113(c).

* * * * *

D. In § 412.71, the introductory text of paragraph (b) is republished and paragraph (b)(8) is revised to read as follows:

§ 412.71 Determination of base year costs

* * * * *

(b) *Modifications to base-year costs.* Prior to determining the hospital-specific rate, the intermediary will adjust the hospital's estimated base-year in patient operating costs, as necessary, to include malpractice insurance costs as described in § 413.55 of this chapter, and exclude the following:

* * * * *

(8) The costs of qualified nonphysician anesthetists' services, as described in § 412.113(c).

* * * * *

E. In § 412.113, paragraph (c) is revised to read as follows:

§ 412.113 Payments determined on a reasonable cost basis.

* * * * *

(c)(1) *Anesthesia services of hospital employed nonphysician anesthetists.* For cost reporting periods beginning on or after October 1, 1984 through any part of a cost reporting period occurring before January 1, 1989, payment is determined on a reasonable cost basis for anesthesia services provided in the hospital by qualified nonphysician anesthetists (certified registered nurse anesthetists and anesthesiology assistants) employed by the hospital or obtained under arrangements.

(2)(i) For cost reporting periods, or any part of a cost reporting period, beginning on or after January 1, 1989 through any part of a cost reporting period occurring before January 1, 1992, payment is determined on a reasonable cost basis for anesthesia services provided in a hospital by qualified nonphysician anesthetists employed by the hospital or obtained under arrangement, if the hospital demonstrates to its intermediary prior to April 1, 1989 that it meets the following criteria:

(A) The hospital is located in a rural area as defined in § 412.62(f) and is not deemed to be located in an urban area under the provisions of § 412.64(b)(3).

(B) The hospital must have employed or contracted with a qualified nonphysician anesthetist, as defined in § 410.66 of this chapter, as of January 1, 1988 to perform anesthesia services in that hospital. The hospital may employ or contract with more than one anesthetist; however, the total number of hours of service furnished by the anesthetists may not exceed 2,080 hours per year.

(C) The hospital must provide data for its entire patient population to demonstrate that, during calendar year 1987, its volume of surgical procedures (inpatient and outpatient) requiring anesthesia services did not exceed 250 procedures. For purposes of this section, a "surgical procedure requiring anesthesia services" means a surgical procedure in which the anesthesia is administered and monitored by a qualified nonphysician anesthetist, a physician other than the primary surgeon, or an intern or resident.

(D) Each qualified nonphysician anesthetist employed by or under contract with the hospital has agreed in writing not to bill on a reasonable charge basis for his or her patient care in that hospital.

(ii) To maintain its eligibility for reasonable cost reimbursement under paragraph (c)(2)(i) of this section in calendar years 1990 and 1991, a qualified hospital must demonstrate prior to January 1 of each respective year that for the prior year its volume of surgical procedures requiring anesthesia service did not exceed 250 procedures.

* * * * *

IV. Part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

A. 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).

B. In § 413.1, paragraph (b) is amended by changing the reference in the first sentence from "paragraphs (c) through (e)" to "paragraphs (c) through (f)" and a new paragraph (f) is added to read as follows:

§ 413.1 Introduction.

* * * * *

(f) *Services of qualified nonphysician anesthetists.* For cost reporting periods, or any part of a cost reporting period, beginning on or after January 1, 1989, costs incurred for the services of qualified nonphysician anesthetists are not reimbursed on a reasonable cost basis unless the provisions of § 412.113(c)(2) of this chapter apply. These services are paid under the special rules set forth in § 405.553 of this chapter.

C. In § 413.80, paragraph (a) is revised and a new paragraph (h) is added to read as follows:

§ 413.80 Bad debts, charity, and courtesy allowances.

(a) *Principle.* Bad debts, charity, and courtesy allowances are deductions from revenue and are not to be included in allowable cost; however, except for anesthetists' services described under paragraph (h) of this section, bad debts attributable to the deductibles and

coinsurance amounts are reimbursable under the program.

* * * * *

(h) *Exception.*

Bad debts arising from services for anesthetists paid under a fee schedule, as described in § 405.553 of this chapter, are not reimbursable under the program.

V. Part 482 is amended as follows:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

A. The authority citation for Part 482 continues to read as follows:

Authority: Secs. 1102, 1814(a)(6), 1861 (e), (f), (k), (r), (v)(1)(G), and (z), 1864, 1871, 1883, 1886, 1902(a)(30), and 1905(a) of the Social Security Act (42 U.S.C. 1302, 1395f(a)(6), 1395x (e), (f), (k), (r), (v)(1)(g), and (z), 1395aa, 1395hh, 1395tt, 1395ww, 1396a(a)(30), and 1396d(a)).

B. In § 482.52, the introductory text of paragraph (a) is republished and paragraphs (a)(4) and (a)(5) are revised to read as follows:

§ 482.52 Condition of participation: Anesthesia services.

* * * * *

(a) *Standard: Organization and staffing.* The organization of anesthesia services must be appropriate to the scope of the services offered. Anesthesia must be administered by only—

* * * * *

(4) A certified registered nurse anesthetist (CRNA), as defined in § 410.66(b) of this chapter, who is under the supervision of the operating practitioner or of an anesthesiologist who is immediately available if needed; or

(5) An anesthesiology assistant, as defined in § 410.66(b) of this chapter, who is under the direct supervision of an anesthesiologist who is physically present.

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance; and No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: January 6, 1989.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: January 17, 1989.

Otis R. Bowen,

Secretary.

Appendix A—Conversion Factors for Hospital-Based Medically-Directed CRNAs

[in dollars]

Alaska	13.48
Alabama	11.30
Arizona	10.17
Arkansas	9.84
California	12.18
Colorado	9.67
Connecticut	10.62
Delaware	9.62
District of Columbia	9.02
Florida	11.14
Georgia	10.69
Hawaii	10.51
Idaho	7.34
Illinois	12.34
Indiana	11.57
Iowa	10.30
Kansas	9.28
Kentucky	9.96
Louisiana	10.86
Maine	8.61
Maryland	9.42
Massachusetts	9.20
Michigan	11.28
Minnesota	9.57
Mississippi	[1]
Missouri	11.80
Montana	12.12
Nebraska	10.97
Nevada	12.08
New Hampshire	9.62
New Jersey	10.00
New Mexico	9.33
New York	10.46
North Carolina	9.29
North Dakota	9.98
Ohio	11.56
Oklahoma	9.58
Oregon	10.15
Pennsylvania	8.59
Rhode Island	9.90
South Carolina	9.58
South Dakota	11.05
Tennessee	11.87
Texas	12.06
Utah	10.72
Virginia	9.62
Vermont	8.23
Washington	9.77
West Virginia	9.29
Wisconsin	9.23
Wyoming	13.77

[1] The carrier for Mississippi uses a relative value guide for anesthesia services that is significantly different from other carrier relative value guides. Its base unit values are significantly higher and its prevailing charge conversion factor significantly lower than for other carriers. Because of this, we are unable to furnish a meaningful CRNA conversion factor for Mississippi. We will provide a blended rate in the final rule based on the premise that all carriers, including the Mississippi carrier, will have calculated revised conversion factors to be used under the uniform relative value guide for pricing anesthesia services furnished on or after January 1 1989.

Appendix B—Conversion Factors for Physician-Employed Medically-Directed CRNAs

[in dollars] [1]

Alaska	6.34
Alabama	3.59
Arizona	5.26
Arkansas	4.10
California	6.59
Colorado	4.92
Connecticut	5.09
Delaware	4.19
District of Columbia	5.18
Florida	6.57
Georgia	5.23
Hawaii	6.73
Idaho	4.42
Illinois	6.20
Indiana	4.26
Iowa	4.54
Kansas	4.12
Kentucky	4.65
Louisiana	4.03
Maine	4.08
Maryland	5.29
Massachusetts	4.92
Michigan	4.70
Minnesota	4.26
Mississippi	3.00
Missouri	4.58
Montana	5.98
Nebraska	5.04
Nevada	7.12
New Hampshire	3.76
New Jersey	5.82
New Mexico	5.59
New York	6.07
North Carolina	4.16
North Dakota	5.95
Ohio	5.06
Oklahoma	3.87
Oregon	4.42
Pennsylvania	4.95
Rhode Island	3.87
South Carolina	4.40
South Dakota	6.01
Tennessee	4.42
Texas	5.04
Utah	5.65
Virginia	4.31
Vermont	3.76
Washington	5.05
West Virginia	3.70
Wisconsin	4.59
Wyoming	4.42

[1] This conversion factor is applicable in those cases in which an anesthesiologist employs and medically directs a CRNA. The conversion factor was derived as follows: (1) We multiplied the 1989 State-level prevailing charge conversion factor for participating anesthesiologists by the ratio of 101/30 to obtain the average CRNA payment per case. The average time for an anesthesia procedure for a Medicare beneficiary is 101 minutes. Under the current system, the estimated payment for the physician employed CRNA service is one time unit per 30 minutes. (2) We divided the average payment per case by the average number of anesthesia units per case to obtain the CRNA conversion factor. The average number of anesthesia units per Medicare case is 12.1 units. (The average of 101 minutes and 12.1 units for a Medicare anesthesia procedure were obtained from the CHER study, as discussed in the preamble to this document.)

An example of this calculation is provided for Alabama. The State level 1989 prevailing charge conversion factor for participating anesthesiologists in Alabama is $12.90. The estimated 1989 conversion factor for CRNA services would be:

$$\left(\$12.90 \times \frac{101}{30} - 12.1\right) = \$3.59 \text{ per unit}$$

In States with more than one prevailing charge locality for anesthesia services or with multiple carriers, we computed the CRNA conversion factor by calculating weighted average State-level prevailing charge conversion factors. These conversion factors are based on the carriers' current base unit systems which vary. Section 4048 of Pub. L. 100-203 requires that HCFA develop a uniform relative value guide to pay for anesthesia services furnished on or after January 1, 1989. Expenditures under the uniform relative value guide must be no different than expenditures under the previous systems. To obtain this result, carrier prevailing charge conversion factors must be adjusted. In the final rule, we will advise the carriers how to calculate the conversion factors for medically-directed CRNAs based on the adjusted prevailing charge conversion factors.

	CRNA payment		Medical direction payment		Combined payment
Curent system [1]	3.4x$20=$68.00	+	8.7x$20=$174.00	=	12.1x$20=$242.00
Proposed schedule [2] (CRNA's)	12.1x$9.90=$119.79	+	$242.00-$119.79=$122.21	=	Same as above $242.00

[1] This is the combined and component pieces of the anesthesia payment in which an anesthesiologist employs and medically directs CRNAs. Under the current system, the average allowable anesthesia payment is estimated at $242.00 or the product of 12.1 units per case multiplied by the national weighted average conversion factor of $20. This amount can be separated into two components, a CRNA payment and a medical direction payment. The CRNA payment is based on the fact that the anesthesiologist receives two time units per hour and the average time per Medicare case is 101 minutes. The medical direction payment represents the difference between the combined payment and the CRNA payment.

[2] This is the combined and component pieces of the anesthesia payment under the system if only hospital data were used to establish the CRNA fee schedule. The first column of row 2 shows the CRNA fee schedule payment: 12.1 units represent the average base and time units per Medicare anesthesia case involving a CRNA; and $9.90 is the national weighted average computed from the rates in Appendix A. The second column shows the resultant medical direction payment. The medical direction payment decreases from $174.00 under the current system to $122.21 under the proposed system, a 30 percent reduction. Thus, if only hospital data were used to establish the CRNA fee schedule, medical direction payments to physicians who employ CRNAs would be reduced 30 percent. If the payment reduction were applied to all anesthesiologists who medically direct CRNAs, the reduction would be 14 percent.

Data from the American Society of Anesthesiologists and the Center for Health Economic Research's Anesthesia Practice Survey show that the percentage of physicians who medically direct their employee CRNAs is 48 percent and the percentage of physicians who medically direct other CRNAs is 52 percent. We assume that each group of physicians furnishes the same volume of cases. The reduction of 14 percent is derived from spreading the 30 percent reduction over all medically-directed cases as follows:

$$\frac{(.30)(48)}{(52+48)} = 14 \text{ percent.}$$

Appendix D—Blended Conversion Factors for Medically-Directed CRNAs

[in dollars]

Alaska	10.48
Alabama	8.06
Arizona	8.11
Arkansas	7.43
California	9.83
Colorado	7.67
Connecticut	8.30
Delaware	7.34
District of Columbia	7.41
Florida	9.22
Georgia	8.39
Hawaii	8.92
Idaho	6.11
Illinois	9.76
Indiana	8.50
Iowa	7.88
Kansas	7.11
Kentucky	7.73
Louisiana	7.99
Maine	6.71
Maryland	7.69
Massachusetts	7.40
Michigan	8.52
Minnesota	7.34
Mississippi	[1]
Missouri	8.77
Montana	9.54
Nebraska	8.48
Nevada	10.00
New Hampshire	7.16
New Jersey	8.25
New Mexico	7.76
New York	8.62
North Carolina	7.14
North Dakota	8.29
Ohio	8.83
Oklahoma	7.18
Oregon	7.74
Pennsylvania	7.06
Rhode Island	7.37
South Carolina	7.41
South Dakota	8.93
Tennessee	8.74
Texas	9.11
Utah	8.59
Virginia	7.39
Vermont	6.35
Washington	7.79
West Virginia	6.94
Wisconsin	7.28
Wyoming	9.84

[1] The carrier for Mississippi uses a relative value guide for anesthesia services that is significantly different from other carrier relative value guides. Its base unit values are significantly higher and its prevailing charge conversion factor significantly lower than for other carriers. Because of this, we are unable to furnish a meaningful CRNA conversion factors for Mississippi. We will provide a blended rate in the final rule based on the premise that all carriers, including the Mississippi carrier, will have calculated revised conversion factors to be used under the uniform relative value guide for pricing anesthesia services furnished on or after January 1, 1989.

Appendix E—Conversion Factors for Nonmedically-Directed CRNAs

[in dollars]

Alaska	18.54
Alabama	15.53
Arizona	13.99
Arkansas	13.53
California	16.75
Colorado	13.30
Connecticut	14.60
Delaware	13.23
District of Columbia	12.41
Florida	15.32
Georgia	14.69
Hawaii	14.45
Idaho	10.09
Illinois	16.97
Indiana	15.90
Iowa	14.16
Kansas	12.76
Kentucky	13.70
Louisiana	14.93
Maine	11.84
Maryland	12.95
Massachusetts	12.65
Michigan	15.52
Minnesota	13.16
Mississippi	[1]
Missouri	16.23
Montana	16.67
Nebraska	15.08
Nevada	16.61
New Hampshire	13.23
New Jersey	13.76
New Mexico	12.83
New York	14.39
North Carolina	12.78
North Dakota	13.72
Ohio	15.89
Oklahoma	13.18
Oregon	13.96
Pennsylvania	11.81
Rhode Island	13.62
South Carolina	13.18
South Dakota	15.19
Tennessee	16.32
Texas	16.58
Utah	14.74
Virginia	13.23
Vermont	11.32
Washington	13.43
West Virginia	12.77
Wisconsin	12.69
Wyoming	18.93

[1] The carrier for Mississippi uses a relative value guide for anesthesia services that is significantly different from other carrier relative value guides. Its base unit values are significantly higher and its prevailing charge conversion factor significantly lower than for other carriers. Because of this, we are unable to furnish a meaningful CRNA conversion factors for Mississippi. We will provide a blended rate in the final rule based on the premise that all carriers, including the Mississippi carrier, will have calculated revised conversion factors to be used under the uniform relative value guide for pricing anesthesia services furnished on or after January 1, 1989.

[FR Doc. 89-1693 Filed 1-25-89; 8:45 am]

BILLING CODE 4120-01-M

42 CFR Part 413

[BERC-601-P]

Medicare Program; Payment for Outpatient Surgery at Eye Specialty Hospitals and Eye and Ear Specialty Hospitals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: In accordance with section 4068(a) of the Omnibus Reconciliation Act of 1987, this proposed rule would revise the payment provisions concerning outpatient hospital services furnished in connection with ambulatory surgical procedures for certain qualified eye hospitals and eye and ear hospitals. We are proposing that, for cost reporting periods beginning on or after October 1, 1988 and before October 1, 1990, the blended payment amount applicable to these hospitals would remain at 75 percent of the hospital-specific amount and 25 percent of the ambulatory surgical center amount.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on March 27, 1989.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-601-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 Ave., SW., Washington, DC.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-601-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of this 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: Linda McKenna, (301) 966-4530.

SUPPLEMENTARY INFORMATION:

I. Background

Section 9343(a) of the Omnious Budget Reconciliation Act of 1986 (Pub. L. 99-509), enacted on October 21, 1986, set forth a new methodology to be used in determining Medicare payment for facility services furnished in a hospital on an outpatient basis in connection with covered ambulatory surgical center (ASC) procedures that are specified by the Secretary in accordance with section 1833(i)(1)(A) of the Social Security Act (the Act) and 42 CFR 416.65. Section 9343(a) of Pub. L. 99-509 amended section 1833(a)(4) of the Act and added a new section 1833(i)(3) to the Act to provide that, for hospital cost reporting periods beginning on or after October 1, 1987, payment for outpatient facility services in the aggregate is to be based on a comparison between two amounts. The payment is the lesser of the following:

- The amount for the services that would be paid to the hospital under section 1833(a)(2)(B) of the Act (that is, the lower of the hospital's reasonable costs or customary charges for the services, reduced by the applicable deductible and coinsurance amounts).
- An amount based on a blend of—

—The amount that would be paid to the hospital for the services under section 1833(a)(2)(B) of the Act (referred to below as the hospital-specific amount); and

—The amount that would be paid to a freestanding ASC for the same procedure in the same geographic area, in accordance with section 1833(i)(2)(A) of the Act, which is equal to 80 percent of the standard overhead amount reduced by the applicable deductible amount (referred to below as the ASC payment amount).

Section 1833(i)(3)(B) of the Act, as added by section 9343(a) of Pub. L. 99-509, provided that for cost reporting periods beginning on or after October 1, 1987 but before October 1, 1988, the blended amount is based on 75 percent of the hospital-specific amount and 25 percent of the ASC payment amount attributable to the procedure. For cost reporting periods beginning on or after October 1, 1988, the blended payment amount is based on 50 percent of the hospital-specific amount and 50 percent of the ASC payment amount.

We published a final rule in the **Federal Register** on October 1, 1987 (52 FR 36765) to implement the revised payment methodology for hospital outpatient ASC procedures. The regulations implementing this policy are set forth at 42 CFR 413.118.

II. New Legislation

Section 4068(a) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), enacted on December 22, 1987, amended section 1833(i)(3)(B)(ii) of the Act to provide certain hospitals a two-year extension of the blended payment amount applicable for cost reporting periods beginning in Federal fiscal year (FY) 1988. The extenson of that blended payment amount (that is, 75 percent of the hospital-specific amount and 25 percent of the ASC payment amount) applies to eye hospitals and eye and ear hospitals that meet certain criteria discussed below and is effective for cost reporting periods beginning on or after October 1, 1988 and before October 1, 1990.

Section 4068(a)(2) of Pub. L. 100-203 amended section 1833(i)(3)(B)(ii) of the Act to provide that a hospital may make an application to the Secretary for an extension of the blended payment amount (75 percent of the hospital-specific amount and 25 percent of the ASC payment amount) if it demonstrates that it—

- Specializes in eye services, or eye and ear services, as determined by the Secretary;
- Receives more than 30 percent of its total revenues from outpatient services; and
- Was an eye specialty hospital or eye and ear specialty hospital on October 1, 1987.

III. Provisions of This Proposed Rule

To qualify as an eye specialty hospital or an eye and ear specialty hospital under section 4068(a) of Pub. L. 100-203, a hospital, in addition to making an application as discussed below, would have to meet certain qualifying criteria.

One of the criteria that a hospital would have to meet to qualify for the extension of the FY 1988 blended payment amount (that is, a blended amount based on 75 percent of the hospital-specific amount and 25 percent of the ASC payment amount) is that it must specialize in eye services or eye and ear services. We considered using outpatient data for determining whether a hospital specializes in providing eye services or eye and ear services. However, we believe that the types of services that a hospital provides to its inpatients represent a more valid and reliable picture of the types of services it generally provides, including services to its outpatients. Since inpatient services

generally comprise a larger part of a hospital's total operation than outpatient services, we believe that the use of inpatient data would be a more accurate identifier of a hospital's specialty. In addition, we believe that the completeness and quality of the diagnostic information for inpatient services is far superior to that for outpatient care. Furthermore, we reiterate the belief that the inpatient area itself is the best representation of a hospital's specialty area.

Under the Medicare program, payment for most inpatient hospital services is made at a predetermined specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). By examining the DRGs into which a hospital's Medicare discharges are classified, we can ascertain the type of inpatient hospital services the hospital furnishes. DRGs 36 through 48 relate to diseases and disorders of the eye, and DRGs 49 through 74 relate to diseases and disorders of the ear, nose, and throat. We believe that a hospital that has more than 60 percent of its Medicare discharges classified into the DRGs relating to diseases and disorders of the eye, or ear, nose, and throat, clearly specializes in eye procedures or eye and ear procedures and thus could qualify as an eye specialty hospital or an eye and ear specialty hospital for purposes of section 1833(i)(3)(B)(ii) of the Act.

The second criterion that a hospital would have to meet to qualify for the extension of the FY 1988 blended payment amount is that it receives more than 30 percent of its total revenues from outpatient services. For purposes of these provisions, we would consider revenues to be a hospital's gross charges as defined for the purpose of Medicare reimbursement. That is, gross charges are the regular rates established by a provider for services furnished to beneficiaries and other charge-paying patients. We believe that charges should be related consistently to the cost of the services and applied uniformly to all patients—inpatients and outpatients.

The third criterion would be that a hospital must have been an eye specialty hospital or an eye and ear specialty hospital on October 1, 1987. Therefore, we would use the data available for a hospital's cost reporting period beginning on or after October 1, 1986 and before October 1, 1987 to determine if the hospital would meet the necessary criteria. Whereas the statute is silent with respect to the period during which the hospital's outpatient revenues must represent 30 percent of its total revenues, section 1833(i)(3)(B)(ii) of the Act requires that a hospital demonstrate it was an eye specialty hospital or an eye and ear specialty hospital on October 1, 1987. Thus, we believe it is fully consistent and appropriate to apply the outpatient revenue test during the cost reporting period when the hospital's specialty is determined.

Hospitals seeking to qualify for the two-year extension of the FY 1988 blended payment rate under the criteria described above would be required to submit an application to the Secretary. We would require that a hospital submit its request in writing to its fiscal intermediary by [60 days from the date of publication] or the start of the hospital's cost reporting period beginning on or after October 1, 1988, whichever is later. As discussed above, in determining whether a hospital qualifies for an extension, the intermediary would use data available from cost reporting periods beginning on or after October 1, 1986 and before October 1, 1987. Upon completion of its determination, the intermediary would notify the hospital and the appropriate HCFA regional office of its determination.

A hospital that meets the three criteria, and has its application approved, would be eligible for an extension of the FY 1988 blended payment amount under § 413.118 for cost reporting periods beginning on or after October 1, 1988 and before October 1, 1990. We are proposing that each hospital that qualifies for the extension would have the extension granted retroactive to its first cost reporting period beginning on or after October 1, 1988. The blended payment amount would be equal to the sum of 75 percent of the hospital-specific amount and 25 percent of the ASC payment amount. For cost reporting periods beginning on or after October 1, 1990, the blended payment amount for eye and eye and ear hospitals would be equal to the sum of 50 percent of the hospital-specific amount and 50 percent of the ASC payment amount (which is the blended payment amount applicable to all hospitals not eligible for the extension effective with cost reporting periods beginning on or after October 1, 1988). We note that hospitals that qualify for the extension would continue to be subject to the payment principle in § 413.118(c) that provides that the aggregate amount of payments for facility services that are related to ASC procedures furnished by a hospital on an outpatient basis is equal to the lesser of—

- The hospital's reasonable costs or customary charges; or
- The blended payment amount.

We are proposing to amend § 413.118(d) to implement the special payment provisions for eye specialty hospitals and eye and ear specialty hospitals required by section 4068(a) of Pub. L. 100–203. We would also revise an incorrect statutory citation in § 413.118(a) so that paragraph (a) correctly states that § 413.118 implements sections 1833(a)(4) and (i)(3) of the Act.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule would not meet the $100 million criterion nor do we believe that it would meet the other E.O. 12291 criteria. Therefore, this proposed rule is not a major rule under E.O. 12291, and an initial regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians are treated as small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an 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 of a Metropolitan Statistical Area.

Based on the definition of specialty hospital set forth in this proposed rule, we have identified 15 hospitals that would qualify as either eye specialty hospitals or eye and ear specialty hospitals. Although the effects of the statute and this proposed rule may have a significant effect on those hospitals that qualify as specialty hospitals, we believe that the number of hospitals that would qualify represent a small fraction of all small rural hospitals and of all hospitals. Thus, because affected hospitals do not represent a substantial number either of all small rural hospitals or all hospitals, the Secretary certifies that a regulatory flexibility analysis and a analysis of the effects of this rule on small rural hospitals is not required.

V. Other Required Information

A. Paperwork Reduction Act

This proposed rule contains no information collection requirements; therefore, it does not come under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

B. Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble, and, we will respond to the comments in the preamble of that rule.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413 would be amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICE

1. The authority citation for Part 413 is revised to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a) and (i), 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) and (i), 1395x(v), 1395hh, 1395rr, and 1395ww).

2. In § 413.118, paragraph (a) is revised; the spelling of the word "date" in paragraph (c)(2) is corrected to read "data"; the spelling of the word "reasonble" in paragraph (d)(1)(i) is corrected to read "reasonable"; paragraph (d)(2) is revised; and a new paragraph (d)(3) is added to read as follows:

§ 413.118 Payment for facility services related to covered ASC surgical procedures performed in hospitals on an outpatient basis.

(a) *Basis and scope.* This section implements sections 1833(a)(4) and (i)(3) of the Act and establishes the method for determining Medicare payments for services related to covered ambulatory surgical center (ASC) procedures performed in a hospital on an outpatient basis. It does not apply to services furnished by an ASC operated by a hospital that has an agreement with HCFA to be paid in accordance with § 416.30 of this chapter. (For regulations governing ASCs see Part 416 of this chapter.)

* * * * *

(d) *Blended payment amount.* * * *

(2) Except as provided in paragraph (d)(3) of this section, for cost reporting periods beginning on or after October 1, 1988, the blended payment amount is equal to 50 percent of the hospital-specific amount and 50 percent of the ASC payment amount.

(3) For cost reporting periods beginning on or after October 1, 1988 and before October 1, 1990, the blended payment amount is equal to 75 percent of the hospital-specific amount and 25 percent of the ASC payment amount for a hospital that makes an application to its fiscal intermediary and meets the following requirements:

(i) More than 60 percent of the hospital's inpatient hospital discharges, as described in § 412.60 of this chapter, occurring during its cost reporting period beginning in Federal fiscal year 1987, are classified in diagnosis-related groups 36 through 74.

(ii) During its cost reporting period beginning in Federal fiscal year 1987, more than 30 percent of the hospital's total revenues is from outpatient services.

* * * * *

(Catalog of Domestic Assistance Programs No. 13.773, Medicare-Hospital Insurance; and No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: October 4, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: December 6, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 89–1694 Filed 1–25–89; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–6; FCC 88–368]

Broadcast Services; Authorization of Use of Multiple Synchronous Transmitters by AM Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule termination.

SUMMARY: The Commission concludes that current transmitter synchronization technology is still in a developmental phase, and that it would therefore be inappropriate to issue proposed technical rules at this time. However, the Commission will continue to authorize individual AM broadcast stations to conduct synchronous operations on an experimental basis.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James E. McNally, Jr., Mass Media Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION: This is a summary of Commission's *Memorandum Opinion and Order*, MM Docket 87–6, adopted November 8, 1988 and released January 13, 1989. 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.

Regulatory Flexibility. In accordance with section 605(b), an Initial Regulatory Flexibility Analysis is not required because no rule amendments are proposed herein. Consequently this action will not have a significant economic impact on a substantial number of small entities.

Summary of the Memorandum Opinion and Order

1. On March 3, 1987, the Commission released a *Notice of Inquiry ("Inquiry")* to solicit information relevant to the development of appropriate technical standards for the operation of synchronous AM transmitters (See 52 FR 8085, published March 16, 1987). Having carefully considered the comments filed in response to the *Inquiry*, the Commission concludes that current transmitter synchronization

technology does not warrant continuing this proceeding to the rule making stage at this time.

2. Synchronous broadcasting is the use of the two or more geographically proximite transmitters broadcasting identical programming on the same radio frequency to enhance or extend the coverage of an AM station. Because the individual service areas of the transmitters will usually overlap to some extent, mutual interference will occur, but can be minimized by precisely synchronizing the carrier frequency or phase between them.

3. The *Inquiry* noted that conventional methods of enhancing or extending AM station service areas (e.g., increasing transmitter power, changing a directional antenna pattern, or relocating the station) were often precluded because of congestion in the AM service and difficulty in protecting signals of other stations. The use of supplemental, carefully placed, synchronous transmitters thus appears to offer an effective and economical way of improving service to geographic areas that are poorly served by conventional AM stations. However, the use of synchronous AM transmitters poses a number of complex technical and administrative questions. These include intra-system and inter-system interference criteria as well as various licensing and eligibility requirements. The Commission requested comment as to the most appropriate method for calculating the interference effects of multiple synchronous transmitters. The *Inquiry* encouraged testing to obtain data and practical test results based on actual field experience. The Commission also requested comment on appropriate power limitations for synchronous transmitters.

4. In addition to the technical issues, the Commission raised questions pertaining to potential licensing and eligibility requirements. For example, comment was requested on whether there should be limits on the extent to which coverage could be augmented, and if synchronous operation should be permitted only in those areas within a station's normaly protected contour. Additionally, the Commission sought comment on whether synchronous transmitters should be authorized only to the original "parent" AM station licensee, and whether synchronous transmitters should be counted for purposes of determining compliance with the multiple ownership "rule of twelve" and local ownership "duopoly" rules.

5. In response to the *Inquiry*, the Commission received twenty-two comments and one reply comment. Many of these comments expressed optimism over the potential benefits of synchronous transmitters, but others enumerated a variety of technical and operational difficulties. Comments on the effects of technical characteristics on intra-system signal protection ratios were expressed only in general terms. Experiences with program distribution equalization seemed encumbered with difficulties, and in several cases problems were encountered in achieving synchronization.

6. The matter of inter-system interference criteria received considerable comment. Generally, the parties recommended that synchronous transmitters be afforded protection similar to that provided the primary station, and that such transmitters not be used to extend the interference contour of the parent station. There was a consensus that synchronous transmitters should be regarded simply as extensions of the primary transmitter, and as such, comply with all current regulations.

7. Agreement was also noted in the matter of the maximum output power appropriate for synchronous transmitters, the general conclusion being that the maximum power of a synchronous transmitter should not exceed the power of the primary station. One commenter suggested that a minimum power of 100 watts be required and that the radiation efficiency of synchronous transmitter antenna systems meet a minimum standard. However, another disputed this view, arguing that allowing very low power levels would be consistent with the Commission's policy in conferring post-sunset authority. There was a consensus among the commenters on many of the various licensing and eligibility issue raised in the *Inquiry*. All agreed that synchronous transmitters should be authorized only to the licensees of the primary station, that they should not be counted for purposes of determinng compliance with multiple ownership regulations and that application of "duopoly" restrictions would be inappropriate, since synchronous transmitters were logical extensions of the primary station.

8. In sum, the *Inquiry* appears to have been useful in soliciting direction on eligibility and authorization issues associated with the use of synchronous transmitters, but less successful in resolving some of the technical issues. Therefore, the Commission concludes that while this proceeding has produced additional beneficial information concerning synchronous AM transmission, remaining technical uncertainties appear to preclude meaningful rule making activity at this time. The record indicates the use of a variety of different approaches to achieving transmitter synchronization, each with varying degrees of success. More importantly, no particular approach to synchronization emerged as being consistently efficacious, even in the absence of economic considerations. The record does mention several emerging technologies that may provide an economical and effective means of achieving phase synchronization. However, none of these have yet been tested in conjunction with AM broadcast operation. Because the applicability of the various current and new technologies to the unresolved technical issues related to AM transmitter synchronization may take some years to determine, it appears that the prudent course of action is to terminate this proceeding without action. Notwithstanding this action, the Commission will continue to issue experimental authorizations to AM station licensees who wish to investigate further the potential benefits of synchronous operation. Accordingly, pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, it is ordered that MM Docket No. 87–6 is terminated.

Donna R. Searcy,

Secretary.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

[FR Doc. 89–1576 Filed 1–25–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–591, RM–6467]

Radio Broadcasting Services; Fruithurst, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Steven L. Gradick, seeking the allotment of FM Channel 274A to Fruithurst, Alabama, as that community's first local broadcast service. Reference coordinates for this proposal are 33–43–57 and 85–28–06.

DATES: Comments must be filed on or before March 13, 1989, and reply comments on or before March 28, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the

petitioner, as follows: Steve Gradick, P.O. Box 32, 12 First Avenue West, Fruithurst, AL 36262.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–591, adopted November 30, 1988, and released January 19, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89–1823 Filed 1–25–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–593, RM–6490]

Radio Broadcasting Services; Wetumpka, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by William B. Grant, seeking the allotment of Channel 282A to Wetumpka, Alabama, as that community's first local FM broadcast service. Reference coordinates for this proposal are 32–36–46 and 86–11–58.

DATES: Comments must be filed on or before March 13, 1989, and reply comments on or before March 28, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: William B. Grant, Route 1, Box 400B, York, AL 39625.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–593, adopted November 30, 1988, and released January 19, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89–1825 Filed 1–25–89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88–592, RM–6491]

Radio Broadcasting Services; Dunsmuir, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Jay Stevens, seeking the allotment of FM Channel 261A to Dunsmuir, California, as that community's first local broadcast service. Reference coordinates for this proposal are 41–12–30 and 122–16–18.

DATES: Comments must be filed on or before March 13, 1989, and reply comments on or before March 28, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: William L. Zawila, Esq., 12550 Brookhurst Street, Suite A, Garden Grove, CA 92640.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–592, adopted November 30, 1988, and released January 19, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 23), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89–1822 Filed 1–25–89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-594, RM-6394]

Radio Broadcasting Services; Othello, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by P-N-P Broadcasting, Inc., proposing the substitution of Channel 248C2 for channel 249A at Othello, Washington and modification of its construction permit for channel 249A to specify operation on the higher class channel. The substitution can be made consistent with the Commission's minimum spacing requirements from Othello's reference coordinates (46-9-36 and 119-10-00). Concurrence of the Canadian government must be obtained.

DATES: Comments must be filed on or before March 13, 1989, and reply comments on or before March 28, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Duane J. Polich, President, P-N-P Broadcasting, Inc., 9235 N.E. 175th, Bothell, WA 98011 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-594, adopted November 30, 1988, and released January 19, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89-1826 Filed 1-25-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-595, RM-6433]

Television Broadcasting Services; Casper and Sheridan, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Jessica Longston proposing the reallotment of vacant and unapplied for VHF Television Channel 9 to Casper, Wyoming from Sheridan, Wyoming. The allotment can be made to Casper in compliance with Section 73.610 of the Commission's Rules with a site restriction of 23.7 kilometers (14.7 miles) southwest of the city at coordinates 42-44-33 and 106-33-58. The proposal could provide Casper with its fifth commercial television service. This proposal is not affected by the freeze on television allotments, or applications therefor.

DATES: Comments must be filed on or before March 13, 1989, and reply comments on or before March 28, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Richard R. Zaragoza, Esquire, Fisher, Wayland, Cooper & Leader, 1255 23rd Street, NW., Suite 800, Washington, DC 20037 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-595, adopted November 30, 1988, and released January 19, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.204(b) for rules governing permissible *ex parte* contact.

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

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89-1824 Filed 1-25-89; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 54, No. 16
Thursday, January 26, 1989

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

Food and Nutrition Service

Summer Food Service Program for Children; Program Reimbursement for 1989

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children. These adjustments reflect changes in the Consumer Price Index and are required by the statute governing the Program.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This notice has been reviewed under Executive Order 12291 and has been classified as *not major* because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

Definitions

The terms used in this Notice shall have the meaning ascribed to them in the regulations governing the Summer Food Service Program for Children (7 CFR Part 225).

Background

Pursuant to section 13 of the National School Lunch Act (42 U.S.C. 1761) and the regulations governing the Summer Food Service Program for Children (7 CFR Part 225), notice is hereby given of adjustments in Program payments for meals served to children participating in the Summer Food Service Program for Children during the 1989 Program. Adjustments are based on changes in the food away from home series of the Consumer Price Index for All Urban Consumers for the period November 1987 through November 1988. The new reimbursement rates in cents are as follows:

Maximum Per Meal Reimbursement Rates

Operating Costs:	
Breakfast	99.50
Lunch or Supper	178.50
Supplement	46.75
Administrative Costs:	
a. For meals served at rural or self-preparation sites:	
Breakfast	9.25
Lunch or Supper	17.00
Supplement	4.50
b. For meals served at other types of sites:	
Breakfast	7.25
Lunch or Supper	14.00
Supplement	3.75

The total amount of payments to State agencies for disbursement to Program sponsors will be based upon these Program reimbursement rates and the number of meals for each type served.

The above reimbursement rates, before being rounded-off to the nearest quarter-cent, represented a 4.30 per cent increase during 1988 (from 118.6 in November 1987 to 123.7 in November 1988) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The change in the index values, as compared to index values published in the Notice for the preceding year, are due to the general rebasing of the Consumer Price Index by the Bureau of Labor Statistics.

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

Date: January 19, 1989.

Anna Kondratas,

Administrator, Food and Nutrition Service.

[FR Doc. 89–1879 Filed 1–25–89; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Pacific Northwest Region; Delegation of Authority

AGENCY: Forest Service, USDA.

ACTION: Notice of delegation.

SUMMARY: The Regional Forester of the Pacific Northwest Region of the Forest Service has delegated authority to Forest Supervisors to issue easement reservations to the Bureau of Land Management for construction and use of roads under authority of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1761). The delegation is being issued in a Regional supplement to chapter 2730 of the Forest Service Manual, the principal source of internal direction to Forest Service line and staff officers.

EFFECTIVE DATE: This delegation was effective on January 9, 1989, the date the directive was signed.

FOR FURTHER INFORMATION CONTACT: Questions about the exercise of this delegation may be addressed to Eugene Fontenot, Leader Rights-of-Way, Pacific Northwest Region, Forest Service, USDA 319 SW Pine Street, P.O. Box 3623, Portland, Oregon 97208. Telephone: (503) 326–2921.

Dated: January 10, 1989.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 89-1757 Filed 1-25-89; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Wheeling Creek Watershed, West Virginia and Pennsylvania

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that a supplemental environmental impact statement is being prepared for the Wheeling Creek Watershed, Ohio and Marshall Counties, West Virginia and Greene and Washington Counties, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia 26505, telephone (304) 291-4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the supplemental project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Rollin N. Swank, State Conservationist, has determined that the preparation and review of a supplemental environmental impact statement are needed for this project.

Notice of Intent to Prepare a Supplemental Environmental Impact Statement

The supplemental project concerns a plan for flood prevention. Alternatives under consideration to reach these objectives include nonstructural measures, channel work, dikes, floodwalls, and dams.

A draft supplemental environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft supplemental environmental impact statement. Meetings have been held with various resource agency personnel to determine the scope of the evaluation of the proposed action. Further information on the proposed action, or planned meetings may be obtained from Rollin N. Swank, State Conservationist, at the above address or telephone (304) 291-4151.

Date: January 18, 1989.

Rollin N. Swank,

State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

[FR Doc. 89-1867 Filed 1-25-89; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 423]

Resolution and Order Approving the Application of the City of Oakland, CA, for Subzone Status at the Mazda Facility in Benicia, CA

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the FTZ Board (the Board) Regulations (15 CFR Part 400), the Board adopts the following order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of Oakland, California, grantee of FTZ 56, filed with the Foreign-Trade Zones Board (the Board) on October 16, 1987, requesting special-purpose subzone status for the vehicle processing (non-manufacturing) facility of Mazda Motors of America (Central), Inc., in Benicia, California, adjacent to the San Francisco-Oakland Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone at the Mazda Facility in Benicia, CA

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the City of Oakland, California, grantee of Foreign-Trade Zone No. 56, has made application (filed October 16, 1987, FTZ Docket 22-87, 52 FR 41314), in due and proper form to the Board for authority to establish a special-purpose subzone at the vehicle accessorization (non-manufacturing) facility of Mazda Motors of America (Central), Inc., in Benicia, California.

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed October 16, 1987, the Board hereby authorizes the establishment of a subzone at the Mazda facility, designated on the records of the Board as Foreign-Trade Subzone No. 56A at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the

construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantees regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 18th day of January, 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-1838 Filed 1-25-89; 8:45 am]

BILLING CODE 3510-DS-M

Foreign-Trade Zones Board

[Order No. 421]

Voluntary Termination of Foreign-Trade Subzone 27A, Fall River, MA

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board has adopted the following Order:

Whereas, on June 20, 1980, the Foreign-Trade Zones Board by Order No. 160 (45 FR 43455) issued a grant to the Massachusetts Port Authority (Massport), grantee of the Foreign-Trade Zone 27, authorizing the establishment of a special-purpose subzone at the Sterlingwale Corporation's textile manufacturing facility in Fall River, Massachusetts, designated Foreign-Trade Subzone No. 27A;

Whereas, Massport advised the Board on February 12, 1988, that zone procedures are no longer needed at the facility, and requests voluntary relinquishment of the subzone; and,

Whereas, the request has been reviewed by the FTZ Staff and the Customs Service, and approval has been recommended;

Now, Therefore, the Foreign-Trade Zones Board terminates the status of Subzone No. 27A effective this date.

Signed at Washington, DC this 19th day of January, 1989.

Foreign-Trade Zones Board

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-1836 Filed 1-25-89; 8:45 am]

BILLING CODE 3510-DS-M

Foreign-Trade Zones Board

[Order No. 422]

Voluntary Termination of Foreign-Trade Subzone 27B, Quincy, MA

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board has adopted the following Order:

Whereas, on December 2, 1983, the Foreign-Trade Zones Board by Order No. 234 (48 FR 55304) issued a grant to the Massachusetts Port Authority (Massport), grantee of Foreign-Trade Zone 27, authorizing the establishment of a special-purpose subzone at the General Dynamics shipbuilding facility in Quincy, Massachusetts, designated Foreign-Trade Subzone No. 27B;

Whereas, Massport advised the Board on February 12, 1988, that the company no longer requires zone procedures at its facility, and requests voluntary relinquishment of the subzone; and,

Whereas, the request has been reviewed by the FTZ Staff and the Customs Service, and approval has been recommended;

Now, Therefore, the Foreign-Trade Zones Board terminates the status of Subzone No. 27B effective this date.

Signed at Washington, DC this 19th day of January, 1989.

Foreign-Trade Zones Board

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-1837 Filed 1-25-89; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa and Certification Requirements Under the Special Regime for Certain Woven Apparel Products from Mexico

January 19, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending export visa and certification requirements.

EFFECTIVE DATE: January 27, 1989.

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 13, 1988, as amended.

The Governments of the United States and the United Mexican States reached agreement to amend the existing visa and certification requirements to extend coverage under the Special Regime to woven apparel products assembled in Mexico from fabric parts formed and cut in the United States which are subject to bleaching, acid-washing, stone-washing or permapressing after assembly.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 32421, published on August 25, 1988.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 19, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive

issued to you on August 22, 1988, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, establishing visa and certification requirements for certain cotton and man-made fiber textile products, produced, manufactured or assembled in Mexico.

Effective on January 27, 1989, you are directed to permit entry under the Special Regime of woven apparel products assembled in Mexico from fabric parts formed and cut in the United States and then subjected to bleaching, acid-washing, stone-washing or permapressing in Mexico after assembly and exported to the United States on and after January 1, 1989.

These products may be entered under the Special Regime even though they may not be classified under HTS number 9802.00.8010 of the Harmonized Tariff Schedule.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-1796 Filed 1-25-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting.

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 16-17 February 1989.

Time:

0900-1100 hours, 16 February (Open)
1300-1330 hours, (Closed)
1330-1700 hours, (Open)
0800-1200 hours, 17 February (Open)

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board's independent review of a product improvement program for the M1 Tank will hold its initial meeting. It will consist of briefings and discussions on the M1 Tank Block 2 and Block 3 planned improvements of electronic hardware and software. The open portions of the meeting are open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The closed portions of the meeting are closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. Appendix 2, subsection 10(d). The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-1866 Filed 1-25-89; 8:45 am]

BILLING CODE 3710-8-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by February 3, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3517) requires that the Director of the Office of Management and Budget (OMB) provide interested agencies and persons an early and meaningful opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of Review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden; and (6) Abstract. Because an expedited review by OMB is requested, the information collection request is also included as an attachment to this notice.

Dated: January 23, 1989.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Expedited
Title: Survey on Library Services to Children in Public Libraries
Abstract: This survey is used by public libraries to provide information on their library services to children. The Office of Library Programs uses this information in future planning of library services.
Additional Information: The National Center for Education Statistics is requesting an expedited review in order to provide national data on children's services to determine the appropriateness of amendments to The Library Services and Construction Act prior to its reauthorization in 1989. This data also is urgently needed for a White House Conference on Libraries and Information Science.
Frequency: Nonrecurring
Affected Public: State or local governments
Reporting Burden:
Responses: 813
Burden Hours: 407
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

BILLING CODE 4000-01-M

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE ASSISTANT SECRETARY
FOR EDUCATIONAL RESEARCH AND IMPROVEMENT

National Center for Education Statistics

February 1989

Dear Library Director:

We request your cooperation in completing this questionnaire for the national survey on library services to children in public libraries. The purpose of the survey is to obtain current information regarding the availability and usage of services for children. This survey is the first national study on this topic and the findings will be used to help guide efforts to improve library services to children.

This survey was requested by the Office of Library Programs in the Office of Educational Research and Improvement, U.S. Department of Education. It has been reviewed by a group of children's library specialists, including library educators and practitioners, and approved by the Office of Management and Budget (OMB). We estimate that it will take an average of 30 minutes to complete the attached form. If you have any comments regarding this estimate or any other aspect of this survey, send them to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651, and to the Office of Management and Budget, Paperwork Reduction Project, OMB Number 1850-New, Washington, D.C. 20503.

The survey has been designed to be completed by the Children's Librarian or the person most knowledgeable about services to children 14 years old and under (8th graders and below) in your library. We are requesting information about individual libraries rather than library systems. Please respond only for your individual library building and the community it serves.

While your participation is voluntary, your cooperation is needed to make the results of this survey comprehensive, accurate, and timely. The information collected will be presented as aggregated statistics only, with no individually identifying information.

The survey is being conducted by our contractor, Westat, a research firm in Rockville, Maryland, using the Fast Response Survey System (FRSS). According to FRSS practice, Westat will send you a report of the survey findings when they are available.

We would appreciate your completing the questionnaire and returning it to Westat within two weeks. If you have any questions about the survey, please call Laurie Lewis, Westat's Survey Manager, at the toll-free Westat number (800) 937-8281, or Fay Nash, the NCES Project Officer for FRSS, at (202) 357-6754. Your cooperation is greatly appreciated.

Sincerely,

Emerson J. Elliott
Acting Commissioner

WASHINGTON, D.C. 20208

FAST RESPONSE SURVEY SYSTEM (FRSS)

NATIONAL CENTER FOR EDUCATION STATISTICS
U.S. DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20208-5651

Form approved
OMB No. 1850-
App. Exp.

SURVEY ON LIBRARY SERVICES TO CHILDREN IN PUBLIC LIBRARIES

This report is authorized by law (20 U.S.C. 1221e-1). While you are not required to respond, your cooperation is needed to make the results of this survey comprehensive, accurate, and timely.

This study is designed to obtain information about individual libraries rather than library systems. Please respond only for services that take place in your individual library BUILDING and the community it serves.

1a. Please estimate the number of persons (of all ages) who used your library in a **TYPICAL WEEK** during fall 1988. (Please use counts such as door counts rather than circulation information). _____ persons per week.

1b. About what percent of these users were children 14 years old and under (8th graders and below)? _____%

2. About what percent of your library's total circulation is children's materials? _____%

3. What percent of your library's total book budget for the last completed fiscal year was used for children's books? _____%

4. How many hours was your library open to the public during a typical week in fall 1988? _____ hours per week.

5a. How many librarians (full- and part-time) are employed at your library? (Include all paid staff who work as librarians, regardless of training. Do not include librarians whose **ONLY** job is technical or administrative (i.e., who do not work directly with the public). Do not include volunteers or support staff such as clerical workers, book shelvers, or desk attendants). _____ (IF ZERO, SKIP TO Q6a)

5b. How many of these librarians have: Master of Library Science (MLS) degree _____; AT LEAST a 4-year college degree, but not an MLS _____; Other _____. (THESE NUMBERS SHOULD SUM TO Q5a)

5c. How many of these librarians have the title "Children's Librarian" or comparable title? _____ (IF ZERO, SKIP TO Q6a)

5d. How many of the Children's Librarians have: Master of Library Science (MLS) degree _____; AT LEAST a 4-year college degree, but not an MLS _____; Other _____. (THESE NUMBERS SHOULD SUM TO Q5c).

6a. Is the assistance of a Children's Coordinator/Consultant available to your library? ☐ Yes; ☐ No. (IF NO, SKIP TO Q7)

6b. From what source(s) is the assistance of a Children's Coordinator/Consultant available? (CHECK ALL THAT APPLY)

☐ Local system headquarters; ☐ Regional system headquarters; ☐ State library agencies;
☐ Other (Specify)_____.

7. How does your library define children? Age: Under _____ years; OR Grade: _____ grade and below.

The remainder of this questionnaire is concerned with services to children 14 years old and under. Although your library may define children differently, please respond for all persons 14 years old and under (8th graders and below).

8. Indicate the availability/usage of the services below by children 14 years old and under (8th graders and below) during the last 12 months. Use the following scale: **0 = not available; 1 = no usage or almost no usage; 2 = light usage; 3 = moderate usage; 4 = heavy usage.**

a. Readers' advisory service (help with book selection, reference) _____
b. Reading lists/booklists _____
c. Summer reading programs _____
d. Story hours _____
e. Study space _____

9. For each service below, indicate by checking "yes" or "no" in Section A whether it is available at all for use or circulation at your library.

For each service available at the library, indicate in Section B by checking the appropriate column whether it is: available to all children; available to only some children (e.g., those with parental consent on file, only certain age groups, etc.); or not available to any children.

Resources and services	A. Available at all for use or circulation?		B. Service is available to:		
	Yes	No	All children	Only some children	No children
a. Books in the adult collection					
b. Personal computers					
c. Computer software					
d. Videocassettes/films					
e. Audio recordings					
f. Interlibrary loan services					
g. Foreign language materials					

USE THE FOLLOWING SCALE FOR QUESTIONS 10, 11 AND 12:
1 = NEVER; 2 = INFREQUENTLY; 3 = SOMEWHAT FREQUENTLY; 4 = VERY FREQUENTLY.

10. During the last 12 months, how frequently did your library offer group programs (e.g., story hours or booktalks) at the library for:

a. Infants through 2-year-olds: ____; b. 3-year-olds through 5-year olds: ____; c. School-age children: ____.

11. During the last 12 months, how frequently did your library offer group programs at the library for parents or other child care-givers on topics related to children? _____.

12. During the last 12 months, how frequently did your library cooperate (e.g., scheduled meetings with staff or students, visits to schools for booktalks, tours, etc.) with schools and preschools/day care centers enrolling any children 14 years old and under (8th graders and below)?
Schools: _____; Preschools/day care centers: _____.

13a. Do you think that unattended children are a problem at your library? ☐ Yes; ☐ No.

13b. IF YES: How much of a problem are unattended children at your library? (CHECK ONLY ONE)

☐ Minor problem; ☐ Moderate problem; ☐ Major problem.

Person completing this form:_____ Title:_____

Library:_____ State:_____ Phone: (___)_____

NCES 2379-35.

[FR Doc. 89-1858 Filed 1-25-89; 8:45 am]
BILLING CODE 4000-01-C

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 27, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: January 23, 1989.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: New
Title: National Household Education Survey (NHES) School-based Component Field Test
Frequency: Three times only
Affected Public: State or local governments, Non-profit institutions
Reporting Burden:
Responses: 80
Burden Hours: 640
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This field test of NHES will obtain lists of enrolled students from a sample of schools and collect a limited set of student identification information that is needed to sample and contact students to determine their dropout status. The Department will use this information to assess the methodological feasibility of the proposed school-based approach in the estimation of dropout rates and to develop and evaluate the methodology for the first full-scale NHES.

Office of Postsecondary Education

Type of Review: New
Title: 1990 National Postsecondary Education Student Aid Study
Frequency: Triennial
Affected Public: Individuals or households; non-profit institutions; small businesses or organizations
Reporting Burden:
Responses: 1272
Burden Hours: 1980
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This data collected by this study will provide the Office of Postsecondary Education a student-based information system for student financial aid and will assess the distribution and use of financial aid.

Office of Postsecondary Education

Type of Review: Extension
Title: Summary Data Sheet/Listing Form for Perkins Loan
Frequency: Annually
Affected Public: Individuals or households; State or local governments; Federal agencies or employees; Non-profit institutions
Reporting Burden:
Responses: 57
Burden Hours: 855
Recordkeeping:
Recordkeepers: 57
Burden Hours: 4.56
Abstract: The Summary Data Sheet and Listing Form will be used by the Department to compile and publish an official Directory of designated low-income elementary and secondary schools.

Office of Postsecondary Education

Type of Review: Reinstatement
Title: Performance Report for Training Program for Special Programs Staff and Leadership Personnel
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 12
Burden Hours: 36
Recordkeeping:
Recordkeepers: 12
Burden Hours: 2
Abstract: The Non-profit institutions which have participated in the Training Program for Special Programs Staff and Leadership Personnel are to submit these reports to the Department. The Department uses the information to assess the accomplishments of project goals and objectives, and to aid in effective program management.

[FR Doc. 89–1859 Filed 1–25–89; 8:45 am]
BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by 02/21/89.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed

information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washingtoin DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3517) requires that the Director of the Office of Management and Budget (OMB) provide interested agencies and persons an early and meaningful opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden; and (6) Abstract. Because an expedited review by OMB is requested, the information collection request is also included as an attachment to this notice.

Dated: January 23, 1989.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Expedited

Title: Application for Centers for International Business Education Program

Abstract: This form will be used by non-profit institutions to apply for funding under the Centers for International Business Program. The Department uses the information to make grant awards.

Additional Information: A February 21, 1989, publication date for the Notice Inviting Applications for New Awards in the **Federal Register** is scheduled. Unless this publication deadline is met, respondents will not have time to establish Center Advisory Councils, and undertake extensive planning in conjunction with these Councils, as required under the eligibility section of the authorizing statute. Furthermore, it will be impossible to complete the lengthy selection process of new grantees and issue grant awards within the timeframe for the year 1989 funding cycle. In accordance with the terms of the legislation, three-year awards are scheduled. This submission contains the standard form SF–424, Federal Assistance Face Sheet.

Frequency: Annually

Affected Public: Non-profit institutions

Reporting Burden:

Responses: 60

Burden Hours: 2,100

Recordkeeping:

Recordkeepers: 0

Burden Hours: 0

BILLING CODE 4000–01–M

Instructions for Part III- Application Narrative for Centers for International Business Education Program Applicants

Public reporting burden for this collection of information is estimated to average 35 hours per response, including time for reviewing of instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1840-xxxx*, Washington, D.C. 20503.

Before preparing the application narrative, an applicant should read carefully all instructions. The Secretary recommends that you carefully consider the authorizing legislation for the Centers for Business and International Education Program, as you address the selection criteria the Secretary uses to evaluate the applications. The narrative should--

1. Begin with an abstract; that is, a summary of the proposed project;

2. In order to establish eligibility under this program, the applicant should include:

(a) The date the Center Advisory Council was established;

(b) A list of the members of the Center Advisory Council and a description of their academic or other affiliations; and

(c) A description of the planning which was or will be conducted prior to the establishment of the Center for International Business Education, concerning the scope of the center's activities and the design of its programs.

3. Describe the proposed Center for International Business Education in light of each of the selection criteria in the order in which the criteria are listed. Describe the activities you propose to carry on in each year of the three-year funding cycle under the "Plan of Operation" section of your application

4. Include any other pertinent information that might assist the Secretary in reviewing the application.

*OMB Number

[FR Doc. 89-1860 Filed 1-25-89; 8:45 am]
BILLING CODE 4000-01-C

[CFDA No. 84-146]

Notice Inviting Applications for New Awards Under the Transition Program for Refugee Children for Fiscal Year 1989.

Purpose: Provides grants to State educational agencies (SEAs) to assist Local educational agencies (LEAs) to provide supplemental educational services to meet the special needs of eligible refugee children.

Deadline for Transmittal of Application: April 21, 1989.

Deadline for Intergovernmental Review Comments: June 21, 1989.

Applications Available: Application packages will be available on January 26, 1989. The Office of Bilingual Education and Minority Languages Affairs will mail application forms and program information packages to all SEAs.

Funds Available: $15,808,000.

Project Period: 12 Months.

Programmatic Information: An SEA may apply for a grant if it meets the eligibility requirments contained in 34 CFR 538.2. To be eligible for a grant, and SEA must submit a count of refugee children eligible for assistance under the Transition Program for Refugee Children conducted in the month of March, 1989.

Applicable Regulations: (a) The regulations governing the Transition Program for Refugee Children in 34 CFR Part 538, as published in the **Federal Register** on December 28, 1988 (53 FR 52618), (b) Regulations governing the Refugee Resettlement Program in 45 CFR Part 400, and to the extent provided in 34 CFR 538.3(a)(2), and (c) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 76, 77, 79, 80, and 85.

For Applications or Information Contact: Jonathan Chang, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW., (Room 5086), Mary E. Switzer Building, Washington, D.C. 20202-6641. Telephone: (202) 732-5708.

Program Authority: 8 U.S.C. 1522.

(Catalog of Federal Domestic Assistance Number 84.146, Transition Program for Refugee Children)

Dated: January 18, 1989.

Alicia Coro,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 89-1861 Filed 1-25-89; 8:45 am]

BILLING CODE 4000-01-M

Solicitation of Comments on Development of a Common Financial Reporting Form

AGENCY: Department of Education.

ACTION: Notice of solicitation of Comments on development of a common financial reporting form.

SUMMARY: The Secretary provides notice that the Department of Education is soliciting comments concerning the implementation of section 483(a)(1) of the Higher Education Act of 1965, as amended (HEA). Section 483(a)(1) provides that the Secretary shall prescribe a common financial reporting form to be used to determine the need and eligibility of a student for financial assistance under the major student financial assistance programs authorized by Title IV of the HEA (Title IV, HEA programs).

DATE: Comments must be received on or before March 16, 1989.

ADDRESS: All comments concerning this notice should be addressed to Mr. Stephen D. Carter, Chief, Analysis Section, Pell Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue SW., (Room 4318, ROB-3), Washington, DC 20202-5443.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Laurel, Program Analyst, Pell Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue SW., (Room 4318 ROB-3), Washington, DC 20202-5443. Telephone (202) 732-4888.

SUPPLEMENTARY INFORMATION: Section 483(a) of the HEA, 20 U.S.C. 1090(a), requires the Secretary to develop a common financial reporting form to be used in determining the need and eligibility of a student for financial assistance under the major Title IV, HEA programs. These programs include the Pell Grant, Supplemental Education Opportunity Grant, Stafford Loan, College Work-Study, Income Contingent Loan, and Perkins Loan programs. As in prior years, the form shall be known as the Application for Federal Student Aid (AFSA).

The Secretary is not considering any major changes to the 1990-91 AFSA except the inclusion of Stafford Loan data elements. The Secretary is, however, requesting public comment concerning the 1990-91 AFSA. The Secretary is especially interested in comments concerning the following:

1. The design of the form.
2. The clarity of the instructions.
3. The burden on the applicant population of filling out the information on the form and methods for keeping this burden at a minimum.
4. The utility on the AFSA a small number of data elements which would eliminate the need for separate applications for Stafford Loans.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed 1990-92 AFSA. To obtain a copy of a draft in the 1990-91 AFSA, call 1-800-333-4636 (INFO), toll-free.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 4318, ROB-3 7th and D Streets SW., Washington, DC 20202-5443, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays.

Dated: January 23, 1989.

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Stafford Loan Program; 84.033 College Work-Study Program; 84.038 Perkins Loan Program; 84.063 Pell Grant Program; 84.063 Income Contingent Loan Program)

[FR Doc. 89-1862 Filed 1-25-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Order With Quintana Energy Corp. et al.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Quintana Energy Corporation, Quintana Refinery Co., and Quintana Petrochemical Company (hereinafter collectively referred to as "Quintana"). The agreement proposes to resolve matters relating to Quintana's compliance with the federal petroleum price and allocation regulations for the period January 1, 1973 through January 27, 1981. If this Consent Order is approved, Quintana shall pay a total of

$3,800,000 within fifteen days of the effective date of the Consent Order. DOE's Office of Hearings and Appeals (OHA) will be petitioned to implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in which proceedings any persons who claim to have suffered injury from Quintana's alleged overcharges would have the opportunity to submit claims for payment.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this notice. ERA will consider all comments received from the public in determining whether to accept the settlement and issue a final Order, renegotiate the agreement and issue a modified agreement as a final Order, or reject the settlement. DOE's final decision will be published in the **Federal Register**, along with an analysis of and response to the significant written comments, as well as any other considerations that were relevant to the final decision.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4167.

SUPPLEMENTARY INFORMATION:

I. Resolution of Regulatory Issues

Quintana is a petroleum refiner subject to the audit jurisdiction of ERA to determine compliance with the Federal Petroleum Price and Allocation Regulations. During the period covered by this proposed Order (January 1, 1973 through January 27, 1981), Quintana engaged in, among other things, the production, importation, refining, and sale of crude oil; and the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane and other refined petroleum products.

ERA conducted an audit of Quintana's compliance for the period beginning in January 1978 through December 1980. During this audit, ERA identified certain areas in the pricing, refining, and sales of crude oil in which it believed that Quintana had failed to comply with the requirements of the Federal price and allocation regulations.

On June 24, 1988, ERA issued to Quintana a Proposed Remedial Order (PRO) to the Quintana-Howell Joint Venture (hereinafter Joint Venture), a Texas joint venture composed of Quintana Refinery Co., and Howell Corporation, which operated refineries in Corpus Christie and San Antonio, Texas. The PRO alleged violations of 10 CFR 211.66 (b) and (h) and § 205.202 as a result of the Joint Venture's significant understatement on its entitlements reports of its receipts of controlled tier crude oil at the two refineries, during the period April 1978 through December 1980. Specifically, ERA alleged that during this period the Joint Venture failed to correctly report the volumes of controlled tier certification associated with substantial volumes of its crude oil receipts at the two refineries. Instead, the Joint Venture reported such volumes as uncontrolled crude oil. ERA alleges that the Joint Venture's actions circumvented and contravened, or resulted in the circumvention and contravention of, the requirements of the Entitlements Program. As a remedy for these alleged violations, the Proposed Remedial Order seeks to recover jointly and severally from Quintana and Howell $10,322,848, which is the amount of Joint Venture's reduced post-entitlement crude costs. With interest, Quintana's interest in the Joint Venture represents approximately $4.9 million, plus interest of approximately $9 million; Howell Corporation's share of the total liability, $5.4 million plus interest of nearly $10 million, would not be resolved by this Consent Order.

II. Determination of Reasonable Settlement Amount

The settlement calls for Quintana to pay $3.8 million, to discharge in full its obligations under the price and allocation regulations. Under the terms of the proposed Consent Order, only the liability of Quintana would be resolved. The other partner to the Joint Venture, Howell Corporation, continues to be liable for the remaining principal sum of approximately $5.4 million, plus interest. ERA took into consideration for settlement purposes, the fact that Quintana benefitted from these transactions only in the amount of approximately $4.9 million, and that the case is in its relatively early stages of litigation. Moreover, inasmuch as Quintana took affirmative steps to end the types of transactions which subsequently came into dispute, significant amounts of overcharges that may have occurred were estopped. In addition, Quintana was not the principal manager of the transactions which did occur due to the Joint Venture. ERA has preliminarily agreed to the settlement amount after considering the factual aspects related to the various issues, assessing the litigation risks associated with establishing the alleged overcharges, and considering the benefit to the public from a significant settlement of the issues which would take years of continued litigation to resolve.

Based on all of these considerations, ERA has tentatively concluded that the resolution of these matters for $3.8 million is an appropriate settlement and in the public interest.

III. Terms and Conditions of the Consent Order

If the Consent Order is made final, Quintana will pay DOE $3.8 million within fifteen (15) days of the effective date of the Consent Order.

ERA will petition OHA to implement Special Refund Procedures under the provisions of Subpart V of the regulations. In these proceedings, OHA would develop procedures for the receipt and evaluation of applications for refund in order to distribute the settlement monies. To ensure that OHA has sufficient information to evaluate the claims, the proposed Consent Order requires that Quintana provide customer identification and purchase volume information to OHA upon request.

Quintana and DOE mutually release each other from claims and actions arising under the subject matters covered by the proposed Consent Order. The proposed Order does not affect the right of any other party to take action against Quintana, or of Quintana or the DOE to take action against any other party.

Submission of Written Comments:

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested parties are invited to submit written comments concerning this proposed Consent Order to: Quintana Consent Order Comments, RG–30, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585. All comments received by the thirtieth day following publication of this notice in the **Federal Register**, will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional

comments. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a notice in the Federal Register.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Washington, DC, on January 18, 1989.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

Consent Order

I. Introduction

101. This Consent Order is entered into between Quintana Energy Corporation, Quintana Refinery Co., and Quintana Petrochemical Company (hereinafter collectively referred to as "Quintana") and the United States Department of Energy ("DOE"). Except as otherwise provided herein, this Consent Order settles and finally resolves all civil and administrative claims and disputes, whether or not heretofore asserted, between the DOE, as hereinafter defined, and Quintana, as hereinafter defined, relating to Quintana's compliance with the federal petroleum price and allocation regulations, as hereinafter defined, during the period January 1, 1973, through January 27, 1981 (all the matters settled and resolved by this Consent Order are referred to hereinafter as "the matters covered by this Consent Order").

II. Jurisdiction, Regulatory Authority and Definitions

201. This Consent Order is entered into by the DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193, Executive Order No. 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. The Economic Regulatory Administration ("ERA") was created by Section 206 of the DOE Act, 42 U.S.C. 7136. In Delegation No. 0204–4, the Secretary of Energy delegated responsibility for the administration of the federal petroleum price and allocation regulations to the Administrator of the ERA. In Delegation No. 0204–4A, the Administrator delegated to the Special Counsel authority to audit the compliance of refiners, including Quintana, with the federal petroleum price and allocation regulations and to take appropriate enforcement actions based upon such audits.

203. For purposes of this Consent Order, the phrase "federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations and orders regarding the pricing and allocation of crude oil, refined petroleum products, natural gas liquids, and natural gas liquid products, including the entitlements and mandatory oil imports programs, administered by the DOE. The federal petroleum price and allocation regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and 10 CFR Parts 205, 210, 211, 212, and 213, and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, and subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocation regulations shall apply to this Consent Order except to the extent inconsistent herewith. Reference herein to "DOE" includes, besides the Department of Energy, the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Office of Special Counsel ("OSC"), the Economic Regulatory Administration and all predecessor and successor agencies. References in this Consent Order to "Quintana" shall include: (1) Quintana Energy Corporation, Quintana Petrochemical Company, Quintana Refinery Co., and all of their subsidiaries and affiliates, except the entity of the Quintana-Howell Joint Venture, (2) all of Quintana's petroleum-related activities as refiner, producer, operator, working interest or royalty interest owner, reseller, retailer, natural gas processor, or otherwise, and (3) except for purposes of Article IV, *infra*, Quintana's directors, officers, and employees.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period covered by this Consent Order, Quintana was a "refiner," "producer," and "reseller" as those terms are defined in the federal petroleum price and allocation regulations and was subject to the jurisdiction of the DOE. Quintana engaged in, among other things, the production, importation, sale, and refining of crude oil, the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane, and other refined petroleum products.

302. DOE conducted an audit to determine Quintana's compliance with the federal petroleum price and allocation regulations. During the course of the DOE's audit, the enforcement proceedings instituted by the DOE and the negotiations that led to this Consent Order, the DOE raised certain issues with respect to Quintana's application of the federal petroleum price and allocation regulations. The DOE has taken an administrative enforcement action against Quintana, through the issuance of a Proposed Remedial Order on June 24, 1988. Quintana maintained, however, that it had calculated its costs, determined its prices, sold its crude oil and petroleum products, and operated in all other respects in accordance with the federal petroleum price and allocation regulations. The DOE and Quintana have disagreed in several respects concerning the proper application of the federal petroleum price and allocation regulations to Quintana's activities with respect to the matters covered by this Consent Order, and each has asserted its belief that its respective legal and factual positions on the matters resolved by this Consent Order are meritorious. These positions were emphasized in the intensive review and exchange of information conducted during the audit and subsequent settlement negotiation process. However, in order to avoid the expense of protracted and complex litigation and the disruption of its orderly business functions, Quintana has agreed to enter into this Consent Order. The DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which have been or might be sought by the DOE against Quintana for such matters under 10 CFR 205.199I or otherwise, Quintana shall pay a total amount of three million eight hundred thousand dollars ($3,800,000) to the DOE in the manner specified in paragraph 402.

402. The payment pursuant to paragraph 401 shall be made within fifteen (15) days of the effective date of the Consent Order by wire transfer in accordance with instructions furnished

to Quintana by the DOE in a timely manner.

403. Payments made by Quintana pursuant to this Consent Order shall be distributed by the DOE pursuant to the special refund procedures prescribed by 10 CFR Part 205, Subpart V.

V. Issues Resolved

501. All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by the DOE against Quintana regarding Quintana's compliance with and obligations under the federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Notice of Proposed Disallowance, Proposed Remedial Order, Remedial Order, action in court or otherwise, including DOE's claim against Quintana as a joint venturer in the Quintana-Howell Joint Venture, are resolved and extinguished as to Quintana by this Consent Order. This Consent Order, however, does not resolve, extinguish, or otherwise affect DOE's claims against any other party, except as follows: (1) The DOE agrees to reduce the principal amount of its claim against Howell Corporation as a joint venturer in the Quintana-Howell Joint Venture, as set forth in Section VII(A) of the June 24, 1988 Proposed Remedial Order (at 41–42), from $10,322,848.09 to $5,407,966.44; the interest on this reduce amount accrued through April 30, 1988 totals $9,916,981.00; and (2) DOE agrees that it will not seek to obtain a judgment against the Quintana-Howell Joint Venture entity, provided that the liability of Howell Corporation and its subsidiaries, or the DOE's ability to sue Howell Corporation and its subsidiaries, is not reduced, resolved, or extinguished in any manner as a result of the DOE's agreement to not seek to obtain a judgment against the Quintana-Howell Joint Venture entity, and provided further that if a judgment is obtained against the Quintana-Howell Joint Venture, DOE agrees not to enforce such judgment against Quintana.

502. (a) Except as otherwise provided herein, compliance by Quintana with this Consent Order shall be deemed by the DOE to constitute full compliance for administrative and civil purposes with all federal petroleum price and allocation regulations for matters covered by this Consent Order. In consideration for performance as required under this Consent Order by Quintana, the DOE hereby releases Quintana completely and for all purposes from all administrative and civil judicial claims, demands, liabilities or causes of action, including without limitation claims for civil penalties, that the DOE has asserted or might otherwise be able to assert against Quintana before or after the date of this Consent Order for alleged violations of the federal petroleum price and allocation regulations with respect to matters covered by this Consent Order. The DOE will not initiate or prosecute any such administrative or civil judicial matter against Quintana or cause or refer any such matter to be initiated or prosecuted, nor will the DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil judicial matter against Quintana or participate voluntarily in the prosecution of such actions. The DOE will not assert voluntarily in any administrative or civil judicial proceeding that Quintana has violated the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order or otherwise take any action with respect to Quintana in derogation of this Consent Order. However, nothing contained herein shall preclude the DOE from defending the validity of the federal petroleum price and allocation regulations.

(b) The DOE will not seek or recommend any criminal fines or penalties based on information or evidence presently in its possession for the matters covered by this Consent Order, provided, however, that nothing in this Consent Order precludes the DOE from (1) seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in combination with information or evidence presently known to DOE, that a criminal violation may have occurred or (2) otherwise complying with its obligations under law with regard to forwarding information of possible criminal violations of law to appropriate authorities. Nothing contained herein may be construed as a bar, estoppel or defense against any criminal or civil action brought by an agency of the United States other than the DOE under (i) section 210 of the Economic Stabilization Act of 1970 or (ii) any statute or regulation other than the federal petroleum price and allocation regulations. Finally, this Consent Order does not prejudice the rights of any third party or Quintana in any private action, including an action for contribution by or against Quintana.

(c) Quintana releases the DOE completely and for all purposes from all administrative and civil judicial claims, liabilities, or causes of action that Quintana has asserted or may otherwise be able to assert against the DOE relating to the DOE's administration of the federal petroleum price and allocation regulations. This release, however, does not preclude Quintana from asserting any factual or legal position or argument as a defense to any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States. Nor does it preclude Quintana from asserting a defense, counterclaim or offset to any action, claim or proceeding brought by any other person.

(d) Quintana hereby releases any and all claims that Quintana may have for refunds of crude oil overcharges pursuant to any special refund procedures implemented pursuant to 10 CFR Part 205, Subpart V.

503. (a) Within thirty (30) days after the Effective Date of this Consent Order, Quintana and the DOE will file or cause to be filed appropriate pleadings and will take all other steps necessary to withdraw all claims and dismiss with prejudice all proceedings against Quintana covered by this Consent Order then pending before the DOE's Office of Hearings and Appeals or the Federal Energy Regulatory Commission and to dismiss with prejudice any court proceeding then pending against Quintana involving an appeal from or seeking review of a decision by the OHA or the FERC in any such proceeding.

(b) Within fifteen (15) days after the execution of the Consent Order by both parties, DOE agrees to join with Quintana in written notification to DOE's Office of Hearings and Appeals, the Federal Energy Regulatory Commission and any appropriate court of the fact of such execution, which notice shall request that said administrative or judicial tribunal stay all further action against Quintana in the proceedings covered by this Consent Order until such time as DOE provides notice to said tribunals that the Consent Order has become effective or has been withdrawn pursuant to Article IX of this Consent Order.

504. Execution of this Consent Order constitutes neither an admission by Quintana nor a finding by the DOE of any violation by Quintana of any statute or regulation. The DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and the DOE will not seek any such civil penalties. None of the payments or expenditures made by Quintana pursuant to this Consent Order are to be

considered for any purpose as penalties, fines, or forfeitures or as settlement of any potential liability for penalties, fines, or forfeitures.

505. Notwithstanding any other provision herein, with respect to the matters covered by this Consent Order, the DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by Quintana, but only if Quintana has concealed facts relating to such violations. The DOE also reserves the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any misrepresentation of fact material to this Consent Order during the course of the audit or the negotiations that preceded this Consent Order or upon discovery of information that is materially inconsistent with the information which has been furnished by Quintana upon which this agreement is based.

VI. Recordkeeping, Reporting and Confidentiality

601. Quintana shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order and records related to Quintana's purchases, sales, exchanges or other transfers of crude oil during the period January 1, 1978, through January 27, 1981. To assist DOE in the distribution of the monies paid pursuant to this Consent Order, Quintana shall also retain sales volume data and customers' names and addresses regarding its sales of crude oil and refined petroleum products for the transactions covered by this Consent Order until thirty (30) days after final distribution by DOE of such monies. If requested, Quintana shall make such information available to DOE. Except as otherwise provided in this paragraph, upon timely payment to DOE of the amount required to be paid under paragraph 402 of this Consent Order, Quintana is relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating to the matters settled by this Consent Order.

602. Except for formal requests for information regarding other firms subject to the DOE's information gathering and reporting authority, Quintana will not be subject to any audit requests, report orders, subpoenas, or other administrative discovery by DOE relating to Quintana's compliance with the federal petroleum price and allocation regulations relating to the matters settled by this Consent Order.

603. The DOE will treat the sensitive commercial and financial information provided by Quintana pursuant to negotiations which were conducted with respect to this Consent Order or obtained by the DOE in its audit of Quintana and related to matters covered by this Consent Order as confidential and proprietary and will not disclose such information unless required to do so by law, including a request by a duly authorized committee or subcommittee of Congress. If a request or demand for release of any such information is made pursuant to law, the DOE will claim any privilege or exemption reasonably available to it. The DOE will provide Quintana with ten (10) days actual notice, if possible, of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. The DOE will retain the audit information which it has acquired during its review of Quintana's compliance with the federal petroleum price and allocation regulations in accordance with the DOE's established records retention procedures. Notwithstanding the otherwise confidential treatment afforded such information by the terms of this Consent Order, the DOE will make such information available to the Department of Justice ("DOJ") in response to a request pursuant to the DOJ's statutory authority by a duly authorized representative of the DOJ. If requested by the DOJ, the DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right Quintana may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701. It is the understanding and express intention of Quintana and the DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Quintana (and its successors and assigns) and the DOE each reserves the right to institute a civil action in an appropriate United States district court, if necessary, to secure enforcement of the terms of this Consent Order, and the DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. The DOE will undertake the defense of the Consent Order, as made effective, in response to any litigation challenging the Consent Order's validity in which the DOE is named a party. Quintana agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801. Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a remedial order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7193, and 10 CFR 205.199B. Quintana hereby waives its right to administrative or judicial review of this Order, but Quintana reserves the right to participate in any such review initiated by a third party.

IX. Effective Date

901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect being published in the **Federal Register**. Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments. The DOE will consider all written comments to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902. Until the Effective Date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Quintana, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred fiftieth (150th) day following execution by Quintana, Quintana may, at any time thereafter until the Effective Date, withdraw its agreement to this Consent Order by written notice to the DOE, in which event this Consent Order shall be null and void.

I, the undersigned a duly authorized representative of Quintana, hereby agree to and accept on behalf of Quintana the foregoing Consent Order.

Dated: January 1, 1989.

H. P. Riley,

Vice President, Quintana Energy Corporation, Quintana Refinery Co., Quintana Petrochemical Company.

I, the undersigned, a duly authorized representative of DOE, hereby agree to and accept on behalf of the DOE the foregoing Consent Order.

Dated: January 9, 1989.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 89-1877 Filed 1-25-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 2386-001 Massachusetts]

City of Holyoke, Massachusetts Gas and Electric Department; Availability of Environmental Assessment

January 23, 1989.

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 minor license for the proposed Number 1 Hydro Unit located on the Holyoke Canal System, on the Connecticut River, in Holyoke, Hampden County, Massachusetts, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-1876 Filed 1-25-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-87-029 and TA89-1-4-003 [1]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates and Tariff Provisions

January 19, 1989.

Take notice that on December 22, 1988, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2 containing changes in rates and other tariff provisions for effectiveness on December 7, 1988 and January 1, 1989:

Proposed For Effectiveness December 7, 1988

First Revised Volume No. 1

Twenty-Second Revised Sheet No. 7
Eight Revised Sheet No. 7-A
Third Revised Sheet No. 14
Sixth Revised Sheet No. 68
Third Revised Sheet No. 69
Fifth Revised Sheet No. 70
Third Revised Sheet No. 70-A
Fourth Revised Sheet No. 71
Third Revised Sheet No. 71-A
Fourth Revised Sheet No. 72
Third Revised Sheet No. 73
Third Revised Sheet No. 74
Fifth Revised Sheet No. 75
Third Revised Sheet No. 75-A
Second Revised Sheet No. 75-B
First Revised Sheet No. 75-C
Fourth Revised Sheet No. 76
Second Revised Sheet No. 77
First Revised Sheet No. 77-A
Original Sheet No. 77-B
Second Revised Sheet No. 82
Third Revised Sheet No. 112
Second Revised Sheet No. 116

Original Volume No. 2

Ninth Revised Sheet No. 27

Proposed For Effectiveness January 1, 1989

First Revised Volume No. 1

Twenty-Third Revised Sheet No. 7

According to Granite State the rate changes and revised tariff provisions are submitted in compliance with an order of the Commission issued November 23, 1988 approving a settlement in Docket No. RP87-87-000. Granite State further states that the rate filing in Docket No. RP87-87-000, originally filed on August 20, 1987, reflected its increased costs for service to Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities) resulting from the expanded operations approved in Docket No. CP87-39-000 to import and purchase Canadian gas from Shell Canada Limited (Shell) for system supply.

It is further stated that the settlement certified to the Commission contained two levels of a jurisdictional cost of service because of a phasing of the Shell deliveries during an initial interim period on an interruptible basis, followed by a period during which Shell will make firm daily deliveries. Also, according to Granite State, the settlement proposed jurisdictional rates for cost of service based on different cost allocation methods: Granite State's historical method and an allocation based on a systemwide costs. Granite State further states that, in the order approving the settlement issued November 23, 1988, the Commission directed Granite State to adopt the systemwide cost allocation procedure and to implement this method with rates effective December 1, 1988.

In its compliance filing, Granite State proposes to implement the requirements of the settlement on December 7, 1988. According to Granite State the compliance rates are based on the settlement rates for the period during which Shell provides full firm daily service to Granite State and the inauguration of such firm service commenced December 7, 1988.

According to Granite State copies of its filing were served upon its customers, Bay State and Northern Utilities, and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

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 sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 27, 1989. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1870 Filed 1-25-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-4-51-000]

Great Lakes Gas Transmission Co., Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

January 19, 1989.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on January 12, 1989, tendered for filing Seventeenth-A Revised Sheet Nos. 57(i) and 57(ii) and Fifth-A Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states that Seventeenth-A Revised Sheet Nos. 57(i) and 57(ii) and Fifth-A Revised Sheet No. 57(v) reflect revised current PGA rates for the month of January, 1989. The tariff sheets are being filed in this out-of cycle PGA to reflect the latest estimated gas cost as

[1] The filing was completed on January 13, 1989, at which time the required information for revision of its PGA rates were filed.

provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines, Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes requested waiver of the notice requirements of the provisions of § 154.309 of the Commission's regulations and any other necessary waivers so as to permit the above tariff sheets to become effective on January 1, 1989 in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 27, 1989. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–1871 Filed 1–25–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89–1–51–001 and TF89–1–51–001]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

January 19, 1989.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on January 12, 1989, tendered for filing Second Substitute Sixteenth Revised Sheet Nos. 57(i) and 57(ii) and Third Substitute Third Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states that no November 23, 1988, Great Lakes Gas Transmission Company ("Great Lakes") filed with the Federal Energy Regulatory Commission ("Commission") six copies of Substitute Sixteenth Revised Sheet Nos. 57(i) and 57(ii), and Second Substitute Third Revised Sheet No. 57(v) to Great Lakes FERC Gas Tariff, First Revised Volume No. 1. These tariff sheets reflect an Out of Cycle PGA to revise the PGA rates for the months of November and December, 1988 and January, 1989 based on the latest estimated gas costs as provided to Great Lakes by its sole supplier of natural gas, TransCanada Pipelines Limited ("TransCanada").

Great Lakes states that on January 6, 1989, the Commission accepted these tariff sheets, effective November 1, 1988, subject to refund and review in the succeeding annual PGA, and further subject to Great Lakes refiling to make corrections for an arithmetic error in the Group 2 rate calculation and a recalculation of the current adjustment. In order to implement these corrections, Great Lakes is filing herewith Second Substitute Sixteenth Revised Sheet Nos. 57(i) and 57(ii) and Third Substitute Third Revised Sheet No. 57(v) to Great Lakes FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes requested waiver of the notice requirements of the provisions of § 154.309 of the Commission's regulations and any other necessary waivers so as to permit the above tariff sheets to become effective on November 1, 1988 in order to implement the requested corrections.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 27, 1989.

Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–1872 Filed 1–25–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89–1–45–002]

Inter-City Minnesota Pipelines Ltd., Inc.; Filing Compliance

January 19, 1989.

Take notice that on January 12, 1989, Inter-City Minnesota Pipelines Ltd., Inc. ("Inter-City") 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, submitted for filing Substitute Thirty-first Revised Sheet No. 4 to Volume No. 1 of its FERC gas tariff.

Inter-City states the filing is made in compliance with the Commission's order issued in this proceeding on October 31, 1988. That order required Inter-City to recalculate its income taxes, interest rates and monthly interest payments.

Inter-City states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons 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, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 27, 1989. 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; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–1875 Filed 1–25–89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2509 Virginia]

Potomac Edison Co.; Intent To File an Application for a New License

January 23, 1989.

Take notice that on December 15, 1988, Potomac Edison Company, the existing licensee for the Shenandoah Hydro Station Hydroelectric Project No. 2509, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2509 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the South Fork of the Shenandoah River in Page County, Virginia. The principal works of the Shenandoah Hydro Station Project include a concrete gravity dam, about 15 feet high and 495 feet long; a reservoir of small pondage; a powerhouse with an installed capacity of 862 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol

Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Downsville Pike, Hagerstown, MD 21740.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-1874 Filed 1-25-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-230-005]

Texas Gas Transmission Corp.; Tariff Filing

January 19, 1989.

Take notice that on January 13, 1989, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 14D
First Revised Sheet No. 14E
First Revised Sheet No. 14F
First Revised Sheet No. 14G

Texas Gas states that this filing is made to reflect the allocation of Tennessee Gas Pipeline Company's revised take-or-pay demand surcharge during the six-month amortization period January 1 through June 30, 1989 to Texas Gas's downstream customers. The filing complies with a September 7, 1988 order in this docket which allows Texas Gas to track any modifications which the Commission may approve and represents a reduction in its monthly charge from $398,404 to $93,536. Texas Gas reserves the right to revise the filing as necessay to reflect any modifications made by the Commission or as required by any appellate court. The proposed effective date of the tariff sheets listed above is February 1, 1989.

Copies of this filing have been served upon Texas Gas's jurisdictional and nonjurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 27, 1989. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-1873 Filed 1-25-89; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Parker-Davis Project; Order Confirming and Approving an Extension of Power Rates and Transmission Rates on an Interim Basis

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of an extension of Power Rates and Transmission Rates—Parker-Davis Project, Rate Schedules PD-F2, PD-FT2, PD-NFT2, and PD-FCT2.

SUMMARY: Notice is given of Rate Order No. WAPA-39 of the Deputy Secretary of Energy extending for 5 years the Rate Schedules PD-F2, PD-FT2, PD-NFT2, and PD-FCT2.

FOR FURTHER INFORMATION CONTACT: Mr. Earl W. Hodge, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477-3255, or Mr. Conrad Miller, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231-1535.

SUPPLEMENTARY INFORMATION: Pursuant to the Department of Energy Organization Act, 42 U.S.C. 7101-7352 (Supp. IV 1981), the power marketing functions, as vested in the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 372, *et seq.* (1976), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c) (1976), and the acts specifically applicable to the project, were transferred to the Department of Energy (DOE).

By Amendment No. 1 to Delegation Order No. 0204-108, effective May 30, 1986 (51 FR 19744, May 30, 1986), the Secretary of Energy delegated: (1) The authority on a nonexclusive basis to develop power and transmission rates to the Administrator of the Western Area Power Administration; (2) the authority on a nonexclusive basis to confirm, approve, and place such rates in effect on an interim basis to the Under Secretary of the Department of Energy; and (3) the authority on an exclusive basis to confirm, approve, and place in effect on a final basis, remand, or disapprove such rates to the Federal Energy Regulatory Commission (FERC).

On October 27, 1988, the Secretary of Energy issued a notice (DOE N 1110.29), which has the effect of amending Delegation Order No. 0204-108 by transferring the authority to place rates into effect on an interim basis from the Under Secretary of the Department of Energy to the Deputy Secretary of the Department of Energy (Attachment A of this notice.)

Western is developing these rates in accordance with Reclamation law; DOE financial reporting policies, procedures, and methodology (DOE Order No. RA 6120.2 (September 20, 1979)); and the procedures for public participation in rate adjustments found at 10 CFR Part 903 (1987), as amended.

Power repayment studies and other analyses indicate that the existing rates are sufficient to maintain the financial integrity of the Parker-Davis Project (P-DP), and will provide sufficient revenues to recover all operation, maintenance, and replacement costs for the P-DP through the cost-evaluation period ending September 30, 1992. Further, revenues since the project was placed into commercial service have been sufficient to satisfy the repayment to the Treasury of the United States, with interest, of all Federal funds advanced to the P-DP for the construction of the P-DP's features, including the assumed obligations of other electrical facilities associated with the reclamation of lands and treaties of the United States with the Republic of Mexican States.

In accordance with 10 CFR 903.23, the Administrator of Western has determined, on the basis that this action does not affect the existing rates, that a consultation and comment period is not needed, nor is there any need for public information or comment forums. Notice of the proposed rate extension was published at 53 FR 48306, November 30, 1988. The extension of the existing rates is expected to be placed in effect on an interim basis on January 1, 1989, by the Deputy Secretary of the Department of Energy and will be forwarded to the FERC for approval on a final basis.

Issued at Washington, DC, December 22, 1988.

Joseph F. Salgado,

Deputy Secretary.

Attachment A

Subject: Authorities and Responsibilities of the Deputy Secretary and Under Secretary

[DOE N 1110.29]

EXPIRES: 10-27-88, 10-27-89.

Joseph F. Salgado, as Deputy Secretary of Energy is designated Chief Operating Officer of the Department. All authorities and responsibilities assigned by any Departmental directive or Delegation Order to the Under Secretary, except those identified below, are hereby assigned to the Deputy Secretary. As Chief Operating Officer the Deputy Secretary will function as Acquisition Executive for all major systems acquisitions and will chair the Energy System Acquisition Advisory Board (ESAAB).

Donna R. Fitzpatrick has been appointed Under Secretary and will, as required by Section 202 of the DOE Organization Act, bear primary responsibility for energy conservation. In addition the Under Secretary will serve as a member of the Energy System Acquisition Advisory Board and will oversee activities of the Office of Policy, Planning and Analysis which will continue to develop and coordinate policies that crosscut multiple Departmental elements and/or have broad Department-wide implications.

Secretarial Officers will continue to be responsible for developing and promulgating policies dealing with their operations and to assure implementation of Department-wide policy decisions.

This Notice supersedes DOE N 1100.18 dated 5-21-85, on the roles and responsibilities of the Under Secretary, DOE N 1100.19 dated 5-21-85, on the reporting relationship of the Office of Policy, Planning and Analysis to the Deputy Secretary, DOE N 1110.17 dated 11-12-86, on designation of the departmental acquisition executive, DOE 1110.26 dated 5-18-88 with respect to designation of the Under Secretary, Joseph F. Salgado and the Assistant Secretary, Conservation and Renewable Energy, Donna R. Fitzpatrick in acting capacity as Deputy Secretary and Associate Under Secretary respectively, and DOE N 1110.27 dated 7-22-88 on designation of the Associate Under Secretary as a member of the Energy System Acquisition Advisory Board.

Appropriate revisions to Departmental directives will be made to reflect these actions.

John S. Herrington,

Secretary.

December 22, 1988.

Pursuant to the Department of Energy Organization Act, 42 U.S.C. 7101-7352 (Supp. IV 1981), the power marketing functions, as vested in the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 372, *et seq.* (1976), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c) (1976), and the acts specifically applicable to the project, were transferred to the Department of Energy (DOE).

By Amendment No. 1 to Delegation Order No. 0204-108, effective May 30, 1986 (51 FR 19744, May 30, 1986), the Secretary of Energy delegated: (1) The authority on a nonexclusive basis to develop power and transmission rates to the Administrator of the Western Area Power Administration (Western); (2) the authority on a nonexclusive basis to confirm, approve, and place such rates in effect on an interim basis to the Under Secretary of the Department of Energy; and (3) the authority on an exclusive basis to confirm, approve, and place in effect on a final basis, remand, or disapprove such rates to the Federal Energy Regulatory Commission.

On October 27, 1988, the Secretary of Energy issued a notice (DOE N 1110.29) which has the effect of amending Delegation Order No. 0204-108 by transferring the authority to place rates into effect on an interim basis from the Under Secretary of the Department of Energy to the Deputy Secretary of the Department of Energy.

Western is developing these rates in accordance with Reclamation law; DOE financial reporting policies, procedures, and methodology (DOE Order No. RA 6120.2 (September 20, 1979)); and the procedures for public participation in rate adjustments found at 10 CFR Part 903 (1987), as amended.

Background

The Parker Dam Project was authorized by section 2 of the Rivers and Harbors Act of August 30, 1935 (49 Stat. 1039), and the Davis Dam Project was authorized April 26, 1941, by the Acting Secretary of the Interior under provisions of the Reclamation Project Act of 1939 (43 U.S.C. 485, *et seq.*). The Parker-Davis Project (P-DP) was formed by the consolidation of the two projects under the terms of the act of May 28, 1954 (68 Stat. 143).

Parker Dam, which creates the Lake Havasu Reservoir, is located on the Colorado River between Arizona and California, 155 miles downstream from Hoover Dam. The dam was constructed by Reclamation, partially with funds advanced by the Metropolitan Water District (MWD) of Southern California. Under contract, MWD is entitled to one-half of the net energy generated. Davis Dam, which creates the Lake Mohave Reservoir, is located on the Colorado River between Arizona and Nevada, 67 miles downstream from Hoover Dam. The P-DP is operated in conjunction with other hydroelectric installations in the Colorado River Basin.

Construction of Parker Dam was authorized for the purpose of controlling floods, improving navigation, regulating flow of the streams of the United States, providing for storage and delivery of the stored waters thereof, reclamation of public lands and Indian reservations, other beneficial uses, and the generation of electric energy as a means of financially aiding and assisting such undertakings.

Davis Dam was constructed to provide reregulation for the fluctuating water releases from Lake Mead at Hoover Dam, from hourly to seasonal, to facilitate water delivery for downstream irrigation requirements, for delivery of water beyond the boundary of the United States as required by the Mexican Water Treaty, and for the generation of electric energy as a means of financially aiding and assisting such undertakings.

Discussion

Power repayment studies (PRS) and other analyses indicate that the existing rates are sufficient to maintain the financial integrity of the P-DP, and will provide sufficient revenues to recover all operation, maintenance, and replacement costs for the P-DP through the cost evaluation period ending September 30, 1992. Further, revenues since the project was placed into commercial service have been sufficient to satisfy the repayment to the Treasury of the United States, with interest, of all Federal funds advanced to the P-DP for the construction of the P-DP's features, including the assumed obligations of other electrical facilities associated with the reclamation of lands and treaties of the United States with the Republic of Mexican States.

Operating revenues for fiscal year 1987 were approximately $24.2 million, while average estimated operating revenues for the first 5-future years (FY 1988-FY 1992) are approximately $20 million. Revenues are impacted by two

factors: (1) The amount of sales (kWh) and (2) the rates for such sales. Sales for fiscal years 1988 through 2008 (termination of current contracts) are based on firm power and transmission contractual commitments. The power and transmission rates now in effect are sufficient to recover the costs of producing and transmitting power and energy. Additionally, all federally funded construction of P–DP facilities has been recovered with appropriate interest.

The PRS on which the rate extension is based differs in the treatment of future replacements from the PRS on which the current rates are based. While the previous ratesetting PRS projected replacements for the entire term of the study, the PRS for the rate extension projects replacements for the 5-future-year cost evaluation period only. Additionally, since 1983, several events have occurred that are now reflected in the PRS prepared for the rate extension. First, fuel replacement sales were made utilizing Western's Boulder City Area Office's transmission system with the revenues from those sales shared among projects. Secondly, the P–DP is repaid, in part due to fuel replacement sales revenues as well as sales greater than expected resulting from surplus water. Lastly, surplus revenues are used during the 5-year cost evaluation period to repay budgeted investments, and thereafter are transferred to another project as required by law.

Beginning in fiscal year 1983, revenues to the Boulder City Area resulting from the settlement of a joint intra-Western projects agreement (Salt Lake City Area and Boulder City Area) have been allocated to both the P–DP and Pacific Northwest-Pacific Southwest Intertie/Southern Division (Intertie). This has resulted in approximately 30 percent (30%), or $10,502,544, of the net revenues to the Boulder City Area being allocated to the Intertie and transferred in FY 1988. This allocation is predicated on the basis that both the P–DP's and the Intertie's transmission systems are utilized proportionately to effect economy energy transactions within the Boulder City Area.

The PRS utilizes budget data to project the first 5-future years of operation, maintenance, and replacement costs for both Reclamation and Western. The FY 1992 operation and maintenance (O&M) budget amount was reduced by the amount of "extraordinary O&M expenses" to determine the FY 1993–FY 2042 level of O&M costs. Budgeted replacement amounts were used in the PRS for the cost evaluation period ending September 30, 1992 (FY 1992). Beginning in FY 1993, no further replacements costs are forecast through the end of the repayment analysis (FY 2042). Exclusion of future replacements costs beyond the cost-evaluation period would prevent a presently unnecessary rate increase for this project that has been repaid.

Also, the PRS reflects, in FY 1993, a transfer of $5,464,601 to the Lower Colorado River Basin Development Fund; from FY 1994 through FY 2004 an annual transfer of $2,727,936; and from FY 2005 through FY 2042 (end of study) an annual transfer of $1,649,936. These transfers represent the "surpluses" of revenues after all operation, maintenance, replacement costs, and completion of repayment requirements for P–DP have been satisfied, and are required by section 403 of the Colorado River Basin Project Act, as amended.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve for a period effective January 1, 1989, a 5-year extension of existing Rate Schedules PD–F2, PD–FT2, PD–NFT2, and PD–FCT2 for wholesale firm power rates and the firm and nonfirm transmission rates for Western's Parker-Davis Project.

Issued in Washington, DC, December 22, 1988.

Joseph F. Salgado,
Deputy Secretary.

Schedule of Rates for Wholesale Firm Power Service; Rate Schedule PD–F2

Effective

The first day of the first full billing period beginning on or after December 15, 1983.

Available

In the area served by the Parker-Davis Project.

Applicable

To wholesale power customers for general power service supplied through one meter at one point of delivery, unless otherwise specified by contract.

Character and Conditions of Service

Three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery specified in the power service contract.

Monthly Rate

Capacity Charge: $1.87 per kilowatt of billing demand.

Energy Charge: 4.28 mills per kilowatthour for each kilowatthour scheduled or delivered, not to exceed the delivery obligation under the power service contract.

Billing Demand: The billing demand will be the greater of (1) the highest 30-minute integrated demand established during the month up to, but not in excess of, the delivery obligation under the power service contract, or (2) the contract rate of delivery.

Billing for Unauthorized Overruns

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm capacity and/or energy obligations, such overrun shall be billed at ten times the above rates.

Adjustments

For Transformer Losses. If delivery is made at transmission voltage but metered on the low-voltage side of the transformer, the meter readings will be increased 2 percent to compensate for transformer losses.

For Power Factor. None. The customer will normally be required to maintain a power factor at the point of delivery of between 95 percent lagging and 95 percent leading.

Schedule of Rates for Firm Transmission Service; Rate Schedule PD–FT2 (Supersedes Rate Schedule PD–T1)

Effective

The first day of the first full billing period beginning on or after December 15, 1983.

Available

In the area served by the Parker-Davis Project transmission facilities.

Applicable

The firm transmission service customers where capacity and energy are supplied to the Parker-Davis Project system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the Parker-Davis Project system specified in the service contract.

Character and Conditions of Service

Transmission service for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery specified in the service contract.

Rate

$7.56 per kilowatt per year, payable monthly at the rate of $.63 per kilowatt for the greater of each kilowatt contracted for or delivered at the point of delivery during that month, as specified in the service contract.

Adjustments

For Reactive Power. None. There shall be no entitlement to transfer of reactive kilovoltamperes at points of delivery, except when such transfers may be mutually agreed upon by contractor and contracting officer or their authorized representatives.

For losses. Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

Schedule of Rates for Transmission Service of Colorado River Storage Project (CRSP) Power And Energy; Rate Schedule PD–FCT2 (Supersedes Rate Schedule PD–T2)

Effective

The first day of the first full billing period beginning on or after December 15, 1983.

Available

In the area served by the Parker-Davis Project transmission facilities.

Applicable

To Colorado River Storage Project (CRSP) Southern Division costomers where CRSP capacity and energy are supplied to the Parker-Davis Project system by CRSP at points of interconnection with the CRSP system and for transmission and delivery, less losses, to Southern Division customers at points of delivery on the Parker-Davis Project system specified in the service contract.

Character and Conditions of Service

Transmission service for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery specified in the service contract.

Seasonal Rate

$3.78 per kilowatt of the maximum allowable rate of delivery made available at each point of delivery during each season as specified in the service contract, payable monthly at the rate of $0.63 per kilowatt.

Adjustments

For Reactive Power. None. There shall be no entitlement to transfer of reactive kilovoltamperes at points of delivery, except when such transfers may be mutually agreed upon by contractor and contracting officer or their authorized representatives.

For Losses. Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

Schedule of Rates for Nonfirm Transmission Service; Rate Schedule PD–NFT2 (Supersedes Rate Schedule PD–T3)

Effective

The first day of the first full billing period beginning on or after December 15, 1983.

Available

In the area served by the Parker-Davis Project transmission facilities.

Applicable

To nonfirm transmission service customers where capacity and energy are supplied to the Parker-Davis Project system at points of interconnection with other systems, transmitted subject to the availability of transmission capacity, and delivered less losses to points of delivery on the Parker-Davis Project system specified in the service contract.

Character and Conditions of Service

Transmission service on an intermittent basis for three-phase alternating current at 60 hertz, delivered and metered at the voltages and points of delivery specified in the service contract.

Rate

1.4 mills per kilowatthour of the scheduled or delivered kilowatthours at the point of delivery, pursuant to the contract, payable monthly.

Adjustments

For Reactive Power. None. There shall be no entitlement to transfer of reactive kilovolt-amperes at points of delivery, except when such transfers may be mutually agreed upon by contractor and contracting officer or their authorized representatives.

For Losses. Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

[FR Doc. 89–1878 Filed 1–25–89; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[WH–FLR–3509–8]

State and Local Assistance; Grants for Construction of Treatment Works (Title II) and State Water Pollution Control Revolving Funds (Title VI) Under the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of allotment.

SUMMARY: This notice sets forth the State allotments of fiscal year (FY) 1989 funding for the municipal wastewater treatment works construction grants program and the state revolving fund capitalization grants program under the Clean Water Act (the Act). On August 19, 1988, in Pub. L. 100–404 Congress appropriated $941 million in funding for the construction grants program (Title II) and $941 million for the state revolving fund capitalization grant program (Title VI). After national set-asides for Indian Tribes and the Marine Estuary Reserve are subtracted from the construction grants allotment, the remaining amounts are allotted in accordance with section 205(c)(3) of the Act, as amended by Pub. L. 100–4.

Through promulgation of this notice the requirements of the Act are fulfilled and the public is notified of the amounts made available to the States for grants to construct municipal wastewater treatment works and to capitalize the State water pollution control revolving funds. This notice also explains an adjustment to the allotment formula in section 205(c)(3) necessitated by laws affecting the funding status of the former Trust Territories of the Pacific Islands.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard B. Fitch, Program Management Branch, Municipal Construction Division, Office of Municipal Pollution Control, (202) 382–5858.

SUPPLEMENTARY INFORMATION:

Pub. L. 100–404 appropriated and made available $941 million for construction grant funds (Title II) and $941 million for state revolving fund capitalization grant funds (Title VI) for fiscal year 1989. Two national set-asides (Marine Estuary and Indian Tribes Reserves) are subtracted from the amount available for the construction grants allotment prior to allotment to the States. Finally, adjustments to States' allotments are made to reflect the decreased amount of funding provided to the Federated States of Micronesia and the Republic of the Marshall Islands

(formerly part of the Trust Territories of the Pacific Islands). The national set-asides and the adjustments necessitated by the change in status of the former Trust Territories are explained below. The amount of FY 1989 funding that is made available to each State is listed in the table at the end of this notice.

Marine Estuary

Section 205(l) of the Act provides that, prior to making allotments among the States, the Administrator shall reserve one and one-half percent of sums appropriated for FY 1989 for construction grants to address water quality problems in marine bays and estuaries. In accordance with this provision, one and one-half percent ($14,115,000) of the $941 million available for construction grant allotments is set aside prior to allotting funds to the individual States. Section 205(l) further stipulates that, "Of the sums reserved under this subsection, two-thirds shall be available to address water quality problems of marine bays and estuaries subject to lower levels of water quality due to the impacts of discharges from combined storm water and sanitary sewer overflows from adjacent urban complexes, and one-third shall be available for the implementation of section 320 of this Act, relating to the national estuary program." Funds set aside for these purposes available for obligation until September 30, 1990.

Indian Tribes

Section 518(c) of the Act provides that the Administrator shall reserve one-half of one percent of the sums appropriated for FY 1989 for construction grants to make wastewater treatment grants to Indian tribes. These funds are available for grants to develop waste treatment management plans and to construct sewage treatment works to serve Indian tribes. In accordance with this provision, one-half of the one percent ($4,705,000) of the $941 million available for allotment is set aside prior to allocating funds to the States.

Trust Territory Adjustment

In Pub. L. 99–658, Congress approved a Compact of Free Association for the Trust Territories' members and directed, for transition purposes, that the Trust Territories receive in FY 1989 "* * * amount not to exceed 25 per centum of the total amount appropriated for * * * [infrastructure] for fiscal year 1986." At the effective date of this allotment the Republic of Palau, a member of the Trust Territories, is yet to implement a Compact of Free Association. To cover this contingency, Pub. L. 99–239, section 105(h)(2) states that, "Upon the effective date of the Compact, the laws of the United States generally applicable to the Trust Territory of the Pacific Islands shall continue to apply to the Republic of Palau and the Republic of Palau shall be eligible for such proportion of Federal assistance as it would otherwise have been eligible to receive under such laws prior to the effective date of the Compact, as provided in appropriations Acts or other Acts of Congress." To comply with both Pub. L. 99–658 and Pub. L. 99–239 it is necessary to decrease the Trust Territories' allotment share from the appropriation. Funds that otherwise would have been allotted to the Trust Territories are redistributed to the remaining States and Territories in proportion to their respective shares of the appropriation. Because the amounts allotted to the Trust Territories for construction grants (Title II) and for capitalization of state revolving funds (Title VI) are different, the adjusted formula for Title II State allotment is different from the Title VI State allotment. This redistribution is accomplished by the new allocation shares shown in the column titled "Allotment Formulae After Trust Territory Adjustments" in the table at the end of this notice. The actual allotments resulting from the adjusted allotment shares are shown in the column titled "State Allotment." The table at the end of this notice lists the amount of funding made available to each State for the two programs. Advices of allowance for these allotments have been issued by the EPA Comptroller and these allotments are available for obligation until September 30, 1990. After September 30, 1990, unobligated balances will be reallotted in accordance with the Act and EPA regulation 40 CFR 35.2010. Grants from the allotments may be awarded as of the date that advices of allowance were issued to the Regional Administrator by the Comptroller of EPA.

Dated: January 19, 1989.

Lee M. Thomas,

Administrator.

State	Allotment formula	Allotment formulae after trust territory adjustments		FY 89 State allotment—	
		Title II	Title VI	Title II	Title VI
Alabama	0.011309	0.011315	0.011321	$10,434,700	$10,653,500
Alaska	.006053	.006056	.006060	5,585,100	5,702,100
Arizona	.006831	.006835	.006839	6,302,900	6,435,000
Arkansas	.006616	.006620	.006623	6,104,500	6,232,500
California	.072333	.072373	.072412	66,741,200	68,140,100
Colorado	.008090	.008095	.008099	7,464,600	7,621,100
Connecticut	.012390	.012397	.012404	11,432,200	11,671,800
Delaware	.004965	.004968	.004970	4,581,200	4,677,200
District of Columbia	.004965	.004968	.004970	4,581,200	4,677,200
Florida	.034139	.034158	.034176	31,499,900	32,160,100
Georgia	.017100	.017110	.017119	15,778,100	16,108,800
Hawaii	.007833	.007837	.007842	7,227,500	7,378,900
Idaho	.004965	.004968	.004970	4,581,200	4,677,200
Illinois	.045741	.045767	.045791	42,205,000	43,089,600
Indiana	.024374	.024388	.024401	22,489,700	22,961,100
Iowa	.013688	.013696	.013703	12,629,800	12,894,600
Kansas	.009129	.009134	.009139	8,423,300	8,599,800
Kentucky	.012872	.012879	.012886	11,876,900	12,125,900
Louisiana	.011118	.011124	.011130	10,258,500	10,473,500
Maine	.007829	.007833	.007838	7,223,800	7,375,200
Maryland	.024461	.024475	.024488	22,570,000	23,043,100
Massachusetts	.034338	.034357	.034376	31,683,500	32,347,500
Michigan	.043487	.043511	.043535	40,125,200	40,966,200
Minnesota	.018589	.018599	.018609	17,152,000	17,511,500
Mississippi	.009112	.009117	.009122	8,407,600	8,583,800
Missouri	.028037	.028053	.028068	25,869,600	26,411,800

State	Allotment formula	Allotment formulae after trust territory adjustments		FY 89 State allotment—	
		Title II	Title VI	Title II	Title VI
Montana	.004965	.004968	.004970	4,581,200	4,677,200
Nebraska	.005173	.005176	.005179	4,773,100	4,873,100
Nevada	.004965	.004968	.004970	4,581,200	4,677,200
New Hampshire	.010107	.010113	.010118	9,325,700	9,521,100
New Jersey	.041329	.041352	.041374	38,134,000	38,933,300
New Mexico	.004965	.004968	.004970	4,581,200	4,677,200
New York	.111632	.111694	.111755	103,002,200	105,161,100
North Carolina	.018253	.018263	.018273	16,841,900	17,194,900
North Dakota	.004965	.004968	.004970	4,581,200	4,677,200
Ohio	.056936	.056968	.056999	52,534,500	53,635,600
Oklahoma	.008171	.008176	.008180	7,539,300	7,697,400
Oregon	.011425	.011431	.011438	10,541,800	10,762,700
Pennsylvania	.040062	.040084	.040106	36,965,000	37,739,700
Rhode Island	.006791	.006795	.006798	6,266,000	6,397,300
South Carolina	.010361	.010367	.010372	9,560,000	9,760,400
South Dakota	.004965	.004968	.004970	4,581,200	4,677,200
Tennessee	.014692	.014700	.014708	13,556,200	13,840,400
Texas	.046226	.046252	.046277	42,652,500	43,546,400
Utah	.005329	.005332	.005335	4,917,000	5,020,100
Vermont	.004965	.004968	.004970	4,581,200	4,677,200
Virginia	.020698	.020710	.020721	19,097,900	19,498,200
Washington	.017588	.017598	.017607	16,228,300	16,568,500
West Virginia	.015766	.015775	.015783	14,547,200	14,852,100
Wisconsin	.027342	.027357	.027372	25,228,300	25,757,100
Wyoming	.004965	.004968	.004970	4,581,200	4,677,200
American Samoa	.000908	.000909	.000909	837,800	855,400
Guam	.000657	.000657	.000658	606,200	618,900
Northern Marianas	.000422	.000422	.000422	389,400	397,500
Puerto Rico	.013191	.013198	.013205	12,171,300	12,426,400
Pacific Trust Territory	.001295	.000737	.000198	680,500	186,400
Virgin Islands	.000527	.000527	.000528	486,300	4967,500
Total	1.000000	1.00000000	1.00000000	922,180,000	941,000,000
Indian setaside					4,705,000
Marine CSO and NEP setaside					14,115,000

[FR Doc. 89-1793 Filed 1-25-89; 8:45 am]
BILLING CODE 6560-50-M

(OSWER-FRL-3421-2)

Pollution Prevention Policy Statement

AGENCY: Environmental Protection Agency.
ACTION: Proposed policy statement.

SUMMARY: The Environmental Protection Agency's progress over the last 18 years in improving environmental quality through its media-specific pollution control programs has been substantial. However, EPA realizes that there are limits as to how much environmental improvement can be achieved under these programs, which emphasize management after pollutants have been generated. EPA believes that further improvements in environmental quality can be achieved by reducing or eliminating discharges and/or emissions to the environment through the implementation of source reduction and environmentally-sound recycling practices.

EPA's proposed policy encourages organizations, facilities and individuals to fully utilize source reduction techniques in order to reduce risk to public health, safety, welfare and the environment, and as a second preference, to use environmentally sound recycling to achieve these same goals. Industrial source reduction can be accomplished through input substitution, product reformulation, process modification, improved housekeeping, and onsite, closed loop recycling. Although source reduction is preferred to other management practices, the Agency recognizes the value of environmentally sound recycling, and is committed to promoting recycling as a sound preference, above treatment, control and disposal.

EPA believes pollution prevention through source reduction and environmentally sound recycling is highly desirable, and that as a Nation there are many opportunities in source reduction and recycling that we have not yet pursued. However, we recognize that, while there is still much progess to be gained, the extent to which we can prevent pollution also has limitations, and that safe treatment, storage and disposal, for pollution that couldn't reasonably be reduced at the source or recycled, will continue to be important components of an environmental protection strategy. Source reduction and recycling will not totally obviate the need for or the importance of these processes. Individuals as well as industrial facilities or organizations can practice source reduction and recycling through changing their consumption or disposal habits, their driving patterns and their on-the-job practices.

EPA firmly believes that all sectors of our society must work together to ensure continued environmental protection. Today's notice commits EPA to a preventive program to reduce or eliminate the generation of potentially harmful pollutants. The Agency has established a Pollution Prevention Office which together with EPA's media-specific offices will develop and implement this program. An Advisory Committee of senior Agency managers will help direct EPA's pollution prevention program and will assure the participation of the entire Agency in this important mission. EPA also believes that State and local government must play a primary role in encouraging this shift in the environmental priorities of all sectors of industry and the public.

Today's notice also commits EPA to working with States to develop and implement specific strategies and technical assistance programs to encourage commercial and

manufacturing industries, the agricultural sector and the general public to reduce the amount of pollution generated.

There are varying views among representatives of industry, public interest groups, state and local governments and others over the role of recycling in pollution prevention. The Agency believes that source reduction (including closed-loop, in-plant recycling) can reduce risk and should be implemented in a cost efficient manner. It is generally preferred over other management approaches. The Agency also believes that out-of-loop and off-site recycling, when properly conducted, also offers the potential for significant economic benefits and reduced risk. With the publication of this proposed pollution prevention policy, the Agency would like to specifically request comment on the role of environmentally sound recycling in the pollution prevention program. Other comments on this policy, and on the steps necessary to implement it effectively are invited.

DATES: EPA urges interested parties to comment on this notice in writing. The deadline for submitting written comments is April 26, 1989.

ADDRESSES: All comments must be submitted in triplicate (original and two copies) to: EPA RCRA Docket (Room SE-201) (mail code OS-305), 401 M Street SW., Washington, DC 20460. Place the docket number #F-88-SRRP-FFFFF, on your comments.

For further information, contact: Gerald Kotas, Director, Pollution Prevention Office, Office of Policy, Planning and Evaluation, 401 M Street SW., Wasington, DC 20460, (202) 382-4335; or James Lounsbury, Office of Solid Waste (OS-302), 401 M Street SW., Washington, DC 20460, (202) 382-4807.

Pollution Prevention Policy Statement Outline:

This policy statement is organized as follows:

I. Background

EPA has made substantial progress over the last 18 years in improving the quality of the environment through implementation of media-specific pollution control programs. Not withstanding past progress, there are economic, technological, and institutional limits on how much improvement can be achieved under these programs, which emphasize management after pollutants have been generated. As early as 1976, EPA believed the nation could not continue to reduce threats to human health and the environment while utilizing only better methods of control, treatment or disposal.

In practice, waste management activities by both the regulatory and the regulated community have largely focused on treatment, control and disposal as specified in EPA's major statutes, and to a lesser extent, on recycling. Although each of these techniques is appropriate in a comprehensive waste management strategy, government and industry are beginning to realize that end-of-pipe pollution controls alone are not enough. Significant amounts of waste containing toxic constituents continue to be released into the air, land, and water, despite stricter pollution controls and skyrocketing waste management costs.

There is increasing evidence of the economic and environmental benefits to be realized by reducing waste at the source rather than managing such waste after it is produced. Elimination of tons of pollutant discharges can be combined with cost savings estimated from the cost of pollution control facilities that did not have to be built; reduced operating costs for pollution control facilities; reduced manufacturing costs; and retained sales of products that might otherwise have been taken off the market as environmentally unacceptable.

Today's policy statement commits EPA to a program that reduces all environmentally harmful releases. EPA's experience with its current programs has shown that, notwithstanding the substantial gains that have been made in limiting environmental pollution, media-specific programs have some inherent limitations. Efforts to control or treat pollutants subsequent to their generation or production can sometimes result in transfers of these pollutants from one environmental medium to another, where they may continue to present a hazard. In addition, once these pollutants have been produced or generated, some proportion of those releases will have an impact on the environment, however effective the control or management techniques. The preventive approach of today's policy statement provides a way to more effectively respond to these remaining problems.

EPA believes that all sectors of our society must work together to ensure continued environmental protection. EPA is committed to working with individuals and organizations (both public and private) to make source reduction and as a second preference, environmentally sound recycling, the major focus of future environmental protection strategies. In particular, EPA believes that State and local governments must play a primary role in encouraging this shift in the environmental priorities of all sectors of industry and the public.

Some programs within EPA have already adopted measures to promote source reduction and recycling. For example, the Office of Water has adopted effluent guidelines that have resulted in flow reductions and product substitutions. The rapid phasing down of lead in gasoline by EPA's Office of Air and Radiation Programs is another attempt to reduce pollution at the source. Nevertheless, much of the past focus in these programs has been on pollution control rather than pollution prevention. It is necessary at this time to reassess EPA's programs in light of today's policy statement and redirect them accordingly.

The term "waste minimization", which EPA has previously used in reference to source reduction and recylcing activities in its hazardous waste program, has been replaced in today's policy statement by the phrase "pollution prevention". Through eliminating a term that may be perceived as closely tied to RCRA, EPA is emphasizing that the policy has applicability beyond the RCRA hazardous waste contest. EPA stresses that the policy focuses primarily on the prevention of pollution through the multi-media reduction of pollutants at the source. In addition, in order to obtain additional benefits of avoiding releases to the environment, EPA's pollution prevention program secondarily promotes environmentally sound recycling.

II. EPA's Pollution Prevention Policy

EPA's proposed policy encourages organizations, facilities and individuals to fully utilize source reduction techniques in order to reduce risk to public health, safety, welfare and the environment and as a second preference to use environmentally sound recycling to achieve these same goals. Industrial source reduction can be accomplished through input substitution, product reformulation, process modification, improved housekeeping, and on-site, closed loop recycling. Although source reduction is preferred to other management practices, the Agency recognizes the value of environmentally sound recycling, and is committed to promoting recycling as a second preference, above treatment, control and disposal.

EPA believes pollution prevention through source reduction and environmentally sound reduction is highly desirable, and that as a Nation there are many opportunities in source reduction and recycling that we have not yet pursued. However, we recognize that, while there is still much progress to be gained, the extent to which we can prevent pollution also has limitations, and that safe treatment, storage and disposal, for pollution that couldn't reasonably be reduced at the source or recycled, will continue to be important components of an environmental protection strategy. Source reduction and recycling will not totally obviate the need for or the importance of these processes. Individuals as well as industrial facilities or organizations can practice source reduction and recycling through changing their consumption or disposal habits, their driving patterns and their on-the-job practices. EPA believes that developing and implementing a new mutli-media prevention strategy, focused primarily on source reduction and secondarily on environmentally sound recycling, offers enormous promise for improvements in human health protection and environmental quality and significant economic benefits.

III. Development of EPA's Multi-Media Pollution Prevention Program

EPA has initiated development of a comprehensive pollution prevention program to implement this pollution prevention policy throughout the Agency programs, whether they affect air, land, surface water, or ground water. EPA has established a Pollution Prevention Office which together with the Agency's media-specific offices will develop and implement this program. EPA will develop an overall Agency pollution prevention strategy, as well as coordinate strategies among EPA's program and regional offices. An important emphasis of these strategies will be on educational, technical assistance and funding support to make it easier to build these programs into the public and private sectors. An Advisory Committee of senior Agency managers will help direct EPA's pollution prevention program and will assure the participation of the entire Agency in this important mission. As part of this program, EPA will establish mechanisms for avoiding or mitigating the generation and cross-media pollution prevention program will focus on several key components. These include:

- The development of institutional structures within each of EPA's media-specific and regional offices to ensure that the pollution prevention philosophy is incorporated into every feasible aspect of internal EPA decisionmaking and planning;
- The support of State and local pollution prevention programs. EPA believes that State and local agencies are more aware of the problems facing the commercial or manufacturing industries, or consumers, than the federal government. Indeed, a few States have already formally recognized the importance of multi-media pollution prevention. One of EPA's primary goals is to help States develop their own pollution prevention programs;
- The development of an outreach program targeted at State and local governments, industry and consumers, designed to effect a cultural change emphasizing the opportunities and benefits of pollution prevention;
- The creation of incentives and elimination of barriers to pollution prevention;
- The development of a multi-media clearinghouse to provide educational and technical information. This includes the support of research, development and demonstrations necessary to provide relevant data; and
- The collection, dissemination and analysis of data for the purpose of evaluating national progress in mutli-media pollution prevention.

EPA believes that the development of a comprehensive multi-media pollution prevention policy offers enormous promise for improvements in human health protection and environmental quality. Because the focus of pollution prevention is on greater efficiency in the use of materials and processing of products, its implementation could additionally result in significant economic benefits.

There are significant opportunities for industry to reduce the generation of waste at the source through cost-effective changes in production, operation, and raw materials use. Such changes offer industry substantial savings in reduced raw material, waste management, and liability costs as well as help protect the environment.

There are varying views among representatives of industry, public interest groups, state and local governments and others over the role of recycling in pollution prevention. The Agency believes that source reduction (including closed-loop, in-plant recycling) can reduce risk and should be implemented in a cost efficient manner. It is generally preferred over other management approaches. The Agency also believes that out-of-loop and off-site recycling, when properly conducted, also offers the potential for significant economic benefits and reduced risk. With the publication of this proposed pollution policy, the Agency would like to specifically request comment on the role of environmentally sound recycling in the pollution prevention program. Other comments on this policy, and on the steps necessary to implement it effectively are invited.

Lee M. Thomas.

January 19, 1989.

[FR Doc. 89-1794 Filed 1-25-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Media-Com, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

I.

Applicant, City and State	File No.	MM Docket No.
A. Media-Com, Ind., Uhrichsville, OH.	BPH-871231ML	88-570
B. Edward Alan Schumacher, Uhrichsville, OH.	BPH-880107MV	.....
C. Thomas Larkin, Uhrichsville, OH.	BPH-880107NL	.....

Issue Heading and Applicant(s)

1. Comparative, A, B, C
2. Ultimate, A, B, C

II.

Applicant, City and State	File No.	MM Docket No.
A. Owen-Dumeyer Partnership, Biltmore Forest, NC.	BPH-870828MC	88-577
B. National Communications Industries, Inc., Biltmore Forest, NC.	BPH-870831MF	.....
C. RaKel Communications, Inc., Biltmore Forest, NC.	BPH-870831MG	.....
D. Ernest J. Phillips, III, Biltmore Forest, NC	BPH-870831MH	.....

Applicant, City and State	File No.	MM Docket No.
E. Liberty Productions, A Limited Partnership, Biltmore Forest, NC.	BPH-870831MI	
F. Willsyr Communications Limited Partnership, Biltmore Forest, NC.	BPH-870831MJ	
G. Biltmore Forest Broadcasting FM, Inc., Biltmore Forest, NC.	BPH-870831MK	
H. Skyland Broadcasting Company, Biltmore Forest, NC.	BPH-870831ML	
I. Biltmore Broadcasting Inc., Biltmore Forest, NC.	BPH-870831MM	
J. United Broadcasting Enterprises Inc., Biltmore Forest, NC	BPH-870831MN	
K. Shamrock Communications, Inc., Biltmore Forest, NC	BPH-870901MB	
L. Orion Communications Limited, Biltmore Forest, NC.	BPH-870901ME	
M. Harbinger Broadcasting Company, Biltmore Forest, NC.	BPH-870901MF	

Issue Heading and Applicants

1. Site Availability; C, G
2. Misrepresentation, C
3. Air Hazard, I
4. Comparative, A–O
5. Ultimate, A–O

III.

Applicant, City and State	File No.	MM Docket No.
A. A. Wayne Price d/b/a Price Broadcasting Company, Danville, WV.	BPH-871123MB	88-579
B. Boone Communications Company, Danville, WV.	BPH-871124MY	

Issue Heading and Applicant(s)

1. Comparative, A, B
2. Ultimate, A, B

IV.

Applicant, City and State	File No.	MM Docket No.
A. Knight Radio, Inc., Old Town, Maine.	BPH-871019MC	88-578
B. Penobscot Indian Nation, Old Town, Maine.	BPH-871026MO	

Issue Heading and Applicant(s)

1. Comparative, A, B
2. Ultimate, A, B

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirely under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 89–1827 Filed 1–25–89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Board of Visitors for the Emergency Management Institute; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the Emergency Management Institute (EMI).

Dates of Meeting: February 15–17, 1989.

Place: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Emmitsburg, Maryland 21727.

Time: February 15—8:30 a.m. to 5:00 p.m., February 16—8:30 a.m. to 5:00 p.m., February 17—8:30 a.m. to Agenda Completion.

Proposed Agenda: Election of Chair and Vice Chair for CY 1989, status reports from the BOV task forces on Core Curriculum and Evaluation Systems Procedures, preparation of the 1988 Annual Report, and working sessions.

The meeting will be open to the public with approximately ten seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, Office of Training, 16825 South Seton Avenue, Emmitsburg, Maryland 21727 (telephone number, 301–447–1251) on or before January 31, 1989.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Director's Office, Office of Training, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: January 9, 1989.

Dave McLoughlin,

Director, Office of Training.

[FR Doc. 89–1749 Filed 1–25–89; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Performance Review Board; Membership

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice.

Notice is hereby given in accordance with 5 U.S.C. 4314(c)(4) of the appointment of the following persons to serve as members of this agency's Performance Review Board.

John Truesdale, Executive Secretary, National Labor Relations Board, Chairman

Charles R. Barnes, Executive Director, National Mediation Board

Michael D. Nossaman, Assistant General Counsel, Federal Labor Relations Authority

Dated: January 18, 1989.

Kay McMurray,

Director.

[FR Doc. 89–1727 Filed 1–25–89; 8:45 am]

BILLING CODE 6732-01-M

FEDERAL RESERVE SYSTEM

Barnett Banks, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89–817) published at page 1445 of the issue for Friday, January 13, 1989.

Under the Federal Reserve Bank of Atlanta, the comment period for Barnett Banks, Inc. is amended to end on February 26, 1989.

Board of Governors of the Federal Reserve System, January 19, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–1830 Filed 1–25–89; 8:45 am]

BILLING CODE 6210-01-M

Gene A. Baughman et al.; Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 255.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 9, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Gene A. Baughman*, Mary Ann Baughman and The Baughman Tile Co., Inc., Paulding, Ohio; to acquire up to 15 percent of the total shares outstanding of Oakwood Deposit Bank, Oakwood, Ohio.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Robert Reiter*, Jack Schaffer, and Keith Hein; to each acquire 33.33 percent of the voting shares of Balaton Agency, Inc., Balaton, Minnesota, and thereby indirectly acquire Farmers & Merchants State Bank of Balaton, Balaton, Minnesota.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *John L. and Phyllis Ary*, Canon City, Colorado; to acquire 5.35 percent of the voting shares of Pueblo Bancorporation, Pueblo, Colorado, and thereby indirectly acquire Pueblo Bank & Trust Company, Pueblo, Colorado.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *James F. Eubanks, II*, Houston, Texas; to acquire 60.06 percent of the voting shares of Alvin Bancshares, Inc., Alvin, Texas, and thereby indirectly acquire Alvin State Bank, Alvin, Texas.

Board of Governors of the Federal Reserve System, January 19, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–1831 Filed 1–25–89; 8:45 am]

BILLING CODE 6210-01-M

Excel Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f)) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 16, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Excel Bancorp, Inc.*, Quincy, Massachusetts; to acquire MAC Investment Services, Inc., Braintree, Massachusetts, and thereby engage in portfolio investment advise to financial institutions pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 19, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–1832 Filed 1–25–89; 8:45 am]

BILLING CODE 6210-01-M

First Essex Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 16, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. First Essex Bancorp, Inc., Lawrence, Massachusetts, and First Essex NH Bancorp, Inc., Windham, New Hampshire; to acquire 100 percent of the voting shares of Fortune Guaranty Savings Bank, Windham, New Hampshire. In connection with this application, First Essex NH Bancorp, Inc. has also applied to become a bank holding company. Comments on this application must be received by February 13, 1989.

B. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Bridge Bancorp, Inc., Bridgehampton, New York; to become a bank by acquiring 100 percent of the voting shares of The Bridgehampton National Bank, Bridgehampton, New York.

C. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Regent Bancshares Corp., Cherry Hill, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Regent National Bank, Philadelphia, Pennsylvania.

D. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Capital Holdings, Inc., Sylvania, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Capital Bank, National Association, Sylvania, Ohio.

2. Commonwealth Trust Company, Butler, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers Bank, Butler, Kentucky. Comments on this application must be received by February 13, 1989.

E. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. County Bancorporation, Inc., Jackson, Missouri; to acquire at least 80 percent of the voting shares of Capital Bank & Trust Company of Clayton, Clayton, Missouri. Comments on this application must be received by February 13, 1989.

2. First State Bancshares, Inc., St. Charles, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of St. Charles, Missouri, St. Charles, Missouri.

F. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Dickinson Bancorporation, Inc., Dickinson, North Dakota; to become a bank holding company by acquiring 72.95 percent of the voting shares of Liberty National Bank and Trust Company, Dickinson, North Dakota.

Board of Governors of the Federal Reserve System, January 19, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-1833 Filed 1-25-89; 8:45 am]

BILLING CODE 6210-01-M

PNC Financial Corp.; Proposal To Engage in Full-Service Brokerage Activities for Institutional and Retail Customers

PNC Financial Corp., Pittsburgh, Pennsylvania ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), for permission to engage through PNC Securities Corp., Inc., Pittsburgh, Pennsylvania ("Company"), in the offering of investment advisory services in conjunction with securities brokerage services to both retail and institutional customers ("full-service brokerage"). Company would conduct the proposed activity on a nationwide basis.

Company currently engages in the activities of underwriting and dealing in securities that state member banks are permitted to underwrite and deal in under the Glass-Steagall Act ("bank-eligible securities") and, to a limited degree, Company also engages in underwriting and dealing in certain bank-ineligible securities. *See PNC Financial Corp.*, 73 Federal Reserve Bulletin 742 (1987). Under this Order, Company is subject to certain retrictions designed to minimize conflicts of interests and other adverse effects. Company also provides discount brokerage services as permitted by § 225.25(b)(15) of Regulation Y (12 CFR 225.25(b)(15)).

The Board has previously approved the provision of full-service brokerage activities in *Bank of New England Corporation*, 74 Federal Reserve Bulletin 700 (1988) ("*BNEC*"). *See also Signet Banking Corporation*, 75 Federal Reserve Bulletin 34 (1989). Unlike these previously approved activities, Applicant proposes to provide to retail customers full-service brokerage services without limitation as to the types of securities offered, including securities that may be underwritten or dealt in by Company.

Section 4(c)(8) of the BHC Act provides that a bank holding company may engage in any activity which the Board has determined to be "so closely related to banking or managing or controlling banks as to be a proper incident thereto." PNC Financial believes that its proposed securities activities are closely related to banking essentially for the reasons previously discussed by the Board in previous Orders regarding similar activities. *See, e.g., National Westminster Bank PLC*, 72 Federal Reserve Bulletin 584 (1986); *BNEC*, 74 Federal Reserve Bulletin 800 (1988).

In determining whether an activity meets the second, or proper incident to banking test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Applicant contends that Company's conduct of the proposed activity will not result in any significant adverse effects, primarily for the reasons set forth by the Board in previous Orders regarding similar activities. Applicant maintains that its proposal is substantially similar to those previously approved by the Board, and Applicant believes that the commitments made in previous proposals should address the potential for any adverse effects arising from the proposed activity.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than February 22, 1989. Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Cleveland.

Board of Governors of the Federal Reserve System, January 23, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-1835 Filed 1-25-89; 8:45 am]

Billing Code 6210-01-M

Society Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the

Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 16, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Society Corporation*, Cleveland, Ohio; to engage *de novo* through its subsidiary, Society National Trust Company, in organization, Naples, Florida, in acting as investment or financial advisor pursuant to § 225.25(b)(4) of the Board's Regulation Y. These activities will be conducted in the Collier County and the State of Florida.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Perham State Bancshares*, Perham, Minnesota; to engage *de novo* in making loans to its common stockholders pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in Perham, Minnesota.

Board of Governors of the Federal Reserve System, January 19, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-1834 Filed 1-25-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Reconsideration of the Disapproval of Tennessee's Proposed Title IV-A State Plan Amendment

AGENCY: Department of Health and Human Services, FSA.

ACTION: Notice of hearing.

SUMMARY: The date of the hearing to rconsider the disapproval of Tennessee's State Plan Submittal No. ES-AP-88-2 noticed in 53 FR 47767, November 25, 1988, has been changed.

DATES: The hearing is rescheduled for 10:00 a.m. on February 17, 1989.

ADDRESSES: The hearing will be held in Room 905, 101 Marietta Tower, corner of Marietta and Spring Streets, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas D. Horvath, Senior Attorney, Departmental Appeals Board, Department of Health and Human Services, Room 451-F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Telephone Number (202) 475-0013.

Alexander G. Teitz,

Presiding Officer.

Date: January 19, 1989.

[FR Doc. 89-1785 Filed 1-25-89; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

Countrymark, Inc.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of two new animal drug applications (NADA's) held by Countrymark, Inc. The NADA's provide for the use of (1) pyrantel tartrate Type A medicated articles for making Type C medicated swine feeds, and (2) tylosin/sulfamethazine Type A medicated articles for making Type C medicated swine feeds. The firm requested the withdrawal of approval.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3183.

SUPPLEMENTARY INFORMATION: Countrymark, Inc. (formerly Ohio Farmers Grain and Supply Association), 4565 Columbus Pike, Rt. 23 North, Delaware, OH 43015-1206, is the sponsor of NADA's 138-940 and 138-343 which were originally approved October 18, 1985 (50 FR 42156) and June 18, 1985 (50 FR 25218), respectively. NADA 138-940 provides for the use of Type A medicated articles containing 9.6 and 19.2 grams of pyrantel tartrate per pound for making Type C medicated swine feeds to be used as anthelmintics, and NADA 138-343 provides for the use of Type A medicated articles containing four concentrations of equal amounts of tylosin and sulfamethazine for making Type C medicated swine feeds to be used in accordance with 21 CFR 558.630(f)(2)(ii).

In letters dated June 2, 1988, the sponsor requested the withdrawal of approval of the NADA's because the products are no longer marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 138-940 and 138-343 and all supplements thereto is hereby withdrawn, effective February 6, 1989.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing 21 CFR 558.485(a)(24) and reserving it for future use, and the firm's drug labeler code No. "026439" from 21 CFR 558.630(b)(10).

Dated: January 18, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-1820 Filed 1-25-89; 8:45 am]

BILLING CODE 4160-01-M

Food and Drug Administration

The Dow Chemical Co.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing

approval of a new animal drug application (NADA) held by The Dow Chemical Co. The NADA provides for use of a Type A medicated article containing zoalene and roxarsone for making Type C medicated chicken feeds. The firm requested withdrawal of approval.

EFFECTIVE DATE: February 6, 1989.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3183.

SUPPLEMENTARY INFORMATION: The Dow Chemical Co., P.O. Box 1706, Midland, MI 48640, is the sponsor of NADA 36–682 which was originally approved by letter of August 28, 1967. The NADA provides for use of the type the Type A medicated article Zoamix® N which contains 25 percent zoalene and 10 percent roxarsone in making Type C medicated chicken feeds. The feeds are used as an aid for the prevention and control of caecal and intestinal coccidiosis and as an aid in stimulating growth, increasing feed efficiency, and for improving pigmentation.

In a letter dated May 16, 1988, the sponsor requested withdrawal of approval of the NADA and waived opportunity for hearing because the product is no longer being marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 36–682 and all supplements thereto is hereby withdrawn, effective February 6, 1989.

Dated: Jan 18, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–1716 Filed 1–25–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 81D–0319]

Collection of Platelets, Pheresis; Availability of Revised Guideline

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised guideline prepared by the Center for Biologics Evaluation and Research for the collection of Platelets, Pheresis prepared by automated procedures using a currently approved instrument. The guideline is intended for use by blood collecting facilities that prepare platelets by this method.

ADDRESSES: The guideline may be seen at and comments submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Requests for a copy of the revised guideline to the Biologics Information Staff (HFB–205), Building 29, Room B–16, 8800 Rockville Pike, Bethesda, MD 20892, 301–496–9508.

FOR FURTHER INFORMATION CONTACT: Joseph Fratantoni, Center for Biologics Evaluation and Research (HFB–480), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–496–2577.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 27, 1981 (46 FR 52430), FDA announced the availability of a guideline for the collection of Platelets, Pheresis prepared by mechanical pheresis using a currently approved instrument. Platelets, Pheresis is a licensed biological product that may be prepared using automated equipment in an approved blood banking facility. FDA made the guideline available to recommend criteria for donor safety and to help ensure that final platelet products were safe and effective. In the **Federal Register** of April 2, 1984 (49 FR 13079), FDA announced the availability of a draft revised guideline intended to replace the original guideline made available in 1981. The draft revised guideline differed from the original guideline in several ways, including a revised standard for Platelets, Pheresis, a provision for donation of platelets for a specific recipient, and removal of some recommended platelet testing and processing procedures during donation periods.

In the 1984 notice, FDA also announced a 2-day public workshop to discuss issues concerning platelets. Public comments received on the draft revised guideline were discussed during the public workshop held on May 22 and 23, 1984. The draft revised guideline has been revised further as a result of comments received. Since 1984 FDA has approved new instrumentation and separation techniques, and has implemented additional testing for assuring the safety of blood products. These changes are reflected in the revised guideline.

In addition, the current revised guideline differs from the April 1984 draft revised guideline with respect to recommendations such as the donor deferral time interval after aspirin ingestion, an increase in the maximum number of platelet collections from a donor in any 1 year, and revised labeling.

FDA is making available the revised guideline under 21 CFR 10.90(b), which provides for the use of guidelines to outline procedures or standards of general applicability that are acceptable to FDA for a subject matter that falls within the laws administered by FDA. Although guidelines are not a legal requirement, a person may be assured that in following an agency guideline the procedures followed and standards used will be acceptable to FDA. A person may also choose to use alternative procedures or standards for which there is scientific rationale even though they are not provided for in a guideline. A person who chooses to use procedures or standards different from procedures or standards in a guideline may discuss the matter further with the agency to prevent an expenditure of resources for work that FDA may later determine to be unacceptable.

Copies of the revised guideline have been distributed to blood bank establishments and plasmapheresis centers that have pending or approved license applications to prepare Platelets, Pheresis using pheresis instruments for which the Center for Biologics Evaluation and Research has acceptable data.

Requests for a copy of the revised guideline should be sent to the Biologics Information Staff (address above).

Interested persons may submit to the Dockets Management Branch written comments on the revised guideline. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 18, 1989.

John M. Taylor

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–1715 Filed 1–25–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88F–0442]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *N*-methyl-*N*-(1-oxo-9-octadecenyl)glycine as a corrosion inhibitor for lubricants with incidental food contact.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4124) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) be amended to provide for the safe use of *N*-methyl-*N*-(1-oxy-9-octadecenyl)glycine as a corrosion inhibitor for lubricants with the incidental food contact.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 13, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–1713 Filed 1–25–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88F–0426]

Huels AG; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Huels AG has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 3-aminomethyl-3,5,5-trimethylcyclohexylamine as a cross-linking agent for use in epoxy resins complying with the indirect food additive regulations.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4118) has been filed by Huels AG, P.O. Box 1320, D–4370 Marl, Federal Republic of Germany, proposing that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) be amended to provide for the safe use of 3-aminomethyl-3,5,5-trimethylcyclohexylamine as a cross-linking agent for use in epoxy resins complying with § 175.300(b)(3)(viii).

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 13, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–1714 Filed 1–25–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85F–0082]

Ecolab, Inc.; Amended Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a food additive petition filed by Economics Laboratory, Inc. (now Ecolab, Inc.), to provide for the safe use of decanoic acid, octanoic acid, a mixture of 1-octanesulfonic acid and 1-octanesulfonic-2-sulfinic acid, and the condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymers with one mole of ethylenediamine as components of sanitizing solutions to be used on food-processing equipment and other food-contact articles. This notice makes clear that the sanitizing solution also contains lactic acid, phosphoric acid, and FD&C Yellow No. 5, and that the mixture of 1-octanesulfonic acid and 1-octanesulfonic-2-sulfinic acid also contains 1,2-octanedisulfonic acid.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 8, 1985 (46 FR 9521), FDA announced that a petition (FAP 5H3842) had been filed by Economics Laboratory, Inc., St. Paul, MN 55102 (the name and address of the company have been changed to Ecolab, Inc., Ecolab Center, St. Paul, MN 55102), proposing that the food additive regulations be amended to provide for the safe use of decanoic acid, octanoic acid, a mixture of 1-octanesulfonic acid and 1-octanesulfonic-2-sulfinic acid, (OSA mixture), and the condensate of four moles of poly(oxyethylene)poly(oxypropylene) block copolymers with one mole of ethylenediamine as components of sanitizing solutions to be used on food processing equipment and other food-contact articles. Subsequently, Ecolab, Inc., amended the petition and indicated the presence of 1,2-octanedisulfonic acid in the OSA mixture.

This notice makes clear that this ingredient is in the sanitizing solution and that this solution also contains FD&C Yellow No. 5, lactic acid, and phosphoric acid, components which were also not listed in the original notice of filing.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch, Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Dated: January 13, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–1819 Filed 1–25–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88G–0388]

Fuji Oil Co., Ltd.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Fuji Oil Co., Ltd., has filed a petition (GRASP 8G0348) proposing to affirm that cocoa butter substitutes from safflower oil and sunflower oil are generally recognized as safe (GRAS) for use as direct human food ingredients.

DATE: Comments by March 27, 1989.

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

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Fuji Oil Co., Ltd., 6–1, Hachiman-cho, Minami-ku, Osaka 542 Japan, has filed a petition (GRASP 8G0348) proposing that cocoa butter substitutes from safflower oil and sunflower oil be affirmed as GRAS for use as direct human food ingredients. The petition has been placed on display at the Dockets Management Branch address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 (21 CFR 170.30 and 170.35) is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before March 27 1989. Review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substances are, or are not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–1717 Filed 1–25–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88F–0428]

Takeda Chemical Industries, Ltd.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition (GRASP 8G0342) has been filed on behalf of Takeda Chemical Industries, Ltd., proposing to affirm that urease enzyme derived from *Lactobacillus fermentum* be affirmed as generally recognized as safe (GRAS) as a direct human food ingredient.

DATE: Comments by March 27, 1989.

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

FOR FURTHER INFORMATION CONTACT: JoAnn Ziyad, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–9463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 8G0342) has been filed on behalf of Takeda Chemical Industries, Ltd., c/o 1730 Rhode Island Ave. NW., Washington, DC 20076, proposing that urease enzyme derived from nonpathogenic and nontoxigenic *Lactobacillus fermentum* be affirmed as GRAS for use as a direct human food ingredient to prevent the development of ethyl carbamate in the alcoholic beverage Sake. The GRAS petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in 21 CFR 170.30 and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before March 27, 1989, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–1718 Filed 1–25–89; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Circulatory System Devices Panel

Date, time, and place. February 6, 1989, 8:30 a.m., Rm. 703A–727A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 10:30 a.m.; open committee discussion, 10:30 a.m. to 2:30 p.m.; closed committee deliberations, 2:30 p.m. to 4 p.m.; Keith Lusted, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7594.

General function of the committee. The committee reviews and evaluates

available data on the safety and effectiveness of medical devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 30, 1989, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss an industry presentation of the use of doppler ultrasound in the characterization of prosthetic heart valves, and premarket approval applications (PMA's) for a pulse generator system and a patent ductus arteriosus occluder.

Closed committee deliberations. The committee will discuss trade secret or confidential commercial information regarding the PMA's listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information on the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: January 13, 1989.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 89–1710 Filed 1–23–89; 4:00 pm]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Pub. L. 92–463, the Annual Report for the following Health Resources and Services Administration's Federal Advisory Committee has been filed with the Library of Congress: Council on Graduate Medical Education.

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Aveune, SE., Washington, DC or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, HHS North Building, Room G–400, 330 Independence Aveune, SW., Washington, DC, telephone (202) 245–6791. Copies may be obtained from: Dr. Donald L. Weaver, Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, Room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6190.

Dated: January 19, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89–1731 Filed 1–25–89; 8:45 am]

BILLING CODE 4160–15–M

Health Education Assistance Loan Program; Maximum Interest Rates for Quarter Ending March 31, 1989

Section 727 of the Public Health Service Act (42 U.S.C. 294) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

A. Section 60.13(a)(4) of the program's implementing regulations (42 CFR Part 60, previously 45 CFR Part 126) provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending March 31, 1989, three interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 11½ percent. Using the regulatory formula (45 CFR 126.13(a) (2) and (3)) in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury bills for the preceding calendar quarter (7.99 percent), and rounding the result (11.49 percent) upward to the nearest ⅛ percent (11½ percent). However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. Because the average rate of the 4 quarters ending March 31, 1989, is not in excess of 12 percent, there is no necessity for reducing the interest rate. For the previous 3 quarters the variable interest at the annual rate was as follows: 9½ percent for the quarter ending June 30, 1988; 10 percent for the quarter ending September 30, 1988; and 10¾ percent for the quarter ending December 31, 1988.

2. For variable rate loans executed during the period of January 27, 1981 through October 21, 1985, the interest rate is 11½ percent. Using the regulatory formula (42 CFR 60.13(a)(13)) in effect for that time period, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (7.99 percent); adding 3.50 percent (11.49 percent); and rounding that figure to the next higher one-eighth of 1 percent (11½ percent).

3. For fixed rate loans executed during the period of January 1, 1989 through March 31, 1989, and for variable rate loans executed on or after October 22, 1985, the interest rate is 11 percent. The Health Professions Training Assistance Act of 1985 (Pub. L. 99–129), enacted October 22, 1985, amended the formula for calculating the interest rate by changing 3.5 percent to 3 percent. Using the regulatory formula (42 CFR 60.13(a)(2)), the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (7.99 percent); adding 3.0 percent (10.99 percent) rounding that figure to the next higher one-eighth of 1 percent (11 percent).

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: January 19, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–1728 Filed 1–25–89; 8:45 am]

BILLING CODE 4160–15–M

Advisory Council; Meetings; February

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of February 1989:

Name: National Advisory Council on the National Health Service Corps.

Date and Time: February 20–22, 1989, 8:30 a.m.–5:00 p.m.

Place: Hyatt Regency Hotel, One Metro Center, Bethesda, Maryland 20814.

The meeting is open to the public.

Purposes: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provision of the legislation.

Agenda: The agenda will include a Bureau and Division update; orientation to the Public Health Service structure and function for new members; speakers from the Council on Graduate Medical Education, Indian Health Service, American Medical Student Association, American Insurance Association and other topics of interest to the Council. A site visit may be scheduled for Tuesday afternoon, February 21.

Anyone requiring information regarding the subject Council should contact Anna Mae Voigt, National Advisory Council on the National Health Service Corps, Room 7A–39, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1470.

* * * * *

Name: Subcommittee on Medical Education Program and Financing of the Council on Graduate Medical Education.

Time: February 22, 1989, 8:00 a.m.–5:00 p.m.

Place: Washington Hilton and Towers, 1919 Connecticut Avenue, NW., Washington, DC 20009.

Purpose: The subcommittee identifies the issues and problems in current methods of financing and support. Assesses the implications of alternative financing policies on medical education programs, service delivery, cost containment, physician supply & distribution, and shortages and excesses of physicians.

Analyzes existing information and data on current and alternative medical education programs of hospitals, schools of medicine and osteopathy, and accrediting bodies; federal policies regarding medical education programs; and their impact on the supply and distribution of physicians.

Agenda: Agenda items include: Presentation and discussion of direct graduate medical cost payments to nonhospital sponsors of graduate medical education programs. Panel presentation and discussion of the Medicare indirect teaching adjustment. Presentation and discussion of Medicare payment to teaching physicians.

Anyone requiring information regarding the subject Subcommittee should contact F. Lawrence Clare, M.D. Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, Room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 Telephone (301) 443–6326.

* * * * *

Name: Subcommittee on Physician Manpower of the Council on Graduate Medical Education

Time: February 22, 1989, 8 a.m.–5 p.m.

Place: Washington Hilton and Towers, 1919 Connecticut Avenue NW., Washington, DC 20009.

Open for entire meeting.

Purpose: The subcommittee reviews and analyzes currently applicable studies of under and oversupply of physician manpower giving special attention to number and distribution of specialists, primary care physicians and residents. It also is concerned with studies and recommendations regarding the number of undergraduate medical students as well as the need for improving physician manpower data.

Agenda: Agenda items include: Discussion of Subcommittee priority activities and preliminary action plan. Presentation and discussion of approach for physician specialty requirements modeling.

Anyone requiring information regarding the subject Subcommittee should contact Jerald M. Katzoff, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professionals, Room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326.

Name: Council on Graduate Medical Education

Time: February 23, 1989, 8:30 a.m.–4 p.m.

Place: Washington Hilton and Towers, 1919 Connecticut Avenue NW., Washington, DC 20009.

Open for entire meeting.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: The Council will receive and discuss the reports from its two Subcommittees and its future direction and agenda. The Council will also receive legislative updates from Health Resources and Service Administration, Health Care Financing Administration, and the Veterans' Administration. Dr. J. Jarrett Clinton, Director, Bureau of Health Professions, will discuss public health issues.

Anyone requiring information regarding the subject Council should contact Dr. Donald L. Weaver, Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, Room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6190.

Agenda Items are subject to change as priorities dictate.

Date: January 19, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89–1730 Filed 1–25–89; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute; Meeting of the Developmental Therapeutics Contracts Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, February 9, 1989, Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on February 9 from 8 a.m. to 8:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 9 from 8:30 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. The proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A–06, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892 (301–496–5708), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Edward H. Allen, Executive Secretary, Developmental Therapeutics Contracts Review Committee, National Cancer Institute, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20892 (301–496–7575) will provide substantive program information, upon request.

Dated: January 18, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–1803 Filed 1–25–89; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meetings of the National Cancer Advisory Board

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, February 6–7, 1989, Building 31C, Conference Room 6, 6th Floor, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees of the Board will be held at the times and places listed below. Portions of the Board meeting and its subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

Portions of the meeeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6),

Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

The Subcommittee on Planning and Budget will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, to discuss the 1990 Presidential Budget.

Mrs. Winifred J. Lumsden, Committee Management Officer, National Cancer Institute, 9000 Rockville Pike, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892, (301/496–5708), will provide a summary of the meeting and rosters of the Board members, upon request.

Name of Committee: Subcommittee on Cancer Centers.

Executive Secretary: Ms. Judith Whalen, Building 31, Room 11A19, Bethesda, MD 20892 (301/496–5515).

Date of Meeting: February 5.

Place of Meeting: Building 31C, Conference Room 7.

Open: 3 p.m. to adjournment.

Agenda: Continue the subcommittee's review of the cancer centers program.

Name of Committee: National Cancer Advisory Board.

Executive Secretary: Mrs. Barbara Bynum, Building 31, Room 10A03, Bethesda, MD 20892 (301/496–5147).

Date of Meeting: February 6 and 7.

Place of Meeting: Building 31C, Conference Room 6.

Open: February 6, 8:30 a.m. to recess; February 7, 1:00 p.m. to adjournment.

Agenda: Reports on activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; Subcommittee Reports; and New Business.

Name of Committee: AIDS Subcommittee.

Executive Secretary: Dr. Joyce O'Shaughnessy, Building 31, Room 11A23, Bethesda, MD 20892 (301/496–3505).

Date of Meeting: February 6.

Place of Meeting: Building 31C Conference Room 7.

Open: Immediately following adjournment of NCAB meeting.

Agenda: Update on AIDS activities for the Institute

Name of Committee: Subcommittee on Planning and Budget

Executive Secretary: Ms. Judith Whalen, Building 31, Room 11A19, Bethesda, MD 20892 (301/496–5515).

Date of Meeting: February 6.

Place of Meeting: Building 31C, Conference Room 8.

Closed Session: February 6—½ hour closed—following adjournment of the NCAB meeting this subcommittee meeting will be closed to the public for approximately 30 minutes.

Closure Reason: Discussion of the President's Budget.

Open: February 6—immediately following closed session of this subcommittee meeting.

Agenda: To discuss and plan other budget matters.

Name of Committee: Subcommittee on Special Actions for Grants.

Executive Secretary: Mrs. Barbara S. Bynum, Building 31, Room 10A03, Bethesda, MD 20892 (301/496–5147).

Date of Meeting: February 7.

Place of Meeting: Building 31C, Conference Room 6.

Closed: 8:30 a.m. to 12:00 noon.

Agenda: Review and discussion of individual grant applications.

Name of Committee: Subcommittee on Minority Manpower Development.

Executive Secretary: Dr. Vincent Cairoli, Executive Plaza North, Room 232B, Rockville, MD 20892 (301/496–8580).

Date of Meeting: February 7.

Place of Meeting: Building 31C, Conference Room 7.

Open: February 7—1:00 p.m. to adjournment.

Agenda: To discuss policies and potential changes regarding recruitment plans for under-represented minorities on institutional training grants.

(*Catalog of Federal Domestic Assistance Program Numbers:* 13.392, Project grants in cancer construction; 13.393, Project grants in cancer cause and prevention; 13.394, Project grants in cancer detection and diagnosis; 13.395, Project grants in cancer treatment; 13.396, Project grants in cancer biology; 13.397 Project grants in cancer centers support; 13.398, Project grants in cancer research manpower; and 13.399, Project grants and contracts in cancer control.)

Dated: January 18, 1989

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–1804 Filed 1–25–89; 8:45 am]

BILLING CODE 4140–01–M

National Center for Nursing Research; Meeting of the Nursing Science Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Nursing Science Review Committee, National Center for Nursing Research, March 15–17, 1989, Building 31, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on March 15 from 9:00 a.m. to 11:00 a.m. Agenda items to be discussed will include the report of the Director, NCNR; NRRC Chairman's Report; and the Executive Secretary's Report. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 15 from 11:00 a.m. to recess, March 16 from 9:00 a.m. to recess, and March 17 from 9:00 a.m. to adjournment, for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Eileen Raizen, Executive Secretary, Nursing Science Review Committee, National Institutes of Health, Building 31, Room 5B19, Bethesda, Maryland 20892, (301) 496–0472, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: January 18, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–1805 Filed 1–25–89; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the Research Manpower Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Research Manpower Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on February 26–28, 1989, at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

This meeting will be open to the public on February 26, from 8 p.m. to approximately 9:30 p.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and

552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 27 from approximately 8 a.m. until adjournment on February 28, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Kathryn Ballard, Executive Secretary, NHLBI, Westwood Building, Room 550, Bethesda, Maryland 20892, (301) 496–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: January 18, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–1806 Filed 1–25–89; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the Clinical Trials Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Clinical Trials Review Committee, National Heart, Lung, and Blood Institute, February 26–28, 1989, at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

The meeting will be open to the public on February 26, from 6:30 p.m. to approximately 7:30 p.m. to discuss administrative details and to hear a report concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub L. 92–463, the meeting will be closed to the public on February 26 from approximately 7:30 p.m. to recess and from 8:00 a.m. on February 27, to adjournment on February 28, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. David M. Monsees, Jr., Contracts, Clinical Trials and Training Review Section, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Westwood Building, Room 550B, Bethesda, Maryland 20892, (301) 496–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; 13.839, Blood Diseases and Resources Research National Institutes of Health.)

Dated: January 18, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–1807 Filed 1–25–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the National Institute on Aging.

These meetings will be open to the public to discuss administrative details for approximately one-half hour at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Building 31, Room 5C05 National Institutes of Health, Bethesda, Maryland, 20892, (301/496–9322), will provide summaries of the meetings and rosters of the committee members upon request.

Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: Gerontology and Geriatrics Review Committee, Subcommittee A.

Executive Secretary: Dr. Walter Spieth, Dr. Maria Mannarino, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496–9666.

Dates of Meeting: March 8–9, 1989.

Place of Meeting: Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496–9666.

Open: March 8, 8:30 a.m.—9:00 a.m.

Closed: March 8, 9:00 a.m. to recess. March 9, 9:00 a.m. to adjournment.

Name of Committee: Gerontology and Geriatrics Review Committee, Subcommittee B and C.

Executive Secretary: Dr. David Lavrin, Subcommittee B, Dr. James Harwood, Subcommittee C, Building 31 Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496–9666.

Dates of Meeting: March 14–15, 1989.

Place of Meeting: Building 31, Conference Room 8, National Institutes of Health, Bethesda, Maryland 20892.

Open: March 14, 8:30 to 9:00 a.m.

Closed: March 14, 9:00 a.m. to recess. March 15, 9:00 to adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health.)

Dated: January 18, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–1810 Filed 1–25–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its Subcommittees

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees National Institute of Diabetes and Digestive and Kidney Diseases on February 22 and 23, 1989, Conference Room 6, Building 31, National Institutes of Health, Bethesda Maryland The meeting will be open to

the public February 22 from 8:30 a.m. to 12 noon and again on February 23 from 1 p.m. to adjournment to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the subcommittee and full Council meeting will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittees will be closed to the public on February 22 from 1 p.m. to recess: Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney, Urologic and Hematologic Diseases. The full Council meeting will be closed on February 23 from 8:30 a.m. to approximately 12 noon.

These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Westwood Building 31, Room 657, Bethesda, Maryland 20892, (301) 496–7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 31, Room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6917.

(Catalog of Federal Domestic Assistance Program No. 13.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health).

Dated: January 18, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–1808 Filed 1–25–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meetings of Subcommittees B, C, and D of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of Subcommittees B, C, and D of the National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK).

These meetings will be open to the public to discuss administrative details at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion, and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Edith Wynkoop, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 31, Room 9A19, Bethesda, Maryland 20892, 301–496–6917, will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee B.

Executive Secretary: Judith M. Podskalny, Westwood Building, Room 417A, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301–496–7841.

Dates of Meeting: February 23–24, 1989.

Place of Meeting: Hyatt Regency, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: February 23, 1:00 p.m.–1:30 p.m.

Closed: February 23, 1:30 p.m. to recess; February 24, 8:00 a.m. to adjournment.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee C.

Executive Secretary: Tommie Sue Tralka, Westwood Building, Room 417, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301–496–8830.

Dates of Meeting: March 6–7, 1989.

Place of Meeting: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

Open: March 6, 8:30 a.m.–9:30 a.m.

Closed: March 6, 9:30 a.m. to recess; March 7, 8:00 a.m. to adjournment.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee D.

Executive Secretary: William E. Elzinga, Westwood Building, Room 421, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301–496–7546.

Date of Meeting: February 10, 1989.

Place of Meeting: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Open: February 10, 8:30 a.m.–9:00 a.m.

Closed: February 10, 9:00 a.m. to adjournment.

Dated: January 18, 1989.

Betty Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–1809 Filed 1–25–89; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meetings of the Biomedical Library Review Committee and the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biomedical Library Review Committee on March 8–9, 1989, convening each day at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland, and the meeting of the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications on March 7 from 3 p.m. to 4 p.m. in the 5th-Floor Conference Room of the Lister Hill Center Building.

The meeting on March 8 will be open to the public from 8:30 to approximately 11:00 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the regular meeting and the subcommittee meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications as follows: The regular meeting on March 8 from approximately 11:00 a.m. to 5 p.m., and on March 9, from 8:30 a.m. to adjournment; and the subcommittee meeting on March 7 from 3 to 4 p.m. These applications and the discussion could reveal confidential trade secrets or commercial property, such as

patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health.)

Dated: January 18, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–1811 Filed 1–25–89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permits Issued for the Months of October, November, December 1988

Notice is hereby given that the U.S. Fish and Wildlife Service has taken the following action with regard to permit applications duly received according to Section 10 of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539. Each permit listed as issued was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be the disadvantage of the endangered species; and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973, as amended.

Additional information on these permit actions may be requested by contacting the Office of Management Authority, P.O. Box 27329, Washington, DC, 20038–7239, telephone (202/343–4955) between the hours of 7:45 a.m. to 4:15 p.m. weekdays.

October

LEMSIP-New York Univ. Med. Ctr.	730563	09–30–88
Bilbie, David F.	730495	10–03–88
San Diego Zool. Society	730503	10–03–88
Hantig, Ferdinand Ferco	725867	10–06–88
Sayers, J. Hanley Jr.	730755	10–12–88
Hawthorn Circus Corp.	730854	10–12–88
Hawthorn Circus Corp.	730855	10–12–88
Hawthorn Circus Corp.	730856	10–12–88
Carpluk, William A	730810	10–13–88

October—Continued

Dunn, Robert E	730802	10–13–88
Greenburg, Dwight A. J.	730330	10–13–88
Hawthorn Circus Corp.	730859	10–13–88
Palombitt, Ryne	730847	10–19–88
Kansas City Zoo	730795	10–21–88
Rio Grande Zool. Park	730971	10–21–88
Persinger, Gerald D	730601	10–25–88
Barnhart, Leslie Irvin	731575	10–28–88
Cincinnati Zoo	731473	10–28–88
Gomez, Dennis	731580	10–28–88
Herrera, Jose Fernando	731578	10–28–88
Hawthorn Circus Corp.	731467	10–31–88
Hawthorn Circus Corp.	731471	10–31–88

November

Ringling Bros.-Barnum & Bailey	732098	11–03–88
Butler, Daniel Y	732076	11–15–88
Oberly, Jack	727187	11–21–88
Cincinnati Zoo	732162	11–22–88
Doty, Don W	732181	11–22–88
Johnson, Ernest L	729767	11–23–88

December

Tesch, Dave	731159	12–01–88
Pritchard, Peter C	728131	12–01–88
Rogers, Donald L	733581	12–01–88
Boulton, James A	732379	12–01–88
Zoo Atlanta	731901	12–05–88
Exotic Paws, Inc	732760	12–09–88
Fontenot, Dallas J. Jr	732797	12–12–88
Torgerson, Thomas B	727375	12–16–88
EG & G	663011	12–30–88

Date: January 18, 1989.

R.K. Robinson,

Chief, Branch of Permits Office of Management Authority.

[FR Doc. 89–1869 Filed 1–25–89; 8:45 am]

BILLING CODE 4310-AN-M

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10 (c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–734003

Applicant: Richard M. Schubot, Avicultural Breeding and Research Center, Loxahatchee, FL

The applicant requests a permit to purchase in interstate commerce one pair of captive hatched Hawaiian (=nene) geese (*Nesochen* (=*Branta*) *Sandvicensis*) from the Sedgewick Co. Zoo & Botanical Gardens, Wichita, Kansas for the purpose of enhancement of propagation.

PRT–734321

Applicant: Knoxville Zoological Park, Knoxville, TN

The applicant requests a permit to import one male Asiatic lion (*Panthera leo persica*) from Zoo Negara Hulu Kelang, Selangor, Malaysia, for captive breeding purposes. The lion was captive born at Zoo Negara.

PRT–734323

Applicant: Cincinnati Zoo, Cincinnati, OH

The applicant requests a permit to import one pair of wild-caught Asian elephants (*Elephas maximus*) from Malaysia for purposes of educational exhibition and captive propagation.

PRT–734332

Applicant: AAZPA Species Survival Plan for Black Rhino c/o Ed Maruska, Cincinnati Zoo

The applicant requests a permit to import one wild-caught female black rhino (*Diceros bicornis minor*) from the Natal Parks Board, South Africa, for captive breeding in accordance with the guidelines set forth by the AAZPA, Game Conservation International and the Natal Parks Board. The rhino will be placed with La Coma Ranch, McAllen, Texas, for captive breeding.

PRT–734124

Applicant: University of Texas Science Park, Smithville, TX

The applicant requests a permit to import 35 blood samples of 2 ml each taken from wild peregrine falcons (*Falco peregrinus*) during banding procedures in Yellowknife, Canada, to be used for DNA studies.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K. Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: January 18, 1989.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89–1868 Filed 1–25–89; 8:45 am]

BILLING CODE 4310-AN-M

Bureau of Land Management

Notice of Intent; Willow Creek Land Use Plan and Subsequent Activity Plans for the Eagle Lake Basin

AGENCY: Bureau of Land Management, Interior, Susanville District, Eagle Lake Resource Area, Susanville, California.

ACTION: Plan Amendment for the Willow Creek Land Use Plan and Subsequent Activity Plans for the Eagle Lake Basin.

SUMMARY: Pursuant to 43 CFR 1601.3 and 40 CFR 1501.7, notice is hereby given that the Eagle Lake Resource Area of the Susanville District, Bureau of Land Management, Susanville, California, will review the Willow Creek Land Use Plan as it pertains to the Eagle Lake Basin, which may result in a land use plan amendment. Activity plans in the Eagle Lake Basin are scheduled for completion following the land use plan review.

DATES: Land use plan amendment recommendations for the Willow Creek Land Use Plan will be developed by March 1, 1989, and final revisions to the plan, including public input and analysis by an interdisciplinary team, are scheduled for completion by June 30, 1989. Final environmental analysis of the amendments is scheduled for completion by July 31, 1989. Activity planning for the Eagle Lake Basin is scheduled for completion by September 30, 1989.

FOR FURTHER INFORMATION CONTACT: Richard H. Stark, Jr., Eagle Lake Resource Area Manager, Bureau of Land Management, Eagle Lake Resource Area Office, 2545 Riverside Drive, Susanville, California 96130. Telephone: (916) 257–0456.

SUPPLEMENTARY INFORMATION: The Eagle Lake Resource Area administers Federal land and resources in Lassen, Plumas, and Sierra counties in California, and Modoc county in Nevada. The plan amendment and activity plans will address both the public land and the private land with reserved Federal minerals in Lassen county, California within the Eagle Lake Basin. General issues identified by the Resource Area Staff include: livestock grazing, vegetation manipulation projects, timber and woodland resources, access, recreation management, water quality, and endangered species in the basin. The interdisciplinary team, which will complete the amendment and the activity plans, will consist of specialists in the fields of range management, botany, soils, wildlife, recreation, visual resources, forestry, watershed, fire management, and lands.

Opportunities for public input and comments will be announced through the media, a mailing list, and personal contact. An open house will be scheduled so that interested publics can contact the interdisciplinary team for information and/or to bring forth their concerns.

Richard H. Stark, Jr.,

Area Manager.

[FR Doc. 89–1699 Filed 1–25–89; 8:45 am]

BILLING CODE 4310–40–M

Susanville District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior, Susanville District Grazing Advisory Board, Susanville, California.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Susanville District Grazing Advisory Board, created under the Secretary of the Interior's discretionary authority on May 14, 1986, will meet on March 3, 1989.

The meeting will begin at 10:00 a.m. at the Susanville District Office, of the Bureau of Land Management, 705 Hall Street, Susanville, California.

The agenda on March 3, will include a report on progress of range improvement work for fiscal year 1989, an update on the Alturas Integrated Resource Management Plan, an update on the Wild Horse and Burro Program, an update on the Nevada water rights situation, an update on the Eagle Lake Basin Plan, an update on the High Rock situation, a film on the Productivity Pilot Program, and a discussion of other items as appropriate.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3:00 p.m. and 4:30 p.m. on March 3, 1989, or file a written statement for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130, by February 24, 1989. Depending on the number of persons wishing to make oral statements, a per person time limit may be established.

Summary minutes of the Board meeting will be maintained in the District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Robert J. Sherve,

Acting District Manager.

[FR Doc. 89–1703 Filed 1–25–89; 8:45 am]

BILLING CODE 4310–40–M

[AZ 020–09; 4212–12; AZA 23589]

Realty Action; Arizona

Summary: The Notice of Realty Action in **Federal Register** document 87–21473, Vol. 52, No. 180, published on Thursday, September 17, 1987, on page 35150, is hereby corrected as follows:

Under T. 11 S., R. 9 E., secs 10 through 26, all, should read: secs. 10 to 15, incl., secs. 21 to 26, incl, all.

secs. 35, 36, unleased portions should be corrected to: sec. 35, unleased portions of E½E½, SW¼NE¼, W½SE¼; sec. 36, unleased portions of W½W½, SE¼NW¼, NE¼SW¼.

Under T. 14 S., R. 9 E., sec. 33 should be followed by: N½, N½S½, SE¼SW¼, SE¼.

Under T. 15 S., R. 9 E., sec. 30 should be followed by: lots 1 to 4, incl., E½, E½W½.

Under T. 12 S., R. 10 E., sec. 18 should be followed by: lots 1 to 4, incl., E½, E½W½, except for mineral patent 02–79–0009 in the SE¼SE¼SE¼SE¼.

Summary: The Notice of Realty Action in **Federal Register** document 88–19864, Vol. 53, No. 170, published Thursday, September 1, 1988, on page 33879, column 1, is hereby corrected as follows:

Under T. 8 N., R. 28 E., sec. 1 should read: lot 2, SW¼NE¼, W½SE¼;

Henri R. Bisson,

District Manager.

Date: January 13, 1989.

[FR Doc. 89–1722 Filed 1–25–89; 8:45 am]

BILLING CODE 4310–32–M

[CO–920–89–4111–15; COC43241]

Colorado; Proposed Reinstatement

January 19, 1989.

Notice is hereby given that a petition for reinstatement of oil and gas lease COC43241 for lands in Weld County, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from October 1, 1988, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

Having 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, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective October 1, 1988.

subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 236–1772.

Angelina Valverde,

Acting Chief, Fluid Minerals Adjudication Section.

[FR Doc. 89–1702 Filed 1–25–89; 8:45 am]

BILLING CODE 4310–JB–M

NM–940–09–4730–12

New Mexico; Filing of Plat of Survey

January 6, 1989.

The plats of survey described below are on open file in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, pending official filing. Effective at 10:00 a.m. on February 17, 1989, these plats will be officially filed.

A survey representing the dependent resurvey of a portion of the north boundary, and the survey of tracts 37–43, Township 6 South, Range 19 West, NMPM, NM. This survey was requested by the Regional Forester, Southeastern Region, USFS, Albuquerque, New Mexico.

A survey representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines and the subdivision of section 24, Township 14 North, Range 12 West, NMPM, NM. This survey was requested by the District Manager, Albuquerque District, Albuquerque, New Mexico.

A survey representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 27, Township 25 South, Range 24 East, NMPM, NM. This survey was requested by the District Manager, Roswell District Office, Roswell, New Mexico.

A survey representing the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, and the adjusted record meanders of a portion of the right bank of the North Fork of the Canadian River in sections 1 and 4, portions of the approximated 1872 left bank, the survey of partition lines in sections 1 and 4, the survey of portions of the 1872 medial line of the avulsed portion of the North Fork of the Canadian River in sections 1 and 4, and the survey of lots in section 4, Township 11 North, Range 3 West, IM, OK. This survey was requested by the BLM Area Manager, Oklahoma Resource Area Headquarters, Oklahoma City, Oklahoma.

The supplemental plat numbering an omitted lot in section 32, Township 15 North, Range 13 West, IM, OK. This plat was requested by BLM records.

The supplemental plat numbering omitted lots in section 33, Township 19 South, Range 16 East, NMPM, NM. This plat was requested by BLM records.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Kelley R. Williamson,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 89–1726 Filed 1–25–89; 8:45 am]

BILLING CODE 4310–FB–M

[AZ–921–09–4212–13; A–18968]

Realty Action; Exchange of Public and Private Lands in Mohave County, AZ

January 13, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and Barton Walker Bell. The United States transferred 741.30 acres in Mohave County and Barton Walker Bell conveyed 12,392.28 acres in Mohave County.

FOR FURTHER INFORMATION CONTACT: Angela Mogel, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241–5534.

SUPPLEMENTARY INFORMATION: On November 10, 1988, the Bureau of Land Management issued Patent No. 02–89–0008 and Deed No. AZ–89–002, pursuant to the Federal Land Policy and Management Act of October 21, 1976. The patent transferred the following described land:

Gila and Salt River Meridian, Arizona

T. 20 N., R. 21 W.,
Sec. 20, E½SW¼, NE¼NW¼SW¼, S½N½NW¼NW¼SW¼, S½NW¼NW¼SW¼, S½NW¼SW¼, SW¼SW¼, SE¼;
Sec. 32, N½.

The areas described comprise 637.50 acres in Mohave County.

The deed transferred the following described land:

Gila and Salt River Meridian, Arizona

T. 19 N., R. 21 W.,
Sec. 31, lots 2, 4, 7 and 9.

The area described comprises 103.80 acres in Mohave County.

In exchange the surface in the following described land was conveyed to the United States:

Gila and Salt River Meridian, Arizona

T. 16 N., R. 11 W.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 and 2, S½NE¼, SE¼;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;
Sec. 17, N½, N½SW¼, SE¼;
Sec. 21, N½NE¼, W½, SE¼;
Sec. 24, all;
Sec. 25, all;
Sec. 29, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½.

T. 16 N., R. 12 W.,
Sec. 21, W½NE¼, W½, SE¼;
Sec. 23, N½, E½SW¼, NW¼SW¼, SE¼;
Sec. 25, E½, E½NW¼, SW¼;
Sec. 27, NE¼, NE¼NW¼, S½NW¼;
Sec. 29, SW¼NE¼, NE¼NW¼, S½NW¼, SW¼, W½SE¼;
Sec. 33, NE¼NE¼, S½NE¼ N½S½, SE¼SE¼.

T. 16½ N., R. 11 W.,
Sec. 33, E½, S½NW¼, SW¼.

The areas described comprise 12,392.28 acres in Mohave County.

The purpose of this notice is to inform the public and interested State and local government officials of the exchange of public and private land.

The land conveyed to the United States in this exchange will be administered by the Bureau of Land Management.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89–1724 Filed 1–25–89; 8:45 am]

BILLING CODE 4310–32–M

[CA–940–09–; CA 7154 WR]

Termination of Small Tract Classification No. 629; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Termination of Small Tract Classification.

SUMMARY: This action terminates Small Tract Classification No. 629 in its entirety which classified public land for disposition pursuant to the Small Tract Act of 1938. The Small Tract Act of 1938 was repealed by the Federal Land Policy and Management Act, 90 Stat. 2743, dated October 21, 1976, therefore, the classification is moot. Removal of the classification will allow an exchange of lands with the Nature Conservancy to

acquire habitat for threatened and endangered species.

DATE: Judy Bowers, BLM California State Office, 2800 Cottage Way, Room E-2841, Federal Office Building, Sacramento, California 95825, (916) 978-4815.

1. Pursuant to the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203 dated April 14, 1987, Small Tract Classification No. 629 is hereby terminated:

San Bernardino Meridian

T. 6 S., R. 22 E.,
Sec. 31, lots 3 through 26, inclusive;
Sec. 32, lots 1 through 56, inclusive.

The area described contains 231.81 acres in Riverside County.

2. The classification segregated the public lands from all other forms of appropriation under the public land laws, including location under the United States mining laws, but not leasing under the mineral leasing laws, pursuant to the Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a), as amended. The Small Tract Act of 1938 was repealed by section 702 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2789); the classification therefore no longer serves a useful purpose.

3. Accordingly at 10 a.m. on February 22, 1989, the lands described in paragraph 1 will be opened to operation of the exchange provisions of FLPMA, but not the other public land laws, nor mining laws, subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable law.

Dated: January 13, 1989.

Ed Hastey,

State Director.

[FR Doc. 89-1725 Filed 1-25-89; 8:45 am]

BILLING CODE 4310-40-M

[AZ-942-09-4730-12]

Arizona; Filing of Plats of Survey

January 19, 1989.

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A plat representing a dependent resurvey of a portion of the subdivisional lines, and a portion of the subdivision lines, and the survey of a portion of the subdivision lines and a metes-and-bounds survey in section 22, Township 6 North, Range 5 East, Gila and Salt River Meridian, Arizona, was accepted October 3, 1988, and was officially filed October 6, 1988.

This plat was prepared at the request of the U.S. Forest Service, Region Three.

A plat representing a survey of a portion of the subdivisional lines and the survey of subdivisions in section 9, Township 30 North, Range 5 East, Gila and Salt River Meridian, Arizona, was accepted October 3, 1988, and was officially filed October 6, 1988.

This plat was prepared at the request of the U.S. Forest Service, Grand Canyon National Park.

A plat (in two sheets) representing a dependent resurvey of portions of the south and west boundaries of the San Rafael Del Valle Land Grant and portions of the subdivisional lines, and the survey of subdivisions in sections 16 and 21, and the metes-and-bounds surveys of lot 5, section 16, and parcels A and B, section 21, and in the San Rafael Del Valle Land Grant in Township 23 South, Range 22 East, Gila and Salt River Meridian, Arizona, was accepted October 3, 1988, and was officially filed October 6, 1988.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

A supplemental plat showing amended lotting created by the cancellation of the unpatented mineral surveys in section 4, Township 14 North, Range 9 West, Gila and Salt River Meridian, Arizona, was accepted October 5, 1988, and was officially filed October 5, 1988.

A supplemental plat showing amended lottings created by the cancellation of the unpatented mineral surveys in section 33, Township 15 North, Range 9 West, Gila and Salt River Meridian, Arizona, was accepted October 5, 1988, and was officially filed October 5, 1988.

A supplemental plat showing amended lottings created by the cancellation of the unpatented Kyeke Millsite, Mineral Survey 4509-B in section 29, Township 15 North, Range 9 West, Gila and Salt River Meridian, Arizona, was accepted October 5, 1988, and was officially filed October 5, 1988.

These plats were prepared at the request of the Bureau of Land Management, Phoenix District Office.

A supplemental plat showing amended lotting of previously segregated mining claims in section 4, Township 10 North, Range 3 East, Gila and Salt River Meridian, Arizona, was accepted November 29, 1988, and was officially filed November 30, 1988.

This plat was prepared at the request of the Bureau of Land Management, Lands and Minerals Operations.

A plat (in three sheets) representing a dependent resurvey of portions of the south boundary, subdivisional lines, Homestead Entry Survey 373, Tract D Exemption of Homestead Entry Survey 373, and the dependent resurvey of the subdivision of sections 28 and 33; and a survey of subdivision of sections 21, 22, 27, and 33, and a survey of lot 1, section 33, in Township 22 North, Range 8 East, Gila and Salt River Meridian, Arizona, was accepted December 13, 1988, and was officially filed December 22, 1988.

This plat was prepared at the request of the U.S. Forest Service, Coconino National Forest.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

James P. Kelley,

Chief, Branch of Cadastral Survey.

[FR Doc. 89-1723 Filed 1-25-89; 8:45 am]

BILLING CODE 4310-32-M

[CO-010-09-5700-11; COC-34329]

Realty Action; Lease of Public Lands for Recreation and Public Purposes; Colorado

The following public lands in the Piceance Basin, Rio Blanco County, Colorado have been found suitable for lease to Colorado State University for disturbed land reclamation research, and will be so classified under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.).

Sixth Principal Meridian, Colorado

T. 2 S., R. 98 W., sec. 4, lots 9, 10, and 15-18 inclusive. A portion of the above parcel containing 50 acres more or less.

Leasing the surface of these lands does not conflict with current or proposed uses. Leasing is consistent with the Piceance Basin Resource Management Plan and would be in the public interest.

The lease, when issued, would be subject to the following conditions:

1. Provisions of the Recreation and Public Purposes Act and to the applicable regulations of the Secretary of the Interior.

2. All existing rights, leases, and reservations of record.

Publication of this notice in the **Federal Register** segregates the public lands from all other forms of appropriation under the public land laws and the general mining laws, except for lease under the Recreation

and Public Purposes Act and the mineral leasing acts.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments to the District Manager, Craig District, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625. In the absence of any adverse comments, this realty action will become a final determination of the Department of the Interior and the classification will become effective 60 days from the date of publication of this notice.

Further information can be obtained from the White River Resource Area (303) 878–3601.

William J. Pulford,

District Manager.

[FR Doc. 86–1761 Filed 1–25–89; 8:45 am]

BILLING CODE 4310–JB–M

[CO–010–09–5700–11; COC–48511]

Realty Action; Lease of Public Lands for Recreation and Public Purposes; Colorado

The following public lands near Rangely, Colorado, have been found suitable for lease to Rio Blanco County for a historic-monument to commemorate the discovery oil and gas well drilled in the Chevron Rangely Oil Field, and will be so classified under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.).

Sixth Principal Meridian, Colorado

T. 2 N., R. 102 W., sec. 30, E½SE¼ NW¼NW¼SE¼, W½SW¼NE¼NW¼SE¼. A portion of the above parcel containing 1 acre more or less.

Leasing the surface of these lands does not conflict with current or proposed uses. Leasing is consistent with the White River Resource Area Management Framework Plan and would be in the public interest.

The lease, when issued, would be subject to the following conditions:

1. Provisions of the Recreation and Public Purposes Act and to the applicable regulations of the Secretary of the Interior.

2. All existing rights, leases, and reservations of record.

3. All minerals and the right to mine and remove the same are reserved to the United States.

Publication of this notice in the **Federal Register** segregates the public lands from all other forms of appropriation under the public land laws and the general mining laws, except for lease under the Recreation and Public Purposes Act and the mineral leasing acts.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments to the District Manager, Craig District, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625. In the absence of any adverse comments, this realty action will become a final determination of the Department of the Interior and the classification will become effective 60 days from the date of pubication of this notice.

Further information can be obtained from the White River Resource Area (303) 878–3601.

William J. Pulford,

District Manager.

[FR Doc. 89–1762 Filed 1–25–89; 8:45 am]

BILLING CODE 4310–JB–M

[CO–010–92–4000–88; COC–39339]

Realty Action; Direct Sale of Public Lands; Colorado

The following described public lands have been examined and identified as suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at not less than the appraised fair market value of $10,000.00.

Sixth Principal Meridian, Colorado

T. 1 N., R. 102 W., sec. 8, lot 13. Containing 2.45 acres.

To resolve an inadvertent unauthorized use and occupancy of the lands, this parcel would be offered for sale to the adjacent landowners and occupants, Mr. and Mrs. Robert Cott of Rangely, Colorado.

Sale is consistent with the White River Resource Area Management Framework Plan and would be in the public interest. The lands are not needed for any resource program and are not suitable for management by the Bureau or another Federal department or agency.

The patent, when issued, would be subject to the following conditions:

1. All existing rights, leases, and reservations of record;

2. All minerals and the right to explore, prospect for, mine, and remove same are reserved to the United States;

3. Rights-of-way for ditches and canals are reserved to the United States.

Publication of this notice in the **Federal Register** segregates the public lands from all other forms of appropriation under the public land laws, the general mining laws, and the mineral leasing acts, except for sale as described. Segregative effect will terminate upon patent issuance or 270 days from publication in the **Federal Register**, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments to the District Manager, Craig District, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625. In the absence of any adverse comments, this realty action will become a final determination of the Department of Interior and the lands will be offered for sale 60 days from the date of this notice.

Further information can be obtained from the White River Resource Area (303) 878–3601.

William J. Pulford,

District Manager.

[FR Doc. 89–1763 Filed 1–25–89; 8:45 am]

BILLING CODE 4310–JB–M

[OR–130–09–4212–14; GP9–103]

Notice of Realty Action; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described land in Chelan County is suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at no less than its appraised fair market value of *$7,500.00*. The land will not be offered for sale until at least 60 days after publication of this notice.

T.27N., R.23E. WM., Section 9: Lot 10, comprising 3.75 acres.

This land is being offered noncompetitively to James and Audrey Van De Mark in order to resolve a longstanding inadvertent occupancy trespass. It is not suitable for management by another Federal agency and no significant resource values will be affected by its disposal. The sale is consistent with BLM's planning for the land involved and will serve the public interest.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, Spokane District Office, E. 4217 Main, Spokane, WA 99202. In the absence of timely objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: The land described is hereby segregated from appropriation under the public land laws, including the mining laws, but not

from sale under the above cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The patent, when issued, will contain a reservation to the U.S. of all minerals and the right to construct ditches and canals. The patent will also be subject to an existing right-of-way and the reservation of section 24 of the Federal Power Act. Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the above address.

Joseph K. Buesing,

District Manager.

Date: January 18, 1989.

[FR Doc. 89-1764 Filed 1-25-89; 8:45 am]

BILLING CODE 4310-33-M

[NM-040-09-4212-11; OK NM 68880]

Recreation and Public Purposes Classification, Comanche County, OK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Recreation and Public Purposes (R&PP) Act Classification; Oklahoma.

SUMMARY: The following described land has been examined and found suitable for classification for conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 et seq.)

Indian Meridian

T. 3 N., R. 12 W.,
Sec. 19, N½NE¼.
Containing 10 acres.

The land was examined in response to R&PP application, Serial Number OK NM 68880, filed by the Medicine Park Board of Education proposing to use the land for an athletic field, a picnic area, recreational community events, and ecosystem area for the science projects.

The land is not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of Interior.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

SUPPLEMENTARY INFORMATION: Upon publication of this Notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. The segregate effect will terminate upon issuance of a patent, 18 months following the issuance of this Notice, or upon publication of a notice of termination. For a period of 45 days from the date of publication of this Notice in the **Federal Register** interested persons may submit comments regarding the proposed conveyance or classification of the land to the Bureau of Land Management, District Manager, Tulsa District Office, 95522-H E. 47th Street, Tulsa, OK 74145. Any adverse comments will be reviewed by the State Director who may vacate or modify this realty action. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Paul Tanner, Area Manager, or Jacqueline Gratton, Program Leader, Oklahoma Resource Area, (405) 231-5491.

Jim Sims,

District Manager.

[FR Doc. 89-1799 Filed 1-25-89; 8:45 am]

BILLING CODE 4310-FB-M

[UT-080-09-4410-08]

Utah Vernal District; Resource Management Plans, etc.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Develop a Resource Management Plan and Environmental Impact Statement for the Diamond Mountain Resource Area.

SUMMARY: The Diamond Mountain Resource Area of the Utah Vernal District is undertaking a resource management planning effort and environmental impact statement scheduled for completion in 1992. The approved Resource Management Plan (RMP) will provide overall management direction for approximately 15-20 years. Necessary amendments to the approved plan will keep the document current and viable. Public comment will be solicited throughout the planning process.

SUPPLEMENTARY INFORMATION: The Diamond Mountain RMP/EIS is needed to consolidate, modify, update, and expand the decisions in the existing Browns Park, Diamond Mountain, and Ashley Creek-Duchesne Management Framework Plans (MFPs) completed during the period 1977 through 1979. The RMP will bring forward valid existing decisions from these MFPs, incorporating decisions from MFP amendments and other approved planning documents developed since 1979. The RMP/EIS will also incorporate needed decisions relating to policy and regulatory changes initiated or enacted since 1979.

The Diamond Mountain Resource Area is responsible for management of BLM-administered lands and minerals on approximately 696,000 acres in Daggett and Duchesne Counties and that portion of Uintah County west of the Green River. These counties are located in northeastern Utah.

The RMP will coordinate management of federal lands administered by the Bureau within the resource area with the management of the State of Utah; the Ute Indian Tribe; federal agencies such as the National Park Service, U.S. Forest Service, and Bureau of Indian Affairs; as well as other county and private entities. It will coordinate management of the federal sub-surface mineral estate with the private or other non-federal surface owner. It will also coordiante management with adjoining BLM districts in both Wyoming and Colorado; as well as the Price Resource Area (Moab District), the Bear River Resource Area (Salt Lake City District), and the Bookcliffs Resource Area (Vernal District) within Utah.

Issues, problems, and concerns arising since the completion of the MFPs in 1979 have been grouped into the following broad categories:

(1) Access and transportation needs
(2) Mineral leasing and development
(3) Special management areas
(4) Multiple-use-balance between land uses (oil/gas, mining, livestock grazing, timber harvest, rights-of-way) and resource protection (archeology, paleontology, wildlife habitat, soil/water/air/vegetation, threatened and endangered plants and animals.)

Special management needs have been tentatively identified for Browns Park, Pariette, Red Mountain, Castle Cove, Cowboy Bench, Leers Canyon, Uintah Mountain South Footslopes, and Nine Mile. Areas of Critical Environmental Concern (ACEC), therefore, are being studied for these lands. Public nominations are being solicited to identify appropriate ACECs. Comments on the 8 tentatively proposed ACECs or nominations on new ones should be submitted to the team leader. Nominations must include a map as well as a discussion on why an ACEC is

necessary and what special management would be proposed.

Public participation is being sought at this initial stage in the planning process to ensure the RMP/EIS addresses all issues, problems, and concerns from anyone interested in the management of the resource area.

Initial scoping for the environmental impact statement took place during the month of November with public workshops, an introductory mailing and a media release.

Comments and input will be solicited throughout the RMP/EIS process, however, initial input on issues or ACEC nominations to be considered should be submitted to the team leader by February 28, 1989.

Formal public participation will be requested again for review of the draft RMP/EIS (1991) and proposed RMP/Final EIS (1992). Notice of availability of these documents will be published at the appropriate items.

The RMP will be developed by an interdisciplinary team composed of BLM resource specialists. The team will have a team leader and specialists in realty, wildlife (including threatened and endangered animals), forestry, fire management, archaeological and paleontological resource protection, minerals, soil/water/air, range, and vegetation (including threatened and endangered plants).

FOR FURTHER INFORMATION CONTACT: Penelope Smalley, Team Leader, Bureau of Land Management, Vernal District Office, 170 South 500 East, Vernal, UT 84078. Phone: (801) 789-1362 during the hours of 7:45 a.m. to 4:30 p.m., Monday thorugh Friday.

Dated: January 17, 1989.

Jens C. Jensen,

Acting State Director.

[FR Doc. 89-1765 Filed 1-25-89; 8:45 am]

BILLING CODE 4810-DQ-M

[CO-010-09-4320-02]

Craig, Colorado Advisory Council Meeting

Time and Date: March 8, 1989, at 10 a.m.
Place: BLM-Craig District Office, 455 Emerson Street, Craig, Colorado.
Status: Open to public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.
Matters To Be Considered:

1. Elections of Officers
2. Recreation 2000
3. Weed Control
4. District Riparian Plan

Contact Person for More Information: Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625-1129, Phone: (303) 824-8261.

Dated: January 20, 1989.

William J. Pulford,

District Manager.

[FR Doc. 89-1865 Filed 1-25-89; 8:45 am]

BILLING CODE 4310-JB-M

National Park Service

Availability of Plan of Operations and Environmental Assessment Continued Operations; Frontier Geophysical Co., Big Thicket National Preserve, TX

Notice is hereby given in accordance with section 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Frontier Geophysical Co., a Plan of Operations for conducting a geophysical exploration, Lance Rosier Unit, Big Thicket National Preserve, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Big Thicket National Preserve, 3785 Milam, Beaumont, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, Room 347, Santa Fe, New Mexico. Copies are available from the Southwest Regional Office, P.O. Box 728, Santa Fe, New Mexico 87504-0728, and will be sent upon request.

Date: January 12, 1989.

Richard Marks,

Acting Regional Director, Southwest Region.

[FR Doc. 89-1857 Filed 1-25-89; 8:45 am]

BILLING CODE 4310-70-M

New River Gorge National River; Cancellation of a Notice of Intent to Prepare an Environmental Impact Statement

SUMMARY: Notice is hereby given that the National Park Service is cancelling the notice issued in the **Federal Register** of September 12, 1980 (45 FR 60495), for the preparation of an Environmental Impact Statement on the New River Gorge National River. A General Management Plan, with an Environmental Assessment and a Finding of No Significant Impact, was issued November 11, 1982.

FOR FURTHER INFORMATION CONTACT: Jacob Hoogland, Chief, Environmental Compliance Division, National Park Service, U.S. Department of the Interior, Room 1210, 18th and C Streets NW., Washington, DC 20240, telephone (202) 343-2163.

Date: January 19, 1989.

Gerald D. Patten,

Associate Director, Planning and Development, National Park Service.

[FR Doc. 89-1855 Filed 1-25-89; 8:45 am]

BILLING CODE 4310-70-M

National Capital Region; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Thursday, January 26, 1989, at 1:30 p.m., in the Executive Conference Room at the National Capital Planning Commission, 1325 G Street NW., Washington, DC.

The Commission was established by Pub. L. 99-652, for the purpose of advising the Secretary of the Interior or the Administrator of the General Services Administration, depending on which agency has jurisdiction over the lands involved in the matter, on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia or its environs, as well as such other matters concerning commemorative works in the Nation's Capital as it may deem appropriate. The Commission evaluates each memorial proposal and makes recommendations to the Secretary or the Administrator with respect to appropriateness, site location and design, and serves as an information focal point for those seeking to erect memorials on Federal land in Washington, DC, or its environs.

The members of the Commission are as follows:

William Penn Mott, Jr. Chairman, Director, National Park Service, Washington, DC
George M. White, Architect of the Capitol, Washington, DC
Honorable Andrew J. Goodpaster, Chairman, American Battle Monuments Commission, Washington, DC .
J. Carter Brown, Chairman, Commission of Fine Arts, Washington, DC
Glenn Urquhart, Chairman, National Capital Planning Commission, Washington, DC
Honorable Marion S. Barry, Jr., Mayor of the District of Columbia, Washington, DC
John Alderson, Administrator, General Services Administration, Washington, DC

Honorable Frank Carlucci, Secretary of Defense, Washington, DC

The purpose of the meeting will be to review and take action on the following:

I. Women in Military Service Memorial to honor women who have served in the Armed Forces of the United States, authorized by Pub. L. 99–610, November 6, 1986.

—Review of Criteria for the Design Competition:

a. Memorial Design Requirements and Limitations.

b. Presentation Requirements.

II. Consideration of policies relating to the recognition of private contributions to memorials, museums, and other cultural facilities on public lands in the National Capital, as originally proposed by the National Capital Planning Commission.

Date: January 17, 1989.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 89–1856 Filed 1–25–89; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–308X]

Central Michigan Railway Co.; Abandonment Exemption; Kent, Muskegon, and Ottawa Counties, MI

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon 31.85 miles of raillines between: (1) milepost 165.5 at Penn Junction, Grand Rapids, MI, and milepost 191.40 at Muskegon, MI; and (2) between milepost 1.5 at Marne, MI and milepost 8.0 at Coopersville, MI. The lines are in Kent, Muskegon, and Ottawa Counties, MI.

Applicant has certified that: (1) No local traffic has moved over the lines for at least 2 years; (2) any overhead traffic on the lines can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the lines either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 25, 1989 (unless stayed pending reconsideration).[1] Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 6, 1989.[4] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by February 15, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Kevin M. Sheys, Weiner, McCaffrey, Brodsky, & Kaplan, P.C., 1350 New York Ave., NW., Suite 800, Washington, DC 20005–4797.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 31, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 18, 1989

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–1736 Filed 1–25–89; 8:45 am]

BILLING CODE 7035–01–M

[1] This is the effective date for purposes of consummation of the transaction.

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[4] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Docket No. AB–55 (Sub-No. 287X)]

CSX Transportation, Inc.; Abandonment Exemption in Tuscarawas and Harrison Counties, OH

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 14.72-mile line of railroad between milepost 44.78 at Freeport and milepost 59.50 at Urichsville, in Tuscarawas and Harrison Counties, OH.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 25, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1]

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemtion of Out-of-Service Rail Lines,* 4 I.C.C. 2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in

Continued

formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 6, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by February 15, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia Vail, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 31, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 18, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–1737 Filed 1–25–89; 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

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on January 5, 1989, a proposed Consent Decree in *United States v. The B.F. Goodrich Company and The BOC Group, Inc.*, Civil Action No. 89–0005–P(CS), was lodged with the United States District Court for the Western District of Kentucky. The Complaint filed by the United States sought injunctive relief and response costs under the Comprehensive Environmental Response, Compensation and Liability Act as amended (the Act), against the B.F. Goodrich Company and The BOC Group, Inc. The Complaint alleged that the defendants disposed of wasted and hazardous substances at two sites which appear on the National Priorities List ("NPL"), promulgated pursuant to the Act. The Complaint further alleges that releases of hazardous substances, pollutants and contaminants have occurred at the sites and have contaminated surface and subsurface soils at the sites and groundwater under the sites.

Under the proposed Consent Decree, the defendants will be liable for EPA's past response costs of $389,081.98, will implement the remedy selected by EPA through a remedial design/remedial action plan, and will conduct any operation and maintenance functions connected with the remedy.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States v. The B.F. Goodrich Company and the BOC Group, Inc.*, D.J. Ref. 90–11–2–414.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Western District of Kentucky, 510 W. Broadway, 10th Floor, Louisville, Kentucky; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, Georgia; and (3) the Environmental Enforcement Section, Land & Natural Resources Division, U.S. Department of Justice, 10th & Pennsylvania Avenues, NW, Washington, DC. Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section of the Department of Justice, Land and Natural Resources Division, P.O. Box 7611, Benjamin Franklin Station, Washington, DC 20044–7611, or in person at the U.S. Department of Justice Building, Room 1517, 10th Street and Pennsylvania Avenue, NW, Washington, DC. Any request for a copy of the proposed Consent Decree should be accompanied by a check for copying costs totalling $5.20 ($0.10 per page) payable to "United States Treasurer."

Roger J. Marzulla,

Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 89–1705 Filed 1–25–89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act; United States v. Metropolitan St. Louis Sewer District, et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 29, 1988, a proposed Consent Decree in *United States v. Metropolitan St. Louis Sewer District, et al.*, ("MDS") Civil No. 88–543–C–4, was lodged with the United States District Court for the Eastern District of Missouri. The proposed Consent Decree arises from a civil action filed on March 22, 1988 under the Clean Water Act, 33 U.S.C. 1251 *et seq.* The complaint alleged that the Metropolitan St. Louis Sewer District ("MSD") had violated the Clean Water Act by discharging pollutants and contaminants from its Bissell Point Sewage Treatment Plant and from several sewer interceptor lines without a National Pollutant Discharge Elimination System Permit ("NPDES Permit") issued pursuant to section 402 of the Clean Water Act, 33 U.S.C. 1362. The complaint also alleged that MSD had violated the Clean Water Act at a number of its other sewage treatment facilities by discharging pollutants or contaminants in violation of the NPDES Permits for those facilities. The consent decree requires MSD to construct the facilities believed necessary to achieve compliance with the Clean Water Act at all of its sewage treatment plants and sewer interceptor lines and to pay a civil penalty of $100,000 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. Metropolitan St. Louis Sewer District, et al.*, DJ Ref. 90–5–2–1–595.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Missouri, 812 North Seventh Street, Kansas City, Kansas 66101. Copies of the Consent Decree may be examined at the Environmental Enforcement Section,

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order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Land and Natural Resources Division, Department of Justice, Room 1748, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. 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 $3.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-1704 Filed 1-25-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notification Pursuant to the National Cooperative Research Act of 1984—OSI/Network Management Forum

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the OSI/Network Management Forum, (the "Forum") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On October 21, 1988, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 8, 1988, 53 FR 49615.

The identities of the additional parties to the venture are given below:

Additional Voting Members

GEC Plessey Telecommunications Ltd., Stoke Works P.O. Box 53, Telephone Road, Coventry, CV3 1HJ, England
Nippon Telegraph and Telephone, Room 10-117A, 9-11 Midori-Cho 3 Chome, Musashino-Shi, Tokyo 180, Japan
MCI Telecommunications, 701 South 12th Street, Arlington, VA 22202, USA
Microtel Limited, 2100-401 West Georgia Street, Vancouver, British Columbia V6B 5CB, Canada

Additional Associate Members

Newbridge Networks Corporation, 600 March Road, P.O. Box 13600, Kanata, Ontario K2K 2G, Canada
Zellweger Telecommunications, Hombrechtikon, CH-8634, Switzerland
Philips Telecommunication and Data Systems, S-17588, Jarfalla, Sweden
Computrol, A division of Modcomp, an AEG Company, 239 Ethan Allen Highway, Ridgefield, CT 06877, USA
NCR Corporation, 1700 South Patterson Boulevard, Dayton, OH 45479, USA
Bull S.A., 68 Rt. de Versailles-BP3, Louveciennes, 78430, France
Prime Computer, Inc., 500 Old Connecticut Path, Framingham, MA 01701, USA
Telindus N.V., Geldenaaksebaan 335, Leuvan 3030, Belgium
Siemens AG, Otto-Hahn-Ring 6, D-8000, Munich 83, Germany
Kokusai Denshin Denwa Co., Ltd., KDD Kamifukuoka R&D Labs., 2-1-15 Ohara Kamifukuoka-shi, Saitama, 356, Japan
Telwatch, 1241 Hawks Flight Court, El Dorado Hills, CA 95630, USA
Tech Nel Data Products, Limited, 8 Haslmere Way, Banbury, Oxon OX16 8TY, England
NEC America, Inc., 8 Old Sod Farm Road, Melville, NY 11747, USA
Racal-Milgo, P.O. Box 407044, Ft. Lauderdale, FL 33340-7044, USA
CNCP Telecommunications, 330 Bloor Street West—15th Floor, Toronto, Ontario M8X 2W9, Canada
Nixdorf Computer Engineering Corporation, 2520 Mission College Boulevard, Santa Clara, CA 95054, USA
Contel Technology Center, Contel Plaza Building, 2015 Lee Jackson Highway, Fairfax, VA 22033-3346, USA
Spider Systems Ltd., 65 Bonnington Road, Edinburgh, EH6 5JQ, England
Fujitsu America, Inc., 3055 Orchard Drive, San Jose, CA 95134-2017, USA

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-1706 Filed 1-25-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act (JTPA); Indian and Native American (INA) Programs for Program Year 1989 Methodology for Setting Grantee Performance Standards

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; request for comments.

SUMMARY: For Program Year (PY) 1989 (July 1, 1989—June 30, 1990), the Department of Labor will retain the same basic methodology for setting Indian and Native American (INA) performance standards that was previously adopted for and implemented during PY 1987 (July 1, 1987—June 30, 1988). This methodology continues in use for the current period in PY 1988 (July 1, 1988—June 30, 1989). This notice describes certain limited changes in these model-based procedures anticipated for PY 1989. INA grantees and other interested parties may offer comments for review and consideration by the Department prior to its issuance of the PY 1989 planning instructions scheduled for February, 1989. Any further changes based on comments received in response to this notice and accepted by the Department will be incorporated into the PY 1989 planning instructions.

DATES: *Effective date:* July 1, 1989.

Comments: Interested persons are invited to submit comments. Comments must be received by the Department of Labor no later than February 9, 1989.

ADDRESS: Comments must be addressed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Clayton Johnson, Room N5637.

FOR FURTHER INFORMATION CONTACT: Clayton Johnson, Telephone: 202-535-0685 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 401 of the Job Training Partnership Act (JTPA) establishes federally-funded employment and training programs for Indians and Native Americans (INA) to ameliorate serious unemployment and economic disadvantages among members of their communities. JTPA section 106 requires the Secretary of Labor to formulate performance standards applicable to grantees designated to operate these Section 401 programs. JTPA section 401(h)(2) further specifies that "Recipients of funds under this section shall establish performance goals, which shall, to the extent required by the Secretary, comply with performance standards established by the Secretary pursuant to section 106". Department of Labor (DOL) regulations at 20 CFR 632.11(d) identify performance standards as one of fourteen responsibility tests that INA grantees must meet for redesignation. This notice sets forth the performance standards for JTPA section 401 INA programs beginning with Program Year (PY) 1989 (July 1, 1989—June 30, 1990).

Background

In accordance with legal requirements referenced above, performance standards have been in use for INA grantees since 1983 through each of the program periods up to the present.

1. *Required Performance Measures.* In consultation with grantee representatives, the Department has established and utilized three required performance measures as follows:

• *Entered Employment Rate* (EER)—the percentage of total terminees placed in unsubsidized employment.

• *Positive Termination Rate* (PTR)—the percentage of total terminees who entered unsubsidized employment plus those achieving certain other outcomes including return to full-time school, completion of a major level of education, or successful completion of other planned participant activity.

• *Cost per Positive Termination* (CPT)—total positive terminations divided into total training funds (minus administrative costs and community benefit costs).

The EER measure reflects the employment orientation of all JTPA programs. The PTR measure recognizes that many INA program participants live in areas with severely depressed economies and limited opportunities for employment. Thus, besides helping participants find employment immediately after termination, another important goal for INA programs is to enhance longer term employability by assisting them to return to school or participate in other training or planned activities. The CPT measure emphasizes that funds must be used cost effectively. A fourth measure available to grantees on an *optional* basis is the Community Benefit project (CB). These projects are monitored separately by the Department. Participants and costs involved in Community Benefit Projects are excluded in calculating grantee performance on the three required measures (EER, PTR, CPT).

2. *Previous "Past Performance" Method for Setting Grantee Standards.* Prior to PY 1987, the method used to set individual grantee standards was to take the grantee's performance level on the given measure in a previous year and apply that fixed number in advance as the minimum standard for the upcoming program period. This meant that grantees were locked into standards based on the previous year's performance without taking into account changes occuring in clientele served and other local conditions affecting outcomes achieved. Grantees who performed at high levels in the previous year were held to high standards even though their conditions may have changed. Accordingly, a number of INA grantees ended up unable to meet such standards because their performance did not match the prior year's higher levels. Conversely, those grantees who had performed at lower levels in previous years had much easier standards with little incentive to improve from one year to the next. This old approach was used during Transition Year 1984 and through Program Years 1984, 1985 and 1986.

3. *Development and Adoption of Model-Based Approach.* From the inception of performance standards, the Department's aim has been to establish a uniform and objective method for setting individual grantee standards so as to reflect each grantee's performance results in relation to its clientele characteristics and to certain local conditions for its own service area. The statistical technique known as multiple regression analysis is the technical procedure through which such a modeling approach can be developed and applied. This same technique has been and is the basic method used to develop and update performance standards for the mainline JTPA Title IIA programs operated by the States and local service delivery areas. This same approach is also being used to set standards for other JTPA employment and training programs such as Job Corps centers and the JTPA Section 402 Farmworker program grantees.

Over a period of several years (PY 1984–85–86) this type of approach was under development for INA programs including periodic consultation with grantee representatives. PY 1987 was the first year in which statistical models were adopted and implemented successfully for the three required INA performance measures. Essentially the same models with some minor changes are presently in use for the current PY 1988 period.

Basic Modeling Approach

Beginning with PY 1987, performance standards for INA program grantees have been set through the use of multivariate adjustment models developed for each of the three required performance measures (EER, PTR, CPT). This modeling approach examines the statistical relationships (via multiple regression analysis) between program outcomes, terminee characteristics, and local economic conditions in order to identify the important factors which influence each performance measure. Some factors are found to be associated with better performance and other factors are related to weaker performance. Models are then developed that quantify the relationships between the various factors so that specific adjustments can be calculated for each grantee on an individualized basis. Adding up the net effect of all factors in the model for each performance measure (EER, PTR, CPT) provides each grantee with its own individually adjusted performance standards.

As an example of how adjustments work for factors included in the models, take the case of various educational levels among the terminees in a grantee's program. If the grantee serves a higher proportion of school dropouts, then the entered employment rate proves to be lower on the average and the model yields somewhat easier standards for that grantee. On the other hand, if a grantee's program serves a higher proportion of high school graduates, then the model produces somewhat higher entered employment rate standards.

In summary, the adjustment model approach offers these advantages:

• It allows allows standards to be set consistently and equitably for all grantees by accounting for a variety of factors affecting performance.

• It reduces inducements for concentrating on easier to serve participants since grantees who may practice "creaming" will be held to stricter performance standards.

• It provides grantees with a useful tool in the planning process by projecting performance targets based on their own unique terminee characteristics and local conditions.

• It involves no disincentives for superior performance since grantees can be rated as superior performers in one year without making their standards more stringent in the subsequent year.

In addition to the above considerations, the model-based standard setting process provides INA grantees and the Department of Labor with objective criteria for assessing program performance on several key outcomes. Thus, well-managed programs should do better than the models predict while poorly managed programs can be expected to do worse.

Selection of Modeling Factors

The following criteria have been used to determine which factors are included in the models.

• Management practices have been excluded because they are regarded as within control of program managers, not beyond their control.

• There must be some variations among grantees on the factor.

• The relationship between the factor and the performance measure makes intuitive sense.

• The factor is strongly related to the performance outcome.

• The factor is objective and easily quantifiable.

• For local economic conditions, published sub-state level data is available nationwide.

Factors appearing in the models use three main types of data including terminee characteristics, program characteristics, and service area characteristics (local economic conditions). For the PY 1989 models, data has been used from the Indian Annual Status Reports (ASRs) submitted by grantees for Program Years 1984, 1985, 1986 and 1987. These reports contain information from each grantee on outcomes achieved, services received by terminees, terminee characteristics and related fiscal data. Data for local economic factors have been drawn from reports published by the Bureau of the Census and the Bureau of Labor Statistics.

The following 14 factors have been selected for inclusion in one or more of the three models for the INA performance measures in PY 1989:

Local factors	Models		
	EER	PTR	CPT
Percent females			X
Percent aged 14 to 21	X	X	X
Percent school dropouts	X	X	
Percent students	X		X
Percent welfare recipients	X		
Percent long-term unemployed	X	X	
Percent not in labor force	X		
Average weeks participated			X
Tribal Government status	X	X	X
Percent employment in manufacturing	X		
Percent employment in farm, forestry, and fisheries	X	X	X
Average earnings in trade industry	X		X
Local area unemployment rate (BLS/LAUS)	X		
Percent families with income below the poverty level			X

Of the 14 factors listed in the table above, 13 of them have been used in the previous models for PY 1987 and/or PY 1988. The one factor being introduced for the first time in these PY 1989 models is the Local Area Unemployment Rate (LAUS) that is being added to the EER model as discussed below. Although a number of other possible factors were examined in developing these PY 1989 models, the factors shown above proved to be the ones that make the largest contribution to the model's predictive ability. Also, retention of these factors in the PY 1989 models make them broadly consistent with the corresponding models for the given measures in PY 1987 and PY 1988. Certain other changes in the particular models for PY 1989 are reviewed below.

Entered Employment Rate (EER) Model

The PY 1989 model for the EER measure contains a total of 11 factors, 10 of which appeared in the PY 1988 EER model. Among the factors retained are six terminee characteristics (Aged 14–21, School dropouts, Students, Welfare recipients, Long-term unemployed, and Not in the labor force). Three service area characteristics are also carried over from the previous PY 1988 EER model and these are Employment in manufacturing; Employment in farm, forestry, and fisheries; and Average earnings in the trade industry.

Tribal Government status continues to appear in the PY 1989 models for all three performance measures just as it did in all three models for PY 1987 and PY 1988. This factor recognizes that reservation grantees (i.e., those tribal groups having a recognized Government-to-Government relationship as defined by the Bureau of Indian Affairs) can be expected to face more serious barriers that can hamper performance on each of the required measures.

Two factors that appear in the PY 1988 EER model are being deleted from the PY 1989 model for this measure. One is "Percent of Population Living in Urban Areas" which was put into the PY 1988 model to distinguish between grantees located in more urbanized or more rural areas. However, this urban population variable makes an inconsequential contribution to the PY 1989 model and is therefore being dropped.

The other factor being deleted is the INA unemployment rate which was added to the PY 1988 EER model by the Department in response to grantees' concerns about severe unemployment in a number of areas. In the absence of any other appropriate data source, local data for this factor was calculated through an ad hoc approach of combining Indian unemployment data from the 1980 Census with current area unemployment statistics. This, however, led to apparent discrepancies for some grantees and raised questions as to data reliability.

Therefore, this factor will be discontinued pending availability of an acceptable nationwide data source based on standard definitions and uniform collection methods. A new factor to be added to the PY 1989 EER model is the Local Area Unemployment Rate (LAUS). Examination of this variable discloses that it is the best existing indicator of relative job opportunities available within the local labor market areas served by INA grantees. Local data for this factor will be drawn from the current local area unemployment statistics compiled regularly by the Bureau of Labor Statistics on a nationwide basis. This factor is expected to reflect changes in unemployment levels and local economic trends that may occur from one year to the next within the grantees' service areas.

Positive Termination Rate (PTR) Model

As shown in the preceding table, the PY 1989 PTR model will contain five factors which include Aged 14–21; School Dropouts; Long-term Unemployed; Employed in Farm, Forestry, and Fisheries; and Tribal Government Status. All five of these factors appeared in the PY 1988 PTR model. However, two factors that were in the PY 1988 PTR models are being dropped. One of these is the "Percent students" which is being omitted because its statistical influence is insignificant in the modeling process. The other factor being dropped is "Percent not in Labor Force" which the data shows as being opposite to its expected effect (i.e., PY 1988 PTR model showed terminees not in labor force as being slightly *harder* to achieve a positive termination; PY 1989 modeling data showed such terminees as being slightly *easier* to obtain a positive termination).

Cost per Positive Termination (CPT) Model

The PY 1989 model for the CPT contains eight factors each of which were also included in the PY 1988 CPT model. Among these are the three terminee characteristics: Females, Aged 14–21, and Students. Two program characteristics are also retained and these are the Average Weeks Participated and Tribal Government Status. The other remaining factors in the CPT model are the three local economic conditions which are Percent employment in farm, forestry, and fisheries; Average earnings in the trade industry; and Percent of families with incomes below the poverty level.

Two terminee characteristics included in the previous PY 1988 CPT model have been dropped because both factors (i.e., Percent of terminees who are long-term unemployed and Percent of terminees not in the labor force) no longer operate in the expected manner (i.e., somewhat more expensive to serve). Instead, based on the total program data analyzed, terminees with these characteristics are shown as being slightly less expensive to serve which appears counter-intuitive; therefore, these previous factors have been deleted from the PY 1989 CPT model.

Additional Modeling Results

In developing the models for PY 1989, special attention has been given to re-examining the question of whether program activity factors ("program

mix") ought to be included. Previously, for the PY 1987 and PY 1988 standards, the Department's position has been that program mix is a matter that falls within management control and, hence, should be left out of the models. However, some grantees have expressed concern that performance standards discourage the use of Classroom Training because it is more expensive even though needed and appropriate for a number of INA participants.

In consideration of such concerns, the model building process for PY 1989 specifically addressed the question of how program activity factors would operate if they were added to the models. Based on program data reported by all grantees over the last several years, the average distribution of INA participants by program activity levels is as follows:

[In percent]

	Program year—		
	1984	1985	1986
Percent of participants in:			
Classroom Training	44.5	44.0	44.2
On-the-Job Training	12.2	13.1	14.4
Tryout Employment	1.3	.5	.7
Work Experience	33.5	34.1	32.7
Community Service Employment	8.6	8.4	8.0

The above data shows substantially the same pattern over the three program years except for the trend toward increased use of On-the-Job Training.

The detailed data analysis completed as part of the modeling process shows that, of the five program activities, On-the-Job Training is the most effective and cost efficient method of placing INA terminees in unsubsidized employment. Contrary to some expectations, Classroom Training turns out to be the next most effective and cost efficient approach to preparing terminees for unsubsidized jobs. Work Experience and Community Service Employment prove to be the least effective and most costly activities.

What this means in terms of including program mix in the models is that those grantees using higher proportions of On-the-Job Training and/or Classroom Training would end up getting more stringent performance standard (i.e., higher EERs and lower CPTs). This would be the opposite of the desired and expected results; therefore, to include program mix in the models, would likely lead to *discouraging* rather than encouraging greater use of Classroom Training in contrast to more expensive and less effective use of Work Experience and Community Service Employment.

In light of these results, and since a choice of program activity continues to be a key management decision, the Department sees little reason to include program mix in the models. In fact, inclusion of program mix in the models based on the above results might become a negative influence leading to lesser use of Classroom Training.

Departure Points

The models described above describe how performance standards can be adjusted for each grantee to reflect characteristics of terminees served and of the local economy. As part of the modeling process, it is also necessary to establish an overall level of performance around which adjustments are made for the various factors included in each model. These overall levels are referred to as departure points. The departure points for each measure are based on the national average performance levels compiled for all grantees during a given period. In the case of the PY 1987 and PY 1988 models, this period has been *one program year* from which data was most recently available.

However, further analysis has shown that using only one program year as the period for determining the departure points can lead to problems if there are significant shifts up or down in the national averages from one particular year to the next. In order to moderate this possible situation, the departure points for the PY 1989 models will be based instead on national averages over the most recent *three program years* for which data is available. This practice has the desired effect of avoiding or minimizing abrupt shifts in departure points for the models from year to year.

End of Transition Period

At the time the new model-based process was introduced, the Department established a two year transition timeframe (PY 1987 and PY 1988) during which grantees' standards would be calculated partially by model adjustments and partially by a past performance weight for each measure. The purpose was to provide a way of accommodating for changes involved in moving from the old past performance approach for setting grantee standards to the new adjustment model methodology. For PY 1987, the weights for past performance ranged from 31% for the CPT and 34% for the PTR to 44% to the EER. For PY 1988, the past performance weights were reduced to 25% on each measure thereby raising the model adjustment weights to 75%. *For PY 1989, the models will no longer include a past performance weight since the transition phase is over.*

Acceptable Performance Ranges

The adjustment models and departure points described above are used to set performance goals individually for each INA grantee. Following procedures previously established for PY 1987 and PY 1988, a range of acceptable performance will be calculated around the performance goal for each measure in the PY 1989 modeling calculations consisting of three levels:

- A *recommended performance goal* that reflects the adjustments for terminee characteristics and other local factors for the particular grantee.
- An *exemplary performance level* above the goal.
- A *Minimally acceptable level* below the goal which represents the minimum performance the grantee should meet.

The size of ranges between minimum, goal, and exemplary levels depend upon the relative size of the grantees' program. Smaller grantees have wider performance ranges than larger grantees, reflecting the fact that statistics can fluctuate more substantially when there are fewer numbers of participants being served.

By using these ranges of acceptable performance, rather than a single level, the performance standards can acknowledge that there are other factors affecting performance that are not captured by the models and that may be outside management control.

Experience With the PY 1987 Models

There has been a continuing pattern of improved performance among INA grantees on each of the three measures over the last several program years. This same pattern continued in PY 1987 which marked completion of the first program year in which model-based standards have been used to assess grantee performance. For information purposes, the following data display the relative proportions of INA grantees achieving the various levels of final results for PY 1987.

[In percent]

	EER	PTR	CPT
Exemplary	26.5	31.5	38.7
Goal level	38.7	44.2	47.5
Minimum standard	39.4	21.0	13.3
Below minimum	4.4	3.3	.5
Percent of total of all grantees	100.0	100.0	100.0

As can be noted, the proportions of grantees achieving the better performance ratings is relatively high and tends to exceed by some margin the expected distribution of grantees which is about 15 percent exemplary, about 15 percent below minimum and the remainder above the minimum and/or goal levels. Thus, the model-generated levels did not impose overly stringent performance standards on the INA grantees during PY 1987. In fact, the number of grantees missing their standards was significantly less in PY 1987 under the modeling approach than under the old past performance method used in PY 1984, PY 1985, and PY 1986.

PY 1989 Planning Instructions

The Department expects to provide performance standards worksheets based on the models described herein so that grantees can use the projected levels in their planning estimates for PY 1989. As previously indicated, planning instructions will furnish guidance to grantees on the specific provisions outlined in this notice together with any further changes that may be adopted for PY 1989.

Signed at Washington, DC this 30th day of December 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 89-1863 Filed 1-25-89; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL COMMISSION ON CHILDREN

Meeting

Background

The National Commission on Children was created by Pub. L. 100-203, December 22, 1987 as an amendment to the Social Security Act. The purpose of the law is to establish a bipartisan Commission directed to study the problems of children in the areas of health, education, social services, income security, and tax policy.

The powers of the Commission are vested in Commissioners consisting of 36 voting members as follows:

1. Twelve members appointed by the President.

2. Twelve members appointed by the Speaker of the House of Representatives.

3. Twelve members appointed by the President pro tempore of the Senate.

This notice announces the first meeting of the National Commission on Children to be held in Washington, DC.

Time: 12:00 pm-3:30 pm, Monday, February 6, 1988.

Place: 12:00 pm-1:30 pm, U.S. Capitol, Room H-137; 1:30 pm-3:30 pm, U.S. Capitol, Room S-126.

Status: 12:00 pm-1:30 pm, Executive Session (Closed); 1:30 pm-3:30 pm, Open meeting.

Agenda: Discussion of the Commission's future agenda.

Contact: Jeannine Atalay, Telephone: (202) 224-6472.

Date: January 23, 1989.

John D. Rockefeller IV,

Chairman, National Commission on Children.

[FR Doc. 89-1681 Filed 1-25-89; 8:45 am]

BILLING CODE 6820-37-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance 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 Dance Advisory Panel (Dance/Film Video Section) to the National Council on the Arts will be held on February 14, 1989, from 9:00 a.m.-6:00 p.m., February 15, 1989 from 9:00 a.m.-8:00 p.m., and February 16, 1989 from 9:00 a.m.-6:00 p.m. at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Room 716, Washington, DC 20506.

A portion of this meeting will be open to the public on February 16, 1989 from 2:00-6:00 p.m. The topics for discussion will be guidelines and policy issues.

The remaining sessions of this meeting on February 14, 1989, from 9:00 a.m.-6:00 p.m., February 15, 1989 from 9:00 a.m.-8:00 p.m., and February 16, 1989 from 9:00 a.m.-2:00 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.

January 19, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-1766 Filed 1-25-89; 8:45 am]

BILLING CODE 7537-01-M

Design Arts 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 Design Arts Advisory Panel (Design Advancement/Organizations Section) to the National Council on the Arts will be held on February 14, 1989, from 9:00 a.m.-6:00 p.m., February 15, 1989 from 9:00 a.m.-7:30 p.m., February 16, 1989 from 9:00 a.m.-5:30 p.m., and February 17, 1989 from 9:00 a.m.-5:00 p.m. at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 17, 1989 from 1:00-5:00 p.m. The topics for discussion will be guidelines and policy issues.

The remaining sessions of this meeting on February 14, 1989, from 9:00 a.m.-6:00 p.m., February 15, 1989 from 9:00 a.m.-7:30 p.m., February 16, 1989 from 9:00 a.m.-5:30 p.m. and February 17, 1989 from 9:00-1:00 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.

January 19, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–1767 Filed 1–25–89; 8:45 am]

BILLING CODE 7537–01–M

Music 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 Music Advisory Panel (Centers for New Music Resources/Services to Composers Section) to the National Council on the Arts will be held on February 15, 1989 from 9:00 a.m.–5:30 p.m., in Room M–14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 15, 1989 from 2:00—3:00 p.m. The topics for discussion will be guidelines and policy issues.

The remaining sessions of this meeting on February 15, 1989 from 9:00 a.m.—2:00 p.m. and 3:00–5:30 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** on 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.

January 19, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–1768 Filed 1–25–89; 8:45 am]

BILLING CODE 7537–01–M

Visual Arts 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 Visual Arts Advisory Panel (Art in Public Places Section) to the National Council on the Arts will be held on February 14–15, 1989 from 9:00 a.m.–6:00 p.m. and February 16 from 9:00 a.m. to 5:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, this meeting will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

January 19, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–1769 Filed 1–25–89; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Mechanical Components; Meeting; Revised

The **Federal Register** published Tuesday, January 17, 1989 (54 FR 1805) contained notice of a meeting of the ACRS Subcommittee on Mechanical Components scheduled for Friday, January 27, 1989. The starting time has been changed to *8:30 a.m. until the conclusion of business* instead of 2:00 p.m. All the other items pertaining to this meeting remain the same as previously published.

Date: January 19, 1989.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 89–1812 Filed 1–25–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Auxiliary and Secondary Systems; Meeting; Cancellation

The ACRS Subcommittee meeting on Auxiliary and Secondary Systems scheduled to be held on January 27, 1989 has been cancelled. The notice of this meeting was previously published in the **Federal Register** on Tuesday, January 17, 1989 (54 FR 1806).

Date: January 19, 1989.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 89–1813 Filed 1–25–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Thermal Hydraulic Phenomena; Meeting; Cancelled

The **Federal Register** published Wednesday, January 18, 1989 (54 FR 2008) contained notice of a meeting of the ACRS Subcommittee on Thermal Hydraulic Phenomena scheduled for January 23, 1989. This meeting has been cancelled.

Date: January 18, 1989.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 89–1814 Filed 1–25–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published December 28, 1988 (53 FR 52531). Those meetings which are definitely scheduled have had, or will have, an individual notice published in

the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the February 1989 ACRS full Committee and the ACNW meetings can be obtained by a prepaid telephone call to be Office of the Executive Director of the Committee (telephone 301/492–7288, ATTN: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Human Factors, January 26, 1989, Bethesda, MD. The Subcommittee will review the Human Factors Research Program Plan.

Mechanical Components, January 27, 1989, Bethesda, MD. The Subcommitee will review the proposed resolution of Generic Issues 70, "PORV Reliability," and 94, "Low Temperature Over Pressure Protection," and other related matters.

Safety Research Program, February 8, 1989, Bethesda, MD. The Subcommittee will discuss the ongoing and proposed NRC Safety Research program and budget.

Babcock & Wilcox Reactor Plants, February 22–23, 1989, Sacramento, CA. The Subcommittee will discuss the lessons learned from the approximately 2-year shutdown of Rancho Seco that occurred following the December 16, 1985, overcooling event. Topics include monitoring the extended start-up program, as well as, plant and organizational changes as a result of the restart effort.

Occupational and Environmental Protection Systems, March 1–2, 1989, Bethesda, MD. The Subcommittee will discuss the general status of emergency planning for nuclear power plants.

Thermal Hydraulic Phenomena, March 7, 1989 (p.m. only) (tentative), Bethesda, MD. The Subcommittee will review the NRC staff's proposed final Policy Statement on additional applications of leak-before-break technology.

General Electric Reactor Plants (Peach Bottom Restart), March 8, 1989 (tentative), Bethesda, MD. The Subcommittee will review the proposed restart plan for the Peach Bottom Plant.

Materials and Metallurgy, March 15–16, 1989, Columbus, OH. The Subcommittee will review the degraded piping program, including NDE and aging of centrifugally cast stainless steel piping material.

Improved Light Water Reactors, March 21–22, 1989, Bethesda, MD. The Subcommittee will review the SER and Chapter 5 of the EPRI ALWR Requirements Document.

Auxiliary and Secondary Systems, March 23, 1989, Bethesda, MD. The Subcommittee will review the adequacy of the proposed staff's plans to implement the recommendations resulting from the Fire Risk Scoping Study.

Limerick 2, March 28, 1989, Philadelphia, PA. The Subcommittee will review Limerick 2 for a low power operating license.

Joint Materials and Metallurgy/ Structure Engineering, March 29, 1989, Bethesda, MD. The Subcommittee will review the proposed amendment to the pressurized thermal shock (PTS) rule updating the formula given in the PTS rule for calculating the level of radiation embrittlement in reactor vessel beltline and the staff's position on reactor support embrittlement.

Maintenance Practices and Procedures, March 30, 1989, Bethesda, MD. The Subcommittee will review the proposed maintenance rule.

Materials and Metallurgy, April 27, 1989, Palo Alto, CA. The Subcommittee will discuss the status of the following matters: erosion/corrosion of pipes, hydrogen/water chemistry, zinc addition to primary coolant loop and its effects on materials, decontamination effects on materials, and other related matters.

General Electric Reactor Plants (ABWR), May 10–11, 1989, Bethesda, MD. The Subcommittee will continue its review of the GE ABWR. The Subcommittee will also preview Chapters 1, 8, 9, 11, 12, 13, 14 and 17 of the GE ABWR SAR.

Materials and Metallurgy, May 24, 1989, Bethesda, MD. The Subcommittee will review low upper shelf fracture energy concerns of reactor pressure vessels.

AC/DC Power Systems Reliability, Date to be determined (February/March), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 128, "Electrical Power Reliability."

Extreme External Phenomena, Date to be determined (February/March), Bethesda, MD. The Subcommittee will review planning documents on external events.

Instrumentation and Control Systems, Date to be determined (March), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 101, "Break Plus Single Failure in BWR Water Level Instrumentation."

Advanced Pressurized Water Reactors, Date to be determined (March), Bethesda, MD. The Subcommittee will discuss the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR-DC).

Instrumentation and Control Systems, Date to be determined (March/April), Bethesda, MD. The Subcommittee will review the implementation status of the ATWS rule.

Advanced Pressurized Water Reactors, Date to be determined (April), Bethesda, MD. The Subcommittee will discuss the comparison of WAPWR (RESAR SP/90) design with other modern plants (in U.S. and abroad).

Plant Operating Procedures, Date to be determined (spring), Bethesda, MD. The Subcommittee will review the status of the NRC program on Technical Specifications update. Also, to review anonymous letter to Ms. E. Weiss (Union of Concerned Scientists), dated September 27, 1988, on Technical Specifications inadequacies.

Regulatory Policies and Practices, Date to be determined (May), Bethesda, MD. The Subcommittee will review the proposed rule on nuclear plant license renewal.

Decay Heat Removal Systems, Date to be determined (May/June), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 23, "RCP Seal Failures."

Decay Heat Removal Systems, Date to be determined, Bethesda, MD. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of Industry Best-Estimate ECCS Model submittals for use with the revised ECCS Rule.

Auxiliary and Secondary Systems, Date to be determined, Bethesda, MD. The Subcommittee will discuss the: (1) criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC staff to review the Chilled Water Systems design.

Joint Core Performance/Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will review the implications of the core power oscillation event at LaSalle, Unit 2.

ACRS Full Committee Meetings

346th ACRS Meeting, February 9–11, 1989—Items are tentatively scheduled.

*A. *Nuclear Safety Research Program (Open)*—Discuss proposed ACRS annual report to the U.S. Congress regarding the NRC safety research program.

*B. *Severe Accident Policy for Future LWRs (Open)*—Briefing by NRC staff regarding implementation of severe accident policy for future lightwater reactors.

*C. *NRC Regulatory Process and Philosophy (Open)*—Discuss proposed ACRS consideration of NRC regulatory processes and policies.

*D. *Human Factors (Open)*—Briefing by NRC staff regarding revised Human Factors Research Program Plan.

*E. *Decay Heat Removal (Open*—Briefing and discussion regarding Staff's response to ACRS comments related to the proposed resolution of Generic Issue 99, "Improved Reliability of RHR Capability in PWRs".

*F. *Resolution of Generic Issues (Open)*—Review and report on proposed resolution of Generic Issue 70, "PORV Reliability" and 94, "Low Temperature Overpressure Protection".

*G. *NRC Safety Goal Implementation Plan (Open)*—Discuss proposed ACRS report regarding the proposed Staff plan for implementing the NRC's Safety Goal Policy.

*H. *Appointment of New ACRS Members (Open/Closed)*—Discuss qualifications of candidates proposed for consideration as ACRS members.

*I. *Anticipated ACRS Activities (Open)*—Discuss anticipated ACRS subcommittee activities and items proposed for consideratiion by the full Committee.

*J. *SECY 88–325 Additional Applications of Leak-Before-Break Technology (Open)*—Discuss potential ACRS review of subject proposed NRC Policy Statement.

*K. *ACRS Subcommittee Activities (Open)*—Hear and discuss reports of cognizant ACRS subcommittee chairman regarding the status of assigned activities.

*L. *Containment Design Criteria (Open)*—Discuss proposed ACRS action regarding development of recommendations for containment design criteria.

347th ACRS Meeting, March 9–11, 1989—Agenda to be announced.

348th ACRS Meeting, April 6–8, 1989—Agenda to be announced.

ACNW Full Committee Meetings

7th ACNW Meeting, February 22–23, 1989: Items are tentatively scheduled.

1. *NRC Staff Briefing on:*

1.1 Status of NRC's Review of DOE's Yucca Mountain Site Characterization Plan (SCP)

1.2 NRC's Review Plan for their review of the SCP

1.3 DOE's Design Acceptability Analysis (DAA) for the Exploratory Shaft Facility (ESF); and of DOE's 5 Study Plans for the ESF

2. State of Nevada comments on the Consultative Draft Site Characterization Plan

3. Greater than Class C Wastes

4. ACNW periodic meeting with the Commissioners

8th ACNW Meeting, March 22–23, 1989—Agenda to be announced.

9th ACNW Meeting, April 26–28, 1989—Agenda to be announced.

Date: January 19, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–1815 Filed 1–25–89; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE FEDERAL REGISTER

Agreements Between the American Institute in Taiwan and the Coordination Council for North American Affairs

AGENCY: Office of the Federal Register (NARA).

ACTION: Notice of availability of agreements.

SUMMARY: The American Institute in Taiwan has concluded a number of agreements with the Coordination Council for North American Affairs in order to maintain cultural, commercial and other unofficial relations between the American people and the people on Taiwan. The Director of the **Federal Register** is publishing the list of these agreements on behalf of the American Institute in Taiwan in the public interest.

SUPPLEMENTARY INFORMATION: Cultural, commercial and other unofficial relations between the American people and the people on Taiwan are maintained on a nongovernmental basis through the American Institute in Taiwan (AIT), a private nonprofit corporation created under the Taiwan Relations Act (Pub. L. 96–8; 93 Stat. 14). The Coordination Council for North American Affairs (CCNAA) is its nongovernmental Taiwan counterpart.

Under section 1(a) of the Act, agreements concluded between the AIT and the CCNAA are transmitted to the Congress, and according to sections 6 and 10(a) of the Act, such agreements have full force and effect under the law of the United States.

The texts of the agreements are available from the American Institute in Taiwan, 1700 North Moore Street, 17th floor, Arlington, Virginia 22209. For further information contact Joseph Kyle at this address, telephone (703) 525–8474.

Following is a list of agreements between AIT and CCNAA which were in force as of December 31, 1988.

Dated: January 13, 1989.

Joseph B. Kyle,

Corporate Secretary and Program Officer.

Dated: January 23, 1989.

Martha L. Girard,

Acting Director, Office of the Federal Register.

Agreements Concluded Between the American Institute in Taiwan and the Coordination Council for North American Affairs as of December 31, 1988

Aviation

Air transport agreement, with exchange of letters. Signed at Washington, DC March 5, 1980; entered into force March 5, 1980

Agreement implementing air transport, with exchange of letters. Signed March 31, 1981; entered into force March 31, 1981

Civair memorandum of understanding, signed at Washington and Arlington October 15, 1981; entered into force on October 15, 1981

Revision of Article VI of air transport agreement of March 5, 1980. Revision signed in Taipei on May 8, 1986; entered into force May 8, 1986

Aeronautical equipment and services agreement with four annexes. Signed at Washington, DC October 23, 1981 and Arlington September 24, 1981; entered into force December 1, 1981

Educational and Cultural

Implementing agreement financing certain educational and cultural exchange programs. Exchange of letters at Taipei April 14 and June 4, 1979; entered into force June 4, 1979

Agreement concerning the Taipei American School. Signed and entered into force on February 3, 1983

Privileges and Immunities

Agreement relating to privileges and immunities of courier systems. Signed at Washington and Arlington December 31,

1979 and January 7, 1980; entered into force January 7, 1980

Privileges, exemptions and immunities agreement. Signed October 2, 1980; entered into force October 2, 1980

Addendum I to the agreement on privileges, exemptions, and immunities. Signed at Washington, DC, January 12, 1988; entered into force January 12, 1988

Protection of information agreement. Signed September 15, 1981; entered into force September 15, 1981

Trade and Commerce

Textile agreement. Signed November 18, 1982; entered into force November 18, 1982 (supersedes former agreements on textiles)

Textile agreement. Signed at Washington, DC on July 19, 1986; entered into force July 19, 1986. Supersedes textile agreement of November 18, 1982

Trade agreement with annexes. Exchange of letters signed October 24, 1979; entered into force October 24, 1979

Bilateral trade agreement (concerning tariffs). Exchange of letters signed December 31, 1981; entered into force December 31, 1981

Agreement concerning exports of rice from Taiwan. Exchange of letters on March 1, 1984; entered into force on March 1, 1984

Agreement relating to export performance requirements. Exchange of letters at Washington, DC October 9, 1986; entered into force October 9, 1986

Agreement on beer, wine and cigarettes. Signed at Washington, DC on December 12, 1986; entered into force December 12, 1986

Agreement concerning trade in certain machine tools. Signed at Washington, DC on December 15, 1986; entered into force December 15, 1986

Agreement relating to sale of Statue of Liberty coins. Signed at Washington, DC on March 3, and April 23, 1986; entered into force April 23, 1986

Scientific Cooperation

Agreement to further scientific and scholarly cooperation. Exchange of letters at Arlington September 4, 1980; entered into force September 4, 1980

Ionospheric and observation and reporting agreement. Signed November 26, 1980; entered into force November 26, 1980

Extension of ionospheric observation and reporting agreement. Signed in Taipei on October 1, 1987; entered into force October 1, 1987

Agreement on information exchange and cooperation on nuclear matters. Signed on May 12 and August 3, 1983; entered into force on August 3, 1983

Agreement on probabilistic risk analysis. Signed on August 23, 1982 and January 27, 1983; entered into force on January 27, 1983

Agreement on cooperation and assistance in electrical energy. Signed on June 24 and 28, 1983; entered into force on June 28, 1983

Guidelines for a cooperative program in the biomedical sciences. Signed on May 21, 1984; entered into force on May 21, 1984

Agreement relating to the establishment of a joint standing committee on civil nuclear cooperation. Signed on October 3, 1984; entered into force on October 3, 1984

Agreement relating to participation in severe nuclear accident research programs. Signed on October 12, 1984; entered into force on October 12, 1984

Extension until October 12, 1990 of the agreement relating to participation in severe nuclear accident research programs. Signed at Washington, DC, Martch 18 and March 22, 1988. Entered into force March 22, 1988

Guidelines for a cooperative program in food hygiene. Signed on January 28, 1985; entered into force January 28, 1985

Guidelines for a Cooperative Program in Atmospheric Research. Signed and entered into force on May 4, 1987

Guidelines for a Cooperative Program in the Physical Sciences. Signed and entered into force on March 10, 1987

Agreement relating to participation in the International Piping Integrity Research Group. Signed on April 10, 1987 and May 15, 1987. Entered into force on May 15, 1987

Agreement for a Cooperative Program in the Sale and Exchange of Technical, Scientific and Engineering Information. Signed and entered into force on November 17, 1987

Guidelines for a Cooperative Program in the Environmental Sciences. Signed and entered into force on November 3, 1987

Agreement for Technical Assistance in Dam Design Construction. Signed and entered into force on August 24, 1987

Extension of 1980 Cooperative Science Agreement. Signed at Washington, DC, March 10, 1987; effective March 10, 1987

Guidelines for a Cooperative Program in the Agricultural Sciences. Signed on January 15, 1986 and January 28, 1986. Entered into force on January 28, 1986

Second Agreement between the American Institute in Taiwan and the Coordination Council for North American Affairs for Procurement of Equipment for the Taiwan Synchrotron Radiation Research Center. Signed at Washington, DC, December 21, 1988. Entered into force December 21, 1988

Maritime

Agreement on tonnage measurement of ships. Signed on May 13 and 26, 1983; entered into force on May 26, 1983

Governing international fisheries agreement with annexes. Signed June 7, 1982; entered into force June 7, 1982

SOLAS agreement (concerning uninterrupted maritime trade and the safety of life at sea), with exchange of letters. Signed in Arlington August 17, 1982 and in Washington, DC September 7, 1982; entered into force September 7, 1982

Agreement on safety of life at sea, with exchange of letters. Signed at Washington, DC January 22, 1985; entered into force January 31, 1985

International convention for prevention of pollution from ships with exchange of letters. Signed at Washington, DC January 22, 1985; entered into force January 31, 1985

Load lines agreement with exchange of letters. Signed at Washington, DC March 26, 1985; entered into force April 10, 1985

[FR Doc. 89-1798 Filed 1-25-89; 8:45 am]

BILLING CODE 1505-02-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-26475; File No. SR-Amex-88-29]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Proposed Amendments to Exchange Procedures Which Govern the Administration of Security Industry Arbitration

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 18, 1988, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[1]

[1] Exhibit A, which contains the text of the proposed amended and new arbitration rules, is available for inspection in the Public Reference Branch at Commission headquarters in Washington, DC.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

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 Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on 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 Amex 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 the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The American Stock Exchange is proposing to amend Exchange Rules and procedures which govern the administration of securities industry arbitration. Rules and amendments to the Uniform Code of Arbitration similar to those proposed by the Exchange have been approved by SICA.

New Rule 427 requires that all pre-dispute arbitration clauses must be highlighted and specifies the information that must be included in such clauses. In addition, the proposed rule requires that the agreement must contain a statement calling the customer's attention to the fact that a pre-dispute arbitration clause is included.

The Exchange is proposing to include in the disclosure rule discussed above a provision which precludes broker-dealers from including in customer agreements any condition which limits or contradicts the rules of any SRO, limits the ability of any party to file an arbitration, or limits arbitrators' ability to make an award.

Rule 602 will list the factors for determining who is to be deemed an industry arbitrator, thus clarifying the limitations on who may serve as a public arbitrator, and specifying the type of information regarding each proposed arbitrator's background that must be provided by the Exchange to parties. It is also proposed that a new Rule 603 be adopted setting forth the disclosures to be made by each arbitrator prior to and while serving on a panel.

New Rule 607 sets forth a comprehensive pre-hearing procedure governing such matters as the exchange of information by parties and the use of pre-hearing conferences or preliminary hearings to resolve certain matters unrelated to the merits of the case. By specifying precise procedures for resolving discovery and other administrative disputes before the hearing, and establishing penalties for failure to exchange information before the hearing, this proposed rule will enable parties to more easily gain access to materials in the possession of their adversaries and will expedite the arbitration process by ensuring that at the commencement of the hearing, the parties and the panel will be able to address the merits of the case.

Rule 616 will expand the form and content of the written arbitration award to provide more detailed information. Pursuant to the amendment, the award must identify the parties and contain a summary of the issues involved, the relief sought, the issues resolved, the amount of any award or other relief granted, the names of the arbitrators and the signatures of the arbitrators concurring in the award. The proposal requires that the summary information contained in the awards must be made publicly available.

Rule 612 will be amended to require that a record be kept of every hearing. Currently, no record is required unless requested by the arbitrators or a party. Under the proposed new rule, either a stenographic record or tape recording must be kept, but need not be transcribed unless requested by the arbitrators or a party. Any party making such a request will bear the cost of the transcription. This amendment will codify procedures already implemented by the Exchange.

A number of further procedural modifications are being proposed. These modifications, designed to further clarify, expedite and make more efficient numerous aspects of the arbitration process, are as follows:

- Amend Rule 602 to set forth more comprehensive procedures for replacing an arbitrator emoved from a panel for any reason following commencement of the first hearing session. In such a case, a replacement will be appointed only if a party raises an objection to the continuation of the proceeding with only the remaining panelists.
- Amend Rules 605, 619 and 620 to provide for service of all pleadings other than the Statement of Claim by the parties themselves rather than by the Exchange, and to clarify that a party need not file a written objection prior to the hearing in order to request that an adversary who has submitted only a general denial as an answer be precluded from presenting any facts or defenses at the hearing.
- Amend Rule 606 to provide that where adjournment of a hearing scheduled in connection with a simplified proceeding is requested, the party making the request will not be required to pay an adjournment fee.
- Amend Rule 608 to provide that all parties must be given copies of any subpoena issued in connection with an arbitration.
- Amend Rule 618 to define the term "hearing session," set forth the total forum fees which arbitrators may determine to be chargeable to parties, clarify the arbitrators' discretion to award other costs and expenses pursuant to the parties' agreement, and establish a fee for a pre-hearing conference.

Finally, Rule 602 et seq. will be renumbered accordingly to allow for the insertion of the recommended new rules.

(2) Basis

The proposed rule change is consistent with sections 6(b)(4) and 6(b)(5) of the Act, in that the amendments to the Exchange's rules and procedures governing the administration of securities industry arbitration provide for the equitable allocation of reasonable dues, fees and other charges among the Exchange's members and issuers and other persons using its facilities, and that they are designed to promote just and equitable principles of trade and protect investors and the public interest by improving the administration of an impartial forum for the resolution of disputes relating to the securities industry.

B. Self-Regulatory Organization's Statement on Burden on Competition

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

No written comments were solicited or received with respect to 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 priod to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex 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

The Commission encourages comment on any aspect of the proposed rule change, including the proposed effective date. In addition, the Commission requests specific comment as follows:

1. The proposed rule change represents significant modifications in the current rules for arbitration proceedings administered by the Amex. On September 10, 1988, the Commission wrote to the Securities Industry Conference on Arbitration ("SICA") in order to request that it consider a wide range of changes to its Uniform Code of Arbitration, which was first developed in 1977 by SICA in order to promote a uniform system of arbitration procedures throughout the securities industry. The membership of SICA is composed of representatives of the Amex, nine other SROs, four public members and the Securities Industry Association. Since receiving the September 1987 letter, SICA has developed new rules to respond to many of the issues raised in the Commission's letter. In addition, on July 8, 1988, the Commission wrote to each of the SROs that administers an arbitration program requesting that they consider the issues raised by their members' use of mandatory predispute arbitration clauses. Proposed amendments to six of the Amex's arbitration rules contained in this filing respond to issues raised in the September 10, 1987 and July 8, 1988 letters. Accordingly, it is with particular interest that the Commission solicits comment on the amendments to those six Amex Rules 602, 603, 607, 614, 618 and 427. These rules deal with the definitions of public and industry arbitrators, the disclosure of arbitrator biographical information and potential conflicts of interest, the discovery process, the preservation of a record, the contents and public availability of arbitration awards and disclosure in connection with the use of predispute arbitration clauses. Comment is sought as to whether these proposed rule changes will appropriately protect investors and the public interest.

2. In particular, proposed Amex Rule 607, concerning prehearing proceedings, does not explicitly provide for the taking of depositions. Rather, the Rule permits arbitrators to issue any ruling which will expedite the arbitration proceedings. The Commission understands this to include the ability to order depositions. Comment is specifically sought as to whether a party should be able to have the arbitrators order depositions in a particular case if he can demonstrate to them that a deposition is necessary to develop his case or that he cannot obtain equivalent information from documents alone.

3. Comment is also solicited on the proposed amendment to Amex Rule 602, which defines public and industry arbitrators. Comment is specifically sought, first, as to whether the standards set out in the rule are adequate to assure the independence of public arbitrators from any perception of influence or actual influence from the securities industry, and second, as to whether the balance struck between the need for impartial arbitrators and the need for industry expertise has been properly made through the use of a majority of public arbitrators and a minority of industry arbitrators.[1]

4. Comment is also sought on whether Amex Rule 618, which establishes standards for the content and public availability of arbitration awards, provides investors with sufficient ability to evaluate the arbitration system in general, as well as the ability to review the past experience of particular arbitrators who have been selected to hear their particular cases.

5. In addition, comment is solicited on proposed new Amex Rule 427, which mandates new disclosures to be used in connection with any predispute arbitration clauses and also prohibits the use of arbitration clauses to limit the types of relief available to investors in arbitration. In particular, does the proposed rule adequately focus investor attention on the existence and meaning of predispute arbitration clauses and otherwise address the concerns surrounding the use of these clauses.

6. Finally, comment is specifically solicited on the proposed amendment to Amex Rule 620. This rule change assesses forum fees against counter, cross and third-party claimants and specifies costs that may be assessed against parties. The combined effect of these changes has the potential to increase significantly the fees and costs that could be assessed by the arbitrators against a single party to an arbitration proceeding. Comment is solicited on whether such fees and charges are reasonable.

[1] Commentators should be advised that the standards for public and industry arbitrators may differ among the SROs. *See, e.g.*, SR-NASD-88-51

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 Amex. All submissions should refer to the file number in the caption above and should be submitted by February 16, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 19, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1843 Filed 1-25-89; 8:45 am]

BILLING CODE 8010-01-M

(Release No. 34-26480; File No. SR-MBS-89-1)

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 6, 1989, MBS Clearing Corporation filed with the Securities and Exchange 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 proposed rule change consists of the following additions to the Fee schedule for the Depository Division (the "Depository") of MBS Clearing Corporation ("MBSCC"):

SCHEDULE OF FEES FOR COLLATERAL SAFEKEEPING SERVICES

Collateral	Fee
Cash wires (in/out)	$7.00/wire *.
Securities delivery/receipt (FHLMC, FNMA, T-bills, notes, bonds).	12.50 each.
Securities (on deposit at end of month).	5.00 each.
All costs associated with deposits of collateral to augment the Depository's Participants Fund are rebillable.	

* Applies to all funds movements to/from the Depository.

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 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 proposed rule change is to set fees for certain services provided by the Depository.

The proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among the Depository's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC 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 neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

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 above-referenced self-regulatory organization. All submissions should refer to SR–MBS–89–1 and should be submitted by February 16, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 19, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–1849 Filed 1–25–89; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

January 18, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Borden Chemical & Plastics, L.P, Depositary Units (File No. 7–4144)

Hubbell, Inc., Class B Common Stock, $5.00 Par Value (File No. 7–4145)

Healthvest, Inc., Shares of Beneficial Interest, No Par Value (File No. 7–4146)

Service Merchandise Company, Inc., Common Stock, $.50 Par Value (File No. 7–4147)

McClatchy Newspapers, Inc., Class A Common Stock, $.01 Par Value (File No. 7–4148)

RAC Income Fund, Inc., Common Stock, $.01 Par Value (File No. 7–4149)

RPS Realty Trust, Shares of Beneficial Interest, $.10 Par Value (File No. 7–4150)

Baroid Corporation, Common Stock, $.10 Par Value (File No. 7–4151)

Monarch Capital Corporation, Common Stock, $1.00 Par Value (File No. 7–4152)

NL Industries, Inc., Common Stock, $.125 Par Value (File No. 7–4153)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 7, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–1754 Filed 1–25–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–26476; File No. SR–NASD–89–4]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc.

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 January 17, 1989, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The following is the full text of a proposed change to Section c.3.(B) of the Rules of Practice and Procedures for the NASD's Small order Execution System ("SOES") and an addition to the facilities description of SOES. The rule change shall be effective for a period of 90 days to permit consideration by the Commission of approval of the proposed modification on a permanent basis, which will be the subject of a separate rule filing. Material to be deleted is in brackets; material to be added is italicized.

(B) SOES will accept both market and limit orders for execution[; however, limit orders not immediately executed due to price will be returned to the SOES order entry firm]. Orders may be preferenced to a specific SOES market maker or may be unpreferenced, thereby resulting in execution in rotation against SOES market makers.

The following is the full text of a new section of the SOES facilities description approved in filing SR–NASD–84–26:

SOES Limit Order Processing

As indicated in the Rules of Practice and Procedure for the Small Order Execution System ("SOES") the system will accept both market and limit orders. An order which, because of price, cannot be immediately executed will be stored in the system. Order entry firms may enter day orders, good-till-cancelled orders, good-till-date orders and fill or kill orders at prices which are away from the current market. Such orders may be preferenced as with any other SOES order. Orders may be entered notwithstanding the existence of special conditions including locked and crossed markets; no quote or closed quote conditions; a lack of market makers in NASDAQ/NMS securities or market maker exposure. If the security is suspended, there is a one sided inside market; there are not market makers in a NASDAQ security other than a national market system security or the limit price is not reasonably related to the market such special conditions will cause the order to be rejected.

Limit orders will become executable at such time as the inside quote in the NASDAQ System is equal to or better than the limit price. Executable orders will be executed on a first-in first-out basis for as long as the inside quote remains equal to or better than the limit price. Orders not executed due to price movement will remain in the SOES limit order file. Unexecuted limit orders in the system will be purged either by their terms, by execution, prior to commencement of trading of the securities ex-dividend or by the NASD on a periodic basis as set forth in the SOES Users Guide. A new Users Guide for Limit Orders will be distributed to SOES participants and is incorporated herein by reference. This document will become a part of the general SOES Users Guide upon its next reprinting.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of SOES is to improve the efficiency of execution of transactions in NASDAQ securities through the use of data processing and communications techniques. The addition of limit order storage and execution capability increases the efficiency and capacity of the system to achieve this end.

The SOES limit order processing capability serves the purpose of providing members, and in particular members not having proprietary systems with such capability, with the ability to enter and store limit orders. The system does not impose priorities for execution of customer limit orders vis-a-vis members' proprietary transactions. Members are, therefore, responsible for ensuring that customer limit orders are handled in a manner consistent with members' obligations to their customers. The NASD believes that those obligations are as set forth in Notice to Members 85–12 dated Febrary 15, 1985.[1]

The NASD is cognizant of the need to ensure that the capacity of the NASDAQ System is sufficient to handle the volume of orders that will be generated by this enhancement to SOES. The NASD will monitor capacity closely during the early implementation phase of the limit order enhancement in order to detect potential capacity limitations.

The statutory basis for the further development and implementation of SOES is found in sections 11A(a)(1)(B) and (C)(i), 15A(b)(6), and 17A(a)(1) (B) and (C) of the Act. Section 11A(a)(1) (B) and (C)(i) set forth the Congressional goal of achieving more efficient and effective market operations and the economically efficient execution of transactions through new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the Association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market." Section 17A(a)(1) (B) and (C) set forth the Congressional goal of reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD believes that the modifications to SOES will further these ends by providing enhanced mechanisms for the efficient and economic execution and clearance of limit orders in over-the-counter securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[1] It is the Commission's position that use of the limit order file does not in any way alter the fiduciary obligations of member firms consistent with *In re* E.F. Hutton & Co., Inc., Securities Exchange Act Release No. 25887 (July 6, 1988). In particular, the Commission believes that entering a limit order into the file does not absolve the firm from taking steps to ensure full compliance with the obligations of the *Hutton* decision, including procedures to ensure that the firm either disclose or abstain from trading ahead of its own customers' limit orders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received with respect to the proposed rule change contained in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has requested that the Commission find good cause pursuant to section 19(b)(2) of the Act for approving the proposed rule change on a temporary basis prior to the thirtieth day after publication in the Federal Register, and in any event before January 20, 1989, the secheduled commencement date for the SOES limit order processing function. The Association believes that the enhancement to the SOES system will benefit members and their public customers by providing an automated method of processing limit orders for all SOES participants that will be comparable to proprietary systems now utilized by some member firms. The NASD contemplates an orderly introduction of the enhancement through the use of a phase-in beginning on January 20, 1989, of only those securities having NASDAQ symbols beginning with the letter "A," with an expansion to the remainder of SOES securities only after an initial test period that is contemplated to last approximately two weeks. The NASD does not believe that the enhancement will result in undue stress on the capacity of the NASDAQ System or SOES and that the ability to maintain stored orders will increase the efficiency of the system by eliminating the need to constantly re-enter orders for execution. The NASD contemplates no operational problems resulting from the enhancement and therefore believes that good cause exists for accelerating the effectiveness of the rule change prior to January 20, 1989, during the Commission's consideration of the permanent rule proposal covering this modification to SOES.

The Commission is concerned that the limit order file, as proposed, does not permit the crossing of limit orders that are entered between the spread. Indeed, serious questions appear to be raised under Sections 11A and 15A of the Act by the NASD institutionalizing a system whereby customers are precluded from interacting with one another. Nevertheless, solely for purpose of the pilot and in recognition of the need for the NASD to enhance automation, and based on the NASD's representation that it will promptly explore during the pilot period means of enhancing the limit order file system to accommodate the crossing of such order,[2] the Commission has concluded that it will not institute proceedings to disapprove this proposed pilot.

The Commission nevertheless finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A(a)(1)(B), 15A(b)(6) and 17A(a)(1) (B) and (C) and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that accelerated approval and the implementation of the modification to SOES scheduled to occur on January 20, 1989, will benefit public investors by providing limit order storage and execution capabilities that will result in more efficient handling of customer orders. The Commission notes that the NASD will shortly file a proposed rule change seeking permanent approval of the limit order enhancement to SOES and that such a proposal will be published for public comment prior to any Commission action on the proposal. The Commission also notes that the limit order file as proposed was viewed favorably by the Regulatory Review Task Force commissioned by the NASD, which endorsed the limit order file as an important first step toward providing improved investor access to the NASDAQ market and improving market liquidity.[3] The Commission believes that the benefits of approval of the temporary rule change outweigh any potential adverse effects during the period of the rule change's effectiveness.

IV. Solicitation of Comments

Interested persons are invited to submit written date, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying in the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 16, 1989.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for a period of 90 days.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: January 19, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1848 Filed 1-25-89; 8:45 am]

BILLING CODE 8010-01-M

[2] Telephone conversation between Joseph Hardiman, President, NASD, and Richard Ketchum, Director, Division of Market Regulations, SEC, on January 18, 1989.

[3] Report of the Special Committee of the Regulatory Review Task Force on the Quality of Markets, July 1988, p. 10. The Commission notes, however, that the Task Force called for the file to include a capability to execute offsetting buy and sell orders at the same price at or inside the best bid and ask.

[Rel. No. 34-26474; File No. SR-NYSE-88-29]

Self Regulatory Organization; Proposed Rule Changes By New York Stock Exchange, Inc. ("NYSE") Relating to Proposed Amendments to Exchange Procedures Which Govern the Administration of Security Industry Arbitration

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 October 14, 1988, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. Amendment No. 1, submitted by the NYSE on January 6, 1989, and subsequently amended by letters received on January 18 and 19, 1989, makes additional changes to the Exchange's Rules under the proposed rule changes and the statements of purpose concerning the proposed rule changes. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.[1]

[1] Exhibit A, which contains the text of the proposed amended and new arbitration rules, is available for inspection in the Public Reference Branch at Commission headquarters in Washington, DC.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The proposed amendments to rules 601 and 612 require that the parties to arbitration serve pleadings upon each other after the New York Stock Exchange serves the Statement of Claim upon the Respondent(s). The parties will be required to supply sufficient copies of the pleadings for the use of the arbitrators and other parties. Rule 612 will state how pleadings must be served. The proposed amendments to Rule 607 set forth the criteria for classifying arbitrators as securities or public. The proposed amendments to Rule 608 require that parties be supplied with background information on each arbitrator assigned to a matter. The Director of Arbitration will be allowed to fill vacancies on panels when arbitrators become unable to serve prior to the first hearing session. The proposed amendments to Rule 610 provide a more detailed statement concerning arbitrator disclosure requirements. The proposed amendments to rule 611 allow a hearing in progress to continue when a vacancy has occurred in a panel. If a party objects to continuing without a replacement arbitrator, the Director of Arbitration will be allowed to appoint a new arbitrator. The proposed amendments to Rule 619 enlarge the scope of the discovery process available in arbitration. The provisions of deleted Rules 620 and 638 will be incorporated into this rule. The proposed amendments to Rule 623 require that a verbatim record of each arbitration be made. The proposed amendments to Rule 627 require that the arbitrators' award include a summary of the issues in controversy, and the damages and relief requested and awarded. The rule will also require that summary arbitration data be made publicly available. The proposed amendments to Rule 629 define a hearing session and state the costs of a pre-hearing conference. The rule will allow the arbitrators to determine who shall bear the costs applicable to the arbitration. The adoption of New Rule 637 will set forth the requirements for using pre-dispute arbitration agreements with customers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes. 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 Changes

The proposed rule changes are based for the most part on proposals developed by the Securities Industry Conference on Arbirtration. The proposed changes are consistent with sections 6(b)(4) and (5) of the Act in that they provide for the equitable allocation of reasonable dues, fees and other charges among the Exchange's members and issuers and other persons using its facilities and in that they promote just and equitable principles of trade by insuring that members and member organizations and the public have an impartial forum for the resolution of their disputes. In general, the proposed rule changes are intended to improve the efficiency of the arbitration process; to expedite the service of pleadings in arbitration proceedings; to provide additional information concerning arbitrators' background to parties to arbitration proceedings: to codify the affirmative disclosure obligations of arbitrators; to require that parties pay deposits upon the filing of Counterclaims, Cross-Claims, and Third-Party Claims; to improve pre-hearing discovery processes and provide pre-hearing conferences; to require that a verbatim record of proceedings be kept; and to clarify the authority of arbitrators or the Director of Arbitration to assess fees and costs or to refund deposits.

The purposes of the proposed rule changes are to:

- Save administrative time and costs by requiring that the parties serve most pleadings upon each other and supply the Exchange with sufficient copies of pleadings for distribution to the parties and arbitrators. Under the existing rules, the Exchange serves all pleadings. Under the new procedures, the Exchange will serve only the Statement of Claim. (Rule 612)
- Avoid confusion regarding the service by pleadings by defining how service may be properly effected, namely by mail, overnight mail service or other means of delivery. (Rule 612)
- Praise customer confidence in arbitration by codifying criteria for arbitrator classification which will insure that no public arbitrator is perceived to have a close affiliation with the securities industry by excluding individuals with close securities industry ties, individuals who have spent a substantial part of their business careers in the securities industry, registered investment advisers and others who may be perceived to have close ties with the securities industry. (Rule 607)
- Avoid adjournments and promote knowledgeable use of peremptory challenges and challenges for cause by requiring that the parties be given full disclosure of the arbitrators' backgrounds, including ten (10) years business history, as well as any disclosures made by arbitrators pursuant to Rule 610. (Rule 608)
- Cut down on last-minute adjournments by allowing the Director of Arbitration to appoint a replacement arbitrator in instances in which a vacancy occurs after the arbitrator has been appointed but before the first hearing session. At the present time, a party may refuse to go forward on the scheduled date because the party was not given the required eight (8) business days' notice of the name and affiliation of a replacement arbitrator. (Rule 608)
- Provide guidance to arbitrators about the types of relationships that may create conflicts of interest, and insure that accurate disclosures made by the arbitrators are provided to the parties by incorporating the conflict of interest and disclosure provisions contained in the *Code of Ethics for Arbitrators in Commercial Disputes* into the arbitration rules. (Rule 610)
- Eliminate the time and cost inherent in rehearing an arbitration matter by allowing the Director of Arbitration to fill a vacancy in a panel which has already begun to hear the matter. The current rules require that the Director of Arbitration obtain the consent of the parties to either appoint a new arbitrator or continue with the remaining arbitrators, thus effectively allowing either party to obtain a re-hearing by withholding its consent. The rule will provide that unless a party requests a replacement arbitrator, the matter will go forward with only the arbitrators remaining. (Rule 611)
- Help the parties resolve all open discovery disputes and better prepare for the first hearing session by expanding the discovery process in arbitration. The amendments provide a procedure in which the parties begin the discovery process by exchanging information requests and attempting to resolve their discovery disputes voluntarily. If this proves fruitless, the parties, aribtrators or the Director of Arbitration may refer this dispute to a pre-hearing conference. The Director of Arbitration will appoint an individual to

preside over this conference, which may be held by telephone conference call, and the presiding individual will seek to achieve agreements among the parties regarding the pre-hearing process including, but not limited to, the exchange of information, exchange/production of documents, stipulation of facts, identification of certain witnesses, identification and briefing of issues and any other related open matters. If the conference is unsuccessful, an arbitrator will be appointed to decide the unresolved issues. The arbitrator may issue subpoenas, direct appearances of witnesses, direct the production of documents and depositions, and set deadlines and issue any other ruling which will expedite the hearing and permit any party to develop fully its case. This may be done by the submission of papers or by a hearing. The arbitrator may refer any issues to a full panel. The amendments will also require that parties be informed of all outstanding subpoenas and that parties exchange witness lists ten (10) days before the scheduled hearing date. We anticipate that these procedures will bring an end to adjournments based on discovery disputes. Session costs and expert witness fees will be saved. (Rule 619)

• Provide for a sufficient record for review by requiring that a verbatim record be made of each arbitration hearing. The cost of transcription shall be borne by the party or parties making the request for the transcription unless the arbitrators direct otherwise. The Exchange currently provides a stenographic reporter at each hearing and will continue to do so. (Rule 623)

• Assure the parties that the arbitrators have considered all the issues raised and damage claims made by requiring that the arbitration award state a summary of the issues, damages and relief requested and awarded. The summary will include the names of the arbitrators and also will include the names of parties unless a public customer requests in writing that his/her name be deleted. By including such a summary, the parties will have a better understanding of the decision and a greater confidence in the process. The New York Stock Exchange will also make the awards and any opinions issued in connection therewith publicly available. This, too, will bolster the parties' confidence in the arbitration process. (Rule 627)

• Eliminate any confusion regarding the potential cost of arbitration by defining a hearing session as a meeting between the parties and arbitrators that lasts less than four (4) hours and by allowing the arbitrators to assess costs against the party they deem appropriate. The amendment will also change the minimum deposit required where no money amount is claimed from $100 to $200 and state the cost of a pre-hearing conference. The amendment will also require that parties pay deposits upon the filing of counterclaims, cross-claims and third-party claims, all of which may ultimately be assessed against a single party. These changes will help to better distribute the costs of arbitrations amongst its users. (Rule 629)

• Insure that customers are aware of the existence, nature and effect of pre-dispute arbitration clauses by requiring that such agreements be highlighted by the broker/dealer and acknowledged by the customer. The arbitration clause must include statements to the effect that arbitration is final and binding and that the parties are waiving their right to a court and jury trial, that pre-arbitration discovery is generally more limited than court proceedings, that arbitrators' awards may not include factual findings, that the right to appeal is strictly limited and that a panel of arbitrators will include a minority of arbitrators who are affiliated with the securities industry. The rule will also require that the disclosure language be included and highlighted. Because of the highlighting requirements and the fact that the disclosure of the existence of the arbitration agreement must appear immediately preceding the signature line, the Exchange did not believe its necessary to require a separate initialing of the arbitration agreement. (Rule 637)

• Insure that all arbitration clauses do not contain conditions which limit or contradict the rules of a self-regulatory organization of which the broker-dealer is a member. The rule will also prohibit limitations on the ability of a party to file a claim or the arbitrators to make an award. Thus, for example, parties will not be able to abbreviate statutes of limitations or designate hearing sites which are not in accordance with SRO rules. (Rule 637)

B. Self-Regulatory Organization's Statement on Burden on Competition

The New York Stock Exchange does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the proposed Rule Changes Received from Members, Participants or Others

The Exchange did not solicit comments on the proposed rule changes. Three letters were received from member organizations (copies are attached). Rule 637 was modified to address the concerns expressed in these letters, namely, the requirement of a separate initialing of the acknowledgement of an arbitration clause was deleted.

III. Date of Effectiveness of the Proposed Rule Changes 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 changes, or

(b) Institute proceedings to determine whether the proposed rule changes should be disapproved. Specifically, the New York Stock Exchange proposes to make effective Rules 608, 618, 619, 623, 607, 611 and 627 upon Commission approval of these proposed rule changes (except for Counterclaims and Third-Party Claims that were previously filed). The proposed provisions of Rules 601, 612 and 629 will only apply to cases filed after Commission approval of the proposed rule change. The proposed provision of Rule 637 will be effective 120 days from the date of Commission approval of this rule.

IV. Solicitation of Comments

The Commission encourages comment on any aspect of the proposed rule change, including the proposed effective date. In addition, the Commission requests specific comment as follows:

1. The proposed rule change represents significant modifications in the current rules for arbitration proceedings administered by the NYSE. On September 10, 1988, the Commission wrote to the Securities Industry Conference on Arbitration ("SICA") in order to request that it consider a wide range of changes to its Uniform Code of Arbitration, which was first developed in 1977 by SICA in order to promote a uniform system of arbitration procedures throughout the securities industry. The membership of SICA is composed of representatives of the NYSE, nine other SROs, four public members and the Securities Industry Association. Since receiving the September 1987 letter, SICA has developed new rules to respond to many of the issues raised in the Commission's

letter. In addition, on July 8, 1988, the Commission wrote to each of the SROs that administers an arbitration program requesting that they consider the issues raised by their members' use of mandatory predispute arbitration clauses. Proposed amendments to seven of the NYSE's arbitration rules contained in this filing respond to issues raised in the September 10, 1987 and July 8, 1988 letters. Accordingly, it is with particular interest that the Commission solicits comment on the amendments to those seven NYSE Rules 607, 608, 610, 619, 623, 627 and 637. These rules deal with the definitions of public and industry arbitrators, the disclosure of arbitrator biographical information and potential conflicts of interest, the discovery process, the preservation of a record, the contents and public availability of arbitration awards and disclosure in connection with the use of predispute arbitration clauses. Comment is sought as to whether these proposed rule changes will appropriately protect investors and the public interest.

2. Comment is also solicited on the proposed amendment to NYSE Rule 607, which defines public and industry arbitrators. NYSE Rule 607 should be read together with the NYSE's "Guidelines for the Classification of Arbitrators," which is also contained in the rule filing. Comment is specifically sought, first, as to whether the standards set out in the rule and accompanying guidelines are adequate to assure the independence of public arbitrators from an perception of influence or actual influence from the securities industry, and second, as to whether the balance struck between the need for impartial arbitrators and the need for industry expertise has been properly made through the use of a majority of public arbitrators and a minority of industry arbitrators.[2]

3. Amended NYSE Rule 619 enlarges the scope of the discovery process available in arbitration, and incorporates the provisions of old NYSE Rules 620 and 638. On behalf of the arbitration panel, amended NYSE Rule 619 authorizes a single arbitrator to issue subpoenas, direct appearances of witnesses and production of documents or depositions, set deadlines and issue any other ruling which will expedite the arbitration proceeding or is necessary to permit any party to develop fully its case. Comment is solicited on whether the Rule is adequate to allow parties to resolve disputes in a timely way and develop their case.

[2] Commenters should be advised that the standards for public and industry arbitrators may differ among the SROs. *See, e.g.*, SR–NASD–88–51.

4. Comment is also sought on whether NYSE Rule 627, which establishes standards for the content and public availability of arbitration awards, provides investors with sufficient ability to evaluate the arbitration system in general, as well as the ability to review the past experience of particular arbitrators who have been selected to hear their particular cases.

5. In addition, comment is solicited on proposed new NYSE Rule 637, which mandates new disclosures to be used in connection with any predispute arbitration clauses and also prohibits the use of arbitration clauses to limit the types of relief available to investors in arbitration. In particular, does the proposed rule adequately focus investor attention on the existence and meaning of predispute arbitration clauses and otherwise address the concerns surrounding the use of these clauses?

6. Finally, comment is specifically solicited on the proposed amendment to NYSE Rule 629. This rule change assesses forum fees against the counter, cross and third-party claimants and specifies costs that may be assessed against parties. The combined effect of these changes has the potential to increase significantly the fees and costs that could be assessed by the arbitrators against a single party to an arbitration proceeding. Comment is solicited on whether such fees and charges are reasonable.

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 70549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by February 16, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: January 19, 1989.

[FR Doc. 89–1844 Filed 1–25–89; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

January 19, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Banco Bilbao Vizcaya, S.A., American Depositary Shares (File No. 7–4154)

Munivest Fund, Inc., Common Shares, $.10 Par Value (File No. 7–4155)

Hong Kong Telecommunications, Ltd., American Depositary Shares (File No. 7–4156)

ACM Government Spectrum Fund, Inc., Common Stock, $0.01 Par Value (File No. 7–4157)

Blackstone Income Trust Inc., Common Stock, $0.01 Par Value (File No. 7–4158)

Galaxy Carpet Mills, Inc., Common Stock, $0.01 Par Value (File No. 7–4159)

New America High Income Fund, Inc., Common Stock, $0.01 Par Value (File No. 7–4160)

Nuveen N.Y. Municipal Value Fund, Inc., Common Stock, $0.01 Par Value (File No. 7–4161)

Schafer Value Trust, Inc., Common Stock, $0.01 Par Value (File No. 7–4162)

Shawmut National Corporation, Common Stock, $0.01 Par Value (File No. 7–4163)

Homefed Corporation, Common Stock, $0.01 Par Value (File No. 7–4164)

Wellman, Inc., Common Stock, $0.01 Par Value (File No. 7–4165)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 10, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make

written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1755 Filed 1-25-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16763; (811-5418)]

American Capital Prime Series, Inc.; Application

January 19, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: American Capital Prime Series, Inc.

Relevant 1940 Act Section: Section 8(f) and Rule 8f-1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on January 4, 1989.

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 February 13, 1989. 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, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 2800 Post Oak Blvd., Houston, Texas 77056.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-3420, or Brion R. Thompson, Branch Chief (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 (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. On December 21, 1987, Applicant filed Form N-8A to register under the 1940 Act as an open-end, diversified management investment company. On December 21, 1987, Applicant also filed Form N-1A under the Securities Act of 1933, but such registration statement did not become effective and Applicant never made a public offering of its securities. Applicant is a corporation incorporated under the law of the State of Maryland and intends to file dissolution documents with the State of Maryland.

2. Applicant does not have any assets or liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant has no shareholders and is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-1845 Filed 1-25-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16764/812-6967]

HT Insight Funds, et al.; Application

January 19, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: HT Insight Funds, Inc. ("HT Insight") and Lazard Freres & Co. ("Lazard").

Relevant 1940 Act Sections: Applicants seek approval of an exchange offer under section 11(a).

Summary of Application: The Applicants seek an order to permit HT Insight to offer shares of front-end load funds in exchange for shares of no-load funds, or any low load fund that may be offered in the future, at net asset value plus the applicable sales charge and that any order issued be applicable to any similar HT Insight investment portfolios that may be offered by Lazard Freres in the future.

Filing Dates: The Application was filed on January 26, 1988 and amended on July 11, September 16, 1988 and January 3, 1989. A supplemental letter was filed on January 18, 1989.

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 February 10, 1989. 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, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; HT Insight Funds, Inc., Irene Pelliconi, One Rockefeller Plaza, New York, NY 10020.

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 (800) 231-3282 (in Maryland (301) 258-4300).

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Staff Attorney (202) 272-7714 or Karen L. Skidmore, Branch Chief (202) 272-3023, Division of Investment Management.

Applicants' Representations

1. HT Insight is an open-end investment company, registered under the 1940 Act, which currently has five portfolios with different investment objectives. These five portfolios are the HT Insight Government Fund ("Government"), HT Insight Cash Management Fund ("Cash"), HT Insight Tax-Free Money Market Fund ("Tax-Free"), HT Insight Convertible Fund ("Convertible"), and HT Insight Equity Fund ("Equity") (collectively the "Funds", individually a "Fund"). Government, Cash and Tax-Free (collectively, "Money Market Funds") are offered at their respective net asset value without imposition of a sales load (each Money Market Fund and each future HT Insight portfolio offered at net asset value without a sales load, a "No-Load Fund"). Convertible and Equity are offered at their respective net asset value plus a sales load (Convertible, Equity and any future HT Insight

portfolio sold with a sales load as set forth in the then current prospectus, "Load Fund." Any Loan Fund that may be offered from time to time in the future with a sales load less than the sales load of the Load Fund into which shares are exchanged, a "Low-Load Fund.")

2. Harris Trust and Savings Bank ("Harris Trust"), an Illinois state-chartered bank and registered investment adviser, is HT Insight's Investment Adviser. Pursuant to advisory contracts with each of the Funds, Harris Trust, in accordance with HT Insight's stated investment objectives, policies and restrictions, furnishes investment and policy direction in connection with the daily portfolio management of each Fund, transmits purchase and sale orders and selects brokers and dealers to execute Fund transactions on behalf of HT Insight. Lazard Freres, a New York partnership and registered broker-dealer, is HT Insight's administrator and principal underwriter. Additionally, Lazard maintains a continuous public offering of the Funds' shares at their respective current offering prices.

3. The five current Funds have a plan adopted pursuant to Rule 12b–1 under the Act (the "Service Plan"). The Service Plan provides that each Fund will bear the costs and expenses in connection with advertising and marketing the Funds' shares and pay the fees of financial institutions (which may include banks), securities dealers and other industry professionals, such as investment advisers, accountants and estate planning firms (collectively, "Service Agents") for servicing activities at a rate up to 0.25% per annum of the value of the Funds' average daily net assets. Harris Trust, however, may from time to time in its sole discretion volunteer to bear all or a part of the costs of such fees. From their inception to the present, none of the Funds has made any payments pursuant to the Service Plan.

4. The Exchange Offer would permit certain written or telephonic exchanges among the Funds. Each exchange would be subject to a minimum exchange amount equal to the minimum initial investment of the Fund into which the exchange is to be made or the minimum subsequent investment of the Fund into which the exchange is to be made if the investor had previously made the minimum initial investment in the Fund into which the exchange is made. Applicants have reserved the right to limit the number of times shares may be exchanged between funds, to reject any telephone exchange order or otherwise to modify or discontinue exchange privileges at any time, but will give shareholders at least 60 days notice. In addition, any sales literature mentioning the existence of the exchange offer will disclose (i) the amount of any nominal administrative fee or redemption fee that would be imposed at the time of the exchange and (ii) since the Applicants have reserved in the prospectus the right to change the terms of or terminate the exchange offer, that the exchange offer is subject to termination and its terms are subject to change.

5. Specifically, the Exchange Offer would permit the offer of shares in any Load Fund in exchange for shares of any No-Load Fund or Low Load Fund at net asset value plus the applicable sales load. The applicable sales load is equal to a percentage no greater than the excess, if any, of the rate of the sales load applicable to shares of the Load Fund in the absence of an exchange over the total rate of any sales load previously paid on the exchanged shares (the "Proposed Exchange Offer"). In calculating any such sales load, when an investor exchanges less than all of his shares in a particular Fund, the shares on which the highest sales load was previously paid will be deemed to have been exchanged first. Additionally, if any shares that are exchanged were acquired through the reinvestment of dividends or capital gains distributions, such shares will be deemed to have been sold with a sales load equal to the sales load previously paid on the shares on which the dividend was paid or distribution made. No administrative or redemption fee, or deferred sales load will be charged at this time by HT Insight or Lazard in connection with any Exchange Offer and any nominal administrative fee or scheduled variation thereof that may be charged in the future will be applied uniformly to all offerees of the class specified.

6. Lazard sells shares primarily on a wholesale basis through unaffiliated brokers and dealers, all of whom are members of the National Association of Securities Dealers, Inc. ("NASD"), for distribution through their retail network. Because of the possibility that brokers or dealers may utilize the exchange privilege as a means of generating commissions, these brokers and dealers have represented in their agreement with Lazard Freres that they will not solicit shareholders on an individual basis except on the infrequent occasion when circumstances suggest that an exchange would be in the best interests of the individual shareholder and the shareholder has requested that the exchange be made. The majority of information about the exchange privilege will be directed to shareholders of the Funds in each Fund's annual and periodic reports and in various other communications. Additionally, brokers and dealers will not receive advice from Lazard as to the suitability of an investment in a Fund or the advisability of exchanges among the Funds.

7. Upon issuance of the requested exemptive order, Applicants will mail to each broker or dealer firm a letter announcing the exchange program, stating the Applicants' and the SEC's concerns and reminding all such participants and their representatives of their responsibilities under their current contract with Lazard, federal securities laws and the Rules of Fair Practice. In addition, the Applicants have available, through the transfer agent of the Funds, a method of identifying exchanges where a commission is paid to a registered representative. Applicants will monitor such information to determine if exchange activity by any particular representative appears to be excessive or not in the best interests of the shareholder and, in the event that such determination is made, the Applicants will notify the representative's compliance officers for their review.

Applicants' Legal Conclusions

1. The Exchange Offer is equitable. If the full sales load were not charged, the exchanging shareholder would be inequitably benefitted because he would not pay the sales load that an investor purchasing directly into a Low-Load or a Load Fund would pay.

2. The purpose of the Exchange Offer is to provide greater investment flexibility to shareholders whose investment objectives have changed. The Exchange Offer also prevents shareholders from circumventing sales loads by purchasing shares of a No-Load Fund and subsequently exchanging them for shares of a Low-Load or a Load Fund.

3. The Exchange Offer is consistent with the most recently proposed Rule 11a–3 under the 1940 Act.

Applicants' Conditions

If the requested order is granted, Applicants agree to comply with the following conditions:

1. The Applicants will comply with the provisions of revised proposed Rule 11a–3 under the 1940 Act, as currently stated and as it may be adopted and modified in the future.

2. Any variations in sales charges on sales of shares, by means of exchange or otherwise, will be effectuated in

accordance with Rule 22d–1 under the 1940 Act.

3. The Applicants will comply with Rule 12b–1 as adopted and as it may be modified in the future.

4. Any future offers of exchange among the Funds will be subject to the representations and conditions described in the Application.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–1846 Filed 1–25–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16762; 812–7090]

Metro Portfolio Investors's Stock Fund and Fidelity Trend Fund; Application

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

Applicant: Metro Portfolio Investor's Stock Fund ("Metro Fund") and Fidelity Trend Fund ("Trend Fund", collectively with Metro Fund referred to as the "Applicants")

Relevant 1940 Act Sections: Order requested under section 17(b) of the Act.

Summary of Application: Applicants seek an order to permit the proposed acquisition by Trend Fund of substantially all of the assets of Metro Fund.

Filing Date: The application was filed on August 4, 1988 and amended on January 13, 1989.

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 February 13, 1989. 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, for lawyers, 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, 82 Devonsire Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Cecilia C. Kalish, Staff Attorney (202) 272–3035 or Karen L. Skidmore, Branch Chief (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

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) 258–4300).

Applicants' Representations

1. Metro Fund and Trend Fund are registered under the Act as open-end, diversified, management investment companies.

2. In accordance with the approval of the boards of directors of Trend Fund and of Metro Fund, Applicants intend to enter into an Agreement and Plan of Reorganization and Liquidation (the "Agreement"). The Agreement provides that, upon the satisfaction of certain terms and conditions, on the date of the exchange (the "Exchange Date"), Trend Fund is to acquire all of the assets of Metro Fund in exchange for which Metro Fund is to receive shares of Trend Fund. The number of shares of Trend Fund to be issued in exchange for Metro Fund's assets is to be determined on the basis of the aggregate value of the assets of Metro Fund transferred to Trend Fund and the net asset value per share of Trend Fund, both fixed as of the close of business on the New York Stock Exchange on the business day next preceding the Exchange Date and determined in accordance with the valuation procedures described in Trend Fund's current prospectus. Metro Fund will distribute the Trend Fund shares to the Metro Fund shareholders on a *pro rata* basis in liquidation of Metro Fund. Following such liquidation, Metro Fund will file an application with the Commission pursuant to Section 8(f) of the Act to terminate its registration as an investment company under the Act and will be dissolved in accordance with the laws of Massachusetts applicable to business trusts.

3. The Agreement provides that Trend Fund will not be assuming the liabilities of Metro Fund. The Agreement also provides that, to the extent that any liabilities may not be discharged prior to the Exchange Date, Metro Fund will retain cash or Trend Fund shares in such amount as it estimates to be necessary to pay any such liability. Metro Fund expects to discharge all of its known liabilities and obligations prior to the Exchange Date. In addition, Metro Fund's investment adviser has agreed to assume the expenses of Metro Fund in excess of 2.25% of average daily net assets. Thus, Applicants represent that Metro Fund will not in fact be required to retain any cash or Trend Fund shares to pay liabilities of Metro Fund.

4. The Agreement is conditioned on the holders of at least a majority of the outstanding shares of Metro Fund approving the Agreement and the transactions contemplated therein and on Metro Fund and Trend Fund obtaining all consents, permits, and orders of federal, state and local regulatory authorities (including those of the Commission) necessary for the consummation of the transactions contemplated by the Agreement. As required under the Agreement, Metro Fund received a favorable ruling from the Internal Revenue Service on December 16, 1988 as to the federal tax consequences of the proposed transactions.

5. The principal underwriter of Metro Fund is Fidelity Distributors Corporation ("Distributors"). The investment adviser for Trend Fund is Fidelity Management & Research Company ("FMR"). Distributors is under common control with FMR both of them being wholly-owned by FMR Corp.

Applicants' Legal Conclusions

1. FMR is an affiliated person of Distributors. FMR is also an affiliated person of Trend Fund by virtue of its being the investment adviser of Trend Fund. Thus, Trend Fund may be deemed an affiliated person of Distributors, the principal underwriter of Metro Fund, because they both may be deemed to be under common control. The proposed transaction is consistent with the general purposes of the Act because it conforms to the requirements of Rule 17a–8 under the Act, but for the fact that Rule 17a–8 does not specifically apply to transactions between investment companies which may be affiliated solely by reason of the fact that the investment adviser of one such investment company and the principal underwriter of the other are under common control. Therefore, the acquisition by Trend Fund of the assets of Metro Fund may be prohibited by Section 17(a) of the Act as a purchase of securities or other property by an affiliated person (Trend Fund) of the principal underwriter (Distributors) of a registered investment company (Metro Fund), and such acquisition may only be effected by obtaining an exemptive order from the SEC pursuant to Section 17(b) of the Act. The proposed transaction conforms to the standards set forth in Section 17(b) of the Act.

2. For the following reasons, the terms of the proposed transaction are fair and do not involve overreaching on the part of any person concerned.

a. The terms of the proposed transaction were independently evaluated and unanimously approved by both the board of trustees of Metro Fund and the board of trustees of Trend Fund. None of the trustees of Metro Fund has any past or present affiliation with Trend Fund, Distributors or FMR and none of the trustees of Trend Fund has any past or present affiliation with Metro Fund.

b. The proposed transaction is fair to the shareholders of each of Metro Fund and Trend Fund because the acquisition of Metro Fund's assets by Trend Fund is to be accomplished on the basis of the aggregate value of the assets of Metro Fund to be acquired by Trend Fund and the net asset value of the shares of Trend Fund to be issued in exchange therefor, with both the aggregate value of the assets of Metro Fund and the net asset value of the shares of Trend Fund being determined in accordance with the same violation procedures—those described in Trend Fund's current prospectus.

c. The transaction will benefit the shareholders of Metro Fund by virtue of the lower expense ratio of Trend Fund and the flexibility and greater diversity in investment in a portfolio of Trend Fund's size.

d. The shareholders of Trend Fund will benefit from the transaction through an increase in the value of Trend Fund's net assets, as well as an increase in investment diversification of Trend Fund through such increase in net assets, without incurring the transaction costs usually associated with the acquisition of additional securities.

3. The proposed transaction is consistent with the policy of each registered investment company concerned. The investment objective of Metro Fund and Trend Fund are consistent and the investment portfolios of the Applicants will be substantially compatible at the time of the proposed transaction.

Applicants' Condition

If the requested order is granted, Applicants agree to the imposition of the following condition:

The proposed transaction will conform to the requirements of Rule 17a–8 under the Act to the extent that (1) the board of trustees of each of Metro Fund and Trend Fund, including a majority of the trustees of each such Fund who are not interested persons of such Fund, shall have determined that participation in the transaction is in the best interest of such Fund, after taking into account, among other things, that the interests of the existing shareholders of such Fund will not be diluted as a result of effecting the transaction, and (2) such findings, and the basis upon which the findings were made, shall have been recorded fully in the minute books of each of Metro Fund and Trend Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

January 19, 1989.

[FR Doc. 89–1847 Filed 1–25–89; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–7391]

Issuer Delisting; Application to Withdraw from Listing and Registration; Damson Oil Corp.

In the matter of: Damson Oil Corporation, Common Stock, $.01 Par Value; $3.00 Cumulative Convertible Preferred Stock, $1.00 Par Value; $2.50 Cumulative Convertible Preferred Stock, $1.00 Par Value, American Stock Exchange

January 19, 1989.

Damson Oil Corporation ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(d) promulgated thereunder, to remove the above specified security from listing and registration on the American Stock Exchange ("AMEX")

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Trading in the Company's Common Stock has been suspended on the Amex since December 7, 1988. The Company understands that primarily due to the reduced market price of the Common Stock further dealings on the AMEX for the Common Stock and the Preferred Stock have become inadvisable. The Company understands that it also does not otherwise fully meet all of the financial guidelines of the AMEX with respect to the continued listing of such securities on the AMEX.

The Company intends to have the Common Stock and the Preferred Stock traded in the over-the-counter market and be reported in the "pink sheets" or if the Company so qualifies to be included in the National Association of Securities Dealers Automated Quotation ("NASDAQ") System.

Any interested person may, on or before February 10, 1989, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–1756 Filed 1–25–89; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Loan Area (EIDL) #6626; Amdt. #1]

California; Declaration of Disaster Loan Area

The above numbered economic injury declaration is hereby amended to include contiguous counties and to extend the filing period. Section 120 of Pub. L. 100–590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be a disaster by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This amendment adds the contiguous counties of Los Angeles, Riverside, San Bernardino, and San Diego, in the State of California, and extends the filing period to give economic injury disaster victims in those counties at least 4 months in which to request EIDLs. The termination date for filing EIDL applications is May 31, 1989, and the interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: January 18, 1989.

James Abdnor,

Administrator.

[FR Doc. 89–1773 Filed 1–25–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Economic Injury Disaster Loan Area (EIDL) # 6628; Amdt. # 1]

California; Declaration of Disaster Loan Area

The above numbered economic injury declaration is hereby amended to include contiguous counties and to extend the filing period. Section 120 of

Pub. L. 100–590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be a disaster by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This amendment adds the contiguous counties of Los Angeles, Riverside, San Bernardino, and San Diego, in the State of California, and extends the filing period to give economic injury disaster victims in those counties at least 4 months in which to request EIDLs. The termination date for filing EIDL applications is May 31, 1989, and the interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: January 18, 1989.

James Abdnor,

Administrator.

[FR Doc. 89–1774 Filed 1–25–89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Areas (EIDL) #6627 & 6695; Amdt. #2]

Illinois and Contiguous Counties in the State of Indiana; Declaration of Disaster Loan Area

The above numbered economic injury declaration is hereby amended to include contiguous counties and to extend the filing period. Section 120 of Pub. L. 100–590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be a disaster by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This amendment adds the contiguous counties of Cook, Grundy, Kane, Kankakee, Kendall, in the State of Illinois, and Lake County in the State of Indiana, and extends the filing period to give economic injury disaster victims in those counties at least 4 months in which to request EIDLs. Economic Injury Declaration #669500 is assigned to the State of Indiana. The termination date for filing EIDL applications is May 31, 1989, and the interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: January 18, 1989.

James Abdnor,

Administrator.

[FR Doc. 89–1775 Filed 1–25–89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2329]

Illinois; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on January 13, 1989, I find that the counties of Edwards, Wabash, Wayne and White, in the State of Illinois, constitute a disaster loan area due to damages from severe storms and tornadoes beginning on January 7, 1989. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on March 17, 1989, and for economic injury until the close of business on October 13, 1989, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308.

or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous counties of Clay, Gallatin, Hamilton, Jefferson, Lawrence, Marion, Richland, and Saline, in the State of Illinois, and Gibson, Knox, and Posey Counties, in the State of Indiana, may be filed until the specified date at this location.

The interest rates are:

Homeowners With Credit Available Elsewhere—8.000%

Homeowners Without Credit Available Elsewhere—4.000%

Businesses With Credit Available Elsewhere—8.000%

Businesses and Non-Profit Organizations Without Credit Available Elsewhere—4.000%

Businesses and Non-Profit Organizations (EIDL) Without Credit Available Elsewhere—4.000%

Others (Including Non-Profit Organizations) With Credit Available Elsewhere—9.125%

The number assigned to this disaster for physical damage is 232912, and for economic injury the numbers are 670900 for the State of Illinois and 671000 for the State of Indiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: January 18, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89–1771 Filed 1–25–89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Areas (EIDL) #6670, 6701 & 6702; Amdt. #1]

Montana and Contiguous Counties in the States of Wyoming and Idaho; Declaration of Disaster Loan Area

Economic Injury Disaster Declaration #6670 is hereby amended to include contiguous counties. Section 120 of Pub. L. 100–590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be a disaster by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This amendment adds the contiguous counties of Broadwater, Carter, Chouteau, Custer, Deer Lodge, Garfield, Glacier, Golden Valley, Jefferson, Judith Basin, Lake, Lincoln, Meagher, Mineral, Musselshell, Petroleum, Pondera, Ravalli, Silver Bow, Sweet Grass, Teton, Treasure, and Yellowstone, in the State of Montana; Bonner, Clark, Clearwater, Idaho, Lemhi, and Shoshone Counties in the State of Idaho; and Campbell and Sheridan Counties in the State of Wyoming. Any other contiguous counties that are not listed here have already been included in other declarations. Applications may be filed until the specified date at the previously designated location.

Economic Injury Declaration #670100 is assigned to those contiguous counties in the State of Wyoming and #670200 for the State of Idaho. The termination date for filing EIDL applications is July 20, 1989, and the interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: January 18, 1989.

James Abdnor,

Administrator.

[FR Doc. 89–1776 Filed 1–25–89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Area (EIDL) #6662; Amdt. #1]

New Jersey; Declaration of Disaster Loan Area

Economic Injury Disaster Declaration #6662 is hereby amended to include contiguous counties. Section 120 of Pub. L. 100–590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be a disaster by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This

amendment adds the contiguous counties of Atlantic and Cumberland, in the State of New Jersey. Applications for economic injury from small businesses located in those contiguous counties may be filed until the specified date at the previously designated location. The termination date for filing EIDL applications is June 23, 1989, and the interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: January 18, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-1777 Filed 1-25-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Areas (EIDL) #6612, 6693 & 6694; Amdt. #1]

New York and Contiguous Counties in the States of Connecticut and New Jersey; Declaration of Disaster Loan Area

Economic Injury Disaster Declaration #6612 is hereby amended to include contiguous counties and to reopen the filing period for 4 months. Section 120 of Pub. L. 100-590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be a disaster by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This amendment adds the contiguous counties of Bronx, Nassau, Orange, Putnam, and Rockland, in State of New York; Fairfield County, in the State of Connecticut, and Bergen County in the State of New Jersey, and reopens the filing period to give economic injury disaster victims in those counties the opportunity to request EIDLs. Economic Injury Declaration #669300 is assigned to those contiguous counties in the State of Connecticut, and for the State of New Jersey the number assigned is 669400. The termination date for filing EIDL applications is May 31, 1989, and the interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: January 18, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-1778 Filed 1-25-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Areas (EIDL) #6644, 6696 & 6697; Amdt. #1]

New York and Contiguous Counties in the States of Connecticut and New Jersey; Declaration of Disaster Loan Area

Economic Injury Disaster Declaration #6644 is hereby amended to include contiguous counties and to extend the filing period. Section 120 of Pub. L. 100-590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be a disaster by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This amendment adds the contiguous counties of Bronx, Nassau, Orange, Putnam, and Rockland, in State of New York; Fairfield County, in the State of Connecticut, and Bergen County in the State of New Jersey, and extends the filing period to give economic injury disaster victims in those counties at least 4 months in which to request EIDLs. Economic Injury Declaration #669600 is assigned to those contiguous counties in the State of Connecticut, and for the State of New Jersey the number assigned is 669700. The termination date for filing EIDL applications is May 31, 1989, and the interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: January 18, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-1779 Filed 1-25-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Area (EIDL) #6648; Amdt. #1]

New York; Declaration of Disaster Loan Area

The above numbered economic injury declaration is hereby amended to include contiguous counties and to extend the filing period. Section 120 of Pub. L. 100-590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be a disaster by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This amendment adds the contiguous counties of Herkimer, Lewis, Madison, Oswego, and Otsego, in the State of New York, extends the filing period to give economic injury disaster victims in those counties at least 4 months in which to request EIDLs. The termination date for filing EIDL applications is May 31, 1989, and the interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: January 18, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-1780 Filed 1-25-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Area (EIDL) #6587; Amdt. #1]

North Carolina; Declaration of Disaster Loan Area

The above numbered economic declaration is hereby amended to include contiguous counties and to reopen the filing period for 4 months. Section 120 of Pub. L. 100-590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be a disaster by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This amendment adds the contiguous counties of Bladen, Brunswick, Columbus, Craven, Duplin, Jones, Pamlico, and Sampson, in the State of North Carolina, and reopens the filing period to give economic injury disaster victims in those counties the opportunity to request EIDLs. The termination date for filing EIDL applications is May 31, 1989, and the interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Date: January 18, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-1781 Filed 1-25-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Areas (EIDL) #6655, 6698 & 6699; Amdt. #2]

South Dakota and Contiguous Counties in the States of Nebraska and Wyoming; Declaration of Disaster Loan Area

Economic Injury Disaster Declaration #6655 is hereby amended to include contiguous counties. Section 120 of Pub. L. 100-590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to

be a disaster by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This amendment adds the contiguous counties of Haakon, Harding, Lyman, Mellette, Perkins, Shannon, Stanley, Washabaugh, and Ziebach, in the State of South Dakota; Dawes and Sioux Counties in the State of Nebraska; and Crook, Niobrara, and Weston Counties in the State of Wyoming. One contiguous county in the State of Montana has been included in the declaration for that State. Applications for economic injury from small businesses located in contiguous counties in the States of South Dakota and Wyoming may be filed until the specified date at the previously designated location.

Applications for economic injury from small businesses located in contiguous counties in the State of Nebraska may be filed until the specified date at: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051.

Economic Injury Declaration #669800 is assigned to those contiguous counties in the State of Nebraska and #669900 for the State of Wyoming. The termination date for filing EIDL applications is June 13, 1989, and the interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: January 18, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-1782 Filed 1-25-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Areas (EIDL) #6665 & 6700; Amdt. #1]

Wyoming and Contiguous Counties in the State of Idaho; Declaration of Disaster Loan Area

Economic Injury Disaster Declaration #6665 is hereby amended to include contiguous counties. Section 120 of Pub. L. 100-590 (11/88) provides, *inter alia*, that areas affected by an economic injury disaster include counties contiguous to the counties determined to be a disaster by the President, Secretary of Agriculture, or the Administrator of the Small Business Administration. This amendment adds the contiguous counties of Big Horn, Carbon, Hot Springs, Lincoln, Natrona, Sweetwater, and Washakie, in the State of Wyoming, and Bonneville, Fremont and Teton Counties in the State of Idaho, thus giving economic injury disaster victims in those counties the opportunity to request EIDLs. Those Montana counties that are contiguous counties are covered as primary counties in the declaration for that State. Applications may be filed until the specified date at the previously designated location.

Economic Injury Declaration #670000 is assigned to those contiguous counties in the State of Idaho. The termination date for filing EIDL applications is July 6, 1989, and the interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: January 18, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-1783 Filed 1-25-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 03104-0065]

Tidewater Industrial Capital Corp.; Surrender of License

Notice is hereby given that Tidewater Industrial Capital Corporation (TICC), Suite 1424, Crestar Bank Building, Norfolk, Virginia 23510, has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). TICC was licensed by the Small Business Administration on February 13, 1962.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the License was accepted on January 13, 1989, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 17, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-1784 Filed 1-25-89; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of El Paso, will hold a public meeting at 9:00 a.m. on Thursday, February 9, 1989 at the Texas Commerce Bank—Downtown, 201 E. Main Trust Conference Room, 5th Floor, El Paso, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John E. Scott, District Director, U.S. Small Business Administration, 10737 Gateway West, Suite 320, El Paso, Texas 79935, 915/541-7676.

Dated: January 19, 1989.

Jeannette M. Pauli,

Acting Director, Office of Advisory Councils.

[FR Doc. 89-1772 Filed 1-25-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular; Turnover Protection of Occupants During Emergency Landing in Part 23 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) and request for comments.

SUMMARY: This notice announces the availability of and request for comments on a proposed AC which provides information and guidance concerning turnover protection of occupants during emergency landing in Part 23 airplanes.

DATE: Comments must be received on or before March 27, 1989.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Small Airplanes Directorate, Aircraft Certification Service, Standards Office (ACE-110), 601 East 12th Street, Kansas Ciry, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Edward A. Gabriel, Aerospace Engineer Standards Office (AC-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; commercial telephone (816) 426-6941 or FTS 867-6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed AC by writing to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

Comments Invited

Interested parties are invited to submit comments on the proposed AC. Commenters must identify AC 23.561-X, and submit comments to the address specified above All written comments

received on or before the closing date for comments will be considered by the FAA before issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE-110), Room 1656, Federal Office Building, 601 East 12th Street, Kansas City Missouri, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background

Section 23.561(d) requires that the airplane structure be designed to protect the occupants in a complete turnover, if it is not established that a turnover is unlikely during an emergency landing. A requirement similar to the present § 23.561(d) rule has been in the airworthiness regulations dating back to the mid-1930s. At the time, and for at least a decade later, virtually all airplanes were equipped with a conventional landing gear with a tailwheel, a configuration obviously prone to turnover during hard decleration. Subsequently, the tricycle landing gear became the most common type. The tricycle landing gear is inherently resistant to turnover during *normal* operations, and it became generally accepted that low-wing airplanes with a tricycle landing gear did not need to be evaluated for occupant protection during a turnover. High-wing airplanes, regardless of landing gear type, were generally thought to have adequate structure to protect the occupants during a turnover.

Recent studies utilizing the FAA Accident/Incident Data System show that low-wing tricycle gear Part 23 airplanes turn over during emergency landing conditions (including undershoot, overshoot, takeoff and emergency landing following takeoff, loss of directional control, etc.) with sufficient frequency that new type designs should be investigated to determine if turnover is likely during such conditions. Subsequently, § 23.561(d) was changed by amendment 23-36 to Part 23 of the Federal Aviation Regulations (FAR) (effective 9/14/88) to reflect the results of these studies.

Accordingly, the FAA is proposing and requesting comments on AC 23.561-X which will provide an acceptable means of compliance with the requirements of § 23.561(d) of Part 23 of the FAR.

Issued in Kansas City, Missouri, January 9, 1989.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-1747 Filed 1-25-89; 8:45am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-89-2]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before February 15, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. ————, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on January 19, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 23290
Petitioner: Air Transport Association of America
Regulations Affected: 14 CFR 121.391(d) and 121.311(f)
Description of Relief Sought: To extend Exemption No. 4298B that allows required flight attendant(s) to be located at the mid-cabin flight attendant station during takeoff and landing on B-767 aircraft operated by petitioner's member airlines and other similarly situated Part 121 certificate holders who may apply for approval from the Principal Operations Inspectors. Exemption No. 4298B will expire on March 31, 1989.

Docket No.: 23477
Petitioner: Experimental Aircraft Association
Sections of the FAR Affected: 14 CFR 103.1 (a), (e)(1), and (e)(4)
Description of Relief Sought: To extend Exemption No. 3784, as amended, that allows individuals authorized by the petitioner to operate powered ultralights at an empty weight of not more than 330 pounds, that have a power-off stall speed of not more than 29 knots calibrated airspeed, and with another occupant for the purpose of flight instruction. Exemption No. 3784, as amended, will expire on June 30, 1989.

Docket No.: 23901
Petitioner: General Motors Corporation
Sections of the FAR Affected: 14 CFR 21.197
Description of Relief Sought: To allow certain aircraft to be flown with the flaps in the up position under specified conditions.

Docket No.: 25103
Petitioner: Air Wisconsin, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378
Description of Relief Sought: To extend Exemption No. 4803 that allows petitioner to use on its British Aerospace, Fokker, and Short Brothers, Ltd., aircraft certain engines, components, and spare parts that have been manufactured, overhauled, repaired, tested, or inspected by persons outside the United States who do not hold U.S. airman certificates. Exemption No. 4803 will expire on May 31, 1989.

Docket No.: 25173
Petitioner: Airlift International, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378
Description of Relief Sought: To extend Exemption No. 4798 that allows the original equipment manufacturers and foreign repair stations certificated by the Civil Air Authorities of their respective countries to perform maintenance, preventive maintenance, and alterations outside the United States on engines, components, and spare parts of the petitioner's F-27/FH-227 aircraft. Exemption No. 4798 will expire on June 30, 1989.

Docket No.: 25433
Petitioner: Raleigh Jet Charter
Sections of the FAR Affected: 14 CFR 25.853(d), 121.312(b), and 135.169
Description of Relief Sought: To allow petitioner to operate its Gulfstream G–1159B (N4890P) aircraft without complying with the seat fireblocking requirements until one of its other Gulfstream aircraft is in compliance with the fireblocking requirements.

Docket No.: 25748
Petitioner: Popular Rotorcraft Association
Sections of the FAR Affected: 14 CFR 91.42(a)(2)
Description of Relief Sought: To allow the establishment of guidelines and the training and rating of pilots in experimental gyroplane aircraft.

Docket No.: 23358
Petitioner: Clarke Outdoor Spraying Company, Inc.
Regulations Affected: 14 CFR 91.39(c)
Description of Relief Sought/ Disposition: To extend Exemption No. 4309 that allows petitioner, under certain conditions, to carry passengers in restricted category aircraft.
GRANT, January 12, 1989, Exemption No. 5010

Docket No.: 25053
Petitioner: Crew Pilot Training
Sections of the FAR Affected: 14 CFR 61.63(d) (2) and (3); 61.157(d) (1) and (2); and Appendix A of Part 61
Description of Relief Sought/ Disposition: To extend Exemption No. 4730 that allowed petitioner to use the FAA-approved visual simulators to meet certain training and testing requirements of the FAR. Exemption No. 4730 expired on November 30, 1988.
GRANT, January 13, 1989, Exemption No. 5011

Docket No.: 25617
Petitioner: Japan Air Lines Company, Ltd.
Sections of the FAR Affected: 14 CFR 91.27(c), 91.173(c) and (d), and 45.11; and Part 43, Appendix B, paragraphs (a) and (d)
Description of Relief Sought/ Disposition: To allow petitioner to operate without keeping an FAA Form 337 on board its aircraft which have been modified by installation of fuel tanks in the passenger or baggage compartment. Also, to allow operation of petitioner's U.S.-registered aircraft without having an identification plate secured to the fuselage exterior and, with respect to its U.S.-registered aircraft manufactured before March 7, 1988, without displaying the aircraft model designation and builder's serial number on the aircraft exterior. In addition, to extend this relief to all Part 121 operators.
PARTIAL GRANT, January 6, 1989, Exemption No. 5006

Docket No.: 25653
Petitioner: Singapore Airlines, Ltd.
Sections of the FAR Affected: 14 CFR 91.27(c), 91.173(c) and (d), and 45.11; and Part 43, Appendix B, paragraphs (a) and (d)
Description of Relief Sought/ Disposition: To allow petitioner to operate without keeping an FAA Form 337 on board its aircraft which have been modified by installation of fuel tanks in the passenger or baggage compartment. Also, to allow operation of petitioner's U.S.-registered aircraft without having an identification plate secured to the fuselage exterior and, with respect to its U.S.-registered aircraft manufactured before March 7, 1988, without displaying the aircraft model designation and builder's serial number on the aircraft exterior. In addition, to extend this relief to all Part 121 operators.
PARTIAL GRANT, January 6, 1989, Exemption No. 5008

Docket No.: 25276
Petitioner: Department of the Air Force
Sections of the FAR Affected: 14 CFR 91.104
Description of Relief Sought/ Disposition: To allow aerial refueling operations between 3,000 feet mean sea level (MSL) and 12,000 feet MSL without regard to visual flight rules cruising altitudes.
DENIAL, December 22, 1988, Exemption No. 5012

Docket No.: 25245
Petitioner: United States Air Force
Sections of the FAR Affected: 14 CFR 91.24(b)
Description of Relief Sought/ Disposition: To extend Exemption No. 4633B to continue to operate its aircraft without operating the aircraft's transponder and to expand the area affected by such operations.
PARTIAL GRANT, December 30, 1988, Exemption No. 4633C

Docket No.: 25030
Petitioner: Pan Am Express, Inc.
Sections of the FAR Affected: 14 CFR 93.123; 93.125; and 93.129
Description of Relief Sought/ Disposition: To extend Exemption No. 4777 which allowed Pan Am to conduct Separate Access Landing System commuter operations and two additional operations in four of five high density hours at JFK International Airport, and to obtain authorization for two additional operations in the 1700 local timeframe and that the submission requirements specified in Part 11, Section 25(b)(1), of the regulations be waived.
PARTIAL GRANT, December 28, 1988, Exemption No. 4777A

Docket No.: 25724
Petitioner: Jet Express, Inc.
Sections of the FAR Affected: 14 CFR 93.123; 93.125; and 93.129
Description of Relief Sought/ Disposition: To conduct two additional commuter operations in two of the five high density hours at JFK International Airport. The additional slots will be used only by short takeoff and landing aircraft using separate access procedures.
GRANT, December 28, 1988, Exemption No. 5004

[FR Doc. 89–1745 Filed 1–25–89; 8:45 am]
BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA) Special Committee 166—User Requirements for Future Airport and Terminal Area Communication, Navigation, and Surveillance Systems; 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 for the first meeting of RTCA Special Committee 166 on User Requirements for Future Airport and Terminal Area Communication, Navigation, and Surveillance Systems to be held February 16–17, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Introductory remarks; (2) review of Committee Terms of Reference, RTCA Paper No. 458–88/ SC166–1; (3) briefing on Final Report of RTCA Special Committee 155 (SC–155); (4) briefing on recommendations of ICAO FANS; (5) briefing by Industry Task Force on Airport Capacity Improvement and Delay Reduction; (6) establishment of Working Groups; (7) Working Groups meet the separate sessions; (8) reports of Working Groups; (9) other business; and (10) date and place of next meeting.

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 January 19, 1989.

Geoffrey R. McIntyre,

Acting Designated Officer.

[FR Doc. 89-1746 Filed 1-25-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Supplemental Environmental Impact Statement: Boston, MA

January 18, 1989.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that it is preparing a Supplement to the Final Environmental Impact Statement for the Central Artery (I-93)/Third Harbor Tunnel (I-90) Project in Boston, Massachusetts. The subject of the supplement is the proposed South Boston Haul Road an early construction mitigation measure for the Artery/Tunnel Project.

FOR FURTHER INFORMATION CONTACT: Mr. Alexander Almeida, Project Manager, Central Artery/Third Harbor Tunnel Project, Federal Highway Administration, Transportation Systems Center, 55 Broadway, 10th Floor, Cambridge, MA 02142, Telephone: (617) 494-2319.

Ms. Martha Bailey, Manager, Planning and Environment, Central Artery/Third Harbor Tunnel Project, Massachusetts Department of Public Works, One South Station, Boston, MA 02110, (617) 951-6113.

Mr. Walter Kudlick, representative for Bechtel/Parsons Brinckerhoff, Management Consultant, Central Artery/Third Harbor Tunnel Project, One South Station, Boston, MA 02110 (617) 951-6151.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Massachusetts Department of Public Works (MDPW), is preparing a Supplement to the Final Environmental Impact Statement (FEIS) which will address a proposal to build a Haul Road in South Boston. The Haul Road is planned to be built before construction begins on the extension of Interstate highway I-90 through South Boston.

The approved Final EIS for the Artery/Tunnel Project is dated August 16, 1985 (FHWA-MA-EIS-82-02-F). Copies of the FEIS are available for examination at the Artery/Tunnel Project Office at One South Station, Boston, MA 02110 and at the FHWA, 55 Broadway 10th Floor, Cambridge, MA 02142. The proposed improvements to I-93 and I-90 as described in the FEIS include generally:

- The construction of a widened (from six to eight lanes) and depressed Central Artery (I-93) from the Massachusetts Turnpike (I-90) Interchange on the Southeast Expressway (I-93) to the Gilmore Bridge area in Charlestown.
- The construction of a four-lane Third Harbor Tunnel (I-90) from the Southeast Expressway (I-93) and present terminus of the Massachusetts Turnpike Extension (I-90) just south of the Central Artery (I-93) Boston, to Logan Airport and Route 1A in East Boston via the waterfront industrial area of South Boston and Boston Harbor.

The FEIS identified construction haul roads as an element of the Artery/Tunnel Project which would be developed further during the design phase to mitigate the potentially negative effects of construction. The South Boston Haul Road is the first such haul road and an early phase construction mitigation measure for the Artery/Tunnel Project. The Haul Road would provide a two-lane commercial vehicle roadway through an existing consolidated rail corporation (CONRAIL) depressed railroad section and adjacent vacant land in South Boston. The Haul Road would extend in a north-south direction between Dorchester Avenue and Congress Street with access to the Massport Haul Road via Congress and B Streets.

The principal purpose of the Haul Road is to provide a truck route for construction vehicles generated by the Artery/Tunnel Project in the South Boston industrial waterfront area. Early construction contracts for major portions of the Artery/Tunnel Project will require large numbers of trucks for hauling construction materials, equipment and excavated material to and from the project sites. Other commercial vehicles would be permitted to use the Haul Road, including those which now use residential streets in South Boston, as well as trucks serving other construction projects and industrial activities in the South Boston waterfront area.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies, and to other organizations and citizens who have previously expressed, or are known to have, an interest in this proposal. Public meetings have been held concerning the proposed action and others will be scheduled to be held in South Boston. A public hearing on the SEIS for the Haul Road will be scheduled in early 1989. The draft SEIS will be available for public and agency review and comment prior to the public hearing. No formal Federal scoping meeting will be held. Previously identified cooperating Federal agencies, however, will continue to be involved in this capacity. Project briefings are being conducted for all cooperating agencies.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from interested parties. Comments or questions concerning this proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

Issued on: January 18, 1989.

Alexander Almeida,

Project Manager, Central Artery (I-93)/Third Harbor Tunnel (I-90) Project Cambridge, Massachusetts.

[FR Doc. 89-1700 Filed 1-25-89; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Petition for Waiver of Compliance; Long Island Railroad

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with a requirement of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provision involved, and the nature of the relief being requested.

Long Island Rail Road

Waiver Petition Docket Number PB-88-6

The Long Island Rail Road (LIRR) requests a waiver of compliance with a provision of the railroad power brakes regulation (49 CFR Part 232), § 232.13(a), concerning intermediate terminal air brake tests of passenger trains, which requires, among other things, that before the train proceeds, an "(i)nspector or trainman must determine if brakes on rear car of train properly apply and release." The LIRR seeks this waiver for its fleet of M-1/M-3 "Metropolitan" self-propelled passenger transit cars. These cars are defined as MU locomotives in the Locomotive Safety Standards (49 CFR § 229.5(j)).

The LIRR's justification is that the M–1/M–3 passenger cars "are among the most sophisticated rail vehicles operated under (49 CFR Part 232). These electric powered, passenger-carrying MU locomotives are equipped with a brake indicator system which supplies the following information to the engineer:

- That continuity of train line control for both service and emergency braking is complete.
- That the brake pipe is charged on every car.
- That the air brake is applied on every car.
- That the air brake is released on every car.
- That every hand brake on the train is released.

"Other information is supplied to the train by:

- The brake pipe gauge found on every car.
- The brake cylinder gauge found on every car.
- The local brake indicator lights found on every car.

"The brake indicator system found on these cars utilizes an in-train, train-lined electrical circuit which monitors air pressure on the individual trucks of the train. The system is designed 'fail safe.' The electrical circuit must be complete and energized prior to the brake indicator light system displaying the condition of the brakes (either applied or released.)"

The LIRR is "confident that the brake indicator systems found on the M–1/M–3 trains meet or exceed (Part 232) requirements. The accuracy and redundancy of these gauges, coupled with the ability to monitor the entire train braking system, far surpasses the current visual on/off rear car observation now standard on most railroads." The railroad states that its procedures and brake indication systems comply with, and exceed, the requirements of 49 CFR § 232.13(a).

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (here, Waiver Petition Docket Number PB–88–6) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before March 14, 1989 will be considered by FRA before final judgment is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m. to 5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on January 17, 1989.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 89–1733 Filed 1–25–89; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

[Docket No. EX88–1; Notice 3]

General Motors Corp., Petition for Temporary Exemption From Federal Motor Vehicle Safety Standards Nos. 108 and 111

This notice extends a temporary exemption previously granted General Motors Corporation ("GM") for two Cadillac models to the additional Cadillac models.

On August 18, 1988, NHTSA granted NHTSA Exemption 88–1 to General Motors Corporation (53 FR 31411). This exemption applies to no more than 2500 Cadillac Seville and Eldorado passenger cars manufactured between August 1, 1988, and August 1, 1989, and to not more than 2500 such vehicles manufactured between August 1, 1989, and August 1, 1990. Exemption 88–1 excuses these vehicles from compliance with the requirements of 49 CFR 571.108 Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment*, that they be equipped with front and rear side marker lamps and reflectors, and that their headlamps, stop lamps, and turn signal lamps meet the photometric requirements of the standard. It also excuses such vehicles from compliance with paragraphs S5.2.1 and S5.4.2 of 49 CFR 571.111 Motor Vehicle Safety Standard No. 111 *Rearview Mirrors*.

The basis of the petition was that, in the absence of an exemption, GM would otherwise be prevented from selling a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of nonexempted motor vehicles (15 U.S.C. 1410(a)(1)(D), implemented by 49 CFR 555.5 and 555.6(d)). Specifically, GM wished to institute a factory delivery program for two of its cars, similar to programs established by European manufacturers where Americans purchase vehicles conforming to the Federal motor vehicle safety standards. The vehicles covered by GM's factory delivery program would be European citizens either visiting this country or working temporarily here, who would export the vehicles to their home countries at the conclusion of their stay. Other than Standards Nos. 108 and 111, the vehicles could be built to both European and U.S. safety regulations, but relief was needed from those two standards in order to implement the factory delivery program.

On November 9, 1988, GM wrote NHTSA asking whether the exemption might be broadened to include the Cadillac DeVille and Fleetwood cars, with the understanding that the 2500 vehicle per year limit would not be exceeded as a result of this inclusion. In their U.S. version, these vehicles are substantially similar in compliance with Standards Nos. 108 and 111 to the ones previously exempted (with the exception that the DeVille and Fleetwood replaceable bulb headlamps use HB3 and HB4 light sources, whereas those of the Seville and Eldorado used HB1s). Exempted Devilles and Fleetwood cars would meet ECE photometrics, as do the Seville and Eldorado, "using the H4 bulb". Given the facts that the noncompliances would be identical, and that GM would otherwise be unable to sell the vehicles, the agency has decided to grant GM's request, and to amend the terms of Exemption 88–1.

Accordingly, the terms of Exemption 88–1 are amended to include the Cadillac DeVille and Cadillac Fleetwood models with the Cadillac Seville and Cadillac Eldorado models, with the proviso that the total number of exempted vehicles sold shall not exceed 2500 in either of the two years that the exemption is in effect.

(15 U.S.C. 1410; delegation of authority at 49 CFR 1.50)

Issued on January 23, 1989.

Diane K. Steed,

Administrator.

[FR Doc. 89–1853 Filed 1–25–89; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. EX89-1; Notice 1]

Panther Motor Car Co. Ltd.; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

The Panther Motor Car Company, Ltd., of Byfleet, Surrey, England, has petitioned for a temporary exemption from the passive restraint requirements of Motor Vehicle Safety Standard No. 208, *Occupant Restraint Systems*, on the basis "that compliance would cause [it] substantial economic hardship and that [it] has, in good faith, attempted to comply with [the] standard from which it requests to be exempted." (15 U.S.C. 1410(a)(1)(A)).

Notice of receipt of the petition is published in accordance with the regulations of the National Highway Traffic Safety Administration on this subject (49 CFR Part 555) and does not represent any agency decision or other exercise of judgment concerning the merits of this petition.

Panther manufactures the Kallista, a roadster in the style of the 1930's. In the 12-month period October 1987–88 it produced 215 such passenger cars. Ssanyong Motors of Korea, a motor vehicle manufacturer, holds an 80% interest in Panther. The total motor vehicle production of Ssanyong in 1987 was 4660 units. Because the combined total of Panther and Ssanyong vehicle production did not exceed 10,000 units in the year preceding the filing of the petition, Panther is eligible to apply for a temporary exemption on the basis that compliance would cause it substantial economic hardship.

Petitioner requests a 2-year exemption from the passive restraint requirements of Standard No. 208 which become effective for convertibles such as the Kallista manufactured on and after September 1, 1989. The company is involved in a feasibility study of an airbag system, and has determined that certain major vehicle components will have to be modified to incorporate it. These involve changes to the steering wheel, modificaiton to the steering column to accommodate the steering wheel, the development of knee bolsters to absorb energy and limit femur loads, the development of mounting positions of an accelerator sensor and to determine "trigger level (i.e., utilize several vehicles to determine firing level)", the installation of an electronic module, and seat development to prevent submarining. Computer modeling would be validated by sled testing, and subsequently a slow speed crash test. "Rough" road tests would be required to "check for sensor closure threshold". Prototypes would follow, and finally validation with the final production system. The company estimates that the above would take at least 24 months and cost 500,000 Pounds Sterling ($900,000 at $1.80 to the Pound). Panther has experienced a "loss on ordinary activities after taxation for the financial year" of slightly over 1,000,000 Pounds Sterling in each year from 1984 through 1987.

Failure to receive an exemption would result in its withdrawal from the American market, creating a "significant financial penalty". It intends to comply at the end of the exemption period. Petitioner argued that an exemption would be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act, in that its withdrawal from the American market would render it unable to provide "very necessary parts and service back-up" to existing owners of Panther cars.

Interested persons are invited to comment on the petition by Panther Motor Car Company, Ltd., described above. Comments should refer to the docket number and be submitted to Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date below will be considered. The petition and supporting materials and all comments received are available for examination in the docket both before and after the closing date. Comments received after the closing date will also be filed and will be considered to the extent practicable. Notice of final action will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: February 27, 1989.

(15 U.S.C. 1410; delegations of authority at 49 C.F.R. 1.50 and 501.8)

Issued on: January 19, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-1732 Filed 1-25-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 23, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: 8811.

Type of Review: New Collection.

Title: Information Return for Real Estate Mortgage Investment Conduits (REMICs).

Description: Form 8811 will be used to collect the name, address, and phone number of a representative of a REMIC who can provide brokers with the correct income amounts that the broker's clients must report on their income tax returns. It is estimated that there are some 1000 REMICs currently in existence.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping: 3 hours 50 minutes.

Learning about the law or the form, 18 minutes.

Preparing, copying, assembling, and sending the form to IRS 22 minutes.

Frequency of Response: Taxpayer must only file once for each obligation issued.

Estimated Total Recordkeeping/ Reporting Burden: 4,510 hours.

OMB Number: 1545-0950.

Form Number: 23.

Type of Review: Extension.

Title: Application for Enrollment to Practice Before the Internal Revenue Service.

Description: The information relates to the granting of enrollment status to individuals admitted (licensed) by the Internal Revenue Service to practice before the Internal Revenue Service.

Respondents: Individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: One time filing.

Estimated Total Reporting Burden: 2,000 hours.

Clearance Officer: Garrick Shear—(202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf—(202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Managment Officer.

[FR Doc. 89–1839 Filed 1–25–89; 8:45am]

BILLING CODE 4810-25-M

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 1–89]

Treasury Notes, Series E–1996

Washington, January 12, 1989.

The Secretary announced on January 11, 1989, that the interest rate on the notes designated Series E–1996, described in Department Circular—Public Debt Series—No. 1–89 dated January 5, 1989, will be 9¼ percent. Interest on the notes will be payable at the rate of 9¼ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89–1707 Filed 1–25–89; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 16
Thursday, January 26, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Regular Meetings

SUMMARY: Notice is hereby given pursuant to the Government in the Sunshine Act (5 U.S.C. 552(e)(3)), that no further regularly scheduled meetings of the Farm Credit Administration Board (Board) will be held until a quorum of the Board is constituted. At such time a notice in the **Federal Register** will be published.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 (703) 883–4003.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Date: January 23, 1989.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 89–1943 Filed 1–24–89; 3:37 pm]

BILLING CODE 6705-01-M

FEDERAL COMMUNICATIONS COMMISSION

January 23, 1989.

FCC To Hold Open Commission Meeting, Monday, January 30, 1989

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Monday, January 30, 1989, which is scheduled to commence at 2:00 p.m., in Room 856, at 1919 M Street NW., Washington, DC.

Agenda, Item No., and Subject

General—1—Title: Amendment of Frequency Allocation and Aviation Services Rules (Parts 2 and 87) to provide frequencies for use by commercial space launch vehicles. Summary: The Commission will consider whether to adopt a Notice of Proposed Rule Making to amend parts 2 and 87 of the Commission's Rules concerning the use of frequencies in the 2310–2390 MHz band for telemetry operations by non-Government entities with fully operational commercial space launch vehicles.

Common Carrier—1—Title: In the Matter of Policy and Rules concerning Rates for Dominant Carriers, CC Docket No. 87–313. Summary: The Commission will consider further actions regarding the regulation of rates for dominant carrier interstate basic service offerings (price caps).

Mass Media—1—Title: Amendment of the Commission's Rules Regarding the Selection from Competing Applicants for New, AM, FM, and Television Stations. Summary: The Commission will consider whether to inititate a proceeding to consider improving the licensing process for new AM, FM, and television stations.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Audrey Spivack, Office of Public Affairs, telephone number (202) 632–5050.

Issued: January 23, 1989.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–1948 Filed 1–24–89; 3:53 pm]

BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, January 31, 1989, 10:00 a.m.

PLACE: 99 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

FR Doc. 89–1949 Filed 1–24–89; 3:53 pm]

BILLING CODE 6715-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 23, 1989.

TIME AND DATE: 10:00 a.m., Thursday, January 26, 1989.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: In addition to the previously announced item, the Commission will consider the following in closed session:

2. *Lincoln Sand & Gravel Co.*, Docket No. LAKE 88–67–M.

It was determined by a unanimous vote of Commissioners that this item be included on the agenda and that it be held in closed session.

FOR MORE INFORMATION CONTACT: Jean Ellen (202) 653–5629/(202) 566–2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89–1915 Filed 1–24–89; 2:27 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, February 1, 1989.

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. Federal Reserve Bank and Branch director appointments.

2. Proposed electronic payment processor pilot program within the Federal Reserve System. (This item was originally announced for a closed meeting on January 30, 1989.)

3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

4. 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.

Date: January 24, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–1947 Filed 1–24–89; 3:37 pm]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 54, No. 16
Thursday, January 26, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3492-6]

Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants; Montana, North Dakota and Wyoming; Delegation of Authority

Correction

In rule document 88-28958 beginning on page 50524 in the issue of Friday, December 16, 1988, make the following correction:

§ 61.04 [Corrected]

On page 50528, in § 61.04(c), in the table, in the entry for "M Asbestos" in the column headed "WY", insert footnote reference 1 after the parenthetical asterisk.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-010-3110-10-7201-GP9-0104; NM NM 68533]

Issuance of Mineral Exchange Conveyance Document; New Mexico

Correction

In notice document 89-205 appearing on page 670 in the issue of Monday, January 9, 1989, make the following correction:

In the second column, under **New Mexico Principal Meridian**, the seventh and eighth lines should read "Sec. 12, S½SW¼, NE¼SE¼, and SW¼SE¼;".

BILLING CODE 1505-01-D

federal register

Thursday
January 26, 1989

Part II

Department of Labor

Occupational Safety and Health Administration

Safety and Health Program Management Guidelines; Issuance of Voluntary Guidelines; Notice

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. C-02]

Safety and Health Program Management Guidelines; Issuance of Voluntary Guidelines

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Issuance of voluntary guidelines.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is issuing safety and health program management guidelines for use by employers to prevent occupational injuries and illnesses.

The language in these guidelines is general so that it may be broadly applied in general industry, shipyards, marine terminals, and longshoring activities regardless of the size, nature, or complexity of operations. Construction activities are not addressed here because they are already covered by Subpart C of the Construction standards, 29 CFR Part 1926.

The guidelines consist of program elements which represent a distillation of applied safety and health management practices that are used by employers who are successful in protecting the safety and health of their employees. These program elements are advocated by many safety and health professionals and consultants. They were strongly endorsed by individuals, corporations, professional associations, and labor representatives who responded to the OSHA request for comments and information, 53 FR 26790, published on July 15, 1988.

EFFECTIVE DATE: January 26, 1989.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N3637, Washington, DC 20210. Telephone: (202) 523-8151.

SUPPLEMENTARY INFORMATION:

I. Background

Over their years of experience with enforcing the provisions of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*), OSHA representatives have noted a strong correlation between the application of sound management practices in the operation of safety and health programs and a low incidence of occupational injuries and illnesses. Where effective safety and health management is practiced, injury and illness rates are significantly less than rates at comparable worksites where safety and health management is weak or non-existent. (See, for example, "DOL Safety Programs Cut Workers Comp Costs," *Good News,* Oklahoma Department of Labor, October 5, 1988, p. 1.; and Michael E. Nave, "Impact of Voluntary Compliance and Compliance Inspection Programs on Experience Rates among Small Employers in California," Doctoral Thesis, Oregon State University, 1987.)

As a result of this awareness, OSHA increased emphasis on management practices in several of the Agency's programs. Standards, including notably the Hazard Communication Standard (29 CFR 1910.1200), began specifically to require management programs. An early OSHA standard requiring safety and health management programs in the construction industry was recently clarified and reaffirmed by the issuance of OSHA Instruction STD 3-1.1. OSHA also instituted programs to encourage voluntary improvement of safety and health management. These included informational pamphlets and consultation services to assist in the development of management programs for small businesses.

In addition, in 1982 OSHA began to approve worksites with exemplary safety and health management programs for participation in the Voluntary Protection Programs (VPP). Safety and health practices, procedures, and recordkeeping at participating worksites have been carefully evaluated and monitored by OSHA. These VPP worksites generally have lost-workday case rates that range from one-fifth to one-third the rates experienced by average worksites (Unpublished statistics, U.S. Department of Labor, OSHA, 1988).

Further, most participating sites report improved employee morale and productivity as a by-product of their safety and health management activities.

Based upon the success of VPP and positive experience with other safety and health program initiatives and in order to broaden the information available to OSHA from other sources, OSHA published a request for comments and information on July 15, 1988, that included possible language for Safety and Health Program Guidelines which would be applicable to general industry, shipyard, and longshoring activities (53 FR 26790). That request inadvertently omitted reference to marine terminals, to which the guidelines are also intended to apply.

In response to several requests, on September 1, 1988, OSHA extended the original six-week comment period for another month, to September 28, 1988 (53 FR 33823). In addition, on September 8, 1988, OSHA announced a public information-gathering meeting to be held on October 6, 1988, at the OSHA Training Institute in Des Plaines, Illinois (53 FR 34780).

OSHA received 54 comments from individuals, labor representatives, trade associations, professional safety and health associations and societies, safety and health consultants, and Federal and State agencies. Thirteen commentors presented information and comments at the public meeting.

II. Summary of Public Response

In the July 15, 1988, request for information and comment, under the heading, "Issues for Discussion" (53 FR 26796), OSHA asked questions concerning five major areas: the nature of the risk from inadequate management; the value of safety and health programs; suitable language for safety and health management guidance; appropriate methods for educating employers; and incentives for effective management.

There was no new information received concerning either the nature of the risk or the value of safety and health programs, but many commentors expressed the belief that safety and health program management makes a major impact on loss prevention. During the public meeting, OSHA was informed that the VPP Participants' Association might be able to obtain information concerning costs and benefits of effective safety and health management through its membership (Tr. pp. 75-76).

As a means of educating employers, one commentor suggested videotaping model safety and health programs to help small businesses (Exh. 3-37). Another commentor advised a major outreach effort using all types of media to reach employers (Exh. 3-46).

Suggested incentives for effective management included tax breaks (Exh. 3-33) and incentives similar to those offered by the VPP (Exh. 3-37). One commentor suggesting the tax breaks acknowledged that they might be difficult to administer fairly (Exh. 3-36). Another commentor proposed the use of the guidelines by compliance officers to determine whether or not to do a partial or comprehensive inspection (Exh. 3-27).

Most respondents offered comments and/or suggestions on the subject of suitable guidance language. Several,

however, also expressed a preference that the guidance from OSHA take the form of a mandatory standard rather than of voluntary guidelines (Exhs. 3–14, 3–17, 3–22, 3–26, 3–28).

Almost all the commentors endorsed the concept that effective safety and health management is the decisive factor in ensuring worker safety and health (e.g., Exhs. 3–4, 3–23, 3–36, 3–37, 3–45, 3–46). Three-fourths of the respondents specifically endorsed the issuance of guidelines. A few respondents objected to the proposal because of expected cost, anticipated impact on diversity and innovation, or the possibility of confusion resulting from the issuance of voluntary guidelines by a regulatory agency (e.g., Exhs. 3–41, 3–44, 3–50).

Most respondents indicated that the guidelines are generally applicable regardless of industry type, size, or nature of activity (e.g., Exhs. 3–28, 3–36). Several commentors recommended greater detail and specificity regarding duties, responsibilities, and program guidance (e.g., Exh. 3–29); others stated that greater specificity would inhibit necessary flexibility (e.g., Exh. 3–12). Although some proposed reorganization of the guidelines (e.g., Exhs. 3–7, 3–16, 3–22, 3–31, 3–32), there seemed to be agreement that the guidelines as suggested are generally applicable and complete.

Many respondents strongly maintained that the guidelines should specify that safety and health management goals and operational activities should be set forth in writing, regardless of how small the business may be (Exhs. 3–30, 3–35, 3–37, 3–49, 3–51).

Several commentors, including both organized labor respondents, maintained that compliance with the guidelines ought to be mandatory (Exhs. 3–14, 3–17, 3–22, 3–26). The majority maintained that they should not.

Several commentors provided safety and health program manuals and materials and suggested that the guidelines include appendices for industry groups or examples of adequate programs, or "question and answer" examples similar to those in the "Recordkeeping Guidelines for Occupational Injuries and Illnesses" developed by the Bureau of Labor Statistics (Exhs. 3–13, 3–20, 3–21, 3–30, 3–35, 3–43, 3–45, 3–46).

III. Issues and Rationale for Their Resolution

A. General Issues

Although commenters almost unanimously supported the concept of safety and health program management, they raised several general issues and proposed various changes to the language. The general issues were: (1) Whether OSHA publication of guidelines would be useful; (2) whether a different organization of the management program elements would promote their use; (3) whether the guidelines should be mandated in the form of a rule; (4) whether a task group should be formed to determine the content of the guidelines or appendices to the guidelines; and (5) whether various aspects of a safety and health management program should be in writing.

1. Usefulness of the Guidelines

A few respondents stated that safety and health program guidelines would be of no value or even counter-productive. These respondents stated, "We see no reason for issuance of guidance * * *" (Exh. 3–12); "* * * guidelines, when issued by a regulatory agency can create confusion with respect to compliance issues * * *" (Exh. 3–41); and "* * * guidelines are unnecessary and put companies with comprehensive, long-standing performance-based programs at risk in being forced to comply with the very specific, prescriptive language as proposed" (Exh. 3–19).

Most of the respondents expressed the belief that the guidelines describe policies, procedures, and practices which are essential to effective safety and health protection and that they are sufficiently performance-oriented that they can be met by a variety of methods. OSHA believes that the criteria described are not unreasonably prescriptive and that they are unlikely to conflict with effective programs already in place. They are not being promulgated as enforceable rules but are being issued as guidelines to assist employers in their efforts to maintain safe and healthful work and working conditions.

In addition, OSHA has observed, and most commenters agree, that a significant number of worksites, particularly medium and small businesses, often lack the professional resources to develop adequate safety and health management practices and programs on their own. In many larger worksites, some program elements are heavily emphasized while other important aspects are neglected. After careful consideration of the record and in light of the above, OSHA concludes that safety and health management guidelines will not be unnecessarily burdensome and will assist employers in their efforts to provide safe and healthful employment.

2. Organization of the Guidelines

Some commenters suggested different methods of organizing the elements of the guidelines or presented safety and health manuals in use at their operations which were organized differently. One respondent stated that since some of the most useful material in the notice requesting comment (53 FR 26790) was in the discussion of the guidelines, the suggested language should be expanded to include that material in the final guidelines. A suggested revision of the guidelines was attached to the comment (Exh. 3–22). This point of view was supported by another comment, "* * * the information currently contained in the background section of the July 15 preamble should be condensed into an introduction to the guidelines * * * OSHA should use [the analysis explaining the reasons for including each provision of the guidelines] in the body of the guidelines to ensure that the goals and objectives of the guidelines will be communicated to employers" (Exh. 3–46).

OSHA recognizes that effective programs can be organized and presented in a variety of ways and that significantly different terminologies and approaches are used by safety and health professionals and loss control managers. While these differences often appear to be great initially, upon examination by the Agency they are frequently found to address substantially the same components and objectives.

Since the responses to the request indicate that the program elements were generally understood, the basic organization of the elements as presented in the request for comments has been retained in the final version. OSHA has, however, incorporated some of the background and explanatory materials into the guidelines to assist the employer's comprehension of the objective of each action recommended by the guidelines. In addition, OSHA has added a Commentary following the guidelines themselves. The Commentary incorporates and expands on much of the explanatory material from the notice requesting comment.

Another commentor questioned whether management commitment is appropriately described as a program element (Exh. 3–44B). OSHA agrees with the observation that management commitment is not a program element in the same sense that worksite analysis, hazard prevention and control, and training are. However, the eight actions described under the title "Management

Commitment" are specific program activities which directly indicate management commitment. At the same time, comments received on the nature and importance of employee involvement in an effective safety and health program (Exhs. 3–17, 3–21, 3–37, 3–43) suggest that such involvement merits clearer emphasis. OSHA has therefore decided to modify the element title to read, "Management Commitment and Employee Involvement."

3. Mandating the Guidelines

Several commentors stated that the guidelines should be mandated and enforced as a rule. For example, "In our view, OSHA has the authority under the Occupational Safety and Health Act of 1970 to issue regulations mandating worksite safety and health committees and broader workplace programs * * * we strongly urge the Agency to make this initiative a priority for regulatory action * * *" (Exh. 3–17); "* * * instead of a guideline, OSHA [should develop] a negotiated performance standard * * *" (Exh. 3–14); "* * * a [safety and health management] program is [the] * * * basic responsibility [of employers] and they should be required to do so through regulation * * *" (Exh. 3–22); "* * * workplace health and safety programs are so vital that they should be *mandatory*, not voluntary as currently proposed * * *" (Exh. 3–26); "* * * they should be proposed as a standard * * * the action could boost the issue of occupational safety and health out of needless conflicts and confusion to a higher order of national coherence" (Exh. 3–28). On the other hand, other respondents "* * * support the guideline versus the standard approach * * *" (Exh. 3–16); "* * * management commitment can not be mandated * * *" (Exh. 3–3); "* * * we recommend that no attempt be made to enforce the guidelines as if they were a rule * * *" (Exh. 3–5); "* * * encourage the Agency to issue these guidelines as advisories only" (Exh. 3–11).

After considering written comments and oral presentations made at the information-gathering meeting, OSHA has decided to issue voluntary safety and health program guidelines rather than a mandatory standard. A period of experience with published program guidelines will undoubtedly produce refinements in methods and practices, as well as provide evidence to indicate whether further action by the Agency is required. Publication of guidelines does not prevent the Agency from undertaking regulatory action, if found to be needed at some future date.

4. Task Group Consideration of the Guidelines

Several commentors favored the formation of a task group representing the affected constituencies and subject matter specialists to refine and further elaborate the guidelines (Exhs. 3–23, 3–35). It was also suggested that a bibliography of literature on safety and health management be developed and attached to the guidelines (Exhs. 3–36, 3–45, 3–46, 3–52).

OSHA welcomes all information and voluntary efforts designed to supplement these guidelines for use in special industry groups, special risk operations, small businesses, and any other applications. The Agency recognizes the value of these supplementary actions but will not delay publication of the guidelines while awaiting their completion. After publication, OSHA will consider how best to utilize the offers of assistance in compiling supplementary materials.

5. Written Safety and Health Guidance

A number of respondents strongly urged that safety and health programs be supported by written guidance in all cases. "Communication of authority, responsibility, and accountability to various parties must be written to prevent confusion and uncertainty" (Exh. 3–35). "The program will be understood better and managers can be held accountable more readily, if the specific elements of the employer's program are set forth clearly in writing" (Exh. 3–49). "[A] truly effective safety program can [not] be maintained unless it is reduced to writing. Understandings and practices are too easily confused [considering] cultural differences, personnel retirements, transfers, etc." (Exh. 3–51). This point is reinforced by OSHA's experience that almost all of the worksites observed to have excellent safety and health programs have written guidance covering such issues as policies, practices, procedures, emergency plans, posted signs, and performance objectives.

OSHA has noticed, however, that some businesses, usually small ones with less complex operations and/or potential hazards, effectively communicate policies and procedures orally and through example. It is not obvious at what level of complexity, or at what size of operation, written guidance becomes necessary, nor which particular processes within various operations require it.

For these reasons, OSHA has retained in the final guidelines the language providing for flexibility in the use of written guidance but has added information on the benefits of written guidance.

B. Specific Issues

Issues dealing with the substance of the guidelines were: (1) whether employees should be involved in the structure and operation of the program and in decisions which affect their safety and health, (b)(1)(ii); (2) whether the system to encourage employees to report conditions that appear hazardous should include the concept of protection from reprisal, (b)(2)(ii); (3) whether the term "competent persons" should be used, (b)(2)(i); (4) whether "a clearly communicated disciplinary system" should be specified, (b)(3)(i); (5) whether employers can be expected to ensure understanding of rules, responsibilities, and procedures by members of their organizations, (b)(4); (6) coordination with other OSHA instructions concerning safety and health management; (7) providing guidance on recordkeeping; and (8) miscellaneous clarifications.

1. Employee Involvement

Some respondents felt that OSHA's language on employee involvement, (b)(1)(ii), was too weak. "[T]he central element of worksite programs should be safety and health committees with worker participation * * * mandated by law" (Exh. 3–17). "OSHA should require that workers be allowed to participate in all phases of the program" (Exh. 3–26). Others felt that the language implied a transfer of decision-making authority to employees from employer. "Employers should determine * * * whether decision-making in this area will be shared * * * or whether it would unduly interfere with the responsibility to ensure a safe workplace" (Exh. 3–49). "Caution is urged as * * * to the 'decision-making' aspects of employee involvement * * * [T]he employer is responsible" (Exh. 3–51). Another group felt that OSHA should not specify employee involvement (Exhs. 3–37, 3–43). Other commentors agreed with the OSHA concept of employee involvement in decision-making and suggested added specifications such as advising employee involvement in all of the suggested possible areas of employee participation (Exhs. 3–14, 3–26). Most testimony at the public meeting which addressed this point also supported OSHA's choice of language (Exh. 3–4; Tr. pp. 17, 24, and 36).

OSHA has decided to retain the proposed language with slight revision, and with the addition of a clause that explains its intent. (See (c)(1)(4).) OSHA

agrees that responsibility for *decision-making* lies with the employer. It has found, however, that employee *involvement* in decisions affecting their safety and health results in better management decisions and more effective protection. OSHA has, therefore, added explanatory language in its Commentary on the guidelines to make clear its intention to advise that employee not *make* decisions but that they *be included in the process* on decision-making on matters which affect their health and safety.

2. Employee Reports of Hazards

Some commentors felt that OSHA provisions for employee reports of hazards, (b)(2)(ii), were inadequate. One commentor stated that "* * * [a worksite] where employees know that management wants to be made aware of safety issues and will take action to correct them, and even solicits such suggestions, is a better place to work" (Exh. 3–29). OSHA's own experience, reflected in the VPP requirements, indicates a clear need for a system under which employee reports of safety and health concerns are encouraged, protected from reprisal, and given an appropriate response in a reliable and timely fashion. OSHA agrees that a similar provision should be a part of these guidelines as well. Accordingly, a separate provision to that effect has been included in the section dealing with worksite analysis.

3. Use of the Term "Competent Person"

Several respondents questioned the use of the term "competent persons," (b)(2)(i), to describe the need for expertise and experience in the conduct of periodic worksite analysis (Exh. 3–46). No one disputed whether persons conducting the analysis should be competent but questioned whether the term "competent" might be misunderstood in view of the many different risk situations and conditions possible in various workplaces and given that the term has specific meaning in maritime and construction standards.

Since the performance objective of a worksite analysis is defined in the phrase "so that all hazards and potential hazards are identified," OSHA agrees that it is not necessary to state the need for competence by persons who perform the work. That need is implicit. The emphasis on competence was included initially because many processes, equipment, and substances in use at worksites may pose hazards beyond the recognition of the employer and employees at the site. This point is made clear in paragraph (c)(2)(ii) and the term "competent" has been removed. A discussion of the relative competence needed for the various approaches to worksite analysis is, however, included in the Commentary.

4. Discipline

The proposed guidelines called for "a clearly communicated disciplinary system" as one of the sub-elements for hazard prevention and control, (b)(3)(i). One respondent suggested that such a system is more logically a part of training. Others questioned whether it should be contained in the guidelines at all. For example, "* * * it is not within OSHA's jurisdiction to dictate employer-employee relations. Secondly, it has been our experience that all too often the 'careless worker' is blamed. In almost every instance we have been able to identify external causes that contributed to workers's 'unsafe' behavior, such as hazardous conditions * * * production quotas/time pressure, inadequate training, etc." (Exh. 3–26). On the other hand, some commentors felt that OSHA had not emphasized discipline enough. For example, "* * * the guidelines [should] be more direct and also detail a compulsory disciplinary system or structure * * * to avoid vagueness, to establish consistency and fairness * * * and to take the onerous load off those who would othewise be loath to be so strict" (Exh. 3–10). "[The guidelines] should include * * * the concept that *all* employees have certain responsibilities regarding health and safety which if not exercised adequately will result in some type of disciplinary action" (Exh. 3–20).

In the revised final version of the guidelines, OSHA refers to enforcement of safe work procedures through a clearly communicated disciplinary system where necessary to the control or prevention of hazards. (See paragraph (c)(3)(i).) OSHA views this reference to enforcement through a disciplinary procedure as an indispensable piece of a whole approach to safety and health protection. Based on OSHA's experience and in light of the record, the Agency concludes that there is little possibility of effective safety and health protection without carefully designed rules for safe and healthful practices that cover all personnel, from the site manager to the hourly employees. Since those most involved with activity which could expose them to hazards are often the hourly employees, it makes good sense to involve them in the establishment of safe work practices and safe work rules as was discussed at the public meeting (Tr. pp. 117–118). Once these work practices are established and those who are expected to follow them understand why it is important to follow them, it is OSHA's experience that there is little need to utilize a corrective disciplinary system to ensure that they are followed.

When safe work practices, clearly understood and fairly enforced disciplinary procedures, and management accountability go hand-in-hand, there is little opportunity to push workers into taking short cuts. OSHA is not in any way suggesting harsh or punitive measures in lieu of the elimination or control of physical hazards. OSHA concludes that an organizational discipline exists for all levels of personnel at a worksite and believes that the application of that system to safety and health program activities is an important and appropriate concern for OSHA in the provision of safety and health management guidelines. Therefore, the language concerning discipline and enforcement is retained in paragraphs (c)(3)(i) and (c)(4)(ii). An elaboration of its rationale is included in the Commentary.

5. Ensuring Understanding

Several commentors objected that employers can never perfectly ensure that all employees understand all rules, responsibilities, and procedures. They recommended that the words "ensure understanding" be deleted from the guidelines and suggested using language similar to that provided in one comment, that "* * * all employees should be provided with training" (Exh. 3–54).

It is OSHA's experience that the quality, content, and success of training vary widely. The act of training itself is not the result that OSHA recommends for effective worker protection. OSHA recognizes the natural limits of communication and comprehension, and agrees that some reasonable interpretation of the phrase "ensure understanding" must be applied. The term used in the guidelines is intended to convey a need for individuals to verify by some reasonable means that hazard information and the necessary elements of a safety and health program are understood by the people who must deal with them. This can be done by formal testing, oral questioning, observation, or other means. In fact, observation and interviewing of employees are key methods used by OSHA in VPP reviews to determine, among other things, the quality of employee safety, health, and emergency training. The term is intended to convey the same diligence that would be applied to ensuring an understanding of other operational requirements, such as time and attendance, production schedules, and job skills. The Agency is

retaining the words "ensure understanding" in paragraphs (c)(4)(i), (ii) and (iii).

6. Coordination with Other OSHA Instructions

Some respondents from Federal Agencies expressed concern that the proposed guidelines might conflict with requirements for safety and health management already established by OSHA for Federal Government agencies (Exhs 3–10, 3–44). Before preparing the final version, OSHA compared the proposed guidelines to existing Federal Agency requirements, its instructions to compliance officers for determining whether to do full or partial inspections based on safety and health program management, the requirements for the VPP, and the 7(c)(1) consultation safety and health program elements. The expanded sub-element on employee reports of hazards and the explanation added to the sub-element on employee involvement concerning protection from discrimination resulted in part from those comparisons. With these additions, OSHA concluded that, while these guidelines may lead to adjustments in the other policies reviewed, they pose no fundamental conflict with those policies.

7. Recordkeeping

Two of the commentors stated that OSHA should address the keeping of injury records (Exhs. 3–49, 3–51). To avoid confusing duplication, OSHA has decided not to include areas which are fully covered by regulation. No language concerning recordkeeping was added to the guidelines. The guidelines do, however, deal with the effective use of occupational injury and illness data. (See (c)(2)(v).)

8. Miscellaneous

Some commentors stated concerns with the use in the proposed guidelines of "OSHA advises," pointing out that this language appears in regulation and makes the guidelines sound less voluntary. The use of the word "encourage" was suggested as an alternative (Exhs. 3–14, 3–54). OSHA does not agree that the use of "advise" constitutes a requirement; rather it indicates advice which may or may not be accepted. OSHA has, however, added the words "and encourages" to "advises" in paragraph (a)(1), to ensure that employers understand the voluntary nature of the guidelines.

One commentor suggested that "facility" be added to the guideline language on preventive maintenance of equipment (Exh. 3–28). OSHA agrees and has expanded preventive maintenance to include the facility as well as equipment in paragraph (c)(3)(ii). Paragraph (c)(2)(i)(B), concerning analysis prior to use, was also changed to include "facility."

Another commentor suggested that OSHA use the term "change analysis" in describing the necessity to review all new equipment, procedures, materials, and facilities to ensure that potential hazards are identified and prevented or controlled (Exh. 3–21). Finding merit in this suggestion, OSHA has added the term to the Commentary on this issue.

A commentor suggested that OSHA make clear the necessity of safety and health training prior to the assumption of duties (Exh. 3–21). OSHA rulemaking records are replete with evidence supporting the need for such training. Consequently, such language has been included in the Commentary on employee training.

Based on its own further review, OSHA has made several additional changes. (1) In the "General" section of the guidelines, the word "systematic" has been added to emphasize the need for a systematic approach to all aspects of safety and health management. (2) In the section on "Management Commitment and Employee Involvement," an initial sub-element has been added which recommends a policy statement on safety and health protection, to ensure that all personnel concerned with the worksite understand the priority of safety and health protection in relation to other organizational values. (3) In the first sub-element under "Worksite Analysis," a distinction has been made between "baseline" comprehensive worksite surveys and "update" surveys, to emphasize the importance of a comprehensive baseline record for subsequent worksite analysis. In this same sub-element, the reference to "phase hazard analysis" has been dropped, because it is primarily relevant to construction.

OSHA's request for comments and information was published in the Proposed Rules Section of the **Federal Register** (53 FR 26790, July 15, 1988) based on the possibility that any guidelines issuing from it might be published in the Code of Federal Regulations (CFR). OSHA has decided not to publish the guidelines in the CFR at this time. The guidelines are therefore published as a notice.

Authority and Signature

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Accordingly, pursuant to the authority of the Assistant Secretary, the following guideline is published.

Signed at Washington, DC this nineteenth day of January, 1989.

John A. Pendergrass,

Assistant Secretary of Labor for Occupational Safety and Health.

Safety and Health Management Guidelines

Scope and Application. (1) This guideline applies to all places of employment which are covered by OSHA standards in 29 CFR Parts 1910, 1915, 1917 and 1918.

(2) This guideline does not apply to places of employment which are covered by OSHA standards found in 29 CFR Part 1926.

Introduction. The Occupational Safety and Health Administration (OSHA) has concluded that effective management of worker safety and health protection is a decisive factor in reducing the extent and the severity of work-related injuries and illnesses. Effective management addresses all work-related hazards, including those potential hazards which could result from a change in worksite conditions or practices. It addresses hazards whether or not they are regulated by government standards.

OSHA has reached this conclusion in the course of its evaluation of worksites in its enforcement program, its State-operated consultation program, and its Voluntary Protection Programs. These evaluations have revealed a basic relationship between effective management of worker safety and health protection and a low incidence and severity of employee injuries. Such management also correlates with the elimination or adequate control of employee exposure to toxic substances and other unhealthful conditions.

OSHA's experience in the Voluntary Protection Programs has also indicated that effective management of safety and health protection improves employee morale and productivity, as well as significantly reducing workers' compensation costs and other less obvious costs of work-related injuries and illnesses.

Through an analysis of public comment received in response to its request and through an earlier review of literature, OSHA has found that the conclusions it has reached from its own experience are supported by a substantial body of expert and practitioner opinion.

Based on this cumulative evidence that systematic management policies,

procedures and practices are fundamental to the reduction of work-related injuries and illnesses and their attendant economic costs, OSHA offers the following guidelines for effective management of worker safety and health protection. OSHA urges all employers to establish and to maintain programs which meet these guidelines in a manner which addresses the specific operations and conditions of their worksites.

The Guidelines

(a) *General.* (1) Employers are advised and encouraged to institute and maintain in their establishments a program which provides systematic policies, procedures, and practices that are adequate to recognize and protect their employees from occupational safety and health hazards.

(2) An effective program includes provisions for the systematic identification, evaluation, and prevention or control of general workplace hazards, specific job hazards, and potential hazards which may arise from foreseeable conditions.

(3) Although compliance with the law, including specific OSHA standards, is an important objective, an effective program looks beyond specific requirements of law to address all hazards. It will seek to prevent injuries and illnesses, whether or not compliance is at issue.

(4) The extent to which the program is described in writing is less important than how effective it is in practice. As the size of a worksite or the complexity of a hazardous operation increases, however, the need for written guidance increases to ensure clear communication of policies and priorities and consistent and fair application of rules.

(b) *Major Elements.* An effective occupational safety and health program will include the following four elements. To implement these elements, it will include the actions described in paragraph (c).

(1) *Management commitment and employee involvement* are complementary. Management commitment provides the motivating force and the resources for organizing and controlling activities within an organization. In an effective program, management regards worker safety and health as a fundamental value of the organization and applies its commitment to safety and health protection with as much vigor as to other organizational purposes. Employee involvement provides the means through which workers develop and/or express their own commitment to safety and health protection, for themselves and for their fellow workers.

(2) *Worksite analysis* involves a variety of worksite examinations, to identify not only existing hazards but also conditions and operations in which changes might occur to create hazards. Unawareness of a hazard which stems from failure to examine the worksite is a sure sign that safety and health policies and/or practices are ineffective. Effective management actively analyzes the work and worksite, to *anticipate* and prevent harmful occurrences.

(3) *Hazard prevention and control* are triggered by a determination that a hazard or potential hazard exists. Where feasible, hazards are prevented by effective design of the job site or job. Where it is not feasible to eliminate them, they are controlled to prevent unsafe and unhealthful exposure. Elimination or control is accomplished in a timely manner, once a hazard or potential hazard is recognized.

(4) *Safety and health training* addresses the safety and health responsibilities of all personnel concerned with the site, whether salaried or hourly. It is often most effective when incorporated into other training about performance requirements and job practices. Its complexity depends on the size and complexity of the worksite, and the nature of the hazards and potential hazards at the site.

(c) *Recommended Actions.* (1) *Management Commitment and Employee Involvement.* (i) State clearly a worksite policy on safe and healthful work and working conditions, so that all personnel with responsibility at the site and personnel at other locations with responsibility for the site understand the priority of safety and health protection in relation to other organizational values.

(ii) Establish and communicate a clear goal for the safety and health program and objectives for meeting that goal, so that all members of the organization understand the results desired and the measures planned for achieving them.

(iii) Provide visible top management involvement in implementing the program, so that all will understand that management's commitment is serious.

(iv) Provide for and encourage employee involvement in the structure and operation of the program and in decisions that affect their safety and health, so that they will commit their insight and energy to achieving the safety and health program's goal and objectives.

(v) Assign and communicate responsibility for all aspects of the program, so that managers, supervisors, and employees in all parts of the organization know what performance is expected of them.

(vi) Provide adequate authority and resources to responsible parties, so that assigned responsibilities can be met.

(vii) Hold managers, supervisors, and employees accountable for meeting their responsibilities, so that essential tasks will be performed.

(viii) Review program operations at least annually to evaluate their success in meeting the goal and objectives, so that deficiencies can be identified and the program and/or the objectives can be revised when they do not meet the goal of effective safety and health protection.

(2) *Worksite Analysis.* (i) So that all hazards are identified:

(A) Conduct comprehensive baseline worksite surveys for safety and health and periodic comprehensive update surveys;

(B) Analyze planned and new facilities, processes, materials, and equipment; and

(C) Perform routine job hazard analyses.

(ii) Provide for regular site safety and health inspections, so that new or previously missed hazards and failures in hazard controls are identified.

(iii) So that employee insight and experience in safety and health protection may be utilized and employee concerns may be addressed, provide a reliable system for employees, without fear of reprisal, to notify management personnel about conditions that appear hazardous and to receive timely and appropriate responses; and encourage employees to use the system.

(iv) Provide for investigation of accidents and "near miss" incidents, so that their causes and means for their prevention are identified.

(v) Analyze injury and illness trends over time, so that patterns with common causes can be identified and prevented.

(3) *Hazard Prevention and Control.* (i) So that all current and potential hazards, however detected, are corrected or controlled in a timely manner, establish procedures for that purpose, using the following measures:

(A) Engineering techniques where feasible and appropriate;

(B) Procedures for safe work which are understood and followed by all affected parties, as a result of training, positive reinforcement, correction of unsafe performance, and, if necessary, enforcement through a clearly communicated disciplinary system;

(C) Provision of personal protective equipment; and

(D) Administrative controls, such as reducing the duration of exposure.

(ii) Provide for facility and equipment maintenance, so that hazardous breakdown is prevented.

(iii) Plan and prepare for emergencies, and conduct training and drills as needed, so that the response of all parties to emergencies will be "second nature."

(iv) Establish a medical program which includes availability of first aid on site and of physician and emergency medical care nearby, so that harm will be minimized if an injury or illness does occur.

(4) *Safety and Health Training.* (i) Ensure that all employees understand the hazards to which they may be exposed and how to prevent harm to themselves and others from exposure to these hazards, so that employees accept and follow established safety and health protections.

(ii) So that supervisors will carry out their safety and health responsibilities effectively, ensure that they understand those responsibilities and the reasons for them, including:

(A) Analyzing the work under their supervision to identify unrecognized potential hazards;

(B) Maintaining physical protections in their work areas; and

(C) Reinforcing employee training on the nature of potential hazards in their work and on needed protective measures, through continual performance feedback and, if necessary, through enforcement of safe work practices.

(iii) Ensure that managers understand their safety and health responsibilities, as described under (c)(1), "Management Commitment and Employee Involvement," so that the managers will effectively carry out those responsibilities.

The Commentary

(Paragraph by Paragraph)

This Commentary indicates the background and rationale for each part of the guidelines. To facilitate its use, each segment of the guidelines except the Introduction is repeated just before it is discussed. The background of the Introduction immediately follows this paragraph.

Introduction

Comment on Introduction. Over the years, OSHA and State enforcement and consultation staff have seen many examples of exemplary workplaces where safety and health programs were well managed and where injury rates were exceptionally low. The common characteristics observed at these sites were the use of organized and systematic methods to assign appropriate responsibility to all managers, supervisors, and employees, to inspect regularly for and control existing and potential hazards, and to orient and train all employees in the ways and means to eliminate or avoid those hazards.

The fundamental importance of such methods has been reflected in decisions of the Occupational Safety and Health Review Commission and the U.S. Courts of Appeal, especially in cases involving an employer claim that a violative workplace condition or action resulted from unpreventable employee misconduct. Such misconduct has been recognized as a defense against citation only when an employer had a work rule prohibiting the conduct, had provided training to ensure that the rule was understood, and had supplied adequate supervision (including regular inspections and work rule enforcement) to ensure that the work rule was followed. These criteria have been applied by the courts in cases involving the citation of OSHA standards as well as the general duty clause. The implication of these cases is that an employer has the duty to establish and maintain such management practices, to the extent that they are necessary to ensure that safe and healthful working conditions are maintained and that safe and healthful work practices are followed.

OSHA has reflected its increasing recognition of the importance of effective safety and health program management by including program management requirements in standards; by recommending safety and health program improvements in conjunction with inspections; by issuing citations under the general duty clause of the Occupational Safety and Health Act of 1970 (Sec. 5(a)(1), 29 U.S.C. 654) which include safety and health management factors; by revising its State-operated consultation program to focus on the promotion of effective safety and health management; and by a range of other promotional efforts.

To further encourage employers and employees to adopt and improve existing safety and health programs, OSHA established, on July 2, 1982 (47 FR 29025), the Voluntary Protection Programs (VPP) to recognize worksites with exemplary safety and health management. The participation requirements embodied in the VPP are a distillation of the means, methods, and processes already in use at worksites where safety and health conditions are exceptionally good.

Because VPP participating worksites are officially recognized and are excluded from routine programmed OSHA inspections, the quality of the safety and health programs at these sites must be maintained as models of effectiveness. In 1988, 62 sites were participating in the VPP, and several had been in the program for five or more years. Collectively, during their participation in the VPP, these sites experienced lost-time injuries that were approximately one-fifth to one-third of the average for their industrial classifications. (Unpublished statistics, U.S. Department of Labor, OSHA, 1988.)

The fact that VPP participants have injury rates which are so much lower than their industry averages demonstrates that significant reduction is possible. It also strongly indicates that the requirements of the VPP, distilled in the management policies, procedures, and practices described in these recommended guidelines, are major means to achieve the reduction.

In addition, employers at these sites reported improved morale and productivity benefits, as well as significantly reduced workers' compensation and other costs. One plant manager found that the implementation of a single safe work practice at his 44-employee plant during the first three years of participation in the VPP resulted in a greater volume of product and a reduction in rejected product. This change alone saved $265,000 a year. (Proceedings of Public Information Gathering Meeting on Suggested Guidelines for General Safety and Health Programs, U.S. Department of Labor, OSHA, Docket No. C-02, p. 77 (October 6, 1988).)

The reduction in workers' compensation and other costs and the improvements in worksite morale and productivity reported by VPP participants reflect significant economic benefits which complement the substantial safety and health benefits of improved management of worker protection. A Business Roundtable report (*Improving Construction Safety Performance* (New York, The Business Roundtable, Report A-3, January, 1982), p. 16) concludes that, for construction, the savings from effective administration of safety and health protection is 3.2 times the cost. OSHA has no independent confirmation of this ratio nor of its relevance to industries other than construction. Based on its experience with VPP sites and the conclusions of experienced safety and health professionals, however, OSHA believes that the long-term benefits of

effective safety and health management consistently exceed its costs.

To understand this conclusion, it is essential to understand the indirect as well as the direct costs of occupational injuries and illnesses. According to commonly accepted safety management concepts as outlined by Frank E. Bird, Jr. in his *Management Guide to Loss Control* (Loganville, GA: Institute Press, 1978), for every $1 in medical or insurance compensation costs ("direct costs") for a worker injury, $5–50 more are likely to be spent on "indirect costs" to repair building, tool or equipment damage; to replace damaged products or materials; and to make up for losses from production delays and interruptions. An additional $1–3 in indirect costs will be spent for hiring and training replacements and for time to investigate the incident. Mr. Bird's figures do not consider the impact of reduced commitment to work when employees operate in a situation in which injuries are common. Because they frequently involve longer absences, the impact of job-related illnesses can be even greater.

Although economic incentives are secondary to human health and safety as motives for safety and health protection, an employer may find it useful to calculate the total (direct and indirect) costs of injuries and illnesses as a means of determining the economic benefits which might be achieved by preventing the injuries and illnesses. By determining the average cost of an injury and of an illness, the employer can estimate the incremental impact of reducing the rate of injuries and illnesses at the site and therefore the potential economic benefit of such reduction.

Some employers may wish to compare their savings or costs in relation to the national average for their industries. A method which can be used for that comparison with respect to occupational injuries is described by David R. Bell, a former OSHA employee, in his article, "Gauging Safety Outlays and Objectives," in *Occupational Hazards*, June, 1987. If the lost workday case rate (LWCR) for a site is *below* the national average, a formula provided by Bell can be used to calculate how many fewer injuries occurred than would have occurred if the site rate had equalled the national average. (Lost workday case rates are published annually by the Bureau of Labor Statistics in "Occupational Injuries and Illnesses in the United States by Industry", available from the U.S. Government Printing Office, Washington, DC 20402. The rate for each industry represents the average number of lost workday cases that occurred per 100 employees in the industry.)

The number of cases which would have occurred if the site rate had been average Bell calls "expected cases." The difference between the "expected cases" and the actual cases he calls "injuries avoided." His formula, in which "employment at the site" means the number of equivalent work-years at the site during the year, is as follows:

$$\frac{\text{Industry LWCR} \times \text{Employment at the site}}{100} = \text{Expected LWCases} - \text{Actual LWCases} = \text{Number of Injuries Avoided}$$

If the site lost workday case rate is above, the national average, the number of cases by which the site exceeds the national average can be determined by subtracting "expected cases" from "actual cases," once the former number has been calculated.

By multiplying the number of "injuries avoided" or the number of injuries above the average by the average cost of an injury at the site, the employer can estimate the savings or losses which resulted from the quality of its management of safety protection relative to national performance. (Because national data on the incidence of occupational illnesses is incomplete, the formula is less useful in relation to occupational health protection.)

(a) General

"(a) *General.* (1) Employers are advised and encouraged to institute and maintain in their establishments a program which provides systematic policies, procedures, and practices that are adequate to recognize and protect their employees from occupational safety and health hazards."

Comment: In essence, this paragraph states that the end (protection of employees from occupational safety and health hazards) determines the means. The criterion for determining what is needed in a safety and health program at a particular site is: whatever feasible action it takes to protect the workers from the safety and health hazards at that specific site. The form of the safety and health program elements and implementing actions will vary at each site according to the nature of site organization and the nature of the hazards and potential hazards at the site.

"(2) An effective program includes provisions for the systematic identification, evaluation, and prevention or control of general workplace hazards, specific job hazards and potential hazards which may arise from foreseeable conditions."

Comment: Provisions for identifying and preventing hazards are *systematic.* If not, hazards or potential hazards will be missed and/or preventive controls will break down, and the chance of injury or illness will significantly increase.

General workplace hazards include such conditions as tripping hazards in walking areas and poor illumination. Specific job hazards may relate to the specific conditions in a job, such as exposure to a saw blade, or to the inherent hazardousness of an operation required in the job, such as the removal of jammed material from a point of operation. Potential hazards include such situations as the possibility of exposure to toxic chemicals as a result of a rupture of piping from the impact of a forklift.

"(3) Although compliance with the law, including specific OSHA standards, is an important objective, an effective program looks beyond specific requirements of law to address all hazards. It will seek to prevent injuries and illnesses, whether or not compliance is at issue."

Comment: OSHA and other government standards provide important guidance on the identification and control of hazards, but they are not always enough. Although compliance with the law is an important objective of and motive for an effective program, OSHA has found that the most successful programs look beyond government standards and legal requirements. They look for other sources of information about hazards, such as the National Electrical Code (NEC), the American Conference of Governmental Industrial Hygienists (ACGIH), and the American National Standards Institute (ANSI); and they use their own seasoned analytical abilities to look for and address hazards not covered by government or other standards. Their motive is to prevent injuries and illnesses and the attendant human and economic costs, whether or not compliance with the law is at issue.

This approach is essential in view of the difficulty that regulatory agencies have in moving quickly to set standards for every possible hazard in the workplace and to revise them when new information becomes available.

"(4) The extent to which the program is described in writing is less important than how effective it is in practice. As the size of a worksite or the complexity of a hazardous operation increases, however, the need for written guidance increases to ensure clear communication of policies and priorities and consistent and fair application of rules."

Comment: OSHA recognizes that relatively simple, unwritten policies, practices, and procedures are adequate to address the hazards in many smaller or less hazardous establishments. The more complex and hazardous an operation is, the more formal (written) and complex the program will probably need to be. A written program which is revised regularly can clarify policy, create consistency and continuity in its interpretation, serve as a checkpoint whenever there is a question of priority between safety and production, and support fair and equitable enforcement of safe work rules and practices.

(b) Major Elements

"(b) *Major Elements.* An effective occupational safety and health program will include the following four elements. To implement these elements, it will include the actions described in paragraph (c).

(1) *Management commitment and employee involvement* are complementary. Management commitment provides the motivating force and the resources for organizing and controlling activities within an organization. In an effective program, management regards worker safety and health as a fundamental value of the organization and applies its commitment to safety and health protection with as much vigor as to other organizational purposes. Employee involvement provides the means through which workers develop and/or express their own commitment to safety and health protection, for themselves and for their fellow workers.

(2) *Worksite analysis* involves a variety of worksite examinations, to identify not only existing hazards but also conditions and operations in which changes might occur to create hazards. Unawareness of a hazard which stems from failure to examine the worksite is a sure sign that safety and health policies and/or practices are ineffective. Effective management actively analyzes the work and worksite, to *anticipate* and prevent harmful occurrences.

(3) *Hazard prevention and control* are triggered by a determination that a hazard or potential hazard exists. Where feasible, hazards are prevented by effective design of the job site or job. Where it is not feasible to elminate them, they are controlled to prevent unsafe or unhealthful exposure. Elimination or control is accomplished in a timely manner, once a hazard or potential hazard is recognized.

(4) *Safety and health training* addresses the safety and health responsibilities of all personnel concerned with the site, whether salaried or hourly. It is often most effective when incorporated into other training about performance requirements and job practices. Its complexity depends on the size and complexity of the worksite, and the nature of the hazards and potential hazards at the site."

Comment: These paragraphs set forth the areas of managerial practice which are essential to effective safety and health protection. These practices, means, and methods are consistent with those used by employers to achieve other organizational objectives, such as cost control, quality, and productivity. Giving safety and health equal organizational priority in relation to these other objectives is fundamental to the protection of individual employees *and* to the effectiveness of the organization itself.

These elements consist of methods historically used to accomplish organizational objectives. They are generic in that they are generally applicable regardless of unique operations or conditions of particular firms. Only the form which they take varies. Though at points they are expressed in the terms of the "hierarchical" organizations most common in American industry (i.e., by reference to "managers," "supervisors," "employees"), they can easily be adapted to other organizational forms or styles of operation. They relate to essential concerns and activities of any organization. It is on this basis that OSHA considers them applicable in shipyard employment, marine terminals, and longshoring, as well as general industry.

(c) Recommended Actions

(c)(1) Management Commitment and Employee Involvement

Comment: Each action listed in this section represents the application to occupational safety and health of a key means for organizing, motivating and controlling activities within an organization.

"(c)(1)(i) State clearly a worksite policy on safe and healthful work and working conditions, so that all personnel with responsibility at the site and personnel at other locations with responsibility for the site understand the priority of safety and health protection in relation to other organizational values."

Comment: A statement of policy is the foundation of safety and health management. It communicates the value in which safety and health protection is held in the business organization. If it is absorbed by all in the organization, it becomes the basic point of reference for all decisions affecting safety and health. It also becomes the criterion by which the adequacy of protective actions is measured.

"(c)(1)(ii) Establish and communicate a clear goal for the safety and health program and objectives for meeting that goal, so that all members of the organization understand the results desired and the measures planned for achieving them."

Comment: A goal, and implementing objectives, make the safety and health policy more specific. Communicating them ensures that all in the organization understand the direction it is taking.

"(c)(1)(iii) Provide visible top management involvement in implementing the program, so that all will understand that management's commitment is serious."

Comment: Actions speak louder than words. If top management gives high priority to safety and health protection *in practice*, others will see and follow. If not, a written or spoken policy of high priority for safety and health will have little credibility, and others will not follow it. Plant managers who wear required personal protective equipment in work areas, perform periodic "housekeeping" inspections, and personally track performance in safety and health protection demonstrate such involvement.

"(c)(1)(iv) Provide for and encourage employee involvement in the structure and operation of the program and in decisions that affect their safety and health, so that they will commit their insight and energy to achieving the safety and health program's goal and objectives."

Comment: Since an effective program depends on commitment by employees as well as managers, it is important for their concerns to be reflected in it. An effective program includes all personnel in the organization—managers, supervisors, and others—in policy development, planning, and operations.

This does not mean transfer of responsibility to employees. The Occupational Safety and Health Act of 1970 clearly places responsibility for safety and health protection on the employer. However, employees' intimate knowledge of the jobs they perform and the special concerns they bring to the job give them a unique perspective which can be used to make the program more effective.

Employee participation may take any or all of a number of forms. For instance, the system for notifying management personnel about conditions that appear hazardous serves as a major means of

worksite analysis to identify hazards and is therefore included as paragraph (c)(2)(iii). Such a system is, however, by itself not sufficient to provide for effective employee involvement. Forms of participation which engage employees more fully in systematic prevention include (1) inspecting for hazards and recommending corrections or controls; (2) analyzing jobs to locate potential hazards and develop safe work procedures; (3) developing or revising general rules for safe work; (4) training newly hired employees in safe work procedures and rules, and/or training their co-workers in newly revised safe work procedures; (5) providing programs and presentations for safety meetings; and (6) assisting in accident investigations.

Such functions can be carried out in a number of organizational contexts. Joint labor-management committees are most common. Other means include labor safety committees, safety circle teams, rotational assignment of employees to such functions, and acceptance of employee volunteers for the functions.

Employee involvement is effective only when the employer welcomes it and provides protection from any discrimination, including unofficial harassment, to the employees involved. However, inclusion of employees in one or more of the suggested activities, or in any way that fits the individual worksite and provides an employee role that has impact on decisions about safety and health protection, will strengthen the employer's overall program of safety and health protection.

"(c)(1)(v) Assign and communicate responsibility for all aspects of the program, so that managers, supervisors, and employees in all parts of the organization know what performance is expected of them."

Comment: Assignment of responsibility for safety and health protection to a single staff member, or even a small group, will leave other members feeling that someone else is taking care of safety and health problems. *Everyone* in an organization has some responsibility for safety and health. A clear statement of that responsibility, as it relates both to organizational goals and objectives and to the specific functions of individuals, is essential. If all persons in an organization do not know what is expected of them, they are unlikely to perform as desired.

"(c)(1)(vi) Provide adequate authority and resources to responsible parties, so that assigned responsibilities can be met."

Comment: It is unreasonable to assign responsibility without providing adequate authority and resources to get the job done. For example, a person with responsibility for the safety of a piece of machinery needs the authority to shut it down and get it repaired. Needed resources may include adequately trained and equipped personnel and adequate operational and capital expenditure funds.

"(c)(1)(vii) Hold managers, supervisors, and employees accountable for meeting their responsibilities, so that essential tasks will be performed."

Comment: Stating expectations of managers, supervisors, and other employees means little if management is not serious enough to track performance, to reward it when it is competent and to correct it when it is not. Holding everyone accountable for meeting their responsibilities is at the heart of effective worker safety and health protection. If management states high expectations for such protection but pays greater attention to productivity or other values, safety and health protection will be neglected.

To be effective, a system of accountability must be applied to everyone, from senior management to hourly employees. If some are held firmly to expected performance and others are not, the system will lose its credibility. Those held to expectations will be resentful; those allowed to neglect expectations may increase their neglect. Consequently, the chance of injury and illness will increase.

"(c)(1)(viii) Review program operations at least annually to evaluate their success in meeting the goal and objectives, so that deficiencies can be identified and the program and/or the objectives can be revised when they do not meet the goal of effective safety and health protection."

Comment: A comprehensive program audit is essential periodically to evaluate the whole set of safety and health management means, methods, and processes, to ensure that they are adequate to protect against the potential hazards at the specific worksite. The audit determines whether policies and procedures are implemented as planned and whether in practice they have met the objectives set for the program. It also determines whether the objectives provide sufficient challenge to lead the organization to meet the program goal of effective safety and health protection. When either performance or the objectives themselves are found inadequate, revisions are made. Without such a comprehensive review, program flaws and their interrelationship may not be caught and corrected.

(c)(2) Worksite Analysis

Comment: The identification of hazards and potential hazards at a worksite requires an active, on-going examination and analysis of work processes and working conditions. Because many hazards are by nature difficult to recognize, effective examination and analysis will approach the work and working conditions from several perspectives. Each of the activities recommended in this paragraph represents a different perspective.

The recognition of hazards which could result from changes in work practices or conditions requires especially thorough observation and thought, both from those who perform the work and those who are specially trained for that purpose. Since such divergence from the routine and familiar is often the occasion for injuries and health hazard exposures to occur, the anticipation of such changes is critical.

Identification at a worksite of those safety and health hazards which are recognized in its industry is a critical foundation for safety and health protection. It is the general duty of the employer under the Occupational Safety and Health Act of 1970. Successful employers will actively seek the benefit of the experience of others in their industry, through trade associations, equipment manufacturers, and other sources.

An effective program does not stop at this point, however. It continually reviews working conditions and operations to identify hazards which have not previously been recognized in the industry.

Implicit in the provision for the surveys, reviews, and analyses recommended in this section is the need for employers to seek competent advice and assistance when they lack needed expertise and to use appropriate means and methods to examine and assess all existing and foreseeable hazards. Personnel who perform comprehensive baseline and update surveys, analysis of new facilities, processes, procedures, and equipment, and job hazard analyses may require greater expertise than those who conduct routine inspections, since the former are conducting a broader and/or deeper review.

Personnel performing regular inspections should, however, possess a degree of experience and competence adequate to recognize hazards in the areas they review and to identify reasonable means for their correction or control. Such competence should normally be expected of ordinary employees who are capable of safely supervising or performing the operations of the specific workplace. Smaller businesses which need assistance in the development of such competence can

receive free assistance from a number of sources, including OSHA and a nationwide network of OSHA-funded, State-operated consultation projects.

"(c)(2)(i) So that all hazards and potential hazards are identified:

(A) conduct comprehensive baseline worksite surveys for safety and health and periodic comprehensive update surveys;

(B) analyze planned and new facilities, processes, materials, and equipment; and

(C) perform routine job hazard analyses."

Comment: A comprehensive baseline survey of the work and working conditions at a site permits a systematic recording of those hazards and potential hazards which can be recognized without intensive analysis. This baseline record provides a checklist for the more frequent routine inspections recommended in paragraph (c)(2)(ii). With those hazards under control, attention can be given to the intensive analysis required to recognize less obvious hazards.

Subsequent comprehensive surveys provide an opportunity to step back from the routine check on control of previously recognized hazards and look for others. With the baseline established, these subsequent reviews are one occasion for focusing more intensive analysis in areas with the highest potential for new or less obvious hazards. The frequency with which comprehensive examinations are needed depends on the complexity, hazardousness, and changeability of the worksite. Many successful worksites conduct such reviews on an annual or biannual basis.

Analysis of new facilities, processes, materials, and equipment in the course of their design and early use (sometimes called "change analysis") provides a check against the introduction of new hazards with them. Effective management ensures the conduct of such analyses during the planning phase, just before their first use, and during the early phases of their use. Numerous specific OSHA standards require inspection of particular equipment, conditions, and activities as a safety precaution prior to operation or use. This guideline makes clear that, in effective safety and health programs, this generally recognized inspection practice is applied more broadly to all conditions and activities.

Job hazard analysis is an important tool for more intensive analysis to identify hazards and potential hazards not previously recognized, and to determine protective measures. Through more careful attention to the work processes in a particular job, analysts can recognize new points at which exposure to hazards may occur or at which foreseeable changes in practice or conditions could result in new hazards.

"(c)(2)(ii) Provide for regular site safety and health inspections, so that new or previously missed hazards and failures in hazard controls are identified."

Comment: Once a comprehensive examination of the workplace has been conducted and hazard controls have been established, routine site safety and health inspections are necessary to ensure that changes in conditions and activities do not create new hazards and that hazard controls remain in place and are effective. Routine industrial hygiene monitoring and sampling are essential components of such inspections in many workplaces.

Personnel conducting these inspections also look out for new or previously unrecognized hazards, but not as thoroughly as those conducting comprehensive surveys.

The frequency and scope of these "routine" inspections depends on the nature and severity of the hazards which could be present and the relative stability and complexity of worksite operations.

"(c)(2)(iii) So that employee insight and experience in safety and health protection may be utilized and employee concerns may be addressed, provide a reliable system for employees, without fear of reprisal, to notify management personnel about conditions that appear hazardous and to receive timely and appropriate responses; and encourage employees to use the system."

Comment: A reliable system for employees to notify management of conditions or practices that appear hazardous and to receive a timely and appropriate response serves a dual purpose. It gives management the benefit of many more points of observation and more experienced insight in recognizing hazards or other symptoms of breakdown in safety and health protection systems. It also gives employees assurance that their investment in safety and health is worthwhile.

A system is reliable only if it ensures employees a credible and timely response. The response will include both timely action to address any problems identified and a timely explanation of why particular actions were or were not taken.

Since the employer benefits from employee notices, effective management will not only guard against reprisals to avoid discouraging them but will take positive steps to encourage their submission.

"(c)(2)(iv) Provide for investigation of accidents and 'near miss' incidents, so that their causes and means for preventing repetitions are identified."

Comment: Accidents, and incidents in which employees narrowly escape injury, clearly expose hazards. Analysis to identify their causes permits development of measures to prevent future injury or illness. Although a first look may suggest that "employee error" is a major factor, it is rarely sufficient to stop there. Even when an employee has disobeyed a required work practice, it is critical to ask, "Why?" A thorough analysis will generally reveal a number of deeper factors, which permitted or even encouraged an employee's action. Such factors may include a supervisor's allowing or pressuring the employee to take short cuts in the interest of production, inadequate equipment, or a work practice which is difficult for the employee to carry out safely. An effective analysis will identify actions to address each of the causal factors in an accident or "near miss" incident.

"(c)(2)(v) Analyze injury and illness trends over time, so that patterns with common causes can be identified and prevented."

Comment: A review of injury experience over a period of time may reveal patterns of injury with common causes which can be addressed. Correlation of changes in injury experience with changes in safety and health program operations, personnel, and production processes may help to identify causes.

(c)(3) Hazard Prevention and Control

Comment: Effective management prevents or controls identified hazards and prepares to minimize the harm from job-related injuries and illnesses when they do occur.

"(c)(3)(i) So that all current and potential hazards, however detected, are corrected or controlled in a timely manner, establish procedures for that purpose, using the following measures:

(A) engineering techniques where feasible and appropriate;

(B) procedures for safe work which are understood and followed by all affected parties, as a result of training, positive reinforcement, correction of unsafe performance, and, if necessary, enforcement through a clearly communicated disciplinary system;

(C) provision of personal protective equipment; and

(D) administrative controls, such as reducing the duration of exposure."

Comment: Hazards, once recognized, are promptly prevented or controlled. Management action in this respect determines the credibility of its safety and health management policy and the usefulness of its entire program.

An effective program relies on the means for prevention or control which provides the best feasible protection of employee safety and health. It regards legal requirements as a minimum. When there are alternative ways to address a hazard, effective managers have found that involving employees in discussions of methods can identify useful prevention and control measures, serve as a means for communicating the rationale for decisions made, and encourage employee acceptance of the decisions.

When safe work procedures are the means of protection, ensuring that they are followed becomes critical. Ensuring safe work practices involves discipline in both a positive sense and a corrective sense. Every component of effective safety and health management is designed to create a disciplined environment in which all personnel act on the basis that worker safety and health protection is a fundamental value of the organization. Such an environment depends on the credibility of management's commitment to safety and health protection, through evidences of direct management involvement in safety and health matters, inclusion of employees in decisions which affect their safety and health, rigorous worksite analysis to identify hazards and potential hazards, stringent prevention and control measures, and thorough training. In such an environment, all personnel will understand the hazards to which they are exposed, why the hazards pose a threat, and how to protect themselves and others from the hazards. Training for the purpose is reinforced by encouragement of attempts to work safely and by positive recognition of safe behavior.

If, in such a context, an employee, supervisor, or manager fails to follow a safe procedure, it is advisable not only to stop the unsafe action but also to determine whether some condition of the work has made it difficult to follow the procedure or whether some management system has failed to communicate the danger of the action and the means for avoiding it. If the unsafe action was not based on an external condition or a lack of understanding, or if, after such external condition or lack of understanding has been corrected, the person repeats the action, it is essential that corrective discipline be applied. To allow an unsafe action to continue not only continues to endanger the actor and perhaps others; it also undermines the positive discipline of the entire safety and health program. To be effective, corrective discipline must be applied consistently to all, regardless of role or rank; but it must be applied.

Factors which may affect the time required for correction of hazards include: (1) The complexity of abatement technology; (2) the degree of risk; and (3) the availability of necessary equipment, materials, and staff qualified to complete the correction. Because conditions affecting hazard correction and control vary widely, it is impractical for OSHA to recommend specific time limits for all situations. An effective program corrects hazards in the shortest time permitted by the technology required and the availability of needed personnel and materials. It also provides for interim protection when immediate correction is not possible.

"(c)(3)(ii) Provide for facility and equipment maintenance, so that hazardous breakdown is prevented."

Comment: Maintenance of equipment and facilities in an especially important means of anticipating potential hazards and preventing their development. Planning, scheduling, and tracking preventive maintenance activities provides a systematic way of ensuring that they are not neglected.

"(c)(3)(iii) Plan and prepare for emergencies, and conduct training and drills as needed, so that the response of all parties to emergencies will be 'second nature.'"

Comment: Planning and training for emergencies is essential in minimizing the harmful consequences of an accident or other threat if it does occur. If personnel are not so thoroughly trained to react to emergencies that their responses are immediate and precise, they may expose themselves and others to greater danger rather than reduce their exposure. The nature of potential emergencies depends on the nature of site operations and its geographical location. The extent to which training and drills are needed depends on the severity and complexity of the emergencies which may arise.

"(c)(3)(iv) Establish a medical program which includes availability of first aid on site and of physician and emergency medical care nearby, so that harm will be minimized if an injury or illness does occur."

Comment: The availability of first aid and emergency medical care are essential in minimizing the harmful consequences of injuries and illnesses if they do occur. The nature of services needed will depend on the seriousness of injuries or health hazard exposures which may occur. Minimum requirements are addressed in OSHA standards.

(c)(4) Safety and Health Training

Comment: Education and training are essential means for communicating practical understanding of the requirements of effective safety and health protection to all personnel. Without such understanding, managers, supervisors, and other employees will not perform their responsibilities for safety and health protection effectively.

It is not suggested that elaborate or formal training programs solely related to safety and health are always needed. Integrating consideration of safety and health protection into all organizational activities is the key to its effectiveness. Safety and health information and instruction is, therefore, often most effective when incorporated into other training about performance requirements and job practices, such as management training on performance evaluation, problem solving, or managing change; supervisors' training on the reinforcement of good work practices and the correction of poor ones; and employee training on the operation of a particular machine or the conduct of a specific task.

Each paragraph in this section recommends that the employer *ensure understanding* of safety and health information by employees, supervisors, and managers. The act of training itself is not sufficient to ensure practical comprehension. Some means of verifying comprehension is essential. Formal testing, oral questioning, observation, and other means can be useful. In its Voluntary Protection Programs, OSHA has found that observing and interviewing employees, supervisors, and managers are the most effective measures for determining their understanding of what is expected of them in practice. Although there is no fully reliable means for ensuring understanding, effective safety and health management will apply the same diligence with respect to safety and health protection as is applied to ensuring an understanding of other operational requirements, such as time and attendance, production schedules, and job skills.

"(c)(4)(i) Ensure that all employees understand the hazards to which they may be exposed and how to prevent harm to themselves and others from exposure to these hazards, so that employees accept and follow established safety and health protections."

Comment: The commitment and cooperation of employees in preventing and controlling exposure to hazards is critical, not only for their own safety and health but for that of others as well. That commitment and cooperation

depends on their understanding what hazards they may be exposed to, why the hazards pose a threat, and how they can protect themselves and others from the hazards. The means of protection which they need to understand include not only the immediate protections from hazards in their work processes and locations, but also the management systems which commit the organization to safety and health protection and provide for employee involvement in hazard identification and prevention.

OSHA's Hazard Communication Standard specifies, for chemical hazards, an employer duty to inform employees about workplace hazards and to provide training that will enable them to avoid work-related injuries or illnesses. Other standards set forth training requirements, as summarized in OSHA Publication 2254, "Training Requirements in OSHA Standards and Training Guidelines." The rationale for these standards requirements is, however, applicable in relation to all hazards.

Education and training in safety and health protection is especially critical for employees who are assuming new duties. This fact is reflected by the disproportionately high injury rates among workers newly assigned to work tasks. Although some of these injuries may be attributable to other causes, a substantial number are directly related to inadequate knowledge of job hazards and safe work practices. The Bureau of Labor Statistics reports that in 1979, 48 percent of workers injured had been on the job less than one year. ("The New Worker Factor Associated with Occupational Injuries and Illnesses," U.S. Department of Labor, Bureau of Labor Statistics, 1982.) These figures make clear the importance of training employees on job hazards and safe work practices *before* they assume new duties.

The extent of hazard information which is needed by employees will vary, but includes at least: (1) The general hazards and safety rules of the worksite; (2) specific hazards, safety rules, and practices related to particular work assignments; and (3) the employee's role in emergency situations. Such information and training is particularly relevant to hazards that may not be readily apparent to, or within the ordinary experience and knowledge of, the employee.

"(c)(4)(ii) So that supervisors will carry out their safety and health responsibilities effectively, ensure that they understand those responsibilities and the reasons for them, including:

(A) analyzing the work under their supervision to identify unrecognized potential hazards;

(B) maintaining physical protections in their work areas; and

(C) reinforcing employee training on the nature of potential hazards in their work and on needed protective measures, through continual performance feedback and, if necessary, through enforcement of safe work practices."

Comment: First-line supervisors have an especially critical role in safety and health protection because of their immediate responsibility for workers and for the work being performed. Effective training of supervisors will address their safety and health management responsibilities as well as information on hazards, hazard prevention, and response to emergencies. Although they may have other safety and health responsibilities, those listed in these guidelines merit particular attention.

"(c)(4)(iii) Ensure that managers understand their safety and health responsibilities, as described under (c)(1), "Management Commitment and Employee Involvement," so that the managers will effectively carry out those responsibilities."

Comment: Because there is a tendency in some businesses to consider safety and health a staff function and to neglect the training of managers in safety and health responsibilities, the importance of managerial training is noted separately. Managers who understand both the way and the extent to which effective safety and health protection impacts on the overall effectiveness of the business itself are far more likely to ensure that the necessary safety and health management systems operate as needed.

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Part III

Environmental Protection Agency

40 CFR Parts 373 and 374

Superfund Programs; Regulations Governing Citizen Suits; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 373 and 374

[FRL-3420-3]

Superfund Programs; Regulations Governing Citizen Suits

AGENCY: Environmental Protection Agency.

ACTION: Proposed rules.

SUMMARY: The Environmental Protection Agency (EPA) is today publishing two proposed rules prescribing the manner in which notice of citizen suits is to be provided as required by section 310 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9659, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986, Pub. L. No. 99-499, and Section 326 of the Emergency Planning and Community Right-To-Know Act (Title III of SARA), 42 U.S.C. 11046, Pub. L. No. 99-499. The rules prescribe the manner of service of the notice, the contents of the notice, and the timing of the notice. EPA is taking this action in response to provisions in Title III of SARA and amendments to CERCLA made by SARA, which authorize persons to commence citizen suits under CERCLA and Title III of SARA after providing notice in the manner prescribed by regulations.

DATES: Comments on these proposed rules must be submitted on or before February 27, 1989. Persons may use these proposed rules as guidance for providing such notice prior to the date they become effective on a final basis.

ADDRESS: Persons may mail comments on these rules to Belinda Holmes, Office of Enforcement and Compliance Monitoring, Hazardous Waste Division (LE-134S), Room 3219, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Persons may inspect comments at that address.

FOR FURTHER INFORMATION CONTACT: Belinda Holmes, Office of Enforcement and Compliance Monitoring, Hazardous Waste Division (LE-134S), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202-382-2860.

Authority: EPA publishes these rules pursuant to Section 310 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9659, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986, Pub. L. No. 99-499, and Section 326 of the Emergency Planning and Community Right-to-Know Act (Title III of SARA) 42 U.S.C. 11046

SUPPLEMENTARY INFORMATION: Section 310 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9659, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986, Pub. L. No. 99-499, and Section 326 of the Emergency Planning and Community Right-To-Know Act (Title III of SARA), 42 U.S.C. 11046, authorize citizen suits against violators of those statutes and against the Administrator of EPA or other federal and state officials for failing to perform specified duties. Both section 310 of CERCLA and section 326 of Title III of SARA require the persons intending to file an action to provide notice 60 days prior to filing the action in the manner specified by regulation. The regulations proposed today prescribe the manner in which the notice is to be provided.

Today EPA is publishing two separate proposed rules. One rule prescribes the manner in which notice is to be provided for citizen suits under CERCLA: the other rule prescribes the manner in which notice is to be provided for citizen suits under Title III of SARA.

Statutory Requirements

CERCLA: Section 310 of CERCLA authorizes any person to commence a civil action on his or her own behalf against: (1) Any person (including the United States or other governing agency) who is alleged to be in violation of any standard, regulation, condition, requirement, or order which has become effective under CERCLA (including any provision of an agreement under section 120, relating to Federal facilities); or (2) the President or other officer of the United States (including the Administrator of EPA or the Administrator of the Agency on Toxic Substances and Disease Registry) for an alleged failure to perform any act or duty which is not discretionary under CERCLA. For actions against a violator of CERCLA, the plaintiff must provide notice to the United States, the State, and the violator 60 days prior to commencing such action. For actions against an officer of the United States for failing to perform a nondiscretionary duty, the plaintiff must provide notice to the United States 60 days prior to commencing such action. Section 310(d) and section 310(e) of CERCLA authorize the President to promulgate these regulations; the President has delegated that authority to the Administrator of EPA. *See* section 6(d) of Executive Order 12580 of January 23, 1987, 52 FR 2923 (Jan. 29, 1987).

Section 113(1) of CERCLA provides that in any action filed under CERCLA in a United States court, including actions under section 310, the plaintiff (if not the United States) must provide a copy of the complaint to the Attorney General of the United States and to the Administrator of EPA.

Title III of SARA: Section 326(a)(1) of Title III of SARA authorizes any person to commence a civil action on his or her own behalf for specified violations of Title III of SARA against the following persons:

(1) An owner or operator of a facility for failing to: (A) Submit a followup emergency notice under section 304(c), (B) submit a material safety data sheet or a list under section 311(a), (C) complete and submit an inventory form under section 312(a) containing tier I information as described in section 312(d)(1), or (D) complete and submit a toxic chemical release form under section 313(a) (section 326(a)(1)(A));

(2) The Administrator of EPA for failing to (A) publish inventory forms under section 312(g), (B) respond to a petition to add or delete a chemical under section 313(e)(1) within 180 days after receipt of the petition, (C) publish a toxic chemical release form under section 313(g), (D) establish a computer data base in accordance with section 313(j), (E) promulgate trade secret regulations under section 322(c), or (F) render a decision in response to a petition under section 322(d) within 9 months after receipt of the petition (section 326(a)(1)(B)); or

(3) The Administrator of EPA, a state governor, or a state emergency response commission for failing to provide a mechanism for public availability of information in accordance with section 324(a) (section 326(a)(1)(C)).

For those citizens actions under section 326(a)(1)(A) of Title III of SARA against an owner or operator of a facility, the plaintiff must provide notice to the Administrator of EPA, the state in which the alleged violation occurs, and the alleged violator 60 days prior to commencing the action. For those citizen actions under sections 326(a)(1)(B) and 326(a)(1)(C) against the Administrator of EPA, the state governor, or the state emergency response commission, the plaintiff must provide notice to the Administrator of EPA, the state governor, or the state emergency response commission (as the case may be) 60 days prior to commencing the action. Section 326(d) of Title III of SARA authorizes the Administrator of EPA to promulgate these regulations prescribing the manner in which notice shall be given under section 326(a).

Section 326(a)(1)(D) also provides for actions by any person against a state governor or a state emergency response commission for failure to respond to a request for tier II information under section 312(e)(3) within 120 days after the date of receipt of the request. In addition, section 326(a)(2) authorizes state or local governments to commence certain actions:

(1) Any state or local government may commence an action against an owner or operator of a facility for failing to (A) provide notification to the emergency response commission in the state under section 302(c), (B) submit a material safety data sheet or a list under section 311(a), (C) make available information requested under section 311(c), or (D) prepare and submit an inventory form under section 312(a) containing tier I information;

(2) Any state emergency response commission or local emergency planning committee may commence an action against an owner or operator of a facility for failing to provide information under section 303(d) or for failing to submit tier II information under section 312(e)(1); or

(3) Any state may commence an action against the Administrator of EPA for failing to provide information to the State under section 322(g).

Plaintiffs in actions under sections 326(a)(1)(D) and 326(b)(2) are not required to provide notice of such actions to the United States. Neither of the rules proposed today apply to actions commenced under sections 326(a)(1)(D) or 326(a)(2).

Proposed Rules

These proposed rules prescribe the manner in which the notice is to be provided for civil actions under section 310 of CERCLA and section 326 of Title III of SARA. The rules describe the manner in which the notice is to be served, the contents of the notice, and the timing of the notice.

Section 310 of CERCLA provides that notice is to be provided to the President, as well as the state and the alleged violator. The President has delegated most authority under CERCLA to several agencies, primarily to the Administrator of EPA (who has delegated some authority to the Regional Administrators). *See* Executive Order 12580 of January 23, 1987, 52 FR 2923 (Jan. 29, 1987). Therefore, EPA proposes in the rule that notice be provided to the head of the agency with delegated authority over the provision of CERCLA violated instead of to the President. The notice must be provided to the Administrator and appropriate Regional Administrator of EPA if EPA has authority over the provision of CERCLA violated. If another agency has authority concerning the provision violated, the notice must be provided to the head of that agency.

Section 326 of Title III of SARA provides that notice is to be provided to the Administrator, as well as the state and the alleged violator. EPA proposes in the rule that notice be provided to the Administrator and appropriate Regional Administrator of EPA (or to other appropriate agency officer) because the Administrator has delegated some authority under Title III to the Regional Administrators. For purposes of Title III of SARA, EPA recognizes Indian tribes to have the same status as state governors and in some locations, the Indian tribe may be a member of the local emergency planning committees. Therefore, if the violation involves an Indian tribe on an Indian reservation, the rule provides that notice should be provided to the Chief Executive Officer of the Indian tribe, or other appropriate tribal official recognized by the Bureau of Indian Affairs of the Department of the Interior. EPA proposes in both rules that the notice include information about the proposed action so that EPA will have a basis to determine whether intervention or other action by the United States, as authorized by Section 310 and Section 326, is appropriate based on the matters at issue and considerations of optimal use of Agency resources. For convenience, the rules provide a list of addresses that will be frequently used in providing notice of citizen suits.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment, a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities. In such circumstances, a regulatory flexibility analysis is not required. The overall economic impact of these rules on small entities is small because they are procedural rules only. Accordingly, I hereby certify that these regulations will not have a significant impact on a substantial number of small entities. These regulations, therefore, do not require a regulatory flexibility analysis.

E.O. 12291

Under Executive Order 12291, the agency must judge whether a regulation is "major" and thus subject to the requirement to prepare a Regulatory Impact Analysis. The notice published today is not major because the rule will not result in an effect on the economy of $100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity, and innovation, and will not significantly disrupt domestic or export markets. Therefore, the Agency has not prepared a Regulatory Impact Analysis under the Executive Order.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order No. 12291.

Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Parts 373 and 374

Environmental protection, Extremely hazardous substances, Hazardous substances, Hazardous wastes, Intergovernmental relations, Notice requirements, Natural resources, Superfund, Title III.

Dated: January 13, 1989.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, and under authority of Section 310 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9659, Section 326 of the Emergency Planning and Community Right-To-Know Act (Title III of the Superfund Amendments and Reauthorization Act), 42 U.S.C. 11046, and Executive Order 12580, 40 CFR is proposed to be amended by adding parts 373 and 374 as follows:

PARTS 373—PRIOR NOTICE OF CITIZEN SUITS

Sec.

Authority: Sec. 310, Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9659

§ 373. 1 Purpose.

Section 310 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthoriation Act of 1986, authorizes civil action by any person to enforce the Act. These civil actions may be brought against any person (including the United States, and any other governmental instrumentality or agency, to the extent permitted by the Eleventh Amendment to the Constitution), where there is alleged to be any violation of any standard, regulation, condition, requirement, or order which has become effective pursuant to the Act (including any provision of an agreement under section 120, relating to Federal facilities); and against the President or any other officer of the United States (including the Administrator of the Environmental Protection Agency and the Administrator of the Agency for Toxic Substances and Disease Registry) where there is alleged a failure to perform any act or duty under this Act, including an act or duty under section 120 (relating to Federal facilities), but not including any act or duty under section 311 (relating to research, development, and demonstration). These civil actions under section 310 are to be filed in accordance with the rules of the district court in which the action is instituted. The purpose of this part is to prescribe procedures governing the notice requirements of subsections (d) and (e) of section 310 as a prerequisite to the commencement of such actions.

§ 373. 2 Service of notice.

(a) *Violation of standard, regulation, condition, requirement, or order.* Notice of intent to file suit under subsection 310(a)(1) of the Act shall be served by registered mail, return receipt requested, addressed to, or by personal service upon, an alleged violator of any standard, regulation, condition, requirement, or order which has become effective pursuant to this Act in the following manner:

(1) If the alleged violator is a private individual or corporation, notice shall be served upon the person alleged to be in violation. A copy of the notice shall be mailed to the head of the authorized Federal agency (if the authorized agency is the Environmental Protection Agency then to the Administrator of the Environmental Protection Agency and the Regional Administrator of the Environmental Protection Agency for the Region in which the violation is alleged to have occurred) and the Attorney General of the State in which the violation is alleged to have occurred. If the alleged violator is a corporation, a copy of the notice shall also be mailed to the registered agent, if any, of that corporation in the State in which such violation is alleged to have occurred.

(2) If the alleged violator is a State or local agency, notice shall be served upon the head of that agency. A copy of the notice shall be mailed to the Attorney General of the State in which the violation is alleged to have occurred and the head of the authorized Federal agency (if the authorized agency is the Environmental Protection Agency then to the Administrator of the Environmental Protection Agency and the Regional Administrator of the Environmental Protection Agency for the Region in which the violation is alleged to have occurred).

(3) If the alleged violator is a Federal agency, notice shall be served upon the head of the agency. A copy of the notice shall be mailed to the head of the authorized Federal agency (if the authorized agency is the Environmental Protection Agency, then to the Administrator of the Environmental Protection Agency and to the Regional Administrator of the Environmental Protection Agency for the Region in which the violation is alleged to have occurred) and the Attorney General of the State in which the violation is alleged to have occurred.

(b) *Failure to act.* Service of notice of intent to file suit under subsection 310(a)(2) of the Act shall be accomplished by registered mail, return receipt requested, addressed to, or by personal service upon, the appropriate officer of the agency of the United States (including the Administrator of the Environmental Protection Agency or the Administrator of the Agency for Toxic Substances and Disease Registry).

(c) Notice given in accordance with the provisions of this part shall be considered to have been served on the date of receipt. If service was accomplished by mail, the date of receipt will be considered to be the date noted on the return receipt card.

§ 373. 3 Contents of notice.

(a) *Violation of standard, regulation, condition, requirement, or order.* Notice regarding an alleged violation of a standard, regulation, condition, requirement, or order (including any provision of an agreement under section 120, relating to Federal facilities) which has become effective under this Act shall include sufficient information to allow the recipient to identify the specific standard, regulation, condition, requirement, or order (including any provision of an agreement under section 120, relating to Federal facilities) which has allegedly been violated, the activity alleged to constitute a violation, the name and address of the site-facility, if known, the person or persons responsible for the alleged violation, the date or dates of the violation, and the full name, address, and telephone number of the person giving notice.

(b) *Failure to act.* Notice regarding an alleged failure of the President or other officer of the United States to perform an act or duty which is not discretionary under the Act shall identify the provisions of the Act which require such act or create such duty, shall describe with reasonable specificity the action taken or not taken by the President or other officer which is claimed to constitute a failure to perform the act or duty, shall identify the Agency and name and title of the Officers failing to perform the act or duty, and shall state the full name, address, and telephone number of the person giving the notice.

(c) *Identification of counsel.* The notice shall state the name, address, and telephone number of the legal counsel, if any, representing the person giving the notice.

§ 373.4 Timing of notice.

(a) *Violation of standard, regulation, condition, requirement, or order.* No action may be commenced under subsection 310(a)(1) of the Act before 60 days after the plaintiff has given notice of the violation as specified in this part. No action may be commenced under subsection 310(a)(1) of the Act if the President or his or her delegate has commenced and is diligently prosecuting an action under the Act or under the Solid Waste Disposal Act, 42 U.S.C. 6901 *et seq.*, to require compliance with the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under section 120).

(b) *Failure to act.* No action may be commenced under subsection 310(a)(2) of the Act before 60 days after the plaintiff has given notice of the failure to act as specified in this part.

§ 373.5 Copy of complaint.

At the time of filing an action under this Act, the plaintiff, if other than the United States, must provide a copy of the complaint to the Attorney General of the United States and to the Administrator of the Environmental Protection Agency.

§ 373.6 Addresses.

Administrator, U.S. Environmental Protection Agency, 401 M Street, SW. (A–100), Washington, DC 20460

Regional Administrator, Region I, U.S. Environmental Protection Agency,

John F. Kennedy Building, Room 2203, Boston, MA 02203
Regional Administrator, Region II, U.S. Environmental Protection Agency, 26 Federal Plaza, Room 930, New York, NY 10278
Regional Administrator, Region III, U.S. Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107
Regional Administrator, Region IV, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, GA 30365
Regional Administrator, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, IL 60604
Regional Administrator, Region VI, U.S. Environmental Protection Agency, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202–2733
Regional Administrator, Region VII, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, KS 66101
Regional Administrator, Region VIII, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, CO 80202–2405
Regional Administrator, Region IX, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105
Regional Administrator, Region X, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101
Administrator, Agency for Toxic Substances and Disease Registry, Center for Disease Control, 200 Independence Avenue, SW., Washington, DC 20201

PART 374—PRIOR NOTICE OF CITIZEN SUITS

Sec.
374.1 Purpose.
374.2 Service of notice.
374.3 Contents of notice.
374.4 Timing of notice.
374.5 Addresses.

Authority: Sec. 326, Emergency Planning and Community Right-to-Know Act (Title III of the Superfund Amendments and Reauthorization Act), 42 U.S.C. 11046.

§ 374.1 Purpose.

(a) The purpose of this part is to prescribe procedures governing the notice requirements of subsection (d) of section 326 of the Emergency Planning and Community Right-to-Know Act (Title III of the Superfund Amendments and Reauthorization Act) as a prerequisite to the commencement of such actions.

(b) *Citizen suits.* Section 326 of the Act authorizes civil action by any person to enforce the Act. These civil actions may be brought against the following:

(1) An owner or operator of a facility for failing to—

(i) Submit a followup emergency notice under section 304(c),

(ii) Submit a material safety data sheet or a list under section 311(a),

(iii) Complete and submit an inventory form under section 312(a) containing tier I information as described in section 312(d)(1), or

(iv) Complete and submit a toxic chemical release form under section 313(a);

(2) The Administrator of the Environmental Protection Agency for failing to—

(i) Publish inventory forms under section 312(g),

(ii) Respond to a petition to add or delete a chemical under section 313(e)(1) within 180 days after receipt of the petition,

(iii) Publish a toxic chemical release form under section 313(g),

(iv) Establish a computer database in accordance with section 313(j),

(v) Promulgate trade secret regulations under section 322(c), or

(vi) Render a decision in response to a petition under section 322(d) within 9 months after receipt of the petition; or

(3) The Administrator of the Environmental Protection Agency, a State Governor, or a State emergency response commission, for failing to provide a mechanism for public availability of information in accordance with section 324(a).

§ 374.2 Service of notice.

(a) *Owner or operator.* Notice of intent to file suit under subsection 326(a)(1)(A) of the Act shall be served by registered mail, return receipt requested, addressed to, or by personal service upon the Administrator of the Environmental Protection Agency, the State in which the alleged violation occurred, and the alleged violator in the following manner:

(1) If the alleged violator is a private individual or corporation, notice shall be served upon the owner or operator of the facility alleged to be in violation. A copy of the notice shall be mailed to the Administrator of the Environmental Protection Agency, the Regional Administrator of the Environmental Protection Agency for the Region in which the violation is alleged to have occurred, and the Governor for the State in which the violation is alleged to have occurred. If the alleged violator is a corporation, a copy of the notice shall also be mailed to the registered agent, if any, of that corporation in the State in which such violation is alleged to have occurred.

(2) If the alleged violator is a State or local agency, notice shall be served upon the head of that agency. A copy of the notice shall be mailed to the Governor for the State in which the violation is alleged to have occurred, the Administrator of the Environmental Protection Agency, and the Regional Administrator of the Environmental Protection Agency for the Region in which the violation is alleged to have occurred.

(3) If the alleged violator is a Federal agency, notice shall be served upon the head of the agency. A copy of the notice shall be mailed to the Administrator of the Environmental Protection Agency, the Regional Administrator of the Environmental Protection Agency for the Region in which the violation is alleged to have occurred, and the Governor for the State in which the violation is alleged to have occurred.

(b) *Failure to act.* Service of notice of intent to file suit under subsections 326 (a)(1)(B) or (a)(1)(C) of the Act shall be accomplished by registered mail, return receipt requested, addressed to, or by personal service upon, the Administrator of the Environmental Protection Agency, the State Governor, or the State emergency response commission (as the case may be).

(c) If the alleged violation or failure to act involves an Indian tribe, an Indian reservation, or an Indian tribe in its capacity as a local emergency planning committee, notice should be served on the Chief Executive Officer of the Indian tribe, or other appropriate tribal official, recognized by the Bureau of Indian Affairs of the United States Department of the Interior.

(d) Notice given in accordance with the provisions of this part shall be considered to have been served on the date of receipt. If service was accomplished by mail, the date of receipt will be considered to be the date noted on the return receipt card.

§ 374.3 Contents of notice.

(a) *Owner or operator.* Notice regarding an alleged violation under subsection 326(a)(1)(A) shall include sufficient information to allow the recipient to identify the specific requirement which has allegedly been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the date or dates of the violation, the name and address of the site, and the full name, address, and telephone number of the person giving notice.

(b) *Administrator or State.* Notice regarding an alleged failure by the Administrator of the Environmental Protection Agency, a State Governor, or a State emergency response commission, to perform certain actions specified in subsections 326 (a)(1)(B) or (a)(1)(C) of the Act shall identify the provisions of the Act which require such action, shall describe with reasonable specificity the action not performed, shall identify the agency and name and title of the officer, and shall state the full name, address, and telephone number of the person giving the notice.

(c) *Identification of counsel.* The notice shall state the name, address, and telephone number of the legal counsel, if any, representing the person giving the notice.

§ 374.4 Timing of notice.

No action may be commenced under subsections 326 (a)(1)(A), (a)(1)(B), or (a)(1)(C) of the Act before 60 days after the plaintiff has given notice of the violation as specified in this part.

§ 374.5 Addresses.

Administrator, U.S. Environmental Protection Agency, 401 M Street, SW. (A–100), Washington, DC 20460

Regional Administrator, Region I, U.S. Environmental Protection Agency, John F. Kennedy Building, Room 2203, Boston, MA 02203

Regional Administrator, Region II, U.S. Environmental Protection Agency, 26 Federal Plaza, Room 930, New York, NY 10278

Regional Administrator, Region III, U.S. Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107

Regional Administrator, Region IV, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, GA 30365

Regional Administrator, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, IL 60604

Regional Administrator, Regional VI, U.S. Environmental Protection Agency, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202–2733

Regional Administrator, Region VII, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, KS 66101

Regional Administrator, Region VIII, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, CO 80202–2405

Regional Administrator, Region IX, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105

Regional Administrator, Region X, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101

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Part IV

Department of Education

34 CFR Part 201

Migrant Education Program; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 201

Migrant Education Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes regulations implementing Subpart 1 of Part D, Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended, which provides financial assistance to State educational agencies to meet the special educational needs of migratory children. In implementing this program, the Secretary proposes to make applicable appropriate portions of the Education Department General Administrative Regulations (EDGAR).

DATES: Comments must be received on or before March 27, 1989.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Dr. John F. Staehle, Director, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2145, FOB #6, Washington, DC 20202–6135.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph P. Bertoglio, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2145, FOB #6, Washington, DC. 20202–6135. Telephone (202) 732–4758.

SUPPLEMENTARY INFORMATION:

Overview of the Reauthorization

On April 28, 1988, the President signed into law the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100–297. Principal themes of this new legislation are the promotion of access to quality education for educationally disadvantaged students and excellence in education for the Nation as a whole. In framing the legislation, Congress noted that Americans are becoming increasingly aware that enhancing educational opportunities is an investment in the future of the Nation. At the same time, there is recognition that anything less than a quality education for elementary and secondary students will have severe and far-reaching economic consequences, such as more expensive programs for remediating older students; deficiencies, retraining unskilled workers, forgone tax revenues, and lost productivity.

In keeping with these themes, Title I of the Hawkins-Stafford Act amends the Elementary and Secondary Education Act of 1965 (ESEA) to include a number of new and reauthorized Federal Education programs. One of these programs is Chapter 1 of Title II of the ESEA, which reauthorizes programs previously contained in Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA). Subpart 1 of Part D of Chapter 1, which these proposed regulations would implement, provides financial assistance to State educational agencies to meet the special educational needs of migratory children of migratory agricultural workers or migratory fishers. This assistance is provided to improve the educational opportunities of those children by helping them succeed in the regular program, attain grade-level proficiency, and improve their achievement in basic and more advanced skills.

In reauthorizing the Chapter 1 migrant education program, Congress retained the basic goals and structure of the program. However, the new law makes certain changes that affect the allocation of funds to each State, the content of State and local applications, the priority for services given to currently migratory children, the operation of the State program and local projects, and State and local evaluation procedures.

Specific Changes Required by the Reauthorization

State Allocations. Section 201.20 implements section 1201 of the Act, which changes the ages of migratory children who may be counted for purposes of the State allocation formula from ages 5 through 17 to ages 3 through 21. The proposed definition of "children" in § 201.3 is the same as the definition now in 34 CFR 204.2, which clarifies that migratory youth may be counted only until they graduate from high school.

Service Priorities. Section 201.31 implements section 1202(b) of the Act, which requires that all currently migratory children with special educational needs (regardless of age) be given priority for services over formerly migratory children, thereby eliminating the priority for program services (prior to reauthorization) of school-aged formerly migratory children over pre-school currently migratory children. With respect to services rendered to migratory preschool children, the Secretary proposes to retain the current interpretation that "instructional programs" for preschool children (§ 201.31(b)) include developmental activities.

Coordination With Other Programs. Section 201.34 implements section 1202(a)(2) of the Act, which expands the list of Federal programs with which the SEA's migrant education program and local projects must be coordinated. Programs with which coordination must be sought now include the High School Equivalency Program and the College Assistance Migrant Program authorized by the Higher Education Act, section 402 of the Job Training Partnership Act, the Education of the Handicapped Act, the Community Services Block Grant Act, the Head Start Program, the Migrant Health Program, and all other appropriate programs of the Departments of Education, Labor, and Agriculture. In addition, consistent with section 1012(b) of the Act, § 201.36(e) of the proposed regulations would require SEAs and subgrantees to provide time and resources for frequent and regular coordination of the migrant education program curriculum and that of the regular instructional program, and to maximize the coordination of migrant education program services with those provided to address the needs of children with limited English proficiency and handicapping conditions.

Relationship to requirements affecting the Chapter 1 local educational agency program. Section 1202(a)(3) of the Act maintains the existing statutory pattern in which Chapter 1 migrant education programs must be implemented in ways that are consistent with the basic objectives of several requirements for the Chapter 1 basic LEA grant program. Applicable portions of the Act include section 1011 (other than subsection (b)) on uses of funds, section 1012 on SEA and LEA assurances and applications, section 1014 on eligible children, including assessment of needs, section 1013 on fiscal requirements, and subpart 2 of Part F of the Act, which includes general provisions applicable to State administration. Where applicable, these proposed regulations incorporate these Chapter 1 provisions either by reference or by summarizing their content.

Definition of Formerly Migratory Children. Under previous legislation, children who once had been eligible to be counted as currently migratory could be counted or served as formerly migratory children only if they were found to be residing in areas served by a migrant education project. Because the new legislation omits this requirement, that provision has been deleted from the

definition of a formerly migratory child in § 201.3. Therefore, children who are no longer currently migratory would qualify as formerly migratory children for up to five years regardless of where they reside in the State.

Identification and Enumeration of Migratory Children. Section 1201 of the Act specifically includes, as eligible to be counted and served, children of migratory agricultural dairy workers. The proposed definition in § 201.3 has been modified to reflect this statutory language.

Section 1201(b) of the Act allows the SEA a five percent standard error rate in the "information" it submits to the Migrant Student Record Transfer System on migratory children. These proposed regulations implement this provision in two respects. Section 201.20(a) would clarify an SEA's entitlement to receive its full projected grant award, subject to the five percent leeway in the accuracy of its eligibility determinations for all children in the State whom it considers to be migratory. Section 201.30(c) would incorporate this five percent tolerance level in the system the SEA must maintain to ensure the correctness of its eligibility information.

Section 1201(b)(2) of the Act requires the Secretary to develop a national standard form for certifying migrant student eligibility. In an effort to improve current practices, the Department, in cooperation with Migrant Education Program Directors and other interested parties, has undertaken an effort to revise current nonregulatory guidance on the identification, recruitment, and documentation of eligible migratory children. The Department plans to develop and distribute a proposed standard certification form after publication of these regulations and after completion of the process to revise the nonregulatory guidance.

Parental Involvement. In accordance with section 1202(a)(4) of the Act, § 201.35(a) and (b) would continue the requirement that SEAs and LEAs establish and appropriately consult with parent advisory councils, but only for programs extending for the duration of the school year. In addition § 201.35(c) by requiring consistency with the requirements in 34 CFR 200.34, published October 21, 1988, in the **Federal Register** (53 FR 41466) reflects the statutory requirement that all migrant education programs and projects be carried out in a manner consistent with the parental involvement requirements for the Chapter 1 basic grant program for LEAs contained in section 1016 of the Act.

Annual Needs Assessment. In accordance with section 1014 of the Act, § 201.32 would be revised to require that children with the greatest special educational needs (including library resource needs) be identified on the basis of educationally related objective criteria that include uniformly applied written or oral testing instruments.

Exclusions from supplement-not-supplant and comparability requirements. In accordance with section 1018 of the Act, § 201.45 of the proposed regulations would continue to permit an LEA to exclude State and local funds spent for compensatory education in determining compliance with the supplement-not-supplant and comparability requirements. The Secretary would determine in advance whether a State program meets certain requirements in order to be excluded, and the SEA would make similar determinations for local programs.

State complaint procedures. Section 201.47 of the proposed regulations would require States to develop and implement procedures for resolving complaints at State and local levels. The Secretary has added this section in response to language in the conference report accompanying the Hawkins-Stafford Act recommending that the Secretary "issue amended regulations making 34 CFR 76.780–783 applicable to Chapter 1." H.R. Rept. 100th Cong., 2d Sess. 341 (1988). The Secretary has proposed, in a notice of proposed rulemaking, published August 18, 1988, in the **Federal Register** (53 FR 3180) to remove the complaint procedures from 76 and to retain those procedures only in regulations for the specific programs to which they apply. Rather than repeating the complaint provisions currently in Part 76, however, the Secretary has attempted in § 201.46 to implement the conferees' intent that States develop and implement procedures to resolve complaints while affording States maximum flexibility in tailoring those procedures to fit the needs of the State and its subgrantees.

Assignment of personnel to supervisory duties. In accordance with section 1453 of the Act, § 201.49 would limit to sixty minutes or one period per day the time that migrant education personnel may be assigned to supervisory duties. Time spent on supervisory duties could be calculated on a daily, weekly, monthly, or annual basis. The proposed regulations define supervisory duties to include supervision of halls, playgrounds, lunchrooms, study halls and other similar activities.

SEA's authority to regulate. In accordance with section 1451 of the act, proposed § 201.46 contains provisions related to State rulemaking authority. In satisfying the requirement in § 201.46(b)(5), relating to a committee of practitioners, an SEA may, but is not required to, use the same committee it uses for rulemaking under the basic Chapter 1 LEA grant program. In section 1202(a)(3) of the Act, Congress determined that SEAs were to administer and carry out their migrant education programs "consistent with the basic objectives" of subpart 2 of part F of Chapter 1, which includes section 1451(a)(2). Section 1451(a)(2) contains an express limitation on States' authority to regulate local school districts' decisions regarding various matters, such as grade levels to be served, basic skills areas to be addressed, and instructional materials to be used, as part of their Chapter 1 programs. The basic objective of this provision would appear to be prevention of unwarranted State intrusion into decisions traditionally left to the local school district.

However, under Section 1201 and 1202 of the Act, the SEA is responsible both for administering and operating the State's Chapter 1 program for migratory children under the terms of an approved state application. While section 1201(a) permits the SEA to perform this function through subgrants to LEAs or other operating agencies, it need not do so. Hence, regardless of whether it chooses to select an LEA to operate an individual migrant education program, the SEA is responsible for that program's operation.

The Secretary encourages SEAs to continue to provide LEAs and other local operating agencies with flexibility and discretion in as many aspects of their migrant education programs as is possible. Nevertheless, the SEA must be able to retain authority to establish rules and policies that legitimately relate to its statutory responsibility for administering and operating the state's migrant education program. This is particularly true in areas, statewide needs of migrant children (see, for example, proposed § 201.25(b) on amounts of a subgrant to an LEA) and intrastate and interstate coordination efforts where the SEA must implement a statewide program. Therefore, consistent with the basic objectives of section 1451(a)(2) of the Act, the Secretary proposes in § 201.46(c) to make the statutory limitations on the State rulemaking applicable to the Chapter 1 migrant education program except where the SEA needs to establish rules or policies to permit it to implement responsibilities under its

approved state application or the Chapter 1 statute or regulations.

Other Changes Proposed in the Regulations. The Secretary also proposes the following amendments to Part 201 that are needed to clarify existing regulations, to clarify or interpret statutory provisions, or to incorporate provisions from Part 204 (General Definitions and Administrative, Project, Fiscal, and Due Process Requirements for Chapter 1 Programs).

Evaluation. Section 1019(b) of the Act requires the SEA to evaluate the migrant education program, at least every two years, to inform the public of the results, and to report those results to the Secretary. The Secretary intends to establish and announce the timelines and related dates (program year) upon which evaluation data are to be collected annually for both the regular school year program and the summer school program for biennial submittal to the Secretary. The new legislation continues the requirement for annual State reporting on demographic data including race, age, gender, and number of children served by grade level and adds a requirement for reporting on the number of participating children with handicapping conditions. Section 1435 of the Act further requires SEAs to conduct evaluations in accordance with national standards and report the results to the Department of Education. Section 201.52 would clarify that SEAs are to submit their evaluation reports every two years.

Sections 201.51–201.57 of the proposed new Subpart E contain proposed general evaluation standards. While no specific evaluation models would be required, State and local evaluation procedures would have to be consistent with four general technical standards (§ 201.53). Grantees would continue to report on sustained gains, but, in accordance with the new legislation, would be required to do so only for those formerly migratory children who have been served in a full school year program for at least two years (§ 201.52).

Section 201.54 describes the composition of the nonproject comparison group that would be required, to the extent possible, by § 201.52(a)(2)(ii), and specifies that this requirement may be fulfilled through the use of appropriately normed achievement tests. Section 201.55 would allow for the submission of evaluation data based on representative samples which may include persons, schools, agencies, or projects. If the SEA proposes to use sampling, it would be required to submit the sampling plan to the Secretary for approval. Section 201.57 would require SEAs and LEAs to use the results of project evaluations for program improvement, while § 201.36 would require SEAs more specifically either to disapprove a project application if the project evaluation clarifies that the project is not making substantial progress toward meeting its educational goals, or to approve necessary changes in the project that will permit the SEA to meet those goals.

Additional guidance on the evaluation procedures and data to be submitted to the Secretary for the required report to Congress will be provided in both nonregulatory policy guidance and as part of a revised performance report form.

Child Residency Accrual at Special "Stop-over" Projects. Under the authority of § 201.20(a) of the current program regulations, the Secretary for many years has determined the amount of funds for which each SEA may apply on the basis of statistics or on the full-time-equivalent number of migratory children residing in each State that are generated by the Migrant Student Record Transfer System (MSRTS). SEAs may enroll identified migratory children in the MSRTS as of the date they became migratory residents of their States, consistent with the definitional criteria in § 201.3. Under current procedures these children are presumed to continue to be residents of those States for one year unless they are identified elsewhere.

Situations exist in which certain States operate migrant education projects in specific locations that are designed to permit project staff, among other things, to provide information to migrant parents on how to secure migrant education program services in the States to which they are moving. In doing so, the projects serve an important function. However, while the migrant parent or guardian may tell project staff that the child will be remaining at the project site for only a day or two while in transit to another State, project staff enroll the child as a migratory resident of their State on the basis of the move to the project site.

The Secretary has determined that permitting States to accrue migrant child residency credit under these circumstances seriously undercuts the integrity of the system by which migrant education program funds are distributed to each State. Since, at the time of their enrollment, parents or guardians have informed project staff of the likelihood that their children will soon leave the State, there is no logical basis for permitting that State to accrue more residency credit on their behalf. Moreover, these children "reside" in that State only in the sense that they stop briefly at the project site to receive project services while en route elsewhere.

Therefore, in § 201.20(a)(3), the Secretary proposes to require that if a State operates this form of migrant project and identifies children passing through the project in that State to another State as migratory residents of the project State, it may enroll those children in the MSRTS as residents of the project State only for the period of time the children are to remain at the project site. In the event the migratory child relocates elsewhere within the State while the child or his or her parents engage in temporary or seasonal agricultural activities, the child will be re-enrolled in the MSRTS.

Summer School Formula. Section 1201 of the Act continues the requirement that the Secretary adjust the full-time equivalent number of migratory children who reside in a State during the summer months to take into account the special needs of those children for summer programs and the additional costs of operating them. At the present time, SEAs receive a summer adjustment credit of one additional full-time equivalent migratory child for each 109 days that migratory students are enrolled in a summer project. For simplicity, the Department has wanted to avoid analyzing cost information relating to each summer migrant education project operated throughout the country. Therefore, use of this formula has assumed that each summer project warrants a commensurate increase in a State's allocation of program funds.

Information gathered from States around the country indicates that this assumption may not always be warranted. The Office of Migrant Education has learned of summer migrant education projects with organized programs of instruction that do not appear to warrant the full summer allocation adjustment based on the number of students participating in them. The Secretary believes that maintaining the current summer adjustment formula in this case distorts the summer adjustments on a national basis by placing SEAs that operate summer projects with extensive instructional components, and presumably higher costs, at a relative disadvantage to SEAs that do not.

In order to encourage SEAs to operate summer projects with extensive instructional components while continuing to provide SEAs flexiblity in the summer school programs they carry on, the Secretary proposes to amend § 201.20(b) by revising the existing

summer adjustment formula. Section 201.20(b) would establish a two-tier system for making summer adjustments in the basic allocation formula. Children participating in intensive summer projects, those with components of organized instruction for minimum daily or weekly durations, would continue to generate the same summer adjustment for their State as they do now. However, children participating in less intensive summer projects would generate an additional adjustment on the basis of one half an additional full-time equivalent migratory child for each 109 days that migratory students are enrolled in the summer project.

Amount of a Subgrant to an LEA. In the past, some States have used allocation formulas that distribute funds to local projects on the basis of the total number of migratory children, or the costs of projects to meet their special educational needs, without regard to whether those children are currently or formerly migratory. Given the emphasis the new statute places on first serving children who are currently migratory, the Secretary proposes to require SEAs, on a Statewide basis, to distribute program funds in ways that will place primary importance on meeting the needs of currently migratory children. Therefore, § 201.25 would require that the formula an SEA uses to determine the amount of a subgrant to an LEA or other operating agency reflect the priority the statute gives to serving first all currently migratory children in need of services.

Treatment of the Content of the SEA's Application. Section 1202(a) of the Act continues the requirement that the Secretary determine that an SEA's program and projects will meet enumerated statutory criteria before awarding an SEA a migrant education program grant. Section 201.12(a) of the current migrant education program regulations contains the list of existing requirements for a SEA's application. Rather than continue to repeat, in regulations, the application content requirements now contained in section 1202(a), the Secretary has determined that application forms specifying the statutorily required information will be prepared and distributed to all SEAs. Further, the remaining portions of § 201.12 concerning amending and updating applications have been incorporated into § 201.11. Therefore, the Secretary proposes to remove § 201.12.

Those portions of section 1202(a) that contain program requirements that are not addressed elsewhere in these proposed regulations are addressed in a proposed new § 201.36.

Applicability of EDGAR. As indicated in § 201.2(a), the Secretary proposes to make the relevant parts of EDGAR applicable to programs under this part. In making this proposal, the Secretary is responding to a need for additional guidance. During the six years that EDGAR has not been applicable to Chapter 1 of the ECIA, SEAs and LEAs have asked the Department numerous questions that are answered by the provisions in EDGAR. Moreover, without the benefit of the guidance in EDGAR, a number of States have incurred audit exceptions concerning fiscal control and fund accountability. The Secretary believes that making the relevant parts of EDGAR applicable to programs under this part will address the need for better guidance and accountability. Moreover, the Secretary does not believe this action will create additional burden for SEAs and LEAs because EDGAR is applicable to other State-administered Federal education programs and has recently been reviewed with respect to federalism issues and burden reduction, and unduly burdensome requirements have been revised or removed

Specifically, the Secretary proposes to apply Part 76 (State-Administered Programs), with certain exceptions: Part 77 (Definitions that Apply to Department Regulations); and Part 78 (Education Appeal Board). In addition, regulations implementing the new enforcement provisions in Part E of the General Education Provisions Act would apply when those regulations are promulgated. Further, the Secretary proposes in § 201.2(a)(4) to apply Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), unless a State formally adopts its own written fiscal and administrative requirements for expending and accounting for funds received by the SEA and its LEAs under this part. If a State does not have its own written requirements implemented by July 1, 1989, but wishes to develop them, the requirements in Part 80 would apply until such time as written requirements are formally adopted. If a State chooses to apply its own written requirements, those requirements must be available for Federal inspection. In a case where departmental officials determine that a State's requirements are not sufficient, the enforcement provisions in Part E of GEPA would apply, including the due process provisions in that part. During the transition period provided for in section 1491(c) of the Act (July 1, 1988–June 30, 1989), a State may continue to comply with the requirements under Chapter 1 of the ECIA. The Secretary specifically invites comments on § 201.2(a)(4).

Enforcement Procedures. Section 3501 of the Hawkins-Stafford Act amended Part E of GEPA to provide for new enforcement procedures. The amended Part E requires the Secretary to establish an Office of Administrative Law Judges (OALJ) to replace the existing Education Appeal Board and sets out new hearing procedures. 20 U.S.C. 1234–1234i. With the exception of provisions regarding withholding actions and judicial review of those actions, which are superseded by sections 1433 and 1434 of the Act, Part E applies to the Chapter 1 Migrant Education Program. As a result, appeals from cost disallowance decisions, received by an SEA on or after October 25, 1988, as well as most other enforcement proceedings under the Chapter 1 Migrant Education Program, will be heard by the OALJ. Proposed regulations implementing Part E will address whether withholding actions under the Chapter 1 Migrant Education Program will also be heard by the OALJ. The Education Appeal Board will continue to hear appeals from determinations under the Chapter 1 Migrant Education Program received before October 25

Proposed Removal of Part 204. The current Part 204 contains general definitions and administrative requirements that apply to all programs that were authorized by Chapter 1 of the ECIA. The Secretary has proposed in the NPRM for the Chapter 1 basic grant program for LEAs to remove Part 204 and to incorporate its provisions in the regulations governing each individual program authorized by Chapter 1 of the ESEA in order to make those regulations more self-contained and easily understood. For the migrant education program, the incorporated provisions are reflected in § 201.2 "Regulations that apply," and in § 201.3 "Definitions for this program." Proposed §§ 201.41 through 201.50 contain several of the administrative and fiscal provisions formerly contained in the removed Part 204, such as maintenance of effort, supplement-not-supplant, comparability and other generally applicable provisions.

Maintenance of effort. Sections 1202(a)(3) and 1018 of the Act reaffirm Congress' intent that migrant education programs and projects are to be administered in a manner that is consistent with the basic objectives of the basic Chapter 1 LEA grant program's maintenance of effort requirement.

Under the Chapter 1 LEA grant program, an SEA must proportionately reduce the allocation of a LEA that failed to maintain fiscal effort. However, unlike the LEA grant program, the migrant education program is State rather than locally administered. Since the SEA itself is responsible for implementing programs for migratory children throughout the State, and the SEA unilaterally determines the subgrant amount for each LEA's migrant education project, LEAs receive migrant education program funds at the discretion of the SEA.

Consequently, because requiring the SEA proportionately to reduce the amount of a LEA's discretionary subgrant for the LEA's failure to maintain fiscal effort seems to be inconsistent with the SEA's primary responsibility for establishing programs and projects for the State's migratory children, the Secretary believes that the maintenance of effort requirement should be enforced differently for the migrant education program than it is for the basic Chapter 1 LEA grant program.

One of the basic objectives of the requirement is the encouragement of an LEA's maintenance of fiscal effort through an imposed reduction in the amount of its project funds if it fails to maintain effort. Consistent with this objective, the Secretary proposed in § 201.41 to require an SEA to reduce by 50 percent the amount of migrant education program funds LEAs that fail to maintan fiscal effort may charge to indirect costs. The Secretary proposes to use the indirect cost component of a LEA's subgrant because, like the LEA's fiscal effort, it is directly linked to overall expenses the LEA incurs. The Secretary proposes a 50 percent reduction in a LEA's allowable indirect costs for its failure to maintain effort in order to underscore the importance that Congress has placed on the maintenance of effort requirement.

Comparability. Sections 1018(b) and 1202 of the Act also retain the existing requirement that the basic objective of the comparability requirement for the basic Chapter 1 LEA grant program apply to the migrant education program.

The Secretary proposes to implement this requirement in § 201.44 by adopting proposed 34 CFR 200.43 from the basic Chapter 1 LEA grant program NPRM, with necessary modifications that reflect the difference between the way LEAs and SEAs select participating children for migrant education programs and the way they select children for the basic Chapter 1 LEA grant program. The proposed § 201.44 relies on the adoption by LEAs of district-wide salary schedules and policies to ensure that they provide children receiving migrant education program services with levels of LEA provided staff and curriculum materials that are equivalent to those received by other children. In addition, proposed § 201.18 would require that before an SEA approves an LEA's application for a subgrant, the SEA determines that the LEA's policies, if implemented, would result in comparability and that the LEA has maintained fiscal effort.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are classified as major because they do not meet the criteria for major regulations established in the order.

Executive Order 12606

The Secretary certifies that these proposed regulations have been reviewed in accordance with Executive Order 12606 and that they do not have a significant negative impact on family formation, maintenance, and general well-being. To the contrary, the Chapter 1 Migrant Education Program supports and strengthens the family by containing strong parental involvement requirements. Specifically, an SEA and its LEAs must develop, in coordination with parents of participating children in regular school year programs, activities and procedures to: inform parents about the Chapter 1 migrant education program; support the efforts of parents, including training parents to work with their children at home; train teachers and other staff to work effectively with parents; consult with parents on an ongoing basis; and provide opportunities for full participation of parents who lack the literacy skills or whose native language is not English. Migrant education funds may be used to support these activities.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Because these proposed regulations would affect States and State agencies, the regulations would not have an impact on small entities. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

The small entities that would be affected by these proposed regulations are small LEAs receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 201.17, 201.25, 201.30, 201.35, 201.44, 201.47, 201.51, 201.52, 201.55, and 201.56, contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

(44 U.S.C. 3504(h))

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, D.C. 20503; Attention: James D. Houser.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposal Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposal regulations will be available for public inspection, during and after the comment period, in Federal Office Building 6, Room 2145, 400 Maryland Avenue, SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subject, in 34 CFR Part 201

Children, Coordination, Education, Eligibility, Evaluation, Grant program education, Identification and recruitment, Local educational agencies, Migrant student record transfer system, Migratory children, Migratory Workers, Needs assessment, Priorities, Reporting and recordkeepting requirements, Special educational needs, State educational agencies, Subgrants.

Dated: January 19, 1989

(Catalog of Federal Domestic Assistance Number 84.011—Migrant Education Basic State Formula Grant Program)

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Part 201 as follows:

1. The title, table of contents, and authority citation for Part 201 are revised to read as follows:

PART 201—CHAPTER 1—MIGRANT EDUCATION PROGRAM

Subpart A—Applying for Chapter 1 Migrant Education Programs Funds

Authority: 20 U.S.C. 2781–2782, unless otherwise noted.

2. In § 201.1, paragraph (a) is amended by adding "(including migratory agricultural dairy workers)" after the word "workers" and the undesignated introductory text and authority citation are revised to read as follows:

§ 201.1 Purpose.

The migrant education program, authorized by sections 1201–1202 of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 is designed to—

* * * * *

(Authority: 20 U.S.C. 2781)

3. Section 201.2 is revised to read as follows:

§ 201.2 Regulations that apply.

The following regulations apply to the Chapter 1—Migrant Education Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 76 (State-Administered Programs) as follows:

(i) Subpart A (General).

(ii) Section 76.125 through 76.137 (Consolidated Grant Applications for Insular Areas).

(iii) Section 76.401 (Disapproval of an application—opportunity for a hearing).

(iv) Subpart F (What Conditions Must be Met by the State and its Subgrantees?), except for §§ 76.650 through 76.662 (Participation of Students Enrolled in Private Schools).

(v) Subpart G (What Are the Administrative Responsibilities of the State and Its Subgrantees?), except for § 76.772 (Other responsibilities of the State).

(vi) Subpart H (What Procedures Does the Secretary Use to Get Compliance?).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 78 (Education Appeal Board).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), unless a State formally adopts its own written fiscal and administrative requirements for expanding and accounting for all funds received by SEAs and LEAs under this part. These requirements must be available for Federal inspection and must—

(i) Be sufficiently specific to ensure that funds received under this part are used in compliance with all applicable statutory and regulatory provisions;

(ii) Result in the efficient and effective administration of programs under this part;

(iii) Ensure that funds received under this part are only spent for reasonable and necessary costs of operating programs under this part; and

(iv) Ensure that funds received under this part are not used for general expenses required to carry out other responsibilities of State or local governments.

(5) 34 CFR Part 81 (GEPA-Enforcement).

(b) The regulations in this part 201.

(Authority: 20 U.S.C. 2781, 2831)

4. In § 201.3, new paragraph (a) is substituted for the existing paragraph (a), and paragraph (b) is amended by adding new introductory language; in the definition of "Formerly migratory child", the word "and" is added at the end of paragraph (1), paragraph (2) is removed, and paragraph (3) is redesignated as paragraph (2); the definition of "Migratory agricultural worker" is revised by adding the words "(including dairy work)" before the period at the end of the definition; new definitions for "Act", "Chapter 1", "Children", "Fiscal Year", and "Preschool Children" are added in alphabetical order; and the authority citation is revised to read as follows:

§ 201.3 Definitions for this program.

(a) *Definitions in the Elementary and Secondary Education Act.* The following

terms used in this part are defined in section 1471 of the Act:

Equipment
Free public education
Local educational agency (LEA)
Parent
Parent advisory council
Secretary
State education agency (SEA)

(b) *Other definitions.* In addition to the terms defined in the applicable regulations listed in § 201.2, or referred to in paragraph (a) of this section, the following definitions also apply to this part:

* * * * *

"Act" means Elementary and Secondary Education Act of 1965, as amended.

"Chapter 1" means Chapter 1 of Title I of the Act.

"Children" means—

(1) Persons up through age 21 who are entitled to a free public education through grade 12; and

(2) Preschool children.

"Fiscal Year" means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30—or another 12-month period normally used by the SEA for recordkeeping.

* * * * *

"Preschool children" means children who are—

(1) Below the age and grade level at which the agency provides free public education; and

(2) Of the age or grade level at which they can benefit from an organized instructional program provided in a school or instructional setting.

(Authority: 20 U.S.C. 2781, 2782, 2831)

5. The authority citation for § 201.10 is revised to read as follows:

(Authority: 20 U.S.C. 2781)

6. Section 201.11 is amended by redesignating paragraph (b) as (c) and revising the second sentence of redesignated paragraph (c) to read: "During subsequent years, the SEA's application must incorporate any updating reports arising from significant changes in the number or needs of children to be served, or the services to be provided.", by revising paragraph (a), adding new paragraphs (b) and (d), and revising the authority citation to read as follows:

§ 201.11 Documents an SEA must submit to receive a grant.

(a) *General.* An SEA that wishes to receive funds under this part for an SEA program designed to meet the special educational needs of migratory children shall submit and annually update an application to the Secretary that meets the requirements in section 1202(a) of the Act.

(b) *SEA assurances.* The SEA shall also provide assurances, which will remain in effect for the duration of its participation in the program under this part, that the SEA will—

(1) Meet the requirements in Section 435( ) (2) and (5) of the General Education Provisions Act (GEPA) as they relate to fiscal control and fund accounting procedures;

(2) Meet the requirements of Section 1202(a)(5) of Chapter 1 regarding when preschool children may be served;

(3) Carry out the evaluation requirements in §§ 201.51 through 201.56;

(4) Ensure that its subgrantee agencies comply with all applicable statutory and regulatory requirements.

* * * * *

(d) *Further updating of information in the application.* If, during the course of the project year, there are significant changes in number or needs of the children to be served or the services to be provided, the SEA shall submit a description of those changes to the Secretary together with the impact of the changes on the Chapter 1 migrant education budget, program and projects.

(Authority: 20 U.S.C. 1232d(b) (2), (5), 2722, 2729(b), 2781, 2782, 2731, 2838(c))

§ 201.12 [Removed]

7. Section 201.12 is removed.

8. The authority citation for § 201.13 is revised to read as follows:

(Authority: 20 U.S.C. 2781, 2782)

§ 201.16 [Amended]

9. Section 201.16 is amended by adding "developed in consultation with teachers and parents, and that is" before the word "specific" and revising the authority citation to read as follows:

(Authority: 20 U.S.C. 2722, 2781)

10. Section 201.17 is amended by revising paragraphs (b)(1), (b)(3), (b)(4), (c)(1), and the authority citation to read as follows:

§ 201.17 Submission of an LEA's project application to the SEA.

* * * * *

(b) * * *

(1) Information consistent with section 1012(b) of Chapter 1 regarding—

(i)(A) The LEA's separate annual assessments of the educational needs of its currently and formerly migratory children; and

(B) The general instructional program goals the LEA has established to meet the needs of those children in greatest need for migrant education program services;

(ii) A description of the local Chapter 1 migrant education project to be conducted; and

(iii) A description of the desired outcomes in terms of basic and more advanced skills that participating children are expected to master and in terms of related support services the LEA will provide.

* * * * *

(3) The assurances in section 1012(c) of Chapter 1 including the program requirements in §§ 201.35 and 201.36;

(4) The assurances in section 436 (b)(2) and (b)(3) of GEPA as they relate to fiscal control and fund accounting procedures; and

* * * * *

(c) * * *

(1) Data showing that the LEA has maintained fiscal effort under § 201.41;

* * * * *

(Authority: 20 U.S.C. 2722, 2781, 2782)

11. Section 201.18 is amended by revising pargraph (a) and the authority citation to read as follows:

§ 201.18 Approval of an LEA's project application for a subgrant.

(a) *Standards for approval.* (1) An SEA may approve an LEA's application for a subgrant only if it complies with the requirements in the Chapter 1 statute, the applicable regulations, and the provisions of the approved SEA application.

(2) Before approving an LEA's application for a subgrant, the SEA also determines that—

(i) The LEA has maintained fiscal effort in accordance with § 201.41 and § 201.42; and

(ii) The LEA's salary schedule and policies under § 201.44(b), if implemented, would result in compliance with the comparability requirement in that section.

* * * * *

(Authority: 20 U.S.C. 2781, 2782, 2831)

12. Section 201.20 is amended by removing "141 of Title I" in paragraph (a)(1), and adding, in its place, "1201 of Chapter 1 and the funds appropriated for grants to States under that section.", removing "141(b)(1) of Title I" in paragraph (a)(2) and adding, in its place, "1201(b)(1) of Chapter 1", removing "children aged five to seventeen" in paragraph (a)(2) and adding, in its place, "children (as defined in § 201.3) aged three through twenty-one", adding the sentence "In submitting such data the SEA shall not exceed a standard error rate of more than 5 percent in the total number of children (full or part-time) identified in accordance with the provisions of § 201.30 (a)" at the end of

paragraph (a)(2), and adding a new paragraph (a)(3), and revising paragraph (b) and the authority citation to read as follows:

§ 201.20 Amount available for an SEA grant.

(a) * * *

(3) If an SEA operates a project in a specific location of the State that is designated to assist migratory children while they are en route, alone or with members of their immediate families, to other locations, the SEA may enroll the child in the MSRTS or other system of records as a resident of the State only for the limited period the child resides at the project site.

Special summer formula. (1)(i) The Secretary uses the formula in paragraphs (a)(3) and (4) of this section to adjust the full-time equivalent (FTE) number of migratory children who are in a State during the summer months to reflect—

(A) The special educational needs of migratory children for summer programs; and

(B) The expected additional costs of operating those projects compared to the costs of operating programs for children in the regular school year.

(ii) In making this adjustment, the Secretary determines—

(A) The FTE number of children who, on the basis of the best available information from the MSRTS, or other system, are participating in the State's summer programs; and

(B) The duration of their particiaption.

(2) An SEA may not enroll a child in the MSRTS or similar system for the purpose of the adjustment referred to in paragraph (b)(1) of this section unless the child is participating, during the 109 day period between May 15 and August 31, in an organized program of instruction that is not part of the regular school year program.

(3) An SEA receives one adjusted FTE for every 109 days that migratory children, in the aggregate, participate in the State's intensive summer school program of instruction. For purposes of this section, an intensive summer school program of instruction is one that is operated for at least 3 hours per day or 15 hours per week during the 109 day eligibility period.

Example: A migratory child is enrolled in an organized fourth grade reading program provided in the classroom setting 15 hours each week from June 1 through June 30. The child would earn for the SEA program .275 FTE (30 days divided by 109 days).

(4) An SEA receives one-half of an adjusted FTE for every 109 days that migratory children, in the aggregate, participate in any other summer school program of instruction.

Example: A migratory child is enrolled from June 1 through June 30 in a self-paced supplemental reading program which is monitored by periodic meetings with the teacher, possibly weekly. The child in this situation would earn for the SEA program .138 FTE (15 days divided by 109 days).

(5) The Secretary determines annually the FTE number of migratory children participating in a State's summer program as described in paragraphs (b)(2), (3), and (4) of this section and adds that number to the number of migratory children who resided in the State full-time and the FTE number of migratory children who resided in the State part-time during the calendar year preceding the July 1 on which the funds to be allocated will become available. For example, the number of children counted for allocation purposes in calendar year 1988, including the number added because of participation in summer school programs of instruction, is the number used in determining, in accordance with section 1201 of Chapter 1, the amount of each State's allocation from the fiscal year 1989 funds available on or after July 1, 1989.

* * * * *

(Authority: 20 U.S.C. 2781, 2782, 2831)

§ 201.21 [Amended]

13. In § 201.21, paragraph (b)(2) is amended by removing "554(a)(2) of Chapter 1 or Section 141 of Title I" and adding in its place, "1201 of Chapter 1" and the authority citation is revised to read as follows:

(Authority: 20 U.S.C. 2781, 2782)

§ 201.22 [Amended]

14. The authority citation for § 201.22 is revised to read as follows:

(Authority: 20 U.S.C. 2781, 2782)

15. Section 201.23 and the authority citation are revised to read as follows:

§ 201.23 Amount available for State administration.

Funds for State administration. (a) Except for programs under Part C of Chapter 1 and as provided in paragraph (b) of this section, an SEA shall use funds received under section 1404(a) of the Act for the proper and efficient performance of its duties under Chapter 1.

(b) The SEA may not use more than 15 percent of the funds referred to in paragraph (a) of this section for indirect costs.

(Authority: 20 U.S.C. 2781, 2782, 2824)

§ 201.24 [Amended]

16. The authority citation for § 201.24 is revised to read as follows:

(Authority: 20 U.S.C. 2782)

17. Section 201.25 is revised to read as follows:

§ 201.25 Amount of a subgrant to an LEA.

(a) An SEA shall determine the amount of a subgrant to an LEA or other operating agency based on—

(1) the number of currently migratory children with identified special educational needs who reside within the area by the LEA or other agency in sufficient concentrations to warrant implementation of a migrant education project designed to meet their needs;

(2) The nature, scope, and cost of the proposed project designed to meet the needs of these currently migratory children;

(3) The availability of migrant education funds to meet the identified special educational needs of formerly migratory children residing in or within the area served by the LEA or other agency, after the SEA has considered the costs of operating projects throughout the State that are designed to meet the needs of currently migratory children; and

(4) The availability of funds from other sources.

(b) In subgranting funds to LEAs or other operating agencies to meet the needs of their currently migratory children in accordance with paragraph (a) of this section, the SEA may develop other relevant criteria. These criteria may include the SEA's priorities concerning ages, grade levels of children to be served, areas of the State to be served, and types of services to be provided.

(Authority: 20 U.S.C. 2731, 2782, 2831)

18. Section 201.30 is amended by redesignating the last sentence of paragraph (b) as paragraph (c), removing "However, the" from the redesignated paragraph (c), adding, in its place, "The", adding a sentence to the end of paragraph (c), and revising the authority citation to read as follows:

§ 201.30 Eligibility of a child to participate.

* * * * *

(c) * * * The SEA shall ensure that the information is recorded on a certificate of eligibility developed by the Secretary to contain the minimally needed documentary information. The Secretary considers the State's count of its eligible migratory children, and the total number of days of eligibility those children accrue for the State, to be correct if the standard error rate of five (5) percent of

the total number of children determined to be eligible is not exceeded.

(Authority: 2781, 2782, 2831)

19. Section 201.31 is revised to read as follows:

§ 201.31 Service priorities.

(a) Children (aged 3 through 21) who have been determined to be currently migratory shall be given priority over formerly migratory children in receipt of services provided in all programs and activities that the SEA, LEA, or other operating agency offers.

(b) If, in order to provide migrant education instructional services to preschool and regular school-aged currently migratory children, it would be necessary to provide day care or similar services to children aged two years or younger who are currently migratory children (or migrant education preschool services to currently migratory children three years of age or over who are not enrolled in instructional programs), and no funds—except Chapter 1 Migrant Education Program funds—are available for that purpose, an SEA or an operating agency may provide day care services to those children as if those children had a higher priority than formerly migratory children.

(Authority: 20 U.S.C. 2782)

20. Section 201.32 is amended by removing the words "shall base their" in the introductory text and adding, in their place, "shall design and improve their", redesignating paragraph (c) as paragraph (d), adding "(and library resource needs)" after the words "educational needs" in redesignated paragraph (d), adding a new paragraph (c), and revising paragraph (b), redesignated paragraph (d), and the authority citation to read as follows:

§ 201.32 Annual needs assessment.

* * * * *

(b) Identifies the general instructional areas on which the program will focus;

(c) Selects those educationally deprived children, consistent with the service priorities in § 201.31, who have the greatest need for special assistance as identified on the basis of educationally related objective criteria that include written or oral testing instruments, which are uniformly applied to particular grade levels; and

(d) Determines the educational needs (and library resource needs) of the children selected to participate with sufficient specificity to ensure concentration on those needs.

(Authority: 20 U.S.C. 2724, 2782)

§ 201.33 [Removed]

21. Section 201.33 is removed.

§ 201.34 [Amended]

22. Section 201.34 is amended by removing the words "Section 402 of the Job Training Partnership Act of 1982 and under the Community Services Block Grant Act of 1981," and adding, in their place, the words "section 418A of the Higher Education Act, section 402 of the Job Training Partnership Act, the Education of the Handicapped Act, the Community Services Block Grant Act, the Head Start Program, the Migrant Health Program, and all appropriate programs of the Departments of Education, Labor, and Agriculture", and revising the authority citation to read as follows:

(Authority: 20 U.S.C. 2782)

23. Section 201.35 is revised to read as follows:

§ 201.35 Requirements for parent involvement.

(a) *General.* An agency that receives Chapter 1 migrant education program funds shall design and implement its program or project in consultation with the parents of the children being served, and shall implement programs, activities, and procedures for the involvement of parents in such programs.

(b) *Parent advisory councils.*

(1) State and local agencies implementing programs extending for the duration of the school year shall establish a parent advisory council. The council must have a majority of members who are parents (or guardians) of children to be served by the migrant education program or projects and, wherever feasible, who are elected by the parents of children to be served;

(2) The SEA shall establish procedures to ensure that—

(i) The SEA and the State's operating agencies appropriately consult with, and solicit information from, councils representative of parents of migratory children in the planning, operation, and evaluation of a program or local project; and

(ii) Compliance with this provision at the State and local levels is documented annually in the State or local agency's application for funds or updating information.

(c) *Parental involvement.* Each SEA and operating agency must, in a manner consistent with 34 CFR 200.34, involve parents in meaningful consultation in the design and implementation of the programs and projects.

(Authority: 20 U.S.C. 2726, 2782)

24. In Subpart C a new § 201.36 is added to read as follows:

§ 201.36 General program requirements.

In developing and implementing its migrant education program and projects, the SEA shall ensure that—

(a) The children selected for services are those who have the greatest need for special assistance (as identified on the basis of educationally-related objective criteria), and the special educational needs of these children are sufficiently specified to permit the SEA to concentrate on meeting those needs;

(b) The size, scope, and quality of the program and projects offered are sufficient to give reasonable promise of substantial progress toward meeting the special educational needs of the migrant children being served;

(c) The results of evaluations will be used to improve the provision of services to eligible migrant children by either—

(1) Disapproving an application to continue a project in a succeeding year if the project is not making substantial progress toward meeting the educational goals of the project and this part; or

(2) Approving changes in the project that will enable the SEA to meet those goals;

(d) Services will be provided to eligible migratory children enrolled in private schools in accordance with the basic objectives of section 1017 of the Act;

(e) The SEA will allocate time and resources for frequent and regular coordination of the curriculum under the migrant education program with the regular instructional program; and

(f) In the case of children participating in the migrant education program who are also of limited English proficiency or are handicapped—

(1) The SEA will provide maximum coordination between services provided under the migrant education program and other services that are provided to address children's handicapping conditions or limited English proficiency; and

(2) The SEA's coordination activities will be designed to increase program effectiveness, eliminate duplication, and reduce fragmentation of services for migratory children.

(Authority: 20 U.S.C. 2722, 2724, 2729, 2782, 2831)

25. A new Subpart D containing §§ 201.40 through 201.50, inclusive, is added to Part 201 to read as follows:

Subpart D—Administrative and Fiscal Requirements

§ 201.40 Prohibition against using Chapter 1 funds to provide general aid.

An LEA or other operating agency that has received assistance from an SEA may use Chapter 1 funds provided under this part only for projects that are designed and implemented to meet the special educational needs of migratory children who are identified and selected for services in accordance with the provisions in this part.

(Authority: 20 U.S.C. 2781, 2782)

§ 201.41 Maintenance of effort.

(a)(1) *Basic standard.* Before an SEA may provide an LEA a subgrant for the operation of a migrant education project, the SEA must find either that the LEA's combined fiscal effort per student or its aggregate expenditures of State and local funds with respect to the provision of free public education for the preceding fiscal year was not less than 90 percent of the LEA's combined fiscal effort per student or the aggregate expenditures of State and local funds for the second preceding fiscal year.

(2) *Meaning of preceding fiscal year.* For purposes of determining maintenance of effort, the "preceding fiscal year" is the Federal fiscal year, or 12-month period most commonly used in a State for official reporting purposes, prior to the beginning of the Federal fiscal year in which funds are available.

Example: For funds first made available on July 1, 1989, if a State is using the Federal fiscal year, "the preceding fiscal year" is the Federal fiscal year 1988 (which began on October 1, 1987) and the "second preceding fiscal year" is fiscal year 1987 (which began on October 1, 1986). If a State is using a fiscal year that begins on July 1, 1989, the "preceding fiscal year" is the 12-month period ending on June 30, 1988 and the "second preceding fiscal year" is the period ending on June 30, 1987.

(3) *Expenditures*—(i) *To be considered.* In determining an LEA's compliance with the maintenance of effort requirement, the SEA shall consider the LEA's expenditures from State and local funds for free public education. These include expenditures for administration, instruction, attendance, health services, pupil transportation, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food services and student body activities.

(iii) *Not to be considered.* The SEA shall not consider the following expenditures in determining the LEA's compliance with the maintenance of effort requirement:

(A) Any expenditures for community services, capital outlay, or debt service.

(B) Any expenditures made from funds provided under Chapter 1 and Chapter 2 of Title I of the Act or Chapter 1 and Chapter 2 of the ECIA.

(b) *Failure to maintain effort.* (1) If an LEA fails to maintain effort as provided in paragraph (a) of this section, and a waiver under § 201.42 is not granted, the SEA shall reduce the LEA's subgrant with respect to the amount allowed for its indirect costs under 34 CFR 76.563 by 50 percent.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year in which the LEA failed to maintain effort, the SEA shall consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year.

Example: In Federal fiscal year 1990, an LEA fails to maintain effort because its fiscal effort in the preceding fiscal year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987). In assessing whether the State maintained effort during the next fiscal year (1991), the SEA may consider the LEA's fiscal effort in the second preceding fiscal year (1988) (the year that caused the LEA's failure to maintain effort) to be no less than 90 percent of the LEA's expenditure in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2728, 2782, 2831)

§ 201.42 Waiver of the maintenance of effort requirement.

(a)(1) An SEA may waive, for one fiscal year only, the maintenance of effort requirement applying to an LEA in § 201.41, if the SEA determines that a waiver would be equitable due to exceptional or uncontrolled circumstances. These circumstances include, but are not limited to, the following:

(i) A natural disaster.

(ii) A precipitous and unforeseen decline in the financial resources of the LEA.

(2) An SEA may not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(b)(1) If the SEA grants a waiver under paragraph (a) of this section the SEA shall not reduce the amount of migrant education funds the LEA is otherwise entitled to receive.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the SEA shall consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year.

Example: In fiscal year 1990, an LEA secures a waiver because its fiscal effort in the preceding fiscal year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987) due to exceptional or uncontrollable circumstances. In assessing whether the LEA maintained effort during the next fiscal year (1991), the SEA may consider the LEA's expenditures for the second preceding fiscal year (1988) (the year for which the LEA needed a waiver) to be no less than 90 percent of the LEA's expenditures in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2728, 2782, 2831)

§ 201.43 Supplement not supplant.

(a) Except as provided in § 201.45, an agency that receives migrant education funds under this part may use those funds only to supplement and, to the extent practical, increase the level of non-Federal funds that would, in the absence of migrant education funds, be made available for the education of pupils participating in migrant education projects, and in no case may migrant education funds be used to supplant those non-Federal funds.

(b) To meet the requirement in paragraph (a) of this section, an LEA is not required to provide services under this part through the use of a particular instructional method or in a particular instructional setting.

(Authority: 20 U.S.C. 2728, 2782, 2831)

§ 201.44 Comparability.

(a) Except as provided in paragraph (b) of this section and § 201.45, an LEA may receive migrant education funds only if the LEA uses State and local funds to provide services to students receiving migrant education program services that, taken as a whole, are at least comparable to services being provided to students in the same grades who are not receiving migrant education programs funds; or

(b)(1) To meet the comparability requirements in paragraph (a) of this section, an LEA shall—

(i) Establish and implement—

(A) A district-wide salary schedule;

(B) A policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and

(C) A policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies;

(ii) Develop written procedures to ensure compliance with paragraph (a) of this section.

(iii) Maintain annual records documenting compliance with paragraph (a) of this section.

(2) In determining compliance with paragraph (a) of this section, an LEA does not need to consider unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year.

(c)(1) In accordance with the rulemaking requirements in § 201.46 of these regulations, an SEA may establish standards to ensure that an LEA's policies under paragraph (b)(1)(i)(B) and (C) of this section result in the provision of equivalent staffing, materials, and supplies among the schools of the LEA.

(2) In the absence of standards established by the SEA, an LEA shall establish standards, approved by the SEA under § 201.18, to ensure that the policies required under paragraph (b)(1)(i)(B) and (C) of this section result in the provision of equivalent staffing, materials, and supplies among the schools of the LEA.

(d)(1) The SEA shall monitor each LEA's compliance with the comparability requirements.

(2) If an LEA is found not to be in compliance with the comparability requirements, the amount to be withheld or repaid is the amount or percentage by which the LEA failed to comply with the standards established under paragraph (c) of this section.

(Authority: 20 U.S.C. 2728(c), (d), 2782, 1831)

§ 201.45 Excluding special State and local funds from supplement-not-supplant and comparability determinations.

(a) *General rule.* (1) For the purpose of determining compliance with the supplement-not-supplant requirement in § 201.43 and the comparability requirement in § 201.44, an LEA may exclude State and local funds spent in carrying out the following types of programs:

(i) Special State programs designed to meet the special educational needs of migratory children, including compensatory education for migratory children, that the Secretary has determined in advance under paragraph (b) of this section meet the requirements in section 1018(d)(1)(B) of the Act.

(ii) Special local programs designed to meet the special educational needs of migratory children, including compensatory education for migratory children, that the SEA has determined in advance under paragraph (c) of this section meet the requirements in section 1018(d)(1)(B) of the Act.

(2) For the purpose of determining compliance with the comparability requirements in § 201.44 only, an LEA may also exclude State and local funds spent in carrying out the following types of programs:

(i) Bilingual education for children of limited English proficiency.

(ii) Special education for handicapped children.

(iii) State phase-in-programs that the Secretary has determined in advance under paragraph (b) of this section meet the requirements in section 1018(d)(2)(B) of the Act.

(b) *Secretarial determination regarding State programs.* (1) In order for an LEA to exclude State and local funds spent on State programs under paragraphs (a)(l)(i) and (2)(iii) of this section, an SEA shall request the Secretary to make an advance determination of whether—

(i) A special State program under paragraph (a)(1) of this section meets the requirements in section 1018(d)(1)(B) of the Act; and

(ii) A State phase-in program under paragraph (a)(2)(iii) of this section meets the requirements in section 1018(d)(2)(B) of the Act.

(2) Before making the determination, the Secretary requires the SEA to submit copies of the State law and implementing rules, regulations, orders, guidelines, and interpretations that the Secretary may need to make the determination.

(3) The Secretary makes the determination in writing and includes the reasons for the determination.

(4) If there is any material change in the pertinent State law affecting the program, the SEA shall submit those changes to the Secretary.

(c) *SEA determination regarding local programs.* (1) In order for an LEA to exclude State and local funds spent on a special local program under paragraph (a)(1)(ii) of this section, the LEA shall request the SEA to make an advance determination of whether that program meets the requirements in section 1018(d)(1)(B) of the Act.

(2) Before making a determination, the SEA shall require the LEA to submit copies of the State law and implementing rules, regulations, orders, guidelines, and interpretations that the SEA may need to make the determination.

(3) The SEA shall make the determination in writing and include the reasons for its determination.

(4) If there is any material change in the pertinent local requirements affecting the program, the LEA shall submit those changes to the SEA.

(Authority: 20 U.S.C. 2728 (b), (c), (d), 2782)

§ 201.46 State rulemaking and other SEA responsibilities.

(a) An SEA is responsible for ensuring that the agencies that receive Chapter 1 Migrant Education Program funds in the State comply with all statutory and regulatory provisions applicable to Chapter 1.

(b)(1) Except as provided in paragraph (c) of this section, Chapter 1 does not preempt, prohibit, or encourage State rules, regulations, or policies issued pursuant to State law.

(2) If a State issues rules, regulations, or policies, they may not be inconsistent with the provisions of the following:

(i) The Chapter 1 statute.

(ii) The regulations in this part.

(iii) Other applicable Federal statutes and regulations.

(iv) The SEA application approved under § 201.13.

(c) Unless needed to implement SEA responsibilities in its approved State application or in the Chapter 1 statute or regulations, a State may not issue rules, regulations, or policies that limit LEAs' decisions affecting funds received under this part regarding—

(1) Grade levels to be served;

(2) Basic skill areas to be addressed;

(3) Instructional settings, materials, or teaching techniques to be used;

(4) Instructional staff to be employed, so long as the staff meets State certification and licensing requirements for education personnel; or

(5) Other essential support services.

(d) Nothing in paragraph (c) of this section limits the SEA's authority to review and approve an LEA's or operating agency's application or to ensure that the use of Chapter 1 Migrant Education Program funds is in accordance with all applicable requirements.

(e) The imposition of any State rule or policy relating to the administration and operation of Chapter 1 Migrant Education Program, including those based on State interpretation of any Federal law, regulation, or guideline, shall be identified as a State imposed requirement.

(f)(1) If a State issues rules or regulations relating to the administration and operation of the Chapter 1 Migrant Education Program, a State committee of practitioners shall review before publishing—

(i) Any proposed rule or regulation, if one is required under State law; or

(ii) Any final rule or regulation if a proposal rule or regulation is not required by State law.

(2) The State is encouraged to convene the committee of practitioners for the purpose of the review required under paragraph (f)(1) of this section.

(3) In an emergency situation in which a rule or regulation must be issued within a limited time, the State—

(i) May issue a regulation without the prior consultation required in paragraph (f)(1) of this section; and

(ii) Shall immediately convene a committee of practitioners to review the emergency regulation prior to issuance in final form.

(4)(i) The committee of practitioners must include—

(A) Administrators;

(B) Teachers;

(C) Parents;

(D) Members of local boards of education; and

(E) Representatives of private school children; and

(ii) A majority of the committee must be representatives of LEAs.

(iii) SEAs are encouraged to request from appropriate organizations recommendations for membership on the committee.

(Authority: 20 U.S.C. 2782, 2831, 2851; H. Rept. 95, 100th Cong., 1st Sess. 34 (1987))

§ 201.47 Complaint procedures for an SEA.

(a) *Definition of a complaint.* For the purpose of this section, a complaint is a signed, written statement that includes—

(1) An allegation that a requirement applicable to the Chapter 1 Migrant Education Program has been violated; and

(2) Information that supports the allegation.

(b) *Who may complain.* Any parent, teacher, or other concerned individual or organization may file a complaint.

(c) *Where to file.* (1) Unless a complaint meets the standards for a direct complaint to the SEA in paragraph (d)(2)(iii) of this section, a complaint must be filed initially with the appropriate LEA.

(2) A complainant who is dissatisfied with the initial decision of the LEA may file an appeal with the SEA.

(d) *Procedures for complaint resolution.* (1) An SEA shall develop and implement written procedures to govern—

(i) Investigation and resolution of direct complaints by an LEA;

(ii) Review by the SEA of appeals of complaints resolved by an LEA; and

(iii) Investigation and resolution of direct complaints filed with the SEA.

(2) The procedures required under paragraph (d)(1) of this section must include—

(i) Specific time limits for investigation and resolution of complaints by an LEA;

(ii) Specific time limits for resolution of direct complaints and appeals by SEA; and

(iii) Standards for—

(A) Accepting direct complaints under paragraph (d)(1)(iii) of this section; or

(B) Referring a direct complaint to the appropriate LEA for resolution.

(Authority: H. Rept. 567, 100th Cong., 2d Sess. 341 (1988)(Conf. Rept.))

§ 201.48 Allowable costs using program funds.

(a) To administer its migrant education program for migratory children, and SEA may use the funds made available for the State migrant education program under § 201.21 only to perform those functions that are unique to the migrant education program or that are the same or similar to the functions performed by LEAs in the State under 34 CFR Part 200.

(b) These functions include, but are not limited to, the—

(1) Statewide identification and recruitment of eligible migratory children;

(2) Interstate and intrastate coordination of the State migrant education program and its local projects with other State programs and local projects;

(3) Coordination of project level activities with other public and private agencies;

(4) Implementation of the migrant student record transfer system;

(5) Processing of reports that are submitted by the operating agencies to the SEAs;

(6) Maintenance of inventories of property acquired with migrant education program funds;

(7) Negotiation and awarding of contracts; and

(8) Evaluation activities of the State migrant education program other than the design of evaluation report forms and final preparation of the SEA's evaluation report to the Secretary.

(Authority: 20 U.S.C. 2781, 2782, 2831)

§ 201.49 Personnel to be assigned supervisory duties.

(a) An LEA may assign public school personnel paid entirely with migrant education funds to limited supervisory duties that may provide some benefit to children not participating in the migrant education project if—

(1) Similarly situated personnel at the same school site, who are not paid with Chapter 1 migrant education funds, are assigned these duties; and

(2) The time spent by Chapter 1 personnel on these duties does not exceed the least of the following:

(i) The proportion of total work time that similarly situated non-Chapter 1 personnel at the same school site spend performing these duties.

(ii) One period per day.

(iii) Sixty minutes per day.

(b) The limited supervisory duties in paragraph (a) of this section need not be limited to classroom instruction.

(c) The amount of time referred to in paragraph (a)(2) of this section may be calculated on a daily, weekly, monthly, or annual basis.

(d) The allowable duties may include but are not limited to the following:

(1) Supervision of halls, playgrounds, lunchrooms, study halls, bus loading and unloading, and homerooms.

(2) Participation as a member of a school or district curriculum committee.

(3) Participation in the selection of regular curriculum materials and supplies.

(Authorities: 20 U.S.C. 2853; H Rept. 95, 100th Cong., 1st Sess. 34–35 (1987))

§ 201.50 Prohibition against considering payments under the migrant education program in determining State aid.

A State may not take into consideration payments under the migrant education program in determining—

(a) The eligibility of an LEA for State aid; or

(b) The amount of State aid to be paid to an LEA for free public education.

(Authority: 20 U.S.C. 2854)

26. A new Subpart E containing §§ 201.51 through 201.56, inclusive, is added to Part 201 to read as follows:

Subpart E—Evaluation

§ 201.51 Demographic and evaluation reports.

(a) *LEA evaluations.* (1) An LEA shall evaluate, at least once every three years, the effectiveness of its Chapter 1 Migrant Education Project, in terms of basic and more advanced skills that all children are expected to master, on the basis of—

(i) The desired outcomes described in the LEA's application; and

(ii) Except for Chapter 1 migratory children in preschool, kindergarten, and first grade, student achievement, aggregated for the LEA as a whole, in accordance with the national standards in § 201.53.

(2)(i) The LEA shall determine whether improved performance of the Chapter 1 formerly migratory children, participating in the full school year program at least two years, is sustained over a period of more than 12 months.

(ii) To make this determination, and LEA shall assess performance of the same children for at least two consecutive 12 month periods, provided these children continue to be enrolled in the schools of the LEA.

Example: An LEA provides Chapter 1 migrant education services during 1989–90 school year. The LEA measures the gains made by participating children on a spring-spring testing cycle (spring 1989, 1990). To determine whether improved performance is sustained over the period of more than 12 months, the LEA measures the performance again in the spring of 1991.

(3) The LEA shall report its evaluation results to the SEA at least once during each three year application cycle.

(b) *SEA evaluations.* (1) An SEA shall evaluate, at least every two years, the Chapter Migrant Education Program in the State on the basis of the local evaluations conducted under paragraph (a) of this section and sections 1107 and 1202(a)(6) of this Act.

(2) The SEA shall ensure that its biennial evaluation report is representative of the statewide program.

(3) The SEA shall inform its LEAs, in advance, of the specific data that will be needed and how the data may be collected.

(4) The SEA shall—

(i) By a date established by the Secretary, submit its evaluation to the Secretary; and

(ii) Make public the results of the evaluation.

(5) The SEA may require the LEAs to evaluate the effect of the Chapter 1 Migrant Education Projects on the children's achievement in basic and more advanced skills within the regular program, including, but not limited to, writing, science, history, or other subjects.

(c) *Annual performance report.* (1) An SEA shall annually—

(i) Collect data specified in section 1019 of the Act and by the Secretary in the SEA's annual performance report; and

(ii) Submit those data to the Secretary.

(2) An LEA shall provide to the SEA any data needed by the SEA to complete its annual report.

(Authority: 20 U.S.C. 2722, 2729, 2731, 2782, 2835, 2852)

§ 201.52 Evaluation information to be collected.

In assessing their programs and projects, the SEAs and LEAs shall develop evaluations that will assess the effectiveness of—

(a) Instructional services provided in grades 2–12;

(1) During the regular school-year term, the evaluation design will include—

(i) Objective measures of the educational progress of project participants (including educational achievement in basic skills) as measured, over a 12-month testing interval, against an appropriate nonproject comparison group; and

(ii) A measure for determining whether, for formerly migratory children who have been served under this part in a full school-year program for at least two years, improved performance is sustained for at least one additional year.

(2) During the summer term, the evaluation design will include—

(i) Objective measures of the educational progress of project participants (including educational achievement of basic skills over the project performance period; and

(ii) To the extent possible, a means of comparing project outcomes to those of an appropriate nonproject comparison group; and

(b) Support services provided in grades 2–12.

(1) During either the regular or summer terms, the evaluation design includes measures of the effects of the project on participants consistent with the defined support services objectives. (For example, changes in student attendance rates may be an appropriate measure of the effect of guidance and counseling services.)

(2) When possible, these project outcomes should also be compared to the performance of an appropriate nonproject comparison group.

(Authority: 20 U.S.C. 2729, 2782, 2831, 2835)

§ 201.53 General technical standards for evaluation.

SEAs and local operating agencies shall comply with the following technical standards in designing and implementing procedures for the evaluation of Chapter 1 migrant education projects:

(a) *Representativeness of evaluation findings.* The evaluation results must be computed so that the findings apply to the persons served in projects under the program. This may be accomplished by including in the evaluation either all or a representative sample of persons, schools, agencies, or projects.

(b) *Reliability and validity of evaluation instruments.* The evaluation instruments used must consistently and accurately measure progress toward accomplishing the objectives of the project, and must be appropriate considering factors such as the age, grade, mobility, language, degree of language fluency and background of the persons served by the project.

(c) *Soundness of evaluation procedures.* The evaluation procedures must minimize error by providing for proper administration of the evaluation instruments, accurate scoring and transcription of results, and the use of analysis and reporting procedures that are appropriate for the data obtained from the evaluation.

(d) *Valid assessment of project outcomes.* The evaluation procedures must provide for accurate and objective measurement of the progress made by project participants towards defined project objectives.

(Authority: 20 U.S.C. 2729, 2782, 2831, 2835)

§ 201.54 Nonproject comparison groups.

(a) To fulfill the requirements of § 201.52, regarding the information to be collected, an appropriate nonproject comparison group shall consist of persons similar in age, grade, language, degree of language fluency, previous achievement level, and other relevant background variables.

(b) To fulfill the requirements of § 201.52(a)(1), SEAs and LEAs may use appropriate forms and levels of national, State, or local normed achievement tests.

(Authority: 20 U.S.C. 2729, 2782, 2831, 2835)

§ 201.55 Submission of sampling plans.

(a) If an SEA wishes to use sampling in its evaluation of programs conducted under this part, the SEA shall submit, for prior approval by the Secretary, a proposed sampling plan designed to ensure that evaluations will be on a representative sample of its LEAs in any school year.

(b) The Secretary approves a sampling plan that will provide reliable and representative data under this subpart.

(c)(1) The SEA shall review its sampling plan at least once every three years.

(2) If based on this review or other circumstances, the sampling plan requires changes, the SEA shall request reapproval of the plan by the Secretary.

(Authority: 20 U.S.C. 2835; H.R. Rept. 567, 100th Cong., 2d Sess. 324 (1988) (Conf. Rept.))

§ 201.56 Use of evaluation results for program improvement.

SEAs and LEAs must ensure that the results of their evaluations are used to improve services provided to the children in their Chapter 1 migrant education programs and projects.

(Authority: 20 U.S.C. 2729, 2782)

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Part V

Department of Education

Final Funding Priorities for Certain New Direct Grant Awards and Invitation for Applications for New Awards Under Certain Direct Grant Programs for Fiscal Year 1989; Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Final Funding Priorities for Certain New Direct Grant Awards

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for certain new direct grant awards.

SUMMARY: The Secretary announces final funding priorities for grants under the Handicapped Children's Early Education Program; Program for Severely Handicapped Children. Educational Media Research, Production, Distribution, and Training Program; Postsecondary Education Programs for Handicapped Persons; Secondary Education and Transitional Services for Handicapped Youth Program; and Technology, Educational Media, and Materials for the Handicapped Program.

EFFECTIVE DATE: These funding priorities take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these funding priorities call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Joseph Clair, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 4092–MS 2313), Washington, DC 20202. Telephone: (202) 732–4503.

SUPPLEMENTARY INFORMATION: On September 29, 1988 at 53 FR 38254, the Secretary published in the **Federal Register** a Notice of Proposed Funding Priorities for fiscal years 1989 and 1990, for certain program competitions under the Office of Special Education and Rehabilitative Services.

This notice announces final funding priorities for fiscal years 1989 and 1990. Additional priorities for fiscal years 1989 and 1990 will be published in future editions of the **Federal Register**. One priority that was proposed under the Educational Media, Research, Production, Distribution and Training Program to provide closed-captioning of movies, mini-series, and specials, will not be included in this notice. This activity will be funded as a contract rather than a cooperative agreement in fiscal year 1989.

A notice requesting transmittal of applications under these priorities is published in this issue of the **Federal Register.**

Analysis of Comments and Changes

A total of fourteen comments were received in response to the proposed priorities. As a result of comments, changes were made to three priorities: (1) Two priorities under Handicapped Children's Early Education Program for Outreach Projects have been combined into one priority; (2) under Programs for Severely Handicapped Persons, a priority has been modified to address the problems students with severe disabilities who use assistive technology have when attending regular education classes; and, (3) under Programs for Severely Handicapped Children, the final report requirements for one priority have been modified to expand the type of educational settings for which results shall be reported. The Secretary has also made some technical changes in the wording of the priorities to provide greater clarity and to remove paperwork requirements that can be handled through other means. A discussion of the requests for clarification and changes on each individual priority follows:

Handicapped Children's Early Education Program—Nondirected Demonstration Projects

Comment: One commenter encouraged model demonstrations that emphasize interagency collaboration, efficacy of different service models and effective use of staff.

Discussion: These projects are allowable under the nondirected demonstration priority.

Changes: None.

Comment: One commenter requested that the use of assistive technology and services be included in the nondirected demonstration priority and that proposals addressing the use of that technology in integrated day care settings be given priority over other proposals.

Discussion: The Secretary recognizes the importance of assistive technology in facilitating the integration of children with severe handicaps into regular education programs. The intent of the nondirected demonstration priority is to support a wide range of applications and to invite applicants to address issues that will accommodate the child care needs of working parents who have young children with handicaps. Projects demonstrating the use of assistive technologies are allowable under this priority.

Changes: None.

Nondirected Experimental Projects

Comment: One commenter requested that the level of funding be increased to minimum of $200,000 per application.

Discussion: The Secretary recognizes the importance of funding experimental projects at a level sufficient to enable researchers to conduct effective research. Projects recently funded under this program have demonstrated that effective research can be conducted within the funding range of $100,000 to $150,000. However, the funding level for each approved application will be determined on an individual basis and may range below and above the average level proposed.

Changes: None.

Mulit-disciplinary Training Programs for Child Care Personnel

Comment: One commenter expressed concern that the multidisciplinary training programs for child care personnel include an invitation for submission by community based, nonprofit organizations.

Discussion: The Secretary encourages submissions by community based, nonprofit organizations. The priority lists programs conducted by nonprofit public or private sector as an appropriate target for the model. The invitation by the Secretary includes applications from organizations that are interested in expanding current child care services to include services for children with handicaps. Projects demonstrating the expansion of child care services to community-based, nonprofit organizations are allowable under this priority.

Changes: None.

Comment: One commenter encouraged the inclusion of families, special educators, occupational therapists, physical therapists, speech and language pathologists, paraprofessionals, nutritionists, nurses, social workers and families in multi-disciplinary teams.

Discussion: This priority allows in-service training for child care workers to include coordination with families and a variety of related services personnels.

Changes: None.

State-wide Outreach Projects

Comment: One commenter expressed concern regarding the division of outreach efforts into a single State outreach priority and a national or mulit-State outreach priority. The commenter stated that a single State focus unnecessarily limits the impact potential of an outreach project; the commenter recommended several other ways in which the priorities should be developed.

Discussion: The Secretary agrees with the commenter that the distinction between single-State outreach and

multi-State outreach would limit the focus of the outreach projects. Because funding constraints limit the number of awards under these priorities, the Secretary chooses to allow greater flexibility on the part of the applicants by eliminating the distinction between the two priorities.

Changes: State Outreach and National Outreach priorities have been combined into a single priority with several invitational requests.

Early Childhood Research Institute—Integrated Programs

Comment: One commenter provided a series of recommendations for additional areas of research within the proposed research institute on Integrated Programs. The first recommendation emphasized the need to conduct longitudinal research on many of the issues set forth in the priority. The second addressed the need to include research on legal, administrative, and fiscal issues that relate to least restrictive environment.

Discussion: The Secretary concludes that the priority allows for the inclusion of studies on these topics.

Changes: None.

Postsecondary Education Programs for Handicapped Persons—Postsecondary Demonstration Projects

Comment: One commenter endorsed the priority and suggested the establishment of an evaluation criterion that would compare dropouts with disabilities and dropouts without disabilities from postsecondary programs.

Discussion: The regulations at 34 CFR Part 338 set forth the evaluative criteria to be used in evaluating applications under this program. Included is a criterion for determining the soundness of the evaluations that are planned for the project described. The criterion is worded such that decisions are made on the match between stated objectives for the project and the evaluation methods for determining the effectiveness of attaining the project objectives. The specific consideration proposed by the commenter may not necessarily apply to all submissions under the announced priority.

Changes: None.

Programs for Severely Handicapped Children

Comments: Three commenters expressed concern that no priority addressed the dissemination of information pertaining to deaf-blindness, and urged that such a priority be developed.

Discussion: The proposed priority titled "Utilization of Innovative Practices for Children with Deaf-Blindness" includes the provision for the funding of a project to develop and disseminate information on deaf-blindness. In addition, information on deaf-blindness is disseminated through the State and multi-State deaf-blind projects and the technical assistance projects funded under the Services for Deaf-Blind Children and Youth Program.

Changes: None.

Comment: One commenter observed that the proposed priorities did not include "Technical assistance to State agencies to facilitate the transition of deaf-blind youth upon attaining age 22 from education to other services," as authorized by section 622 of Part C, EHA, and urged that this priority be added.

Discussion: This priority is included in regulations at 34 CFR Part 307. The Secretary anticipates including this priority along with others when an application notice for the Services for Deaf-Blind Children and Youth Program is announced later this year.

Change: None.

Comment: One commenter recommended that in addition to the announced priorities, a priority needs to be added to fund a deaf-blind research institute, which would focus on the transition of deaf-blind youth from school to adult life.

Discussion: The importance of the suggested research is recognized as being among the most significant areas pertaining to deaf-blind youth that needs investigation. However, since over the past three years the Department has supported several demonstration projects addressing the issues of transition and supported work for deaf-blind youth, the Secretary intends to analyze the results of these projects as an interim step before developing an institute such as that suggested.

Changes: None.

Comment: One commenter suggested the addition of a priority that would assure that blind, visually impaired and deaf-blind children receive the appropriate services that they require in integrated settings.

Discussion: It is the intent of each of the proposed priorities under the Programs for Severely Handicapped Children, CFDA No. 84.086, that the services that they support will be appropriate services provided in integrated settings to the maximum extent appropriate.

Changes: None.

Comment: One commenter recommended the addition of a priority to address the problems students with severe disabilities who use assistive technology have when attending regular education.

Discussion: The Secretary recognizes the importance of addressing these problems.

Changes: Priority No. 2 under the Program for Severely Handicapped Children has been modified to provide for the funding of projects addressing these problems.

Comment: One commenter observed that under several priorities a common thread appears to be that the outcome must be that children with deaf-blindness be educated within classrooms of peers who are non-handicapped. The commenter expressed concern that the restrictive nature of this approach may preclude the support of model services to those children in other educational settings.

Discussion: The Secretary recognizes that solutions to problems in the delivery of services may be tested in a range of settings, and has modified the final reporting requirements under the priority titled "Validated Practices: Children with Deaf-Blindness". However, with the intent to extend the range of innovative approaches for providing educational services to this population, the Secretary elects to retain the original language of the other proposed priorities.

Changes: The final reporting requirements of priority No. 5 have been modified to require that grantees report on principles learned or tested for solving specific problems in educating children with deaf-blindness without regard to the educational setting in which services are provided.

Secondary Education and Transitional Services for Handicapped Youth Program Family Networking

Comments: One commenter wants the priorities to foster family networking through existing groups in the community.

Discussion: Existing community groups such as service organizations, churches, and hospitals, mentioned by the second commenter are eligible applicants under this priority.

Changes: None.

Technology, Educational Media and Materials for the Handicapped Program

Comment: One commenter suggested that the Technology program (CFDA 84.180) should stress the development of toys and materials which are play-oriented.

Discussion: The purpose of Part G of the Education of the Handicapped Act is

for " * * * advancing the use of new technology, media, and materials in the *education* of handicapped students * * * " (italic added). The emphasis on education in the Act does not preclude the utilization of technology or materials which are oriented toward educational "play" under either of the priorities, as long as the design formats are consistent with the priorities as a whole.

Changes: None.

Title of Program: Handicapped Children's Early Education Program

CFDA No.: 84.024

Purpose: To provide Federal support for a variety of activities designed to address the special problems of infants and children with handicaps, from birth through age eight and their families, and to assist State and local entities in expanding and improving programs and services for those infants, toddlers, and children and their families. Activities include demonstration, outreach, experimental, research and training projects, and research institutes.

Priorities: The Secretary establishes the following funding priorities for the Handicapped Children's Early Education Program, CFDA No. 84.024. In accordance with the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.105(c)(3), the Secretary will give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet these priorities.

Priority 1. Coordinated Service Delivery for Infants and Toddlers with Identified Handicapping Conditions. (CFDA No. 84.024)

This priority supports demonstration projects that design and evaluate model procedures for actively involving families in (1) the assessment of needs, planning and decision-making that result in the individualized family service plan (IFSP); and (2) the implementation of the plan. Models developed under this priority must build on current research findings regarding family involvement in service programs and family decision-making. The models must identify barriers that hinder family involvement and should identify and develop processes to support and enhance family involvement in the development and implementation of the IFSP. Procedures for implementation of the IFSP must include a case management system for the family that includes interagency coordination of all the early intervention services identified in the IFSP. This system must include strategies for assuring that services stipulated in the IFSP are provided by all identified service providers, that the financial responsibilities related to the delivery of services are met by the responsible agencies, that there is regular communication and coordination among all service providers involved in services to a particular child or family, and that the IFSP is reviewed and revised periodically.

The model must be evaluated using multiple case studies. Cases must include the families of infants and toddlers with identified handicapping conditions (e.g., children with Down's Syndrome, severe visual and/or hearing impairments, cerebral palsy, myleomenigecele) or with conditions that have a high probability of producing handicaps and that require medical intervention (e.g., extremely low birth weight of less than 750 grams, or AIDS-related complex). To assure that procedures are applicable to a range of families (including two-parent families, single-parent families, foster families, families with parents who are developmentally disabled, and low-income families) the case must also represent a range of families. The evaluation design should include assessment of outcomes for families and children as well as measures of family involvement and satisfaction. Projects must produce a manual delineating the procedures for enhancing family involvement in developing and using the IFSP and for case management to assure coordinated services, as well as sample case studies and outcome data for families who participated in the project.

Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested for developing interventions for involving families in the development and implementation of the IFSP. Quantifiable information from project evaluation activities must also be included along with precise information regarding the procedures for the interventions and contexts in which they were implemented as well as available cost information.

Priority 2. Nondirected Demonstrations (CFDA No. 84.024)

This priority supports demonstration projects that develop, implement, and evaluate new or improved approaches for serving young children with handicaps (ages birth through eight). Projects funded under this priority must design models that allow young children with handicaps to achieve their optimal functioning level within normalized, nonsegregated environments.

Projects must (1) address a specific service problem or issue; (2) include specific components or procedures of the model and the rationale, based on theory, research, or practice evaluation, for those components or procedures; (3) include specific types of students to participate in the project (i.e., by age, handicapping condition or diagnosis, level of functioning) and (4) include an evaluation design that includes functional outcome measures for the young children with handicaps who participate in the proposed intervention(s). Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principals that have been learned or tested for developing interventions for young children with handicaps. Quantifiable information from project evaluation activities must also be included along with precise information regarding the procedures for the interventions and the contexts in which they were implemented as well as available cost information.

The Secretary particularly invites applications for demonstration projects that develop models for delivering, coordinating, or supplementing needed developmental, special educational, or related services to infants, toddlers, or preschool-aged children with handicaps who are in day-care programs (home-based, center-based, or home or center based in conjunction with part-day special education preschool programs). This invitational priority responds to the growing number of young children, including children with handicaps, who are placed in day-care services to accommodate the child-care needs of working parents. However, applications that meet this invitational priority will not receive a competitive preference over other applications for demonstration projects that develop, implement, and evaluate new or improved approaches for serving young children with handicaps (ages birth through eight).

Priority 3. Multi-disciplinary Training Programs Child Care Personnel (CFDA No. 84.024)

This priority supports demonstration projects that develop and evaluate in service training models that will prepare professionals and paraprofessionals to provide, coordinate, or enhance early intervention, special education, and related services to infants and toddlers with handicaps and/or preschool-aged children with handicaps. Model projects must provide inservice training for professionals and paraprofessionals

who are already engaged in the provision of child care, who have not been trained to serve infants and toddlers with handicaps and/or preschoolers with handicaps, but who are committed to serving these children in programs with nonhandicapped children.

In developing their model, projects must identify existing preschool or child care programs, and obtain their commitment prior to submission of the application. The model may target child care workers (e.g., day care providers, preschool providers) in the corporate or private-for-profit sector as well as in the not-for-profit public or private sector. A model must be based on a conceptual framework that identifies the existing roles and responsibilities of the individuals to be trained, the changes required in those roles to serve children with handicaps, and the skills needed to implement the new roles. A model must directly train personnel to provide, coordinate, or enhance special education or related services to children with handicaps in integrated community based programs. Inservice training procedures and materials must address the training needs of a variety of personnel. The model must enable the content and procedures to be tailored to the existing skills and roles of the different trainee groups. In addition to initial training the model must include an array of follow-up and support activities that insures that personnel participating in the training master and implement services to meet the needs of students with handicaps being served in settings with nonhandicapped children. During years 2 and 3, the inservice training model must collect data regarding the number of infants and toddlers or preschool-aged children with handicaps served in the target programs and the types of services provided to the children. Projects must also evaluate the inservice training model through direct assessment of participant skills following the training and after a period of time. At least some measures must be based on direct observation in the service setting using standardized observational rating techniques. Models must be consistent with personnel standards and certification/licensure requirements in their States.

The Secretary especially invites applications from: (a) Local, intermediate education agency or State-operated programs that are interested in placing children with handicaps in programs for nonhandicapped preschool children as a way to integrate handicapped and nonhandicapped children; (b) corporations or organizations that are interested in expanding current child care services to include services for children with handicaps an integrated setting; and (c) institutions or organizations that have collaborative relationships with entities described in (a) or (b) above. However, applications that meet this invitational priority will not receive a competitive preference over other applications for demonstration projects that develop, implement, an evaluate new or improved approaches for serving young children with handicaps (ages birth through eight).

Priority 4. Information Management of Services for Infants and Toddlers. (CFDA No. 84.024)

This priority supports demonstration projects to develop or improve and evaluate automated information management systems for tracking, managing, and planning services for young children with handicaps, aged birth through two years of age, and their families within a State or major urban area. The system must (1) separately track and count the children and families who receive early intervention services; (2) identify the types and location of those services provided and/or needed but not provided; (3) identify the provider and the funding sources (Federal, State, private, or local) for each service provided; (4) alert programs serving preschool-aged children of incoming three year old children, at least three months in advance of the children's transition from early intervention services to preschool services; and (5) use data elements compatible with State or regional child count systems.

Applicants must coordinate the program with the State education agency and the State agency designated to administer the Program for Infants and Toddlers With Handicaps in the States where the information system is tested. The system must be coordinated with any other information systems in the State (e.g., health agency systems for tracking specific medical conditions), that overlap in population tracked, intent or purpose. This may be achieved, for example, by using identifiers compatible with other existing systems, or by merging the existing systems into a single system.

Projects funded under this priority must include an evaluation design that assures that the automated system is operational (*i.e.* produces information and reports that are accurate and consistent with the system design), that the required information linkages are compatible and reliable, and that the information produced is useful for tracking and planning purposes by the intended users of the information system. It is anticipated that projects funded under this priority will develop the software, documentation, and users' guides that will allow other interested agencies to adopt the information system. Users guides must provide as much information as possible as to the ways elements of the system can be adapted to fit the data needs or hardware configurations of other agencies.

Priority 5. Nondirected Experimental Projects (CFDA No. 84.024)

This priority supports investigations of alternative interventions or approaches for serving infants, toddlers, or preschool-aged children with handicaps. Interventions selected for comparison must include those for which information is unavailable regarding their relative effectiveness for particular groups of children or within particular settings or conditions. Projects supported under this priority must:

(1) Compare the alternative interventions or approaches in typical service settings;

(2) Conduct the investigations using methodological procedures that will produce unambigious findings regarding the relative effectiveness of the alternative strategies as well as any findings as to interaction effects between particular approaches and particular groups of children or particular contexts; and

(3) Include dissemination activities that will lead to improved services for infants, toddlers, or preschool-aged children with handicaps.

Projects must (1) address a specific problem or issue; (2) include specific approaches or interventions that will be compared or validated, including the rationale for selecting particular approaches and previous evaluation information regarding these approaches; (3) include specific types of children targeted by the project (i.e., by age, handicapping condition or diagnosis, level of functioning); and (4) include an evaluation design that includes functional outcome measures for the young children with handicaps or their families who participate in the proposed intervention(s). Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested for developing interventions for young children with handicaps. Quantifiable information from project evaluation activities must also be

included along with precise information regarding the procedures for the interventions and the contexts in which they were implemented as well as available cost information.

The Secretary particulary invites applications that compare alternative approaches to assessing family strengths and needs as part of the process for developing the individualized family plans (IFSP) required under Part H of the Education of the Handicapped Act. Such projects could compare approaches, instruments, or tools commonly used for family assessment across disciplines or within a single discipline to determine their relative effects on the strength and needs identified, on the process for developing the IFSP, on the document itself, and on the satisfaction of participants in the planning process, including families of infants and toddlers with handicaps. However, applications that meet the invitational priority will not receive a competitive preference over other applicants for projects that investigate alternative interventions or approaches for serving infants, toddlers, or preschool-aged children with handicaps.

Priority 6. State or Multi-State Outreach Projects. (CFDA No. 84.024)

This priority supports projects that facilitate the implementation in single or multiple States of proven infant, toddler or early childhood models, or selected components of those models. Projects supported under this priority must:

(1) Coordinate their dissemination and replication activities with the lead agency for Part H of the Education of the Handicapped Act for early intervention services or the State educational agency for special education and related services;

(2) Disseminate and replicate proven models, or components of proven models, that provide services needed to assist young children, aged eight and below to achieve the children's optimal functioning. Services at a minimum must contain the following components:

(a) Approaches relevant to programming in regular settings including provision for skills necessary to function in integrated educational environments;

(b) Team based programming that integrates the delivery of services that includes parents, teachers, therapists and other professional disciplines;

(c) Effective involvement of families in the planning and delivery of services; and

(d) Interagency coordination when multiple agencies are involved in the provision of services to children;

(3) Evaluate the dissemination and replication activities to determine their effectiveness including their impact on the provision of services to infants, toddlers, and young children with handicaps.

The models or components of models must be state-of-the art, providing procedures and information that are not readily available to program sites within States where outreach is planned. The models or components of models must be based on current theory and research, and must have unambigious evaluation information regarding effectiveness. In addition, the project should be consistent with the provisions of Part B or Part H of the Education of the Handicapped Act. Outreach activities may include, but not be limited to: public awareness, product development and dissemination, site development, training and technical assistance. The projects may work with major early childhood associations, provider groups or agencies in disseminating and replicating the proven models, or components of proven models.

Projects under this priority must (1) include models or components of models selected for outreach activities and a rationable as to the importance of these models; (2) select a model based on unambiguous evidence as to its effectiveness; (3) include specific dissemination and replication activities; and (4) have a rationale for those activities.

Final reports submitted by projects funded under this priority must include evaluation information as to the effectiveness of the model as implemented by replication sites.

The Secretary particularly invites applications for outreach projects that are based on models serving young children with severe disabilities, young children with handicaps due to chronic health problems, or young children with handicapping conditions who have been previously unserved or underserved. However, applications that meet this invitational priority will not receive a competitive preference over other applications for outreach projects that serve other young children with handicaps aged birth through eight.

Priority 7. Early Childhood Research Institute—Integrated Programs. (CFDA No. 84.024)

This priority establishes an Early Childhood Research Institute to develop, field-test, and disseminate intervention strategies to improve the integration of young children with handicaps into a range of preschool, child-care, pre-kindergarten, and kindergarten programs available to non-handicapped children in local communities (whether sponsored by public, private, or corporate agencies). The goal of the institute is to produce validated intervention procedures that service can providers use to adapt to on-going preschool, child-care, pre-kindergarten, and kindergarten programs to appropriately meet the needs of children with a range of handicapping conditions. The institute must conduct a program of research that will:

(1) Work with major early childhood associations and provider groups or agencies to identify major approaches, curricula, or models that are commonly used by preschool, child-care, pre-kindergarten, or kindergarten providers to structure and deliver services for non-handicapped preschool or kindergarten-aged children. These approaches may encompass the entire program or particular program areas (i.e., language development, practical life skills, etc.), but they must be found in communities throughout the Nation;

(2) Identify through analysis of materials and classroom observation the extent to which particular approaches, models, or curricula are compatible with the learning characteristics and education/related service needs of preschool-aged children with a range of handicapping conditions as well as program barriers that affect the capacity of the programs to address the special needs of children with a range of handicapping conditions. The results of these analyses must be shared and revised through discussions with major early childhood associations and provider groups or agencies.

(3) Develop and test adaptations of particular approaches, models, or curricula to meet the special needs of children with a range of handicapping conditions. In developing and testing adaptations, the institute will work with major early childhood associations and provider groups or agencies to (a) select approaches, models, or curriculum that are most promising (based on the analyses of 2 above) for meeting the special needs of children with handicaps; (b) develop adapted activities, materials, curricula, instructional strategies, classroom environments that are compatible with key features of particular approaches and models, but that are also consistent with the learning characteristics and special education/related service needs of children with a range of handicapping conditions; and, (c) test and evaluate the intervention strateges in multiple sites, employing research designs that assure

that the effectiveness of the intervention strategy is determined;

(4) Work with major early childhood associations and provider groups and agencies to develop and test materials that would allow public, private, and corporate providers of preschool, child-care, pre-kindergarten, and kindergarten programs for non-handicapped students to adapt their programs to meet the needs of students with a range of handicapping conditions. Materials must be developed that describe adaptations identified in (3) above for particular approaches, models, or curricula. Materials must be developed that outline general principles for providing services for preschool-aged children with various handicapping conditions in integrated preschool and kindergarten settings. Inservice and preservice materials for training early childhood personnel to adapt and modify programs to meet the needs of preschool-aged students with handicaps must also be developed and field tested; and

(5) Provide research training and experience for at least 10 graduate students each year.

The institute must conduct the program of research and development within a conceptual framework that identifies major approaches and models for delivering preschool, childcare, pre-kindergarten, and kindergarten services to non-handicapped children; the learning characteristic and special education/related service needs of preschool-aged children with a range of handicapping conditions; and program dimensions that impede or facilitate the integration of preschool-aged students with handicaps.

Period of Award. The Secretary will approve one cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the institute for the last two years of the project period, in addition to considering the factors in 34 CFR 75.253(a), the Secretary will consider the recommendation of a review team consisting of three external experts selected by the Secretary and designated Federal program officials. The services of the review team are to be performed during the last half of the institute's second year, and will replace that year's annual evaluation that the recipient is required to perform under 34 CFR 75.590. During all other years of the project, the recipient must comply with 34 CFR 75.590. Costs associated with the services to be performed by the three external members of the review team are to be incorporated into the applicant's proposed budget. In developing its recommendation, the review team will consider, among other factors, the following:

(1) The timeliness and the effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the recipient of the cooperative agreement; and

(2) The degree to which the institute's research design and methodological procedures demonstrate the potential for producing significant new knowledge and products.

Priority 8. Early Childhood Research Institute—Intervention (CFDA No. 84.024)

This priority will establish an Early Childhood Research Institute to develop new or improved interventions for infants and toddlers with handicaps who, because of the nature of their disabilities, require extended medical care in hospital intensive care units and who may require life-supporting technologies and systems of health care. The institute's purpose is to conduct a program of research and development designed to produce information and materials that can be used in concert with the provision of intensive health care and that promote the developmental progress of these children. The institute's research and development activities must produce information and materials that can be used within intensive care units and that facilitate the successful transition of the child to the home and to community-based services. The research and development activities must consist of two major areas of inquiry.

First, the institute must conduct a program of research to develop new or improved procedures related to the identification, referral, and intervention process. The institute's research must include, but need not be limited to, studies that: (1) Develop exemplary practices related to physician referral, initial family counseling, and tracking of the child's progress and services; (2) indentify effective practices and procedures for forming and involving a multidisciplinary team to plan services for the child and family; (3) establish criteria for enlisting the services of different State agencies, including the State Protection and Advocacy agency or other child protection groups; (4) develop exemplary models for determining the point in the child's life when nonmedical interventions can be appropriately and safely implemented; (5) identify a variety of effective nonmedical interventions that are keyed to child developmental needs, child medical needs, family needs and characteristics, and the potential for delivering such services within a hospital intensive care unit; and (6) develop new or improved interventions that will facilitate the transition of the child to the home and to community-based services. The outcomes of this research are expected to lead to improved processes of referral, family counseling, and planning and coordinating services.

Second, the institute must conduct a program of research to develop new or improved organizational structures related to the identification, referral and intervention process. The institute's research must include but not be limited to studies that: (1) Identify the full range of services and personnel needed in a comprehensive hospital-based intensive care unit; (2) develop model organizational structures (including roles, responsibilities, lines of authority, communication, and coordination) for a comprehensive hospital-based intensive care unit; (3) identify exemplary models in involving parents, siblings, friends, and extended family with a multi-disciplinary team; (4) develop procedures to prevent or remediate role conflicts among team members; and (5) identify alternative approaches to team composition and team member roles in providing intervention and transitional services. The outcomes of this research are expected to lead to improved processes for implementing interdisciplinary interventions as well as knowledge related to organizational configurations and disciplinary combinations that will enhance these processes.

It is anticipated that in conducting this research and development effort, a consortium of neonatal intensive care units will participate in order to permit the research objectives to be met and to determine the utility and effectiveness of the new information and materials in a variety of neonatal intensive care units. In forming a consortium of participating neonatal intensive care units, the applicant should consider inclusion of a range of units that currently vary on dimensions of quality and comprehensiveness of services, client characteristics, geographic location, organizational configuration, and intake and transition procedures, as appropriate. In considering transitional processes, the applicant should address the need to develop and field test specific transitional procedures and materials for children and families who require continuing medical care after discharge. In carrying out its research activities, the institute must provide

research training and experience for at least 10 graduate students annually.

The institute must conduct the program of research and development within a conceptual framework that identifies major approaches to multi-disciplinary team coordination in planning and delivering services, characteristics and needs of children requiring extended medical interventions and their parents, and the organizational structures of intensive care units and relevant service agencies.

Period of Award. The Secretary will approve one cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the institute for the last two years of the project period, in addition to considering the factors in 34 CFR 75.253(a), the Secretary will consider the recommendation of a review team consisting of three external experts selected by the Secretary and designated Federal program officials. The services of the review team are to be performed during the last half of the institute's second year, and will replace that year's annual evaluation that the recipient is required to perform under 34 CFR 75.590. During all other years of the project, the recipient must comply with 34 CFR 75.590. Costs associated with the services to be performed by the three external members of the review team are to be incorporated into the applicant's proposed budget. In developing its recommendation, the review team will consider, among other factors, the following:

(1) The timeliness and the effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the recipient of the cooperative agreement; and

(2) The degree to which the institute's research design and methodological procedures demonstrate the potential for producing significant new knowledge and products.

Program Authority: 20 U.S.C. 1424.

Title of Program: Educational Media Research, Production, Distribution, and Training Program

CFDA No.: 84.026.

Purpose: To promote the educational advancement of persons with handicaps by providing assistance for: (a) conducting research in the use of educational media for persons with handicaps; (b) producing and distributing educational media for the use of persons with handicaps, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of persons with handicaps; and (c) training persons in the use of educational media for the instructions of persons with handicaps.

Priorities: The Secretary establishes the following funding priorities for the Educational Media, Production, Distribution, and Training Program, CFDA No. 84.026. In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary will give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet these priorities.

Priority 1. Closed-Captioned Local and Regional News. (CFDA No. 84.026)

The purpose of this priority is to support projects for the closed-captioning of local television news programs which, at the end of this three year award, will be maintained and continued without additional Federal funding. Projects must:

(1) Include a total number of television hours (first time and repeat) to be captioned per week and a specific method to be used for each hour—real-time, computer assisted, teleprompting, etc.;

(2) Obtain financial commitments for project continuation by the end of the third year;

(3) Provide a back-up system that will ensure successful, timely captioning; and

(4) Have obtained willingness of major networks to permit captioning of their programs.

Priority 2. Illiteracy Projects. (CFDA No. 84.026)

The purpose of this priority is to support development projects which analyze the prevalence and nature of illiteracy among persons who are handicapped and develop ways to use educational media and captioning technology to alleviate the problems associated with illiteracy in the work place and in independent living within the community. This priority allows projects to address problems identified by investigators in the field. However, the strategies proposed by investigators must be consistent with validated approaches in the area of adult literacy. Projects must (1) address a specific illiteracy-related problem including whether the problem is in the workplace or home; (2) include how the educational media or captioning application developed, produced, or tested, by the project can be expected to alleviate that problem; and (3) include an evaluation design that includes functional outcome measures for individuals with handicaps who have used the educational media or captioning application. The final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested for developing and using educational media and captioning to alleviate problems resulting from illiteracy. Quantifiable information from project evaluation activities also must be included.

Program Authority: 20 U.S.C. 1451, 1452.

Title of Program: Postsecondary Education Programs for Handicapped Persons

CFDA No.: 84.078.

Purpose: To develop, operate, and disseminate specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with handicapping conditions.

Priority: The Secretary establishes the following funding priority for the Postsecondary Education Programs for Handicapped Persons, CFDA 84.078. In accordance with the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.105 (c)(3), the Secretary will give an absolute preference to applications that respond to the following priority; that is, the Secretary will select for funding only those applications proposing projects that meet this priority.

Postsecondary Demonstration Projects. (CFDA 84.078C)

This priority supports model projects which provide individuals with mild or moderately disabling conditions other than deafness with adapted or specially designed programs that coordinate, facilitate, and promote the provision of appropriate education of these individuals with their nondisabled peers. These projects are to be targeted to improve the vocational outcomes for youths and adults who have completed or left secondary school programs and who are in need of additional education or training in order to secure and maintain competitive employment. Projects under this priority must:

(1) Establish strategies for use in locating and serving youth and adults with disabilities who are in need of continued educational services;

(2) Establish or make use of existing formal cooperative relationships among and between schools (public secondary and higher educational institutions),

vocational rehabilitation agencies, and potential employers;

(3) Develop individualized programs that detail the goals and objectives necessary for students to obtain the requisite skills for securing competitive employment;

(4) Achieve appropriate job placements for persons with disabilities served by the project through short term postsecondary educational interventions;

(5) Provide follow-up and follow-along activities for persons with disabilities placed in jobs by the project; and

(6) Propose training of project participants in relevant aspects of adjustment to the community as well as workplace.

Program Authority: 20 U.S.C. 1424a.

Title of Program: Program for Severely Handicapped Children

CFDA No.: 84.086.

Purpose: To provide Federal financial assistance for demonstration or development, research, training, and dissemination activities for severely handicapped, including deaf-blind, children and youth.

Priorities: The Secretary establishes the following funding priorities for the Program for Severely Handicapped Children, CFDA No. 84.086. In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary will give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet these priorities.

Priority 1. State-Wide Systems Change. (CFDA No. 84.086)

This priority supports projects that do all of the following:

(a) Develop, in conjunction with the Part B State plan, activities to improve the quality of special education and related services in the State for severely handicapped (including deaf-blind) children and youth, birth through 21 years of age, and to change the delivery of these services from segregated to integrated environments;

(b) Significantly increase the number of severely handicapped including deaf-blind children in the State who are served in regular school settings alongside their same-aged nonhandicapped peers;

(c) Evaluate the effectiveness of these activities, including tracking the number of children with severe handicaps and deaf-blindness in the State in each type of educational setting and showing changes from previous years; and,

(d) Evaluate and disseminate information about the project's outcomes. Projects under this priority must:

(1) Identify resources available in the State to provide the needed services to children and youth who are severely handicapped, including deaf-blind, as well as financial resources available through other agencies or parties.

(2) Establish services needed to assist these children and youth to achieve their most realistic functioning level in normalized, nonsegregated least restrictive environments. These services must include at a minimum:

(i) Delivery of integrated educational services that include providing severely handicapped, including deaf-blind, children who are currently being served in segregated environments with special educational and related services in programs at facilities with nonhandicapped children;

(ii) Movement of participating children and youth to and integration into less segregated environments, with the objective of facilitating the placement of these children in appropriate regular school settings;

(iii) Delivery of curricula relevant to education in integrated settings including the teaching of social integration skills, community referenced skills, and employment skills;

(iv) Activities to promote acceptance of severely handicapped including deaf-blind children and youth by the general public through increasing both the quality and frequency of meaningful interactions of these children and youth with handicapped and nonhandicapped peers and adults;

(v) Delivery of services to meet the unique needs of severely handicapped including deaf-blind children and youth; and

(vi) Effective involvement of families in the planning and delivery of services to their severely handicapped children and youth.

(3) Establish a project advisory board having representation of parents of project children and youth, including parents of deaf-blind children and youth, providers of services to this population, and State and professional organizations, that is responsible for providing significant input on project management procedures.

(4) Formulate and implement formal, written policies and procedures with relevant State, local and professional organizations for coordinating services provided to the target population, of severely handicapped including deaf-blind children and youth including the elimination of overlapping and redundant services.

Each project must include a specific number of deaf-blind students that will benefit from the project.

Priority 2. Innovations for Meeting Special Problems of Children with Severe Handicaps in the Context of Regular Education Settings. (CFDA No. 84.086)

This priority supports projects that are designed to develop in-depth, innovative approaches to a particular problem for educating students with severe handicaps in the context of regular educational settings. Towards this end, projects must include a setting in which the activities will be carried out, with particular attention paid to the extent to which physical and social integration between students with severe handicaps and students without handicaps exist in the proposed setting. Projects must ensure that the proposed setting has the following prerequisite components: (1) An established system of community-based training; (2) a systematic, data-based educational program; and (3) an established functional curriculum. Projects must build upon previous research and demonstration activities in the field and demonstrate a thoughtful synthesis and extension of such work within a complete approach of their own. Projects funded under this priority must include (1) a specific problem that the project will address; (2) a proposed approach developed by the project that can be expected to alleviate that problem; and (3) an evaluation design that includes functional outcome measures for children and youth who experience severe handicaps who participate in the proposed intervention. Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned and tested for solving specific problems that may arise when students who experience severe handicaps are educated within the context of regular education settings. Quantifiable information from project evaluation activities must also be included.

The Secretary particularly invites applications that address one of the following special problems:

(1) Serving individuals with profound disabilities and/or who are treatment-assisted or otherwise require significant therapeutic or medical intervention;

(2) Designing models for incorporating nonaversive approaches within curriculum and instruction, particularly

for students who present difficult and persistent excess behaviors;

(3) Developing approaches to encourage social support systems for individuals with severe handicaps within educational and community environments;

(4) Establishing innovative approaches to facilitating home-school communication and interactions that serve to benefit the student and the family and that allow for the varied needs and concerns of individual families;

(5) Developing steps for providing related services within regular education settings, or

(6) Developing approaches that address the problems children and youth with severe handicaps who use assistive technology have when attending regular education programs.

However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive or absolute preference over applications that meet the priorities described in this notice.

Priority 3. Innovations for Meeting Special Problems of Children with Deaf-Blindness in the Context of Regular Education Settings. (CFDA No. 84.086)

This priority supports projects that are designed to develop in-depth innovative approaches to a particular problem for educating students with deaf-blindness in the context of regular educational settings. Toward this end, projects must include a setting in which the proposed activities will be carried out, with particular attention paid to the extent to which physical and social integration between students with deaf-blindness and students without handicaps exist in the proposed setting. Projects must ensure that the proposed setting has the following prerequisite components: an established system of community-based training; a systematic, data-based educational program; and an established functional curriculum. Projects must build upon previous research and demonstration activities in the field and demonstrate a thoughtful synthesis and extension of such work within a complete approach of their own. Each project must include a specific number of deaf-blind students who will benefit from the project.

Final reports submitted by projects under this priority must include both the specific findings of the project as well as general principles that have been learned and tested for solving specific problems that may arise when students who are deaf-blind are educated in the context of regular education settings. Quantifiable information from program evaluation activities must also be included.

The Secretary particularly invites applications that address one of the following special problems:

(1) Serving children and youth with deaf-blindness who have other severe handicaps in extended school year demonstration projects that focus on maintaining and enhancing skills in integrated environments;

(2) Serving children and youth with deaf-blindness who have other profound disabilities and/or who are treatment-assisted or otherwise require significant therapeutic or medical intervention;

(3) Designing models for incorporating nonaversive approaches within curriculum and instruction, particularly for students who present difficult and persistent excess behaviors;

(4) Developing approaches to encourage social support systems for individuals with deaf-blindness within educational and community environments;

(5) Establishing innovative approaches to facilitating home-school communications and interaction that serve to benefit the student and the family and that allow for the varied needs and concerns of individual families;

(6) Developing strategies for providing specialized services such as orientation and mobility within regular educational settings; or

(7) Developing systematic strategies for facilitating movement of individual students with deaf-blindness into regular classrooms, which predominantly serve nonhandicapped students.

However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive or absolute preference over applications that meet the priorities described in this notice.

Priority 4. Validated Practices: Children with Severe Handicaps. (CFDA No. 84.086)

This priority supports projects that test solutions to specific problems in the delivery of special education and related services to students with severe handicaps (as defined at 34 CFR 315.4(d)). Projects supported under this priority must use methodological procedures that will produce unambiguous findings regarding the relative effectiveness of different solutions to a specific problem or that use well-designed outcome evaluations to test the effects of a single program or solution. The projects must be designed to improve the services for children and youth with severe handicaps.

Projects funded under this priority must include (1) a specific problem that the project will address; (2) specific solutions that will be compared or validated, including previous evaluations regarding these approaches; and (3) an evaluation design that includes functional outcome measures for children and youth who experience severe handicaps who participate in the proposed intervention(s). Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested for solving specific problems that may arise when students who experience severe handicaps are educated within the context of regular education settings. Quantifiable information from project evaluation activities must also be included along with precise information regarding the procedures for the interventions and the contexts in which they were implemented as well as available cost information.

The Secretary particularly invites applications that address one of the following areas:

(1) Improving and expanding social interaction skills in regular classrooms, workplaces, or recreational settings;

(2) Improving curricular and instructional procedures that enhance acquisition, generalization, and maintenance of functional skills and activities;

(3) Improving communication skills of children with severe handicaps in their interaction with peers and others in educational and non-educational settings;

(4) Expanding the activities that support the participation in a range of community-based settings for children with severe handicaps, with such settings to include living environments, recreation-leisure options, transportation options, and neighborhood shopping, educational and cultural settings;

(5) Supported employment for youth with severe handicaps; or

(6) Supported living for children and youth with severe handicaps.

However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive or absolute preference over applications that meet the priorities described in this notice.

Priority 5. Validated Practices: Children with Deaf-Blindness. (CFDA No. 84.086)

This priority supports projects that test solutions to specific problems in the delivery of special education and

related services to students with deaf-blindness. Projects supported under this priority must use methodological procedures that will produce unambiguous findings regarding the relative effectiveness of different solutions to a specific problem, or that use well-designed outcome evaluations to test the effects of a single program or solution in addressing the service delivery problem. The projects must be designed to improve the services for children and youth with deaf-blindness as defined at 34 CFR 300.5(b)(2).

Projects funded under this priority must include (1) a specific problem that the project will address; (2) specific solutions that will be compared or validated, including previous evaluations regarding these approaches; and (3) an evaluation design that includes functional outcome measures for children and yough with deaf-blindness who participate in the proposed intervention(s). Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested for solving specific problems that may arise in providing services. Quantifiable information from project evaluation activities must also be included along with precise information regarding the procedures for the interventions and the contexts in which they were implemented as well as available cost information. Each project must include a specific number of deaf-blind students that will benefit from the proposed project.

The Secretary particularly invites applications that address one of the following areas:

(1) Improving and expanding social interaction skills in regular classrooms, workplaces, or recreational settings;

(2) Improving curricular and instructional procedures that enhance acquisition, generalization, and maintenance of functional skills and activities;

(3) Improving communications skills of children who are deaf-blind in their interaction with peers and others in educational and noneducational settings;

(4) Expanding the activities that support the participation in a range of community-based settings for children with deaf-blindness, with such settings to include living environments, recreation-leisure options, transportation options, and neighborhood shopping, educational and cultural settings;

(5) Supported employment for youth with deaf-blindness; or

(6) Supported living for children and youth with deaf-blindness.

However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive or absolute preference over applications that meet the priorities described in this notice.

Priority 6. Utilization of Innovative Practices for Children with Severe Handicaps. (CFDA No. 84.086)

This priority promotes the adoption and use of innovative practices for the education of students with severe handicaps through the support of technical assistance activities such as inservice training, program replication, and/or product dissemination. The practices are to be selected from current data and best practices and must be justified in the application in terms of their proven ability to address the needs of children with severe handicaps.

Applicants are particularly encouraged to select practices that have been generated and implemented across a range of disciplines that provide services to students with severe handicaps. Projects must identify a focus of the utilization activities and the importance of the focus in terms of its impact on the education and quality of life of students with severe handicaps, as defined at 34 CFR 315.4.

Projects under this priority must include a design that (a) defines a target audience for the training or dissemination activities; (b) includes what this target audience is expected to do or to accomplish by participating in the project; (c) includes the utilization activities that are appropriate and well-suited to achieving the described activities with the intended audiences; i.e., inservice training, program replication, and/or product dissemination, as needed to accomplish the selected change; and (d) includes systematic evaluation and reporting of the impact and effectiveness of project activities. Target audiences shall include family members whenever practicable. The Secretary particularly invites applications that address one of the following topics:

(1) Least restrictive environments for children and youth with severe handicaps;

(2) Supported employment for youth with severe handicaps;

(3) Community-based curriculum and instruction for children and youth with severe handicaps;

(4) Integration of related services for children and youth with severe handicaps into instructional objectives;

(5) Increased participation of parents in the educational process; or

(6) Communication skills of children and youth with severe handicaps.

However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive or absolute preference over applications that meet the priorities described in this notice.

Priority 7. Utilization of Innovative Practices for Children with Deaf-Blindness. (CFDA No. 84.086)

This priority promotes the adoption and use of innovative practices for the education of students with deaf-blindness through the support of technical assistance activities such as inservice training, program replication, and/or product dissemination. The practices are to be selected from current data and best practices and must be justified in terms of the proven ability to address the needs of children who are deaf-blind.

Applicants are particularly encouraged to select practices that have been generated and implemented across a range of disciplines that provide services to students who are deaf-blind. Projects must identify a focus of the utilization activities and the importance of the focus in terms of its impact on the education and quality of life of students with deaf-blindness, as defined at 34 CFR 300.5(b)(2).

Projects under this priority must include a design that (a) defines a target audience for the training or dissemination activities; (b) includes what this target audience is expected to do or to accomplish by participating in the project; (c) includes activities that are appropriate and well-suited to achieving the training or dissemination activities with the intended audience; i.e., inservice training, program replication, and/or product dissemination, as needed to accomplish the selected change; and (d) includes systematic evaluation and reporting of the impact and effectiveness of the project activities. Target audiences must include family members whenever practicable.

The Secretary particularly invites applications that address one of the following topics:

(1) Least restrictive environments for children and youth with deaf-blindness;

(2) Supported employment for youth with deaf-blindness;

(3) Community-based curriculum and instruction for children and youth with deaf-blindness;

(4) Integration of related services for children and youth with deaf-blindness into instruction objectives;

(5) Communication skills of children and youth with deaf-blindness; or

(6) Transitional services from school to independent living or working for youth with deaf-blindness.

However, in accordance with EDGAR at 34 CFR 75.105(c)(1), an application that meets this invitational priority receives no competitive or absolute preference over applications that meet the priorities described in this notice.

Program Authority: 20 U.S.C. 1424.

Title of Program: Secondary Education and Transitional Services for Handicapped Youth Program

CFDA No.: 84.158.

Purpose: To assist handicapped youth in the transition from secondary school to postsecondary environments such as competitive or supported employment and to ensure that secondary special education and transitional services result in competitive or supported employment for handicapped youth.

Priorities: The Secretary establishes the following funding priorities for the Secondary Education and Transitional Services for Handicapped Youth Program, CFDA No. 84.158. In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 74.105(c)(3), the Secretary will give an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet these priorities.

Priority 1. Training and Employment Models for Youth with Handicaps. (CFDA) No. 84.158)

This priority supports school and community-based model projects for youth with handicaps to be prepred for and placed in competitive or supported work prior to leaving school. This priority responds to growing evidence that youth with handicaps who exit from school may have difficulty obtaining competitive or supported employment despite the vocational programming that may have been offered in school. These students often remain at hope for several years before a placement can be found in a job training or supported employment program. By providing employment experiences in setting where the requisite support services are provided by adult service agencies or other public or private providers prior to exit from school, it is more likely that a smooth transition can be made from school to work and adult life. Projects funded under this priority must include models that emphasize the following:

(1) Collaboration with employers;

(2) Measurement of employer and youth satisfaction;

(3) Program evaluation with outcome measures to determine initial and continuing employment status;

(4) Working relationships between education agencies and supported and transitional work efforts at the State and/or local level; and

(5) Working partnerships with families that demonstrate a commitment to maximizing independence.

The goal of these models is to place youths with handicaps in competitive or supported employment. Supported employment must include paid employment in integrated work settings and ongoing support from adult service agencies or other public or private services.

Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested regarding the preparation of youth with handicaps for competitive or supported employment upon leaving school. Quantifiable information from project evaluation activities must also be included along with precise information regarding the procedures used to implement the model and the contexts in which the model was implemented.

Priority 2. Secondary and Transition Services Follow-up, Follow-Along Projects. (CFDA No. 84.158)

This priority supports school and community-based model projects to improve tracking systems for youth with handicaps who complete or leave secondary programs and to revise curriculum and/or program options based on continued analyses of outcome data. Projects funded under this priority must include models that emphasize the following:

(1) Development of enhancement of procedures for a follow-up/follow-along system for all youth with handicaps who complete or leave secondary education, and

(2) Revision of existing program options to improve outcomes for youth with handicaps completing or leaving school.

This priority is intended to support a variety of strategies to determine the status of "completers" and "leavers" living in our communities. The strategies employed by individual projects must ensure that all exiting students are included in status reports. It is expected that outcome measures will be developed to determine how successful our education programs are at preparing youth with handicaps to live and work in the community. Additional information regarding the availability of needed public services and informal supports should be obtained during the follow-up/follow-along process. Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested regarding the preparation of youth with handicaps for employment and adult life upon leaving school. Quantifiable information from project evaluation activities must also be included along with precise information regarding the procedures for the follow up system as well as available cost information.

Priority 3. Family Networking. (CFDA No. 84.158)

This priority supports model demonstration projects that build on existing transition planning processes to assist youth with handicaps and their families in identifying, accessing, and using formal and informal networks to obtain needed supports and services to maximize independence in adult life. Projects under this priority must ensure that there is an existing planning process in place that includes the student, his or her family, representatives from the school, and representatives from adult service agencies or other providers in planning for the transition of students who will be exceeding the maximum age for public school services.

Models funded under this priority must assist youth with handicaps and their families in identifying the range of possible post-school options for living, working, recreation, or post-secondary education, and assessing the supports or services needed by the student to participate in different post-school options. Projects must develop strategies to assist youth with handicaps and their families in identifying potential formal (service agencies, handicapped student services) and informal (extended family, friends) sources of services and supports and in learning to effectively access and use these sources. Persistent barriers to obtaining needed supports or services must also be identified and strategies developed and tested for overcoming these barriers.

Final reports submitted by projects funded under this priority must include both the specific findings of the project as well as general principles that have been learned or tested regarding the idenification, access, and use of formal and informal networks by youth with handicaps and their families to obtain needed supports and services. Common barriers identified to accessing and

using various sources for support and service should be described along with any implications for policy makers or service providers. Quantifiable information for project evaluation activities must also be included along with precise information regarding the model procedures, the context in which it was implemented, and available cost information.

Program Authority: 20 U.S.C. 1425.

Title of Program: Technology, Educational Media, and Materials for the Handicapped Program

CFDA No: 84.180.

Purpose: The purpose of this program is to support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with handicaps and the provision of early intervention services to infants and toddlers with handicaps. In creating a new Part G, Congress expressed the intent that the projects and centers funded under the part should be primarily for the purpose of enhancing research and development advances and efforts being undertaken by the public or private sector, and to provide necessary linkages to make more efficient and effective the flow from research and development to application.

Priorities: The Secretary establishes the following funding priorities for the Technology, Educational Media, and Materials for the Handicapped Program, CFDA No. 84.180. In accordance with the Education Department General Administrative Regulations (EDGAR, 34 CFR 75.105(c)(3)), the Secretary gives an absolute preference under this program to applications that respond to the following priorities; that is, the Secretary will select for funding only those applications proposing projects that meet one of these priorities.

Priority 1. Using Technology to Improve Assessment of Children with Handicaps, (CFDA 84.180)

This priority supports projects that use innovative technologies to advance assessment theory and practice for infants, toddlers, children, and youth with handicaps. Projects must develop and evaluate technology applications which extend beyond the current paper and pencil tests used to measure skill, proficiency, competence or performance of children with handicaps in educational, home, community, or training settings. The cognitive, language, perceptual-motor, academic, vocational, or social proficiency domains can be addressed.

Projects must develop and evaluate technologically based prototypes for advancing assessment theory and practice. These projects are not meant to produce tests or scales but rather to stimulate such development in the future by providing prototypic design features related to any of the following: (a) Item stimuli, (b) sequence of item presentation, (c) expanded response capabilities, or (d) scoring criteria. The innovative methodologies developed may require expansions of traditional psychometric theory to address new procedures for establishing indices of reliability and validity. Projects must address issues of reliability and validity where applicable. Thus, these projects are viewed as development activities providing direction for future test assessment products.

Projects must include specific strategies and rationales that justify the development activity including why the assessment would be important and what impact the applications of such an assessment might have. Projects must also provide resources and expertise related to the domain(s) being measured and the integration of electronic technologies. The final report must highlight the prototypic design features by describing their nature and evidence to support the extent to which they advance current practice.

Priority 2. Compensatory Technology Applications. (CFDA No. 84.180)

This priority supports the innovative development of hardware or software technology prototypes which have market potential. The prototype must alleviate mobility, manipulation, communication or instructional barriers to providing educational opportunities for learners who are handicapped. The prototype may be operated by either the teacher or the learner. The prototype must be designed not only to compensate for a particular learner's handicap but must also be easily modified to accommodate other learners with similar handicaps. Projects must develop working prototypes which use existing technology, where possible, and which capitalize on recent technological advances to enhance the teaching or learning of children with handicaps. Projects must include a plan for the formative evaluation of the innovative adaptations to determine the soundness of the engineering, the adequacy of the design, whether it compensates for the disability, whether it is feasible to operate and maintain in a school setting, and the feasibility for future production and distribution. A final report must include the prototype product as well as a discussion and rationale to support any needed and recommended modifications for the prototype based on the formative evaluation.

Program Authority: 20 U.S.C. 1461.

Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

(Catalog of Federal Domestic Assistance Numbers: 85.024, Handicapped Children's Early Education Program; 84.026, Educational Media Research, Production, Distribution, and Training Program; 84.078, Postsecondary Education Program for Handicapped Persons; 84.086, Programs for Severely Handicapped Children, 84.158, Secondary Education and Transitional Services for Handicapped Youth Program; 84.180, Technology, Educational Media and Materials for the Handicapped Program.)

Dated: December 13, 1988.

Lauro F. Cavazos,

Secretary of Education.

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DEPARTMENT OF EDUCATION

Office of Special Education Programs

Invitation for Applications for New Awards under Certain Direct Grant Programs for Fiscal Year 1989

Note to Applicants: This notice is a complete application package. The notice contains information, application forms, and instructions needed to apply for a grant under these competitions. The priorities for these programs are published in a separate part of this issue of the **Federal Register.**

The estimates of funding levels in this notice do not bind the Department of Education to a specific number of grants, unless the amount is otherwise specified by statute or regulation.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 79, 80 and 85; and the following program regulations:

Handicapped Children's Early Education Program (CFDA No. 84.024) 34 CFR Part 309, as amended August 11, 1987 (52 FR 29816)

Educational Media Research, Production, Distribution and Training (CFDA No. 84.026) 34 CFR Part 332

Program For Severely Handicapped (Including Deaf-Blind) Children (CFDA No. 84.086) 34 CFR Part 315, as amended August 24, 1987 (52 FR 31958)

Secondary Education and Transitional Services for Handicapped Youth Program (CFDA No. 84.158) 34 CFR Part 326

Technology, Educational Media, and Materials for the Handicapped Program (CFDA No. 84.180) 34 CFR Part 333, 53 FR 6952–6954 (March 3, 1988)

TITLE OF PROGRAM: HANDICAPPED CHILDREN'S EARLY EDUCATION PROGRAM

Application Notices for Fiscal Year 1989

Title and CFDA Number	Deadline for Transmittal of Applications	Deadline for Intergovernmental Review	Available Funds	Estimated Range of Awards	Estimated Size of Awards	Estimated Number of Awards	Project Period in Months
Multi-disciplinary Training Programs for Child Care Personnel (CFDA No. 84.024P).	Mar. 10, 1989	May 10, 1989	$1,250,000	$100,000 to 135,000	$125,000	10	Up to 36 months.
State or Multi-State Outreach Project (CFDA No. 84.024D).	do	do	5,881,000	350,000 to 405,000	390,000	[1] 15	Do.
Early Childhood Research Institute—Integrated Programs (CFDA No. 84.024K).	Mar. 13, 1989	May 12, 1989	700,000	650,000 to 700,000	700,000	1	Up to 60 months.
Early Childhood Research Institute—Intervention (CFDA No. 84.024S).	do	do	700,000	650,000 to 700,000	700,000	1	Do.

[1] Anticipated to be fully funded for 36 months in fiscal year 1989.

Selection Criteria

The Secretary uses the following criteria under 34 CFR Part 309 to evaluate an application. The maximum score for all the criteria is 100 points.

(a) *Importance.* (15 points)

(1) The Secretary reviews each application to determine the extent to which the proposed project addresses concerns in light of the purposes of this part.

(2) The Secretary considers—

(i) The significance of the problem or issue to be addressed;

(ii) The extent to which the project is based on previous research findings related to the problem or issue;

(iii) The numbers of individuals who will benefit; and

(iv) How the project will address the identified problem or issue.

(b) *Impact.* (15 points)

(1) The Secretary reviews each application to determine the probable impact of the proposed project in meeting the needs of children with handicaps, birth through age eight, and their families.

(2) The Secretary considers—

(i) The contribution that project findings or products will make to current knowledge and practice;

(ii) The methods used for dissemination of project findings or products to appropriate target audiences; and

(iii) The extent to which findings or products are replicable, if appropriate.

(c) *Technical soundness.* (35 points)

(1) The Secretary reviews each application to determine the technical soundness of the project plan;

(2) In reviewing applications under this part, the Secretary considers—

(i) The quality of the design of the project;

(ii) The proposed sample or target population, including the numbers of participants involved and methods that will be used by the applicant to ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(iii) The methods and procedures used to implement the design, including instrumentation and data analysis; and

(iv) The anticipated outcomes.

(3) With respect to training projects, in applying the criterion in paragraph (c)(2)(iii) of this section, the Secretary considers—

(i) The curriculum, course sequence, and practica leading to specific competencies; and

(ii) The relationship of the project to the comprehensive system of personnel development plans required by Parts B and H of the Act, and State licensure or certification standards.

(4) In addition to the criteria in paragraph (c)(2) of this section, the Secretary, in reviewing outreach projects, also considers—

(i) The agencies to be served through outreach activities;

(ii) The current services, their location, and anticipated impact of outreach assistance for each of those agencies;

(iii) The model demonstration project upon which the outreach project is based, including the effectiveness of the model program with children, families, or other recipients of project services; and

(iv) The likelihood that the demonstration project will be continued and supported by funds other than those available through this part;

(d) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary considers—

(i) The extent to which the management plan will ensure proper and efficient administration of the project;

(ii) Clarity in the goals and objectives of the project;

(iii) The quality of the activities proposed to accomplish the goals and objectives;

(iv) The adequacy of proposed timelines for accomplishing those activities; and

(v) Effectiveness in the ways in which the applicant plans to use the resources and personnel to accomplish the goals and objectives.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application to determine the quality of the plan for evaluating project goals, objectives, and activities.

(2) The Secretary considers the extent to which the methods of evaluation are appropriate and produce objective and quantifiable data.

(f) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use.

(2) The Secretary considers—

(i) The qualifications of the project director and project coordinator (if one is used);

(ii) The qualifications of each of the other key project personnel;

(iii) The time that each person referred to in paragraphs (f)(2)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant will ensure that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) The Secretary considers experience and training in areas related to project goals to determine qualifications of key personnel.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine adequacy of resources allocated to the project.

(2) The Secretary considers the adequacy of the facilities and the equipment and supplies that the applicant plans to use.

(h) *Budget and cost-effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to undertake project activities; and

(ii) Costs are reasonable in relation to objectives of the project.

Eligible Applicants

Public agencies and nonprofit private organizations may apply for an award under any of the priorities.

TITLE OF PROGRAM.—EDUCATIONAL MEDIA RESEARCH, PRODUCTION, DISTRIBUTION AND TRAINING

[Application notices for fiscal year 1989]

Title and CFDA number	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Closed-Captioned Local and Regional News (CFDA No. 84.026L).	Mar. 14, 1989	May 15, 1989	$400,000	$40,000 to $60,000	$50,000	8	Up to 36 months.

Selection Criteria

The Secretary uses the following criteria under 34 CFR Part 332 to evaluate applications for new awards. The maximum score for all criteria is 100 points.

(a) *Plan of operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally under represented, such as—

(A) Handicapped persons;

(B) Members of racial or ethnic minority groups;

(C) Women; and

(D) The elderly.

(b) *Quality of key personnel.* (20) points.

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under represented, such as—

(A) Handicapped persons;

(B) Members of racial or ethnic minority groups;

(C) Women; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (15 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (*See* 34 CFR 75.590–Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources for the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (20 points)

(1) The Secretary reviews each application for information that shows the need for the project.

(2) The Secretary looks for information that shows—

(i) The need for the proposed activity with respect to the handicapping condition served or to be served by the applicant;

(ii) The potential for using the results in other projects or programs.

(g) *Marketing and dissemination.* (5 points)

(1) The Secretary reviews each application for information that shows adequate provisions for marketing or disseminating results.

(2) The Secretary looks for information that shows—

(i) The provisions for marketing or otherwise disseminating the results of the project; and

(ii) Provisions for making materials and techniques available to the populations for whom the project would be useful.

Eligible Applicants

Parties eligible for grants under this subpart are profit and nonprofit public and private agencies, organizations, and institutions.

Authority: 20 U.S.C. 1451, 1452.

TITLE OF PROGRAM.—PROGRAMS FOR SEVERELY HANDICAPPED CHILDREN

[Application notices for fiscal year 1989]

Title and CFDA number	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Innovations for Meeting Special Problems of Children with Severe Handicaps in the Context of Regular Education Settings (CFDA No. 84.086D).	3/24/89	5/24/89	$609,000	$110,000–130,000	$120,000	5	36 months.
Innovations for Meeting Special Problems of Children with Deaf-Blindness in the Context of Regular Education Settings (CFDA No. 84.086F).	3/24/89	5/24/89	784,000	120,000–140,000	130,000	6	36 months.
Validated Practices: Children with Deaf-Blindness (CFDA 84.086G).	3/24/89	5/24/89	783,000	120,000–140,000	130,000	6	36 months.
Statewide Systems Change (CFDA 84.086J)	3/24/89	5/24/89	750,000	240,000–260,000	250,000	3	36 months.
Utilization of Innovative Practices for Children with Deaf-Blindness (CFDA 84.086L).	3/24/89	5/24/89	783,000	120,000–140,000	130,000	6	36 months.
Validated Practices: Children With Severe Handicaps (CFDA 84.086P).	3/24/89	5/24/89	609,000	110,000–130,000	120,000	5	36 months.
Utilization of Innovative Practices for Children with Severe Handicaps (CFDA 84.086U).	3/24/89	5/24/89	545,000	100,000–120,000	109,000	5	36 months.

Note: Each of these competitions will be evaluated using the selection criteria for Demonstration and Training Projects under 34 CFR 315.33.

Selection Criteria for Research Projects

The Secretary uses the following criteria under 34 CFR 315.32 to evaluate an application for a research project:

(a) *Importance and expected impact of the research.* (20 points) The Secretary reviews each application to determine the extent to which the project will develop new knowledge in understanding and effectively meeting the needs of severely handicapped children and youth, including the extent to which—

(1) The programmatic research areas proposed by the applicant represent critical areas of investigation, or problems whose solution would have greatest impact on improving services to severely handicapped children and youth; and

(2) The specific questions to be addressed in the project are likely to generate knowledge needed for bringing about a major change in understanding of the topical area.

(b) *Technical soundness of the project.* (15 points)

(1) The Secretary reviews each application to determine the technical soundness of the research plan, including—

(i) The design;

(ii) The proposed sample;

(iii) Instrumentation; and

(iv) Data analysis procedures.

(2) The Secretary also reviews each application for the relevance of its proposed training efforts, including—

(i) Strategies for provision of training; and

(ii) Relationships between the applicant, other organizations or agencies providing training in coordination with the applicant, and trainees receiving training from the applicant.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(2) How the objectives of the project relate to the purpose of the program;

(3) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(4) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director or principal investigator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) the time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in conducting, documenting, and applying research pertaining to severely handicapped children and youth;

(ii) Awareness of relevant research findings and demonstration project results pertaining to other handicapped children and youth and the potential for use of the findings and results with severely handicapped children and youth; and

(iii) Experience in communicating research findings to service providers of severely handicapped children and

youth and in assisting these providers with effective application of the findings.

(e) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(**Cross-reference:** See 34 CFR 75.590 Evaluation by the grantee.)

(g) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information within the State in which the project is located and throughout the Nation; and

(2) Provides a clear description of the content, intended audiences, and timelines for production of all project documents and other products that the applicant will disseminate.

Selecton Criteria for Demonstration and Training Projects

The Secretary uses the following criteria under 34 CFR 315.33 to evaluate an application for a demonstration project and a training project.

(a) *Extent of need and expected impact of the project.* (25 points) The Secretary reviews each application to determine the extent to which the project is consistent with national needs in the provision of innovative services to severely handicapped and youth, including consideration of—

(1) The needs addressed by the project;

(2) The impact and benefits to be gained by meeting the educational and related service needs of severely handicapped children and youth served by the project, their parents and service providers; and

(3) The national significance of the project in terms of potential benefits to severely handicapped children and youth who are not directly involved in the project.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information within the State in which the project is located and throughout the Nation; and

(2) Adequately includes the content, intended audiences, and timeliness for production of all project documents and other products which the applicant will disseminate.

Eligible Applicants

Any public or private, profit or nonprofit, organization or institution may apply for a grant under this program.

Authority: 20 U.S.C. 1424.

Title of Program: Secondary Education and Transitional Services for Handicapped Youth Program

[Application Notices for Fiscal Year 1989]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated No. of awards	Project period in months
Training and employment models for youth with handicaps (CFDA 84.158N).	Mar. 31, 1989....	May 31, 1989....	$1,010,000	$90,000-110,000	$101,000	10	Up to 36.

Title of Program: Secondary Education and Transitional Services for Handicapped Youth Program—Continued

[Application Notices for Fiscal Year 1989]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated No. of awards	Project period in months
Secondary and transition services follow-up, follow-along (CFDA 84.158R).	Mar. 10, 1989	May 10, 1989	$1,000,000	$120,000-130,000	$125,000	8	Up to 36.
Family networking (CFDA No. 84.158S)	do	do	$310,000	$95,000-100,000	$103,000	3	Up to 36.

Selection Criteria

The Secretary uses the following criteria under 34 CFR 326 to evaluate an application for new awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment of eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10) points

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project.

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) Budget and cost effectiveness. (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget of the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(See 34 CFR 75.590. Evaluation by the grantee)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points)

The Secretary reviews each application for information that shows—

(1) The service delivery problem addressed by the proposed project is of concern to others in the Nation, and;

(2) The importance of the project in solving the problem.

(g) *Impact.* (10 points)

The Secretary reviews each application for information that shows the probable impact of the proposed model in educating handicapped youth, including

(1) The contribution that the project findings or products will make to current knowledge or practice; and

(2) The extent to which findings and products will be disseminated to, and used for the benefit of, appropriate target groups.

(h) *Innovativeness.* (10 points)

(1) The Secretary reviews each application for information that shows the innovativeness of the proposed project.

(2) The Secretary looks for information that shows a conceptual framework that—

(i) Is founded on previous theory and research; and

(ii) Provides a basis for the unique strategies and approaches to be incorporated into the model.

(i) *Technical soundness.* (25 points)

The Secretary reviews each application for information demonstrating the technical soundness of the plan for the development, implementation, and evaluation of the model with respect to such matters as—

(1) The population to be served;

(2) The model planning process;

(3) Recordkeeping systems;

(4) Coordination with other service providers;

(5) The identification and assessment of students;

(6) Interventions to be used, including proposed curricula;

(7) Individualized educational program planning; and

(8) Parent and family participation.

Eligible Applicants

Institutions of higher education, State educational agencies, local educational agencies, and other public and private

nonprofit institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*)).

Authority: 20 U.S.C. 1425.

Title of Program: Technology, Educational Media, and Materials for the Handicapped Program

[Application Notices for Fiscal Year 1989]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated No. of awards	Project period in months
Using technology to improve assessment of children with handicaps (CFDA No. 84.180B).	Apr. 3, 1989	June 2, 1989	$950,000	170,000–210,000	$190,000	5	Up to 24.
Compensatory technology applications (CFDA No. 84.180P).	Mar. 24, 1989	May 24, 1989	$930,000	100,000–160,000	$130,000	7	Up to 12.

Supplementary Information and Requirements

The Secretary uses the following criteria under 34 CFR Part 333 to evaluate applications for new awards. The maximum score for all the criteria is 100 points.

Selection Criteria

For priority 1 "Using Technology to Improve Assessment of Children with Handicaps", the Secretary uses the following criteria to evaluate applications. These criteria pertain to applications for research or evaluation activities. *See* 34 CFR 333.21.

(a) *Importance.* (15 points) The Secretary reviews each application to determine the extent to which the proposed project addresses national concerns in light of the purposes of this part, and considers the significance of the problem or issue to be addressed.

(b) *Technical soundness.* (30 points)

(1) The Secretary reviews each application to determine if the approach is technically and programmatically sound.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) Technical soundness of the research or evaluation plan, including if appropriate—

(A) The design;

(B) The proposed sample;

(C) The instrumentation; and

(D) The data analysis.

(c) *Plan of operation.* (15 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) An effective plan of management that ensures proper and efficient administration of the project;

(ii) A clear description of how the objectives of the project relate to the purpose of the program;

(iii) The way the applicant plans to use its resources and personnel to achieve each objective; and

(iv) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, or gender.

(d) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, and any other qualifications that pertain to the quality of the project.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine that the applicant plans to devote adequate resources for the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate;

(ii) The equipment and supplies that the applicant plans to use are adequate; and

(iii) The applicant demonstrates necessary access to target population necessary to conduct the research or evaluation.

(f) *Impact.* (5 points) The Secretary reviews each application to determine—

(i) The probable impact of the proposed project in educating or providing early intervention services to infants, toddlers, children, and youth with handicaps; and

(ii) The contribution that the project findings or products will make to current knowledge or practice.

(g) *Dissemination.* (5 points) The Secretary reviews each application to determine the extent to which the findings and products will be disseminated to, and used for the benefit of appropriate target groups.

(h) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

The Secretary uses the following criteria to evaluate applications under priority 2 "Compensatory Technology Applications". These criteria pertain to applications for development or demonstration activities. *See* 34 CFR 333.22.

(a) *Importance.* (20 points)

(1) The Secretary reviews each application to determine the extent to which the proposed project addresses national concerns in light of the purposes of this part.

(2) The Secretary considers—

(i) The significance of the problem or issue to be addressed;

(ii) The potential impact of the proposed project for providing innovative advancements to the problem or issue; and

(iii) Previous research findings related to the problem or issue.

(b) *Technical soundness.* (30 points)

(1) The Secretary reviews each application to determine the quality and technical soundness of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the conceptual design of the project;

(ii) A clear specification of the procedures to be followed in carrying out the project; and

(iii) The extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that can be quantified.

(c) *Plan of operation.* (15 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) An effective plan of management that insures proper and efficient administration of the project;

(ii) The way the applicant plans to use its resources and personnel to achieve each objective; and

(iii) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for assuring adequate performance measurement of project progress.

(**Cross Reference:** 34 CFR 75.590, Evaluation by the grantee)

(e) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(2)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, and any other qualifications that pertain to the quality of the project.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine that the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate;

(ii) The equipment and supplies that the applicant plans to use are adequate; and

(iii) The applicant demonstrates access to subjects necessary to conduct the proposed project.

(g) *Marketing and dissemination.* (10 points)

(1) The Secretary reviews each application to determine if there are adequate provisions for marketing or disseminating results.

(2) The Secretary considers—

(i) The provisions of marketing, replicating, or otherwise disseminating the results of the project; and

(ii) Provisions for making materials and techniques available to the populations for whom the project would be useful.

(h) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1461)

Eligible Applicants

Under this program, the Secretary may award grants or contracts, or enter into cooperative agreements with, institutions of higher education, State and local educational agencies, public agencies, and private nonprofit or for-profit organizations.

Intergovernmental Review of Federal Programs

These programs are subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the Single Point of Contact for each State and follow the procedure established in those States under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 18, 1987, pages 44338–44340.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372–CFDA # , following address: The Secretary, E.O. 12372—CFDA # (applicant must insert number and letter), U.S. Department of Education, MS 6403, 400 Maryland Avenue SW., Washington, DC 20202–0125. Proof of mailing will be determined on the same basis as applications.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20202–4725 or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary

does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms:

The appendix to this application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions. (**Note:** ED Form GCS–009 is intended for the use of primary participants and should not be transmitted to the Department.)

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certification. However, the application form, the assurances, and the certification must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT:

Joseph Clair, Division of Educational Services, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4620–2644), Washington, DC 20202 (except CFDA No. 84.180). Telephone: Joseph Clair (202) 732–4503.

Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, 400 Maryland Avenue, SW. (Switzer Building, Room 3094–M.S. 2313), Washington, DC 20202 (CFDA No. 84.180 only). Telephone: Linda Glidewell (202) 732–1099.

Dated: January 19, 1989.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

Appendix

Potential applicants frequently direct questions of officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions. In general these questions and answers are applicable to all direct grant competitions covered by this combined application package.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to *all* applications. Waivers for individual applications *cannot* be granted, regardless of the circumstances.

Q. How many copies of the application should I submit and must they be bound?

A. Current Government-wide policy is that only an original and two copies need be submitted. The binding of applications is optional. At least one copy should be left unbound of facilitate any necessary reproduction. Applicants should not use foldouts, photographs, or other materials that are hard-to-duplicate.

Q. We just missed the deadline for the XXX competition. May we submit under another competition?

A. Yes, but it may not be worth the postage. A properly prepared application should meet the specifications of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate. What should I do?

A. We are happy to discuss the questions with you and provide clarification on the unique elements of the various competitions.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Claarly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required, nor does it guarantee the success of an application.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we can called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with *anyone.*

Q. How long should an application be?

A. The Department of Education is making a concerted effort to reduce the volume of paperwork in discretionary program applications. The scope and complexity of projects is too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the significance of the project against the criteria of the competition. It is helpful to include in the appendices such information as:

(1) Staff qualifications. These should be brief. They should include the person's title and role in the proposed project and contain only information relevant to the proposed project. Qualifications of counsultants and advisory council members should be provided and be similarly brief.

(2) Assurance of participation of an agency other than the applicant if such participation is critical to the project, including copies of evaluation instruments proposed to be used in the project in instances where such instruments are not in general use.

Q. How can I be sure that my application is assigned to the correct competition?

A. Applicants should clearly indicate in Block 10 of the face page of their application (Standard form 424) the CFDA number and the title of the program priority (e.g., 023) representing the competition in which the application should be considered. If this information is not provided, your application may inadvertently be assigned and reviewed under a different competition from the one you intended.

Q. Will my application be retured if am not funded?

A. We no longer return original copies of unsuccessful applications. Thus, applicants should retain at least one copy of the application. Copies of reviewer comments will be mailed to applicants who are not successful.

Q. How should my application be organized?

A. The application narrative should be organized to follow the exact sequence of the components in the selection criteria of the regulations pertaining to the specific program competition for which the application is prepared. In each instance, a table of contents and a one-page abstract summarizing the objectives, activities, project participants, and expected outcomes of the proposed project should precede the application narrative.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed (i.e. travel for data collection, etc.). Because we may request the principal investigator or director of funded projects to attend an annual meeting, you may also wish to include a trip to Washington, DC in the travel budget. Travel to conferences is sometimes allowed when it is for purposes of dissemination.

Q. If my application receives a high score from the reviewer does that mean that I will receive funding?

A. No. It is often the case that the number of applications scored highly by or approved by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of the applications and other relevant factors, determines the applications that can be funded.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during panel and staff review and require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. If my application is successful can I assume I will get the estimated/projected budget amounts in subsequent years?

A. No. The estimate for subsequent year project costs is helpful to us for planning purposes but it in no way represents a commitment for a particular level of funding in subsequent years. Grantees having a multi-year project will be asked to submit a continuation application and a detailed budget request prior to each year of the project.

Q. What is a cooperative agreement and how does it differ from a grant?

A. A cooperative agreement is similar to a grant in that its principal purpose is to provide assistance for a public purpose of support or stimulation as authorized by a Federal statute. A cooperative agreement differs from a grant because of the substantial involvement anticipated between the executive agency (in this case the Department of Education) and the recipient during the performance of the contemplated activity.

Q. Is the procedure for applying for a cooperative agreement different from the procedure for applying for a grant?

A. No. If the Department of Education determines that a given award should be made by cooperative agreement rather than a grant, the applicant will be advised at the time of negotiation of any special procedures that must be followed.

Q. How do I provide an assurance?

A. Simply state in writing that you are meeting a prescribed requirement.

Q. Where can copies of the **Federal Register**, program regulations, and federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783-3238.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (*give city, county, state, and zip code*):	Name and telephone number of the person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (*specify*): _____

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐
A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4000-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) is the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. **TOTALS** (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. **TOTAL** (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. **TOTALS** (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) Through (g).

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the total for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contributions to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column(f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Program Narrative

A. New Grants

Prepare the program narrative statement in accordance with the following instructions for all new grants programs and all new functions or activities for which support is being requested.

Note that the program narrative should encompass each program and each function or activity for which funds are being requested. Relevant selection criteria (included in this package) should be carefully examined for criteria upon which evaluation of an application will be made and the program narrative must respond to such criteria under the related headings below. The program narrative should begin with an overview statement (Abstract) of the major points covered below.

1. *Objectives and need for this assistance.* Describe the problem and demonstrate the need for assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used.

Any relevant data based on planning studies should be included or footnoted. Projects involving Demonstration/Service activities should present available data, or estimates for need in terms of number of handicapped children (by type of handicap and by type of service) in the geographic area involved.

Projects involving Training should present available data, or estimates, for need in terms of number of personnel by position type (e.g., teachers, teacher-aides) by type of handicap to be served.

2. *Results or benefits expected.* Identify results and benefits to be derived. Projects involved in Training and or Demonstration/Service activities should indicate the number of personnel to be trained or the number of children to be served.

3. *Approach.* a. Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished for each grant program, function or activity provided in the budget. Cite factors which might accelerate or decelerate the work and your reason for taking this approach as opposed to others.

For example, an application for demonstration/service programs should describe the planned educational curriculum: the types of attainable accomplishments set for the children served; supplementary services including parent education; and the

composition and responsibilities of an advisory council.

An application for a training program should describe the substantive content and organization of the training program, including the roles or positions for which students are prepared, the tasks associated with such roles, the competencies that must be acquired; the program staffing; and the practicum facilities including their use by students, accessibility to students and their staffing.

B. Provide for each grant program, function or activity, quantitative projections of the accomplishments to be achieved.

An applications for demonstration/service programs should project the number of children to receive demonstration/services by type of handicapping conditions, and number of persons to receive inservice training.

Training programs should project the number of students to be trained by type of handicapped condition.

For non-demonstration/service and non-training activities of all programs, planned activities should be listed in chronological order to show the schedule of accomplishment and their target dates.

C. Identify the kinds of data to be collected and maintained and discuss the criteria to be used to evaluate the results and successes of the project. For demonstration/service activities, evaluation procedures should be related to the child-centered objectives set for project participants.

For all activities, explain the methodology that will be used to evaluate project accomplishments.

D. List organizations, cooperators, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution. Especially for demonstration/service activities, describe the liaison with community or State organizations as it affects project planning and accomplishments.

E. Present biographical sketch of the project director with the following information: name, address, telephone number, background, and other qualifying experiences for the project. Also, list the names, training and background for other key personnel engaged in the project.

Note.—The application narrative should not exceed 30 double-spaced typed pages (on one side only).

Assurances—Non-Construction Programs

OMB Approval No. 0348–0040 Standard Form 424B (4–88) Prescribed by DMB Circular A–102

Note.—Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR Part 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) which prohibits discrimination of the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age;

(e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a–7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Managements Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (Pub. L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (Pub. L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protection components or potential components of the national wild an scenic rivers system.

13. Will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with Pub. L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official
Title

Applicant Organization
Date submitted

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, § 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160–19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, SW. (Room 3633 GSA Regional Office Building No. 3), Washington, DC 20202, telephone (202) 732–2505.

(Before Completing Certification, Read Instructions Below)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name And Title of Authorized Representative

Signature
Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The propsective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participated," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction,

unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Governemnt, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, § 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 **Federal Register** (pages 19160–19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(Before Completing Certification, Read Instructions Below)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name And Title Of Authorized Representative

Signature

Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require established of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

[FR Doc. 89–1663 Filed 1–25–89; 8:45 am]
BILLING CODE 4000–01–M

federal register

Thursday
January 26, 1989

Part VI

Department of Labor

Employment Standards Administration, Wage and Hour Division

29 CFR Part 502

Reporting and Employment Requirements for Employers of Certain Workers Employed in Seasonal Agricultural Services; Final Rule

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 502

Reporting and Employment Requirements for Employers of Certain Workers Employed in Seasonal Agricultural Services

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This rule amends the regulations to exclude field work on hay from the definition of seasonal agricultural services for purposes of the reportable worker requirements of the special agricultural worker program. This action is taken because the litigation challenging the Department of Agriculture's failure to include hay in its definition has concluded. This rule also amends the regulations to provide a complete address for return mailing of Form ESA–92, to further clarify the definition of a "reportable worker," and to make a clarification in the procedures for appeal.

EFFECTIVE DATE: January 26, 1989.

FOR FURTHER INFORMATION CONTACT: Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Telephone (202) 523–8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 9, 1988 (53 FR 35154), the Department of Labor issued final regulations, 29 CFR Part 502, entitled "Reporting and Employment Requirements for Employers of Certain Workers Employed in Seasonal Agricultural Services." These regulations were effective October 1, 1988.

In the regulations referred to above, the definition of "seasonal agricultural services" in § 502.2(o)(3) included field work related to the growing and harvesting of hay because application of sections 210 and 210A of INA to hay was being contested in litigation. In *Texas Farm Bureau et al.* v. *Lyng* (U.S. District Court for the Eastern District of Texas, No. M–88–095–CA, 9/28/88), the Court upheld the regulation issued by the Department of Agriculture which excludes hay from the special agricultural worker program. That decision was not appealed. Accordingly, this document revises the regulations to exclude field work on hay from seasonal agricultural services. In this regard, a conforming change is made to § 502.12(d)(2).

The regulations are amended at § 502.12(g) to provide the address to which Form ESA–92 must be mailed.

An amendment to clarify the definition of "reportable worker" is also made. It has come to our attention that there may have been some misunderstanding regarding the previous definition of "reportable worker." Accordingly, § 502.2(n) is clarified to make it clear that the phrase "INS Alien Registration Number in the A90000000 series" includes any Alien Registration Number starting with A9 and followed by any seven digits.

A minor amendment is made to § 502.39 to conform to the rules of the Department's Administrative Law Judges for conduct of hearings at 29 CFR Part 18. The regulation provides that where an exception is filed by mail, 5 days will be added to the prescribed time for filing.

For information purposes, a copy of revised Form ESA–92, deleting "hay" and including the mailing address, is attached as an appendix.

Publication in Final

The Department of Labor has determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for waiving public comment on these amendments to the regulation. Such comment is unnecessary because the Department had previously announced its intention to amend the regulations to reflect the final disposition of hay and the other contested crops after conclusion of the litigation, and to publish the address to which the ESA–92 form must be mailed. The clarifying change to the reportable worker definition and to the procedural rules do not require notice and comment pursuant to 5 U.S.C. 553(b)(A), since they are interpretative and procedural in nature.

Effective Date

The Department has determined that good cause exists for waiving the customary requirement to delay the effective date of a final rule for 30 days following its publication. The amendments contained in this rule are necessary for the public to comply with the reporting requirements which must be fulfilled by January 16. Furthermore, the amendment deleting "hay" relieves a reporting requirement. Therefore, these amendments should be effective immediately.

Executive Order 11291

The Department has determined that this rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Pub. L. 96–354, Stat. 1165, 5 U.S.C. 601 *et seq.* pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2). In any event, the rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Since the exclusion of hay from the list of eligible commodities under the special agricultural worker program and the other amendments to this rule require the collection of no additional information, additional approval of the Office of Management and Budget is not required. See 44 U.S.C. 3501 *et seq.*

Authority

For reasons set out in the preamble, Part 502 of Chapter V of Title 29 of the Code of Federal Regulations, is amended as set forth below:

PART 502—REPORTING AND EMPLOYMENT REQUIREMENTS FOR EMPLOYERS OF CERTAIN WORKERS EMPLOYED IN SEASONAL AGRICULTURAL SERVICES

1. The authority citation for Part 502 continues to read as follows:

Authority: 8 U.S.C. 1160, 1161; 1801 et seq.

Section 502.6 also issued under 29 U.S.C. 49k.

§ 502.2 [Amended]

2. Section 502.2(o)(3) is amended by removing the word "hay," from the first sentence.

3. In § 502.2, paragraph (n) is revised to read as follows:

§ 502.2 Definitions pertaining solely to a reportable worker employed in seasonal agricultural services.

* * * * *

(n) "Reportable Worker" is an alien employed in seasonal agricultural services who was admitted with lawful temporary resident status or whose status was adjusted to lawful temporary residency, and who is identified by an INS Alien Registration Number in the A90000000 series (i.e., the number starts with "A9," followed by any seven digits). This series includes:

(1) Resident aliens admitted under section 245A of the INA,

(2) Resident alien-special agricultural worker admitted under section 210 of the INA, and

(3) Resident alien-replenishment agricultural workers admitted between FY 1990 and FY 1993 under section 210A of the INA.

* * * * *

§ 502.12 [Amended]

4. Section 502.12(d)(2) is amended by removing the word "hay," from the text.

5. In § 502.12, paragraph (g) is revised to read as follows:

§ 502.12 Reporting to the Federal Government.

* * * * *

(g) The Form ESA–92 shall be submitted to "Committee for Employment Information on Special Agricultural Workers" and mailed to 1201 E. 10th Street, Jeffersonville, Indiana 47132.

* * * * *

6. In § 502.39, paragraph (c) is revised to read as follows:

§ 502.39 Service of determinations and computation of time.

* * * * *

(c) When a request for a hearing is filed by mail, (5) five days shall be added to the prescribed period during which the party has the right to request a hearing on the determination.

Note: The Department presents a form in the Appendix which satisfies certain recordkeeping aspects of the Act and regulations. This form, however, will not appear in the Code of Federal Regulations.

BILLING CODE 4510-27-M

Appendix A—Work-Day Report, ESA–92

WORK-DAY REPORT (Form ESA - 92)

Required under Public Law 99-603, Sec 210A (b) (2)

Form ___ of ___ (use additional forms as needed)

2. EMPLOYER NAME

BUSINESS NAME

3. ADDRESS

CITY STATE ZIP -

DAYTIME PHONE

4. EIN

TYPE OF BUSINESS

1. Reporting Period [check quarter *and* year]

Quarter	Year
( ) Oct. 1 through Dec. 31 *mail by Jan. 16*	( ) *1988* ( ) *1989*
( ) Jan. 1 through March 31 *mail by April 17*	( ) *1990* ( ) *1991*
( ) April 1 through June 30 *mail by July 17*	( ) *1992*
( ) July 1 through Sept. 30 *mail by Oct. 16*	

5. All crops on which reportable workers were employed:

6. The following (or attached, certified list of) employees are reportable workers and worked at least one work-day (4 or more hours worked) in seasonal agricultural services during the quarter reported:

Reportable Worker Name	INS Alien Registration Number	Number of days worked 4 hours or more in seasonal agricultural services		
		All Other Crops	Sod	Sugar Cane
	A9__,___,___			
	A9__,___,___			
	A9__,___,___			
	A9__,___,___			
	A9__,___,___			
	A9__,___,___			
	A9__,___,___			
	A9__,___,___			
	A9__,___,___			
	A9__,___,___			
	A9__,___,___			
	A9__,___,___			
	A9__,___,___			
	A9__,___,___			
	A9__,___,___			
	A9__,___,___			

I hereby certify that all information provided herewith is complete and accurate to the best of my knowledge. The willful falsification of any statements contained herein or attached hereto may subject the employer to civil or criminal prosecution. See Section 1001 of Title 18 of the United States Code.

Instructions and authority for report on reverse side of form.

7. Employer Signature and Date

Return To: CEISAW
Committee for Employment Information
on Special Agricultural Workers
1201 E. 10th Street
Jeffersonville, Indiana 47132

Form ESA 92
Form Approved
OMB Number 1215-0168
Expiration Date 8/91

Form ESA 92 (Cont)

AUTHORITY FOR EMPLOYERS REPORTS

The authority for this certified report to the Federal Government is contained in Section 210A of the Immigration and Nationality Act as amended by the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603. This form is to report employment information on certain workers employed in seasonal agricultural services. This information is used to identify labor utilization and, if necessary, to determine any agricultural labor shortage in order to replenish the work force for this type of employment.

Public reporting burden for this collection of information is estimated to average 20 1/2 minutes per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N-1301, 200 Constitution Ave., NW, Washington, DC 20210, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

WHO MUST REPORT

This form is to certify employment information of certain workers employed in seasonal agricultural services in which the employer is required to provide such information to the Federal Government. A worker whose employment is to be reported is an individual with an INS Alien Registration Number (if applicable, submitted by the employee on the INS Form I-9) in the A90000000 series and who performs work in seasonal agricultural services for at least one workday (4 or more hours worked) during the quarter reported. For further details refer to regulations at 29 CFR 502.

ITEM 1. Indicate the quarter and year for which the information is submitted.

ITEM 2. Enter the complete employer and/or business name(s).

ITEM 3. Enter the complete address, and telephone number (including area code of the employer).

ITEM 4. Enter the employer's federal tax identification number and type of agricultural business, e.g., farm, nursery, or farm labor contractor.

ITEM 5. Indicate in this space all the crops (such as "cucumbers" or "wheat") in which reportable workers were employed.

ITEM 6. With respect to each employee with an Alien Registration Number in the A90000000 series who was employed in seasonal agricultural services at any time during the quarter reported, enter each worker's name, INS Alien Registration Number, and the total number of workdays that each worker was employed in seasonal agricultural services in any of the specific "contested crops" indicated and for all other crops. Where an employee worked in one or more "contested crops" and in other crops on the same day, enter that workday under "All Other Crops." The entries in all columns should add up to the total number of workdays that each worker was employed in seasonal agricultural services. A "workday" is defined as any day during which at least four (4) hours of work in seasonal agricultural services is performed. If one worker performs seasonal agricultural services for more than one employer on any one day, only one workday will be counted.

The information required under item 6 (only) may be supplied via a certified computer-generated paper listing in the same format as called for on the Form ESA-92 - attached to the otherwise complete ESA-92, but such attached listing must also be signed and dated (i.e., certified) by the responsible party to be valid.

ITEM 7. THIS FORM MUST BE SIGNED AND DATED BY THE REPORTING EMPLOYER OR A DESIGNATED REPRESENTATIVE OF THE EMPLOYER. NOTE: STATEMENTS SUBMITTED ARE SUBJECT TO 18 U.S.C. 1001.

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

Failure to accurately complete and mail this form within the time period specified in regulation 29 CFR 502 will be in violation of the Immigration and Nationality Act as amended by IRCA. The penalties imposed are contained in the statute and regulation 29 CFR 502.

DEFINITIONS

Performing work in "Seasonal Agricultural Services" means performing field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities as defined in regulation 7 CFR part 1d. For purposes of this regulation only, "seasonal agricultural services" also includes field work performed in the following "contested crops": sod and sugarcane. The requirement of reporting these commodities does not constitute evidence that they are eligible commodities for purposes of the SAW program. The reporting requirements will enable the Federal Government and the replenishment agricultural worker to obtain needed data in the event that it is later decided that these commodities are SAW eligible.

"Field work" means any employment performed on agricultural lands for the purpose of planting, cultural practices, cultivating, growing, harvesting, drying, processing, or packing any fruits, vegetables, or other perishable commodities. These activities have to be performed on agricultural land in order to produce fruits, vegetables, and other perishable commodities, as opposed to those activities that occur in a processing plant or packinghouse not on agricultural lands. Thus, the drying, processing, or packing of fruits, vegetables, and other perishable commodities in the field and the "on the field" loading of transportation vehicles are included. Operations using a machine, such as a picker or a tractor, to perform these activities on agricultural lands are included. Supervising any of these activities shall be considered performing the activities.

"Agricultural lands" means any land, cave, or structure, such as a greenhouse, except packinghouses or canneries, used for the purpose of performing field work.

Fruits and vegetables of every kind and other perishible commodities INCLUDE the following. All fruits and vegetables, including (but not limited to) berries, melons, tree fruits and nuts, table vegetables; also corn and small grains, cotton, soybeans; other perishable commodities are limited to Christmas trees, cut flowers, herbs, hops, horticultural specialties (field grown, containerized, and greenhouse produced nursery crops), spanish reeds (arundo donax), spices, sugar beets, and tobacco, as defined in 7 CFR Part 1d.

Examples of other commodities which are EXCLUDED include: Animal aquacultural products, birds, dairy products, earthworms, fish including oysters and shellfish, flax, forest products, fur bearing animals and rabbits, hay, honey, horses and other equines, livestock of all kinds including animal specialties, forage, silage, poultry and poultry products, wildlife and wool.

"Contested crops" INCLUDE sod and sugarcane. Reports must be filed on field work performed by reportable workers in these crops.

★U.S.GPO:1988-0-241-384/02605

BILLING CODE 4510-27-C

Signed at Washington, DC, this 18th day of January, 1989.

Ann McLaughlin,

Secretary of Labor.

Fred W. Alvarez,

Assistant Secretary for Employment Standards.

Paula V. Smith,

Administrator, Wage and Hour Division, Employment Standards Administration.

[FR Doc. 89-1864 Filed 1-25-89; 8:45 am]

BILLING CODE 4510-27-M

federal register

Thursday
January 26, 1989

Part VII

Department of Commerce

Patent and Trademark Office

37 CFR Parts 15 and 15a

Service of Process and Testimony of Employees of the Patent and Trademark Office and Production of Documents in Legal Proceedings; Final Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 15 and 15a

[Docket No. 9106-9006]

Service of Process and Testimony of Employees of the Patent and Trademark Office and Production of Documents in Legal Proceedings

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office is adding 37 CFR Parts 15 and 15a to supplement 15 CFR Parts 15 and 15a. These new parts prescribe policies and procedures to be followed with respect to service of process on the Patent and Trademark Office, the Commissioner of Patents and Trademarks, and employees of the Office, the testimony of Office employees regarding official matters, and the production of official documents in legal proceedings. These regulations serve as a statement of Office policy and provide comprehensive guidelines for the Office and its employees, outside agencies, and other persons regarding the appropriate procedures for service of process, testimony, and production of documents.

EFFECTIVE DATE: January 26, 1989.

FOR FURTHER INFORMATION CONTACT: Associate Solicitor John W. Dewhirst by mail at Box 8, U.S. Patent and Trademark Office, Washington, DC 20231 and by phone at (703) 557-4035.

SUPPLEMENTARY INFORMATION: These regulations are designed to supplement, and be construed consistent with, 15 CFR Parts 15 and 15a. The regulations in Part 15a state the views of the Office with respect to the permissible scope of testimony which may be given by Office employees in connection with their performance of quasi-judicial patent and trademark matters. These Office views are consistent with *United States v. Morgan*, 313 U.S. 409, 422 (1941); *Western Electric Co., Inc. v. Piezo Technology, Inc. v. Quigg*, No. 88-1216, 860 F.2d 428, 8 USPQ 2d 1853 (Fed. Cir. Nov. 1, 1988); *In re Mayewsky*, 162 USPQ 86, 89 (E.D. Va. 1969), and *Shaffer Tool Works v. Joy Mfg. Co.*, 167 USPQ 170 (S.D. Tex. 1970).

Because these regulations concern agency management and personnel, they are not rules or regulations within the meaning of section 1(a) of Executive Order 12291, and they are not subject to the requirements of that Order. Accordingly, no preliminary or final regulatory impact analysis has to be or will be prepared.

These regulations, relating to agency management and personnel, are exempt from all requirements of section 553 of the Administrative Procedure Act (5 U.S.C. 553) including a delayed effective date and therefore will be effective immediately upon publication in the **Federal Register.**

Because a notice of proposed rulemaking and an opportunity for public comments are not required to be given for these regulations by section 553 of the APA, or by any other law, no regulatory flexibility analysis has to be or will be prepared for purposes of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)).

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

This rule does not contain collections of information for purposes of the Paperwork Reduction Act.

List of Subjects in 37 CFR Parts 15 and 15a

Attorneys, Administrative practice and procedure, Courts, Government employees.

For the reasons set forth in the preamble, 37 CFR is amended as follows:

1. Part 15 is added to read as follows:

PART 15—SERVICE OF PROCESS

Sec.

Authority: 5 U.S.C. 301; 15 U.S.C. 1501, 1512, 1513, 1515, and 1518; Reorganization Plan No. 5 of 1950; 44 U.S.C. 3101; 15 CFR 15.2(a).

§ 15.1 Scope and purpose.

(a) This part supplements 15 CFR Part 15 and sets forth the procedures to be followed when a summons or complaint is served on the Office or the Commissioner or an employee of the Office in his or her official capacity. This part is to be construed consistent with 15 CFR Part 15.

(b) This part is intended to ensure the orderly execution of the affairs of the Office and not to impede any legal proceedings.

(c) This part does not apply to subpoenas. The procedures to be followed with respect to subpoenas are set out in Part 15a of this Title.

(d) This part does not apply to service of process made on an Office employee personally on matters not related to official business of the Office or to the official responsibilities of the Office employee.

§ 15.2 Definitions.

For the purpose of this part:

(a) "Commissioner" means Assistant Secretary and Commissioner of Patents and Trademarks.

(b) "Legal proceeding" means a proceeding before a tribunal constituted by law, including a court, an administrative body or commission, or an administrative law judge or hearing officer.

(c) "Office" means Patent and Trademark Office.

(d) "Office employee" means any officer or employee of the Office.

(e) "Official business" means the authorized business of the Office.

(f) "Solicitor" means the chief legal officer of the Office or other Office employee to whom the Solicitor has delegated authority to act under this part.

§ 15.3 Acceptance of service of process.

(a) Any summons or complaint to be served in person or by registered or certified mail or as otherwise authorized by law on the Office or the Commissioner or an Office employee in his or her official capacity, shall be served on the Solicitor or an Office employee designated by the Solicitor.

(b) Any summons or complaint to be served by mail may be addressed to Solicitor, P.O. Box 15667, Arlington, Virginia 22215. Any summons or complaint to be served by hand may be delivered to the Office of the Solicitor.

(c) Any Office employee served with a summons or complaint shall immediately notify and deliver the summons or complaint to the Office of the Solicitor.

(d) Any Office employee receiving a summons or complaint shall note on the summons or complaint the date, hour, and place of service and whether service was by personal delivery or by mail.

(e) When a legal proceeding is brought to hold an Office employee personally liable in connection with an action taken in the conduct of official business, rather than liable in an official capacity, the Office employee by law is to be served personally with process. Service of process in this case is inadequate when made upon the Solicitor or the Solicitor's designee. Any Office employee sued personally for an action taken in the conduct of official business shall immediately notify and deliver a copy of the summons or complaint to the Office of the Solicitor.

(f) An Office employee sued personally in connection with official business may be represented by the Department of Justice at its discretion. See 28 CFR 50.15 and 50.16 (1987).

(g) The Solicitor or Office employee designated by the Solicitor, when accepting service of process for an Office employee in an official capacity, shall endorse on the Marshal's or server's return of service form or receipt for registered or certified mail the following statement: "Service accepted in official capacity only." The statement may be placed on the form or receipt with a rubber stamp.

(h) Upon acceptance of service or receiving notification of service, as provided in this section, the Solicitor shall take appropriate steps to protect the rights of the Commissioner or Office employee involved.

2. Part 15a is added to read as follows:

PART 15a—TESTIMONY BY EMPLOYEES AND THE PRODUCTION OF DOCUMENTS IN LEGAL PROCEEDINGS

Sec.

Authority: 5 U.S.C. 301; 15 U.S.C. 1501, 1512, 1513, 1515, and 1518; Reorganization Plan No. 5 of 1950; 44 U.S.C. 3101; 15 CFR 15a.1(e) and 15a.2(f).

§ 15a.1 Scope.

(a) This part supplements 15 CFR Part 15a and prescribes the policies and procedures of the Office with respect to the testimony of Office employees as witnesses in legal proceedings and the production of documents of the Office for use in legal proceedings pursuant to a request, order, or subpoena. This part is issued pursuant to 15 CFR 15a.1(e) and is to be construed consistent with 15 CFR Part 15a.

(b) This part does not apply to any legal proceeding in which an Office employee is to testify, while on leave status, as to facts or events that are in no way related to the official business of the Office.

(c) This part is intended to ensure the orderly execution of the affairs of the Office and not to impede any legal proceeding and in no way affects the rights and procedures governing public access to records pursuant to the Freedom of Information Act or the Privacy Act. See 15 CFR 15a.4 and 37 CFR 1.15.

§ 15a.2 Definitions.

For the purpose of this part:

(a) "Commissioner" means Assistant Secretary and Commissioner of Patents and Trademarks.

(b) "Demand" means a request, order, or subpoena for testimony or documents for use in a legal proceeding.

(c) "Document" means any record, paper, and other property held by the Office, including without limitation official patent and trademark files, official letters, telegrams, memoranda, reports, studies calendar and dairy entries, maps, graphs, pamphlets, notes, charts, tabulations, analyses, statistical or informational accumulations, any kind of summaries of meetings and conversations, film impressions, magnetic tapes, and sound or mechanical reproductions.

(d) "Legal proceeding" means a proceeding before a tribunal constituted by law, including a court, an administrative body or commission, an administrative law judge or hearing officer or any discovery proceeding in support thereof.

(e) "Office" means Patent and Trademark Office.

(f) "Office employee" means any officer or employee of the Office.

(g) "Official business" means the authorized business of the Office.

(h) "Solicitor" means the chief legal officer of the Office or other Office employee to whom the Solicitor has delegated authority to act under this part.

(i) "Testimony" means a statement given in person before a tribunal or by deposition for use before the tribunal or any other statement given for use before a tribunal in a legal proceeding, including an affidavit, declaration under 35 U.S.C. 25, or declaration under 28 U.S.C. 1746.

(j) "United States" means the Federal Government, its departments and agencies, and individuals acting on behalf of the Federal Government.

§ 15a.3 Office policy.

The Office policy is that its documents will not be voluntarily produced and Office employees will not voluntarily appear as witnesses or give testimony in a legal proceeding. The reasons for this policy include:

(a) To conserve the time of Office employees for conducting official business.

(b) To minimize the possibility of involving the Office in controversial or other issues which are not related to the mission of the Office.

(c) To prevent the possibility that the public will misconstrue variances between personal opinions of Office employees and Office policy.

(d) To avoid spending the time and money of the United States for private purposes.

(e) To preserve the integrity of the administrative process, minimize disruption of the decision-making process, and prevent interference with the Office's administrative functions.

§ 15a.4 Testimony or production of documents; general rule.

(a) No Office employee shall give testimony concerning the official business of the Office or produce any document in any legal proceeding without the prior authorization of the Solicitor. Where appropriate, an Office employee may be instructed in writing by the Commissioner, Solicitor, or other appropriate Office employee not to give testimony or produce a document. Without prior approval, no Office employee shall answer inquiries from a person not employed by the Department of Commerce regarding testimony or documents subject to a demand or a potential demand under the provisions of this Part. All inquiries involving a demand or potential demand on an Office employee shall be referred to the Solicitor.

(b) A certified copy of a document, not otherwise available under Chapter I of this Title, will be provided for use in a legal proceeding upon written request and payment of applicable fees required by law.

(c)(1) *Request for testimony or document.* A request for testimony of an Office employee or document shall be mailed or hand-delivered to the Office of the Solicitor. The mailing address of the Office of the Solicitor is Box 8, Patent and Trademark Office, Washington, DC 20231.

(2) *Subpoenas.* A subpoena for testimony by an Office employee or a document shall be served in accordance with the Federal Rules of Civil or Criminal Procedure as appropriate, or applicable state procedure, and a copy of the subpoena shall be sent to the Solicitor.

(3) *Affidavit.* Every request and subpoena shall be accompanied by an affidavit or declaration under 28 U.S.C. 1746 or, if an affidavit or declaration is not feasible, a written statement setting forth the title of the legal proceeding, the forum, the requesting party's interest in the legal proceeding, the reasons for the request or subpoena, a showing that the desired testimony or document is not reasonably available from any other

source, and if testimony is requested, the intended use of the testimony, a general summary of the testimony desired, and a showing that no document could be provided and used in lieu of testimony. The purpose of this requirement is to permit the Solicitor to make an informed decision as to whether testimony or production of a document should be authorized.

(d) Any Office employee who is served with a demand shall immediately notify the Office of the Solicitor.

(e) The Solicitor may consult or negotiate with an attorney for a party or the party, if not represented by an attorney, to refine or limit a demand so that compliance is less burdensome or obtain information necessary to make the determination required by paragraph (c) of this section. Failure of the attorney or party to cooperate in good faith to enable an informed determination to be made under this part may serve as the basis for a determination not to comply with the demand.

(f) A determination under this part to comply or not to comply with a demand is not an assertion or waiver of privilege, lack of relevance, technical deficiencies or any other ground for noncompliance. The Commissioner reserves the right to oppose any demand or any legal ground independent of any determination under this part.

§ 15a.5 Testimony of Office employees in proceedings involving the United States.

(a) An Office employee may not testify as an expert or opinion witness for any party other than the United States.

(b) When appropriate, the Solicitor may authorize an Office employee to give testimony as an expert or opinion witness on behalf of the United States. Expert or opinion testimony on behalf of the United States will not be authorized in any legal proceeding involving the validity or enforceability of a patent or registered trademark.

(c) Whenever, in any legal proceeding involving the United States, a request is made by an attorney representing or acting under the authority of the United States, the Solicitor will make all necessary arrangements for the Office employee to give testimony on behalf of the United States. Where appropriate, the Solicitor may require reimbursement to the Office of the expenses associated with an Office employee giving testimony on behalf of the United States.

§ 15a.6 Legal proceedings between private litigants.

(a) Testimony by an Office employee and production of documents in a legal proceeding not involving the United States shall be governed by § 15a.4.

(b) If an Office employee is authorized to give testimony in a legal proceeding, the testimony, if otherwise proper, shall be limited to facts within the personal knowledge of the Office employee. An Office employee is prohibited from giving expert or opinion testimony, answering hypothetical or speculative questions, or giving testimony with respect to subject matter which is privileged. If an Office employee is authorized to testify in connection with the employee's involvement or assistance in a quasi-judicial proceeding which took place before the Office, that employee is further prohibited from giving testimony in response to questions which seek:

(1) Information about that employee's:

(i) Background.

(ii) Expertise.

(iii) Qualifications to examine or otherwise consider a particular patent or trademark application.

(iv) Usual practice or whether the employee followed a procedure set out in any Office manual of practice in a particular case.

(v) Consultation with another Office employee.

(vi) Understanding of:

(A) A patented invention, an invention sought to be patented, or patent application, patent, reexamination or interference file.

(B) Prior art.

(C) Registered subject matter, subject matter sought to be registered, or a trademark application, registration, opposition, cancellation, interference or concurrent use file.

(D) Any Office manual of practice.

(E) Office regulations.

(F) Patent, trademark, or other law.

(G) The responsibilities of another Office employee.

(vii) Reliance on particular facts or arguments.

(2) To inquire into the manner in and extent to which the employee considered or studied material in performing the quasi-judicial function.

(3) To inquire into the bases, reasons, mental processes, analyses, or conculsions of that Office employee in performing the quasi-judicial function.

§ 15a.7 Procedures when an Office employee receives a subpoena.

(a) Any Office employee who receives a subpoena shall immediately forward the subpoena to the Office of the Solicitor. The Solicitor will determine the extent to which an Office employee will comply with the subpoena.

(b) If the Office employee is not authorized to comply with the subpoena, the Office employee shall appear at the time and place stated in the subpoena, produce a copy of Part 15a of Title 15 and a copy of this part, and respectfully refuse to provide any testimony or produce any document. *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

(c) When necessary or appropriate, the Solicitor will request assistance from the Department of Justice or a U.S. Attorney or otherwise assure the presence of an attorney to represent the interests of the Office or an Office employee.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

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